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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

FINAL OFFER INTEREST ARBITRATION  
OPINION AND AWARD

In the Matter of Final Offer  
Interest Arbitration

between

DEERFIELD COMMUNITY SCHOOL  
DISTRICT

and

DEERFIELD EDUCATIONAL  
SUPPORT PERSONNEL

CASE 23  
NO 40863  
INT/ARB - 4981  
Decision No. 25629-A

Hearings Held

January 4, 1989  
Deerfield High School  
300 Simonson Blvd.  
Deerfield, WI

Appearances

For the District:

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Arbitrator

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For the Union:

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BACKGROUND

The undersigned was notified of his selection as Arbitrator in the above interest dispute by an August 31, 1988, letter from the Wisconsin Employment Relations Commission. The dispute concerns the provisions covering health insurance, dental insurance, retirement and wages to be included in a 2-year collective bargaining agreement (1988-1989, 1989-1990) covering support personnel (approximately nineteen custodians, cooks, aides and secretaries) in the Deerfield Community School District. The support personnel are represented for collective bargaining purposes by the Deerfield Education Support Personnel (the Association).

Beginning in February, 1988, the parties to this dispute engaged in negotiations over the terms of a successor to their 1986-1988 Collective Bargaining Agreement. When approximately five subsequent bargaining sessions did not result in a complete settlement of all the issues, the Association filed a petition alleging the existence of an

impasse and requesting the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Sec. 111.70 (4)(cm), of the Wisconsin Municipal Employment Relations Act.

The arbitration hearing was held on January 4, 1989, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective final offers. The hearing was transcribed. Timely Posthearing Briefs and Reply Briefs were filed by both parties, and the record was declared closed on March 28, 1989.

## THE PARTIES' FINAL OFFERS

### Association Offer

The Association's final offer is quoted below

#### ARTICLE IV - BENEFITS AND CONDITIONS

##### J NEW-RETIREMENT

Effective July 1, 1988, the Employer shall contribute an amount equal to 3% of the Employee's annual salary to a TSA of the Employee's choice

Effective July 1, 1989, the Employer shall contribute an amount equal to 6% of the Employee's annual salary to a TSA of the Employee's choice

The above contributions shall be made on a biweekly payroll basis.

#### ARTICLE VI

##### A HEALTH INSURANCE

Effective July 1, 1988, the District will contribute up to \$95.82 per month for single coverage and \$249.30 per month for family plan coverage for regular full-year and regular school term employees. Effective July 1, 1989, the District will contribute up to \$107.32 per month for single plan coverage and \$279.22 per month for family plan coverage for regular full-year and regular school term employees. The District will prorate the contribution for regular part-time employees based on a 40-hour week. No contribution shall be made for employees who work less than 20 hours per week. No employees employed prior to February, 1985, shall have their health insurance benefit reduced by application of this article. Preadmission Hospital Review shall be incorporated into the standard plan effective July 1, 1987.

**B DENTAL INSURANCE**

The District will contribute up to \$10.06 per month for single plan coverage and \$30.80 per month for family plan coverage for regular full-year and regular school term employees for 1988-1989 term. Effective July 1, 1989, the District will contribute up to \$10.86 per month for single plan coverage and \$33.26 per month for family plan coverage for regular full-year and regular school term employees. No contribution shall be made for employees who work less than 20 hours per week.

There shall be no retroactively (sic) concerning coverage or premium payments.

**ARTICLE XXIII - WAGES**

**A STARTING WAGES** (For Employees newly hired during the term of this collective bargaining agreement)

<u>Classification</u>	<u>1988-1989</u>	<u>1989-1990</u>
Custodians/Maintenance	\$6.05	\$6.15
Food Service	\$4.75	\$4.85
Aides*	\$4.75	\$4.85
Secretarial/Clerical	\$6.05	\$6.15

\* Aides who are required to be certified for their position will be paid an additional 50 cents per hour.

**B RETURNING EMPLOYEE RATES**

Effective July 1, 1988, the wages shall be increased by 10 cents per hour over their hourly rate, and

Effective July 1, 1989, the wages shall be increased by 2% plus 2 cents per hour over their hourly rate.

District Offer

The District's final offer is as follows:

**ARTICLE IV**

**J Retirement**

1988-1989 The Board of Education will contribute \$40 per month for full-time, full year employees and \$25 per month for part-time, school

year employees (those who work 20 or more hours per week and less than 52 weeks per year to a Tax Sheltered Annuity (TSA)

1989-1990 The Board of Education will contribute: \$60 per month for full-time, full year employees and \$45 per month for part-time, school year employees (those who work 20 or more hours per week and less than 52 weeks per year to a Tax Sheltered Annuity

## ARTICLE VI - INSURANCE

### A Health Insurance

The District will contribute up to \$92.00 per month for single plan coverage and \$235.00 per month for family plan coverage for regular full-year and regular school term employees for the 1988 term. Effective July 1, 1989, the District will contribute up to \$100.00 per month for single plan coverage and \$270.00 per month for family plan coverage for regular full-year and regular school term employees. The District will prorate the contributions for regular part-time employees based on a 40-hour week. No contribution shall be made for employees who work less than 20 hours per week. No employees employed prior to February, 1985 shall have their health insurance benefits reduced by application of this article. Preadmission Hospital Review shall be provided for the standard plan. If both spouses are employed by the District, only one family plan would be provided. No employee shall make any claim against the district for any compensation in lieu of the coverage because said employee is not eligible.

### B Dental Insurance

The District will contribute up to \$10.06 per month for single plan coverage and \$30.80 per month for family plan coverage for regular full-year and regular school term employees for 1988-1989 term. Effective July 1, 1989, the District will contribute up to \$10.86 per month for single plan coverage and \$33.26 per month for family plan coverage for regular full-year and regular school term employees. No contribution shall be made for employees who work less than 20 hours per week. If both spouses are employed by the District, only one family plan would be provided. No employee shall make any claim against the district for any compensation in lieu of the coverage because said employee is not eligible.

### C Insurance Adjustments

~~For the 1987-1988 term of this Agreement, a majority of the bargaining unit employees, as a group, shall determine whether to have fully paid health and/or dental insurance should the premium rates exceed those stated above for 1987-1988. If the majority elect such, the employer shall decrease the hourly rates for all unit positions by the flat cost per hour amount necessary to pay for the full health and/or dental premiums. Any offset shall be determined on or about the date of the known premium increase, based upon the number of employee single and family plans in effect for a particular type of insurance on that date.~~

**~~D~~-C Long Term Disability**

The school district will provide long term disability insurance to all personnel employed twenty (20) hours or more per week. The life insurance coverage will be for \$25,000.

**ARTICLE XXIII - WAGES**

**A Starting Rates (For employees newly hired during these school terms)**

<u>Classification</u>	<u>1988-1989</u>	<u>1989-1990</u>
Custodians/Maintenance	\$6 00	\$6 10
Food Service	\$4 70	\$4.80
Aides*	\$4.70	\$4.80
Secretaries/Clerical	\$6 00	\$6.10

\* Aides who are required to be certified for their position will be paid an additional \$ .50 per hour

**B Returning Employee Rates**

1 1988-1989 All employees will receive 5¢ per hour increase over their 1987-1988 hourly rate

2 1989-1990 All employees will receive 10¢ per hour increase over their 1988-1989 hourly rate.

**ANALYSIS**

**A PROCEDURAL ISSUE**

The Association attached to its Posthearing Brief two appendices. Appendix A consists of what it characterized as "source documents" for several of its exhibits. Appendix B, according to the Association, consists simply of a mathematical equation which can be derived from several of its exhibits. The District moved to strike these two Appendices on the grounds that they were not entered into evidence at the hearing. The Arbitrator hereby grants the District's Motion. To do otherwise might encourage parties to future interest arbitration proceedings to withhold intentionally certain evidence of importance to a particular case and simply attach it as an appendix to a posthearing brief without giving opposing counsel an opportunity to cross-examine as to its source and content.

To be sure, nothing in the instant matter has convinced me that the Association's motivation in attaching the Appendices to its Posthearing Brief was anything less than honorable. As noted in its response to the District's Motion to Strike, the Association attached the Appendices " . . . for the convenience of both the Arbitrator and opposing

counsel " However, the proper time to introduce the documents was at the hearing itself

## SUBSTANTIVE ISSUES

### The Comparables

The Association proposes that all school districts within a 35-mile radius of Deerfield be considered for comparison purposes; the District maintains that only those districts within the Eastern Suburban Athletic Conference are comparable. Furthermore, the District adds, terms and conditions of employment in other districts should not be given much significance in this matter because (1) there are no benchmark measurement devices for support personnel similar to those used in teacher interest disputes, and (2) support personnel are not usually as mobile as are teachers.

Consideration of employment conditions in comparable work contexts should focus on a market perspective. That is, an employer in free collective bargaining is pressured by market forces to provide wages and benefits at a level which would generally prevent its employees from "jumping ship" for more favorable ones elsewhere. It is highly unlikely that Deerfield support personnel, many of whom are part-time employees, would travel up to 35 miles one-way for a similar job paying even substantially more. The District is thus quite correct in its arguments against placing heavy significance on comparables under the circumstances of this particular dispute.

It is clear from the record that Deerfield support personnel have no significant history of leaving the District's employ. This may be because in the past the District has remained competitive with regard to the employment package it has provided. On the other hand, it may be related to the nature of the work performed by support personnel (including its part-time status for some) and the relatively low salary levels (as compared to teachers) offered generally for such work. These conditions might have limited the willingness of Deerfield support personnel to travel any significant distance for more favorable employment conditions. In any event, there are not enough precisely comparable wage statistics in this record to justify placing much weight on the hourly rates paid by other districts. Furthermore, there are no commonly accepted "benchmark" salaries for support personnel. There are no steps or lanes in a salary schedule that can be used for comparison purposes across school districts. For all of the above reasons, the Arbitrator has concluded it is not appropriate to place a great deal of weight on the "comparables" criterion in this matter.

To the extent that comparables are used, only those contiguous to Deerfield are appropriate, given the above comments on support personnel mobility and related market considerations. Moreover, the undersigned rejects the notion of using unionized status as a controlling criterion in selecting comparable districts. Terms and conditions of employment are shaped by market forces whether they are negotiated bilaterally or established unilaterally by management.

### Wages

The District's wage offer of 5¢ per hour the first year and 10¢ per hour the second year equates to percentage increases ranging from a low of about one-half of one percent to a high of just over one percent. For the second year it ranges from just over one percent to just over two percent. Such increases can be characterized as modest indeed, as can the Association's wage offer. In percentage terms, the Association's offer for the first year (10¢ per hour across-the-board) ranges from just over one percent to two percent. For the second year (2% plus 2¢) the Association's wage demand ranges from a low of 2.2% to a high of 2.5%. The total wage cost differential between the parties' offers over two years is just over \$4,000.

Both parties' wage offers are well below the cost of living increases for the relevant period. The District argues strenuously that since Deerfield is largely an agricultural community the falling price of agricultural land and effects of the 1988 drought should be considered. Moreover, the District points to the high tax levy in Deerfield as good reason for rejecting any public employment package which would increase it further. Such arguments are compelling indeed, but as the Association notes, the total dollar difference between the parties' offers here is only about one-tenth of one percent of the Deerfield School District's annual budget.

Frankly, neither of the parties' wage offers seems unduly large, especially as compared to any commonly accepted estimate of the cost-of-living increases over the first year of the pending contract. The District believes the Association's wage package goes well beyond what "comparable" private sector employers pay, but the Arbitrator finds no valid private sector wage data in this record. While there is wage information from the private sector, it is not accompanied by meaningful description of duties, length of service, or benefit packages. Data included in this record about wages in the Village of Deerfield were equally incomplete.

The Association explained that adoption of the District's offer would result in an actual reduction in take-home pay for almost all employees within the unit, once health insurance cost increases are considered. While this is true, the Association's argument implies that the District has an inherent responsibility to insulate employees against rising health care costs. Clearly, the District has no such responsibility.

On balance, the Arbitrator has concluded that neither of the parties' wage offers is wholly more reasonable than the other.

### Dental Insurance

The parties' final offers on dental insurance provide for the same employer contribution to the premium. The District's offer changes the status quo by adding language covering the presumably unique situation where one District employee is married to another. It limits such a couple to just one family dental plan between them. The District's offer would also prevent any employee from making a claim against the District for any compensation in lieu of the coverage because said employee is not eligible.

While the District did not present evidence of an immediate need for such language, it is not difficult to understand the financial wisdom of limiting two employees married to

each other to just one family insurance plan, whether it be for dental or medical insurance. However, in harmony with the bulk of arbitral authority, it is incumbent upon the party wishing to change the status quo to present compelling reasons why such a change should be implemented through interest arbitration. The District has not done so in the present case, particularly with regard to the issue of why such employees should not receive some form of compensation for essentially saving the District the cost of one family dental insurance plan. Accordingly, the Arbitrator concludes that the Association's offer on dental insurance is the more reasonable.

### Health Insurance

The Association argues that the District's health insurance offer changes the status quo, noting that the dollar contribution made by the District was equivalent to 100% of the premium cost for all of the previous ten years except 1987-1988. The negotiated employer contribution for that year, the second in a two-year agreement, was obviously an estimate made by the parties during negotiations. That estimate was apparently not high enough to meet the rising cost of health insurance. The Association believes that the District is now attempting to change the status quo by institutionalizing an employee contribution to health insurance.

The record has convinced me that the District is indeed attempting to change the status quo on health insurance. If it were to prevail in this dispute, the District would for the first time in ten years succeed in obtaining a contractually specified dollar cap lower than the known present health insurance premium (i.e. for 1988-1989). The Arbitrator therefore looks to the District for compelling reason to achieve such a change in interest arbitration rather than in free collective bargaining. No such evidence is found in this record.

This is not to say that Deerfield support personnel have enjoyed a guaranteed 100% employer payment of the health insurance premium; rather, the status quo is that they have never over the last ten years received through free collective bargaining an employer contribution less than the known premium amount at the time. The District has not convinced the undersigned that 1988-1989 is the year to depart from that pattern, especially through interest arbitration.

Additionally, the Arbitrator notes that the internal comparables strongly favor the Association's position on this issue. Deerfield teachers and administrators both enjoy the benefit of fully paid health insurance premiums. With regard to external comparables, Districts contiguous to Deerfield for which data were supplied either make health insurance contributions of a lower dollar amount or treat teachers and support personnel similarly with regard to health insurance contributions.

On balance, then, the undersigned finds the Association's final offer to be the more reasonable on the health insurance issue.

### Retirement

Deerfield support personnel have never had a retirement benefit. The Board's offer provides for fixed dollar contributions; the Association's includes a percentage payment



based upon the employee's salary. It should be apparent to even the most casual observer that the Association's offer would grant Deerfield support personnel an automatic increase in employer pension contribution every time they received a salary increase. However, a percentage-based employer pension contribution is very common in Wisconsin school districts, and the Arbitrator does not view that element of the Association's proposal as a fatal flaw.

The District argues that its retirement proposal would phase in this new benefit at a slower, more reasonable rate than would the Association's offer. There is some merit to this argument, particularly in view of the general trend in collective bargaining whereby new benefits are not achieved in one fell swoop, rather, they are achieved by employee organizations gradually, on a piecemeal basis over several iterations of bargaining. The Association argues that its offer does the same thing. It provides for a 3% employer contribution for the first year and a 6% employer contribution only for the second year. Moreover, the Association notes, its final offer on retirement would cost the employer less for the first year than would the employer's offer itself.

Another difference in the parties' offers on retirement is the District's provision excluding from coverage any employees who do not work at least twenty hours per week. The Association points out that such an exclusion would mean that three employees in the support personnel unit would receive no retirement contribution whatsoever. It is reasonable to conclude that the employer's retirement plan contribution should somehow be keyed to employees' respective contribution to the District's operation as a whole. Such a conclusion is consistent with the well-accepted notion in collective bargaining that those who work for an employer over a long period of time are entitled to a larger pension benefit than are those whose service was not so substantial. The Association's offer is in harmony with that general notion, however, since it would tie the District's retirement plan contribution to employee salary, which, in turn, is connected to hours worked.

Consideration of the internal comparables supports the Association's offer. Both teachers and administrators in the Deerfield Community School District enjoy employer retirement contributions based upon a percentage of their earnings. The rate is currently 11.8%, paid entirely by the District.

In view of the foregoing discussion, the Arbitrator has concluded that the Association's final offer on the retirement issue is the more reasonable. Its percentage-based structure is consistent with the District practice for other employees, and with retirement plans generally across either of the proposed groups of comparables in this matter. Moreover, the Association's offer on retirement reflects some measure of fiscal restraint. It will cost less for 1988-1989 than the District's own offer, and overall its financial impact over the two-year period is a modest \$425.90 greater than that which would result from implementation of the District's retirement plan.

#### Concluding Comments

Neither of the parties' offers is overwhelmingly preferable. Legitimate points were raised by both advocates in support of their respective constituencies. Overall, though, the Arbitrator finds the Association's offer to be slightly more reasonable and in harmony with applicable statutory criteria.

The Arbitrator recognizes that the total cost of the Association's offer (7.05% for 1988-1989; 6.12% for 1989-1990) is slightly greater than the increase in the cost-of-living estimates and projections for the same period, but consideration of the remaining statutory criteria outweighs that fact. In any event, the record has not convinced me that adoption of the Association's offer is repugnant to the public interest. As noted earlier, the dollar difference between the parties' offers is only about one-tenth of one percent of the annual Deerfield School District budget.

#### AWARD

In full consideration of the criteria set forth in Section 111.70(4)(cm), Wisconsin Statutes, the Arbitrator has decided that the final offer of the Deerfield Educational Support Personnel shall be included in the parties' 1988-1990 Collective Bargaining Agreement, along with the provisions of the 1986-1988 Master Agreement which are to remain unchanged and along with the stipulated changes agreed to by the parties.

Signed by me at Milwaukee, Wisconsin this 22nd day of May, 1989.

  
Steven Briggs