STATE OF WISCONSIN
ARBITRATION

IN THE MATTER OF THE
MEDIATION/ARBITRATION
BETWEEN

THE ROSHOLT SCHOOL DISTRICT

and

THE ROSHOLT EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION

Case 14 No. 36907
Med/Arb - 3885
Award

Decision No. 24004-A

Introduction

On April 25, 1986 the Rosholt School District (hereafter Board or Employer) filed a petition with the Wisconsin Employment Relations Commission alleging an impasse between it and the Rosholt Educational Support Personnel Association (hereafter Association or Union) and requesting that the Commission initiate mediation/arbitration pursuant to Section 111.70 (4) (cm) 6, Wis. Stat. After an investigation the Commission concluded that the parties were deadlocked in their negotiations over a collective bargaining agreement and ordered the parties to select a mediator/arbitrator. On October 28, 1986 the Commission issued its order appointing Arlen Christenson of Madison, Wisconsin mediator/arbitrator. On January 5, 1987, after an unsuccessful attempt at a mediated settlement an arbitration hearing was conducted at which the parties had full opportunity to present evidence and argument. Post hearing briefs were filed according to an agreed upon schedule. The final reply briefs were received by the arbitrator by February 12, 1987.

Appearances

Dean R. Dietrich, Esq., Mulcahy & Wherry, S.C., Wausau, Wisconsin appeared for the Rosholt School District.

Thomas J. Coffey, Executive Director, Central Wisconsin UniServ Council-North, Wausau, Wisconsin appeared for the Rosholt Educational Support Personnel Association.

Issues

The parties have resolved all but five issues through collective bargaining. The remaining issues on which the final offers are in conflict are as follows:

1. Wages:

   1985-1986: A 4% increase has been implemented. The Board offer includes an additional increase of about 1 1/2 % for Reading/Teacher Aides. The Board offer calls for a total increase for 1985-86 of 4.1%. The Union offer would provide increases of varying amounts for each classification. The increases would range from 12.9% to 5.4% and average 8.9%.

   1986-1987: The Board offer for a 6% increase in two steps, July 1, 1986 and January 1, 1987 would vary from 5.8% to 6.2% depending upon classification. The Union offer in three steps, July 1, 1986, January 1, 1987 and March 1, 1987 would total 9.3% for each classification.

2. Health and Dental Insurance:

The Board offer provides for a three month waiting period before picking up the premiums for new employees. The Association offer begins premium payment immediately. The Association offer includes coverage for two regular part time employees. The Board would prorate benefits based on normal hours of work per week, current employees excepted.

3. Fair Share and Dues Deduction:

Both offers provide for a fair share clause. The Board offer includes a clause excluding current employees who choose not to join the Union while the Association would include everyone if the clause were approved by referendum. The Association offer also provides for dues deduction which the Board omits.

4. Holidays:

The Association's offer provides for 8 paid holidays for regular full time employees while the Board's offer provides 7.

5. Duration:

The Board's offer calls for bargaining to commence each year with the Union's proposals presented on or before February 15, the Board's proposals by March 15 and bargaining no later than April 1. The Association would provide that its proposals be due on or before March 15, the Board by April 15 and negotiations by May 1.

Discussion

The criteria to be applied in selecting one or the other of the final offers of the parties are established in Section 111.70 (4) (cm) 7, Wis. Stat. The parties have limited their analysis to just four of the statutory criteria. The four are:

1. The interest and welfare of the public.

2. The cost of living.

3. Comparison with wages received by other public employees.

4. The overall compensation, continuity and stability of employment for these employees.

The arguments of the parties have concentrated primarily on the statutory criterion calling for a comparison of the benefits in dispute with those afforded public employees in similar employment in comparable communities. This requires, initially, resolution of a dispute over which communities should be considered comparable. The Association contends that the communities used for comparison should be limited to those in the same athletic conference whose school support personnel are unionized. In addition the Association offers a comparison with three other nearby communities having unionized support personnel; Stevens Point, Mosinee and the Menominee Reservation. The Board proposes that the comparables include all communities in the athletic conference whether or not they are unionized and that the three other communities be excluded because they are not comparable.

I cannot subscribe to the notion that to apply the statutory criterion, a list of communities should be drawn up and labelled "comparable" and all other communities thereby excluded from any consideration. Comparability is a matter of degree and all communities in the state are in some degree comparable to all others. Of course some communities differ so markedly that their bargaining units cannot be considered comparable enough to provide useful information. Certainly, however, none of the communities cited by either party to this dispute can be said to be so different from Rosholt that knowledge of the benefits paid their similar employees is irrelevant to determining which of the two competing final offers in this dispute should be preferred. At the same time it is equally clear that geographically proximate, similarly sized communities, with similar economic resources, whose employees are unionized are more directly comparable than distant communities of different size and resources whose employees are not organized. In this dispute that means that the most directly relevant information is that from the school districts in the athletic conference whose employees are organized.

Information about nearby communities of similar size whose support personnel are not organized should, the Union contends, not be considered at all. I cannot accept that argument although it does point up the problems with relying too heavily on such information. One of those problems is the difficulty in providing mutual access to comparable information. These proceedings are to a large degree adversarial in the sense that the arbitrator must rely on the parties to present information and argue from it. Information from negotiated agreements is readily available, mutually verifiable and usually compiled in comparable form. None of these attributes necessarily characterizes information gleaned from the sources available respecting non-union employees. Nevertheless the reasonably complete information provided by the Board for this proceeding cannot be said to be so irrelevant as to be excluded from consideration. It defies common sense to say that Bowler should be considered comparable but the three similarly sized districts lying between Bowler and Rosholt should be totally excluded on the ground that their employees are not organized. Nor does the controlling statute exclude such consideration. The circumstances in a similar sized community within 30 miles or so must, under the statutory criteria, be taken into account if they are made known to the arbitrator on the record.

The Board contends that information about Stevens Point, Mosinee and the Menominee Reservation should not be considered because these communities are not comparable to Rosholt. They are different, to be sure. Stevens Point is very substantially larger, yet it is only 15 miles away. Mosinee has a different economic base, yet it too is geographically within the same labor market. Likewise with Menominee. None of these communities is as directly comparable as the core of geographically proximate, similarly sized, unionized districts but all are comparable enough to provide relevant information.

Taking into account the information provided on the record and viewed under the "comparable" criterion as described above, I must conclude that the Board's offer is inadequate with respect to the level of wage increases. Even among the districts chosen by the Board its offer for 1985-1986 is below average, despite the fact that the wage levels at the beginning of the year were also below average; in several classifications at or next to the very bottom. In the second year of the contract increase, using ending wage levels, is only .2% (6.0% as compared to 5.8%) above the average. Given the levels at which these employees began, the comparable criterion points to a larger increase.

Despite the inadequacy of the Board's wage offer, however, it is preferrable to the Association's. The Association's offer has two major weaknesses. First, it attempts to do too much in two years. Increases of 8.9% and 9.3%, fully recognizing the Association's argument that percentages applied to a low base are misleading, are more than can be justified. This is more emphatically the case in two years of such low inflation and in the application of the statutory criterion that requires consideration of the consumer price index. Secondly, and even more significantly, the distribution of the wage increases under the Union's offer is irrational. In several instances the classifications that fare best by comparison with other districts receive, by a large margin, the highest increase in the first year of the collective bargaining agreement. At the same time, the one classification, Reading/Teacher Aide, which the Association and the Board agreed needed a larger than average increase, would receive the lowest increase over the two years under the Association's offer. That classification would remain at the bottom among comparable districts.

The statutory criteria also require a consideration of the overall compensation presently received by the employees. Both parties argue that the agreement they have reached respecting participation in the state retirement program should be taken into account under this criterion. The Board has agreed to participation in the program and to paying the employer's share of the contribution. The Union points out that in most instances comparable employers pay the employee's share as well. The Board, on the other hand, emphasizes that this is a new benefit, the cost of which should be taken into account in evaluating the Board's offer. Both points are well taken. The agreement by the Board to pay for a portion of the cost is an increase in the Board's total compensatin package. At the same time need for the employees to pick up their portion of the cost affects their comparable position with those districts in which the employer pays the full cost. The arguments tend to balance one another under this criterion.

I have not given weight to the Board's arguments based upon either the generalized information about the state of the agricultural sector nor about the wage settlements in other municipal employment. The statutory criteria call attention to this kind of information but the quality of the information available does not make it relevant. The information presented is too general and, at the same time, to fragmentary.

Both parties concur in the proposition that the non-wage issues in dispute are secondary. In reviewing them I can see no compelling reason, considering them as a whole, that these issues should lead to a preferance of one offer over the other. The controlling issue is wages. On that issue the decision is extremely close. I conclude in the end, however, that the excessive increase in the Union's offer and the damage it would do to the wage structure present more compelling reasons for rejecting it than does the inadequacy of the level of increase in the Board's offer. In reaching this conclusion I have taken into account all the relevant information presented by the parties and applied all the relevant factors listed in Section 111.70 (4) (cm) 7, Wis. Stat.

Award

The final offer of the Rosholt School District is selected. It shall be incorporated into the collective bargaining agreement between the parties.

Dated at Madison, Wisconsin this 18th day of March, 1987.

Arlen Christenson, Arbitrator