WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of Arbitration Between	)	
	)	
MENOMONEE FALLS, SCHOOL DISTRICT MAINTENANCE/ CUSTODIAL UNIT, LOCAL 2765, AFSCME, AFL-CIO	)	Case XLI No. 31865
	)	Decision No. 21105-A
and	)	MED/ARB - 2347
	)	
SCHOOL DISTRICT OF MENOMONEE FALLS	)	OPINION AND AWARD

Appearances:

For the Union: Richard W. Abelson, Representative, Council 40, AFSCME, AFL-CIO, Waukesha.

For the Employer: Mark L. Olson, Esq., Milwaukee.

BACKGROUND

On July 6, 1983, Menomonee Falls School District Maintenance/Custodial Unit, Local 2765, AFSCME, AFL-CIO (referred to as the Union) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate mediation-arbitration pursuant to Section 111.70 (4) (cm) (6) of the Municipal Employment Relations ACT (MERA) to resolve a collective bargaining impasse between the Union and the School District of Menomonee Falls (referred to as the Employer) concerning a reopener to the parties'collective bargaining agreement which will expire on June 30, 1984.

On October 19, 1983, the WERC found that an impasse existed within the meaning of Section 111.70 (4) (cm). On November 9, 1983, after the parties notified the WERC that they had selected the undersigned, the WERC appointed her to serve as mediator-arbitrator to resolve the impasse pursuant to Section 111.70 (4) (cm) (b-g). No citizens' petition pursuant to Section 111.70 (4) (cm) (6) (b) was filed with the WERC.

By agreement, the mediator-arbitrator met with the parties in Menomonee Falls, Wisconsin, on January 24, 1984 to mediate the above impasse. An arbitration hearing was held in Menomonee Falls, Wisconsin on March 1, 1984 at which time the parties had full opportunity to present evidence and arguments. Post hearing briefs were exchanged and filed with the arbitrator.

ISSUES AT IMPASSE

In this reopener impasse arbitration proceeding, there are three unresolved issues. Two relate to insurance premium payments and the third relates to wages for 1983-84.

As to hospital and surgical insurance, the Union's final offer is for the Employer to continue to pay the full monthly premiums, expressed in dollar amounts, for single employee coverage ($71.30) and for family employee coverage ($186.44). As for dental insurance, the Union's final offer is for the Employer to continue to pay the full monthly premiums, expressed in dollar amounts, for single employee coverage ($11.90) and for family employee coverage ($32.06). The Employer's final offer on insurance coverage is to raise its present monthly contribution for health insurance to $66.13 for single coverage and $172.91 for family employee coverage, and to raise its monthly contribution for dental insurance to $10.48 for single employee coverage and $30.26 for family employee coverage. Under the Employer's final offer, remaining premium amounts would be paid by the employee.

As for wages, the Union's final offer is 4% across-the-board increase effective July 1, 1983, while the Employer's final wage offer is the following wage schedule effective July 1, 1983:

Position	Starting Rate	After 120 Days
Assistant Maintenance Foreman	$9.22	$10.25
Maintenance	8.57	9.93
Assistant Custodian Foreman	9.06	9.69
Custodian A (Fifteen (15) rooms or more)	7.71	9.34
Custodian B (Less than fifteen (15) rooms)	7.59	9.06
Laundry Operator	5.77	6.97
Part-time	5.18	5.18

STATUTORY CRITERIA

Under Sec. 111.70 (4) (cm) (7), the mediator-arbitrator is required to give weight to the following factors:

(a) The lawful authority of the municipal employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

(d) Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost-of-living.

(f) The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The Union

The Union clearly states that its top priority in collective bargaining and in this proceeding is to maintain the 100% Employer's contribution for health and dental insurance premiums (expressed in dollar terms as it has been historically worded in the parties' prior collective bargaining agreements). Accordingly, the Union has made a low wage offer (obviously lower than the Employer's final wage offer) in order to maximize the reasonableness of its total package taking into account its primary demand. The Union supports its final offer on full Employer contribution to health and dental insurance premiums by a number of arguments. These include that 1) the Union's position has been the unbroken, historical pattern in this School District for these employees; 2) tax considerations favor its position since Employer payments are made with "pre-tax" dollars; 3) to require employee contributions, particularly in this unit, would be inequitable and regressive taking into account the comparatively low wage levels and the inflexible dollar contributions required of each covered employee, regardless of wage, by the Employer's final offer; and 4) this is just a "foot in the door" to make way for even greater Employer give-back demands in the future.

The Union further supports its insurance positions by looking at data from a large pool of school districts which the Union views as comparable. The Union also notes that the Employer's proposal shifts only the responsibility for payment of part of an insurance payment from Employer to employee. The level of benefits, however, remains unchanged. Accordingly, the Union believes that this is not a "co pay" proposal and is

not the type of cost containment coinsurance proposal discussed and advocated in the articles introduced into evidence by the Employer.

Finally, the Union supports it final insurance offers because of its lower wage offer which it contends is in line with external (other school districts) as well as internal comparables.

The Union concludes by rejecting the Employer's final offer as "paternalism at its worst" because it "tells workers how to spend their money". For all the above reasons, the Union believes that its offer should be selected.

The Employer

The Employer contends that its insurance premium final offers are more reasonable for a number of reasons. First, the Employer argues for the need for cost containment of rapidly escalating health and dental insurance premiums. It points to several publications introduced into the record, including an article in the New England Journal of Medicine. Second, it notes that its position will not harm employees since the level of coverage will remain unchanged while its wage increase will exceed the amount employees would be required to contribute. Third, the Employer points to all the other employees of the School District (represented and nonrepresented) and notes that its offer herein merely conforms to the pattern already established within the School District where, it should be emphasized, other bargaining units have agreed to the premium payment changes proposed to this bargaining unit.

The Employer further supports its insurance proposals by pointing to its survey of Menomonee Falls private sector employers where 10 out of 16 respondents indicated they required some employee contributions to health premiums. Finally, the Employer argues that its health and dental insurance costs were significantly greater than in the majority of other school districts which it believes are comparable.

Turning next to its wage final offer, the School District argues that its offer exceeds increases in the cost of living and is more in line with wage increases received by other School District bargaining units (internal comparability) and by custodians in comparable school districts (external comparability). In contrast, the School District believes that the Union's final offer would permit employees to fall behind the comparables presented by both parties.

Accordingly, the Employer concludes that its total package is more reasonable and should be selected in this proceeding.

DISCUSSION

Although this case concerns a reopener impasse dispute with only a few issues at impasse, it is a difficult case to decide. The Union wants to retain what it views as a very important existing fringe benefit for bargaining unit members, full payment by the Employer of the health and dental insurance premiums (expressed contractually in dollar amounts). The Union, therefore, has submitted an across-the-board wage offer of only 4%. On the other hand, the Employer, concerned with rapidly escalating health and dental insurance premiums, wants members of the bargaining unit to pay a small part of these premiums particularly because other of the Employer's bargaining units have already agreed to this change. To compensate appropriately for its proposed insurance premium changes, the Employer's final wage offer is 7%. It is clear that both sides have consciously structured their bargaining and final offers to emphasize the reasonableness of their respective positions on the insurance issues. The major difference between the parties is primarily principle rather than economics.[1] Both parties have given special emphasis to their insurance final offers and have viewed their wage final offers primarily in relationship to their insurance proposals.

Initially, it is important to note that it is the School District which is proposing to change the status quo by requiring employee contribution to health and dental premiums (although it should also be noted that the Employer's proposal includes an increase in Employer dollar contributions to health insurance premiums in excess of the amounts presently in the parties' collective bargaining agreement). The Employer's arguments for such a change merit close consideration.

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1. The difference between the packages, according to the parties' various calculations, is roughly 1 or 2%.

It is certainly understandable that employers generally and this Employer in particular would prefer uniform, district-wide practices relating to the payment of health and dental insurance premiums. The lack of uniformity in this regard, however, does not present the same level of serious administrative problems that would occur if there were varying levels of benefits available to different groups of School District employees. It is also understandable that employers generally and this Employer in particular are concerned about high dollar costs for health and dental insurance for employees and therefore will compare themselves with other similarly situated school districts and local private sector employers. Close analysis of comparable insurance costs must take into account the level of contracted for employee benefits available. This cannot be done in this proceeding since the information required for such an analysis has not been made part of the record. There is no way to determine herein whether the health and dental insurance premium costs are "high" or "appropriate" in relationship to the level of benefits provided. Comparability, therefore, cannot be critical herein.

Thus, the undersigned must focus on the "heart" of the Employer's argument in this proceeding, i.e. the policy need for containing escalating health and dental insurance costs. It was for this reason, at least in significant part, that the School District earlier sought acceptance of its proposal to share insurance premium costs between Employer and employee participants from all its bargaining units and imposed this premium cost sharing arrangement upon its unrepresented employees. To support its cost containment argument, the Employer submitted several exhibits that were made part of the record. The most detailed and serious of these exhibits is an article which appeared in the New England Journal of Medicine (Vol. 35, No. 25) reporting interim results from a "controlled trial" of health cost sharing conducted by The Rand Corporation and performed pursuant to a federal grant. The article describes various effective co-insurance alternatives. The described "trials" involving co-insurance did not concern or refer to the sharing of insurance premiums by Employer and employee as proposed by the Employer. They did concern or involve various plans whereby an insurance company or other third party payor and a family or individual shared the costs in varying ways for health and dental services provided. Co-insurance of the type investigated by The Rand Corporation research has no connection with the Employer's insurance proposals herein.

Further, in this proceeding, the Employer has expressed concern that health care costs will not be contained until users (employees and their families) become aware of or sensitive to health care costs. The Employer proposes to begin this awareness process by its final offer requiring some premium cost sharing. This bargaining unit, however, has demonstrated its accurate awareness of the financial implications of the Union's insurance proposals by significantly moderating its wage demands so that the Union's final offer package is less expensive than that of the Employer. This certainly demonstrates significant "awareness."

Accordingly, the undersigned must conclude that the Employer has not adequately justified its insurance proposals either as viable health cost containment measures or as the only appropriate route to increase employee awareness of the problem of escalating health care costs. Further, from the public's point of view, the lower total costs of the Union's final offer package is to be preferred over the higher costing package of the Employer unless there are other important Employer justifications for the "higher priced" final offer distinct from the arguments already addressed.

Both the Union and the Employer point to external comparables to justify their insurance proposals. Aside from the parties' dispute as to which school districts constitute appropriate comparables, the comparability data presented provide some support for the positions of both parties herein. The external comparables demonstrate a pattern of Employer payments of all health and dental insurance premiums, expressed either in terms of 100% or in dollar amounts (thus supporting the Union's position) while at the same time insurance premium dollars that must be paid by the Employer under its final offer are at the high end of the comparability range (thus supporting the Employer's position). Thus, insurance comparability data is inconclusive as well as incomplete.

Both the Union and the Employer also point to various external comparables to justify their wage final offers. This information is also inconclusive particularly in view of the integrated relationship between the parties' wage and insurance final offers in this proceeding, according to both the Union and Employer. The comparability data on wages is also incomplete since the undersigned is unable to compare job responsibilities from school district to school district, and there is a lack of information about other terms and conditions of employment needed to make a thoughtful comparability analysis. Thus, there is no need to resolve the parties' dispute as to what constitutes the appropriate comparables.

For the above reasons, the undersigned concludes that the Union's final offer is more reasonable, although she notes that both parties presented reasonable positions. The Employer, desiring to change an existing contractual benefit pattern for this unit, tried to make its final offer attractive by including a higher wage offer. The Union, desiring to retain what it viewed as a very important fringe benefit, tried to make its final offer attractive by its lower wage offer. Although the undersigned has selected the Union's final offer in this proceeding because it more closely conforms to the statutory criteria, it should be also noted that the Employer's expressed concerns about escalating health costs and the need for cost containment measures are serious and shared by a number of thoughtful observers. Future negotiations will provide the parties with an opportunity for further exploration of these concerns and the viability of various proposals to deal with this issue.

AWARD

Based upon consideration of the record herein and the arguments of the parties, the statutory criteria contained in Section 111.70 (4) (cm) (7), and for the reasons stated above, the arbitrator selects the final offer of the Union and directs that it be incorporated into the parties' collective bargaining agreement.

Madison, Wisconsin
June 27, 1984

June Miller Weisberger
Mediator-Arbitrator