STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of the	*	
RIB LAKE EDUCATION ASSOCIATION	*	Case 11
	*	No. 40803
To Initiate Arbitration	*	INT/ARB - 4965
Between Said Petitioner and	*	Decision No. 25799-A
RIB LAKE SCHOOL DISTRICT	*	

APPEARANCES:

Gene Degner, Executive Director, WEAC UniServ Council #18, on behalf of the Association

Steven J. Holzhausen, Membership Consultant, Wisconsin Association of School Boards, on behalf of the District

INTRODUCTION

On January 5, 1989, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act (MERA) in the dispute existing between the Rib Lake Education Association (hereinafter the "Employees," the "Association" or the "Union") and the Rib Lake School District (hereinafter the "Employer", "District", or "Board"). On March 20, 1989, an arbitration hearing was held between the parties pursuant to statutory requirements and the parties agreed to submit briefs and reply briefs. Briefing was completed on May 22, 1989. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (6), Wis. Stats. (1985).

ISSUE

Shall the Labor Agreement between the parties reflect the terms of the final offer of the Union or that of the District?

DISCUSSION

This award will depart from the usual form because of the nature of the disputes between the parties.

There are four areas of disagreement. They agree that two of them, the assignment of substitute teachers and the extra-curricular pay schedules, are not to be considered controlling here, even though they are not without importance.

Therefore, two issues remain. The first is the salary schedule. Both parties have filed extensive and capable briefs on behalf of their position on this issue. What appears to

the arbitrator is two well thought out, responsible positions. After a review of the briefs and the exhibits supporting them, I have come to the conclusion that either final offer might be acceptable in light of the statutory standards. I have concluded that the wage issue shall not be controlling here in light of the fourth and remaining issue.

This has not been an easy conclusion to reach, and I believe the parties are entitled to as full a discussion of the rationale behind this award as I am capable of making.

There are two inherent difficulties facing the parties in bargaining over health insurance issues. The first is in the timing of health insurance policies. Even in bargaining for a one year contract, the parties are faced with uncertainties. These policies generally last for a single calendar year, while the statute imposes a July to June fiscal year upon school districts. School administrators are informed of insurance costs and coverages about three months before the expiration of the current policy, leaving only a short time period in which to make decisions for the coming calendar year.

Most teacher contract bargaining takes place in the early spring. At that point, the new insurance policy has only just been in force and neither party can be totally sure of how a new policy might be administered from a benefit perspective, though they will have a good idea of the cost of the coverage.

Assuming the parties reach agreement before the end of the fiscal year, they will still not be able to precisely project either costs or coverage for one half of the labor agreement's term. This period of uncertainty is compounded when longer contracts are involved. When a two year contract is involved, as it is in Rib Lake, the period of cost and coverage uncertainty extends to three-quarters of the time covered by the parties' agreement.

An even more difficult set of uncertainties face the parties and an arbitrator when coverages are to be compared. It is one thing to apply the statutory requirements to costs which are expressed in terms of dollars. For the life of me, I cannot fathom how those criteria may be applied to coverage. With only a few exceptions, health policies are not available to all school districts in the State. Moreover, coverage available through a HMO may be available in one school district and be totally unavailable in the adjoining district, not to mention the conference schools.

It may well be that a set of standards will evolve in time to provide a basis for analysis by arbitrators using the statutory criteria. To my knowledge, none presently exist and the parties here did not deal with the issue in light of those criteria except as the costs of the entire wage and benefit package were compared.

As a result of these problems, it is not possible to line up the wage issue and the health care issue side by side in order to decide which shall be the controlling issue. Even if such a lining up were possible, it would be difficult to objectively decide that on balance the wage issue is more vital than health (or vice versa). The factors involved, including past bargaining history, comparables and contract administration, are so complex that in the final analysis the parties must depend upon the reasoned judgment of the arbitrator, as informed and educated by the parties, to arrive at a fair decision.

As stated above, the health insurance issue will control in this matter. In view of the relative lack of attention given the issue in briefs or exhibits as compared to the wage offers, how was this decision made? One reason for my decision was the responsible nature of the final wage offers. This is not to say that they were so close as to enable the arbitrator to find they were essentially the same. They most certainly are not and there will be a clear winner or loser on the wage issue when this award is made. So, the final

offers are not similar, but they are both responsibly developed and supported by useful comparables and the skill of the parties and their representatives. A different result obtains when the final offers relating to health insurance are evaluated.

One of the objectives of interest bargaining is to arrive at a contract that can be administered and understood by the union and management easily and simply. Although the impact of wage schedules is substantial from a cost standpoint, it can be put in place and administered routinely.

That is not true when language changes are proposed by one or the other party. If these changes alter the relationship between the parties to a substantive degree, conflicts between the parties may arise that will hamper the orderly administration of the contract. It is for this reason that arbitrators have been properly reluctant to impose important language changes through the interest arbitration process, preferring to have the parties arrive at agreement on a voluntary basis.

The parties have agreed to make some modifications in the current language. They have agreed to eliminate the existing minimum payment to be made by the District and are agreed that all premiums shall be shared on a 90%-10% basis. If a teacher elects not to be covered by the school's health insurance policy, the District will pay that teacher the sum of $200 each year. The Board shall select the carrier and shall notify the Association of its choice 30 days in advance of any change.

The issue is the level of coverage. The present contract language requires the coverage to be equal to present coverage. The Association has asked the arbitrator to confirm this language. The District has proposed changing the terms of the agreement to enable the Board to select the carrier "provided that substantially equivalent coverage in major areas is maintained".

The District argues that the proposed language change is a relatively minor issue in this dispute. The Association does not agree with this view of the District's language proposal, arguing that it would result in a totally altered relationship between the parties when it comes to evaluating the terms of a new or substitute health insurance package. I agree that adoption of the Board's proposed language will require the parties to abandon a very straight forward standard, "equal," for one that will require constant interpretation.

The District states that "equal" and "equivalent" are synonymous. The Random House Dictionary of the English Language, Second Edition, Unabridged (Random House, Inc., 1987), on page 655, discusses the two terms as synonymous in this way, "**EQUAL** indicates a correspondence in all respects or in a particular respect: a dime is equal to 10 cents (that is, in purchasing power). **EQUIVALENT** indicates a correspondence in one or more respects, but not in all: an egg is said to be the equivalent of a pound of meat in nutritive value". To my knowledge, no person would order scrambled meat for breakfast. An egg and a pound of meat are not "equal" in that respect.

Unless the present health insurance policy sets forth "major" and "minor" areas of coverage, the District's proposed language is subject to further uncertainty. Experience tends to show us that all of our own injuries or illnesses are major. Those experienced by others are of lesser or minor import. Again, the word is subject to a degree of interpretation not required by the present language. The same is true of the word "substantially". I therefore find that the District's language proposal would constitute a substantive alteration in the contract language were it adopted here.

Having made this determination, we turn next to the question of whether the Board, as the party proposing the language change, has borne the burden of support required for an arbitrator to impose language changes in the arbitration process.

The first question to be examined is whether the present contract language has resulted in a condition requiring change. The second criterion is whether the proposed contract language can reasonably be expected to resolve the matter. The third is whether the proposed change will impose an unreasonable burden upon the other party if adopted.

The District argues that its proposed language will assist in containing the costs of health care, which have recently increased in Rib Lake by 18.3%. It further contends that adoption of its language will require both the Board and the Union to examine insurance coverage closely so that utilization of benefits and their attendant costs may be responsibly evaluated by both sides in the future.

Containment of costs is a valid objective. Yet, the Board has not set forth any cost containment history to indicate they have endeavored to cut costs outside of the bargaining process in the past to no avail. It also appears that the parties have agreed to language which will encourage Association participation in cost containment efforts in the future. This language will result in the same percentage increase in premium costs to the individual teacher as to the Rib Lake School District. If the total costs were to double, both parties' costs would double as well and the impact of such an increase would be the same. Both parties would have an equal interest in cost containment and in analysis of benefit levels.

When faced with such an increase, the existing standard of coverage provides a firm, understandable and agreed-upon standard for evaluation. As discussed before, the Board's proposed change would reduce the usefulness of that standard and comparison of premium to benefit level would be more difficult, not less.

Finally, the District's proposed language will result in a substantive and important alteration in the bargaining position of the parties. It seems inappropriate for an arbitrator to impose language upon an objecting party when the only resource available in the event of disagreement in interpretation might be the grievance process. It is precisely that possibility that has led arbitrators to require agreement on language through voluntary settlement in bargaining, not the interest arbitration process.

DECISION

For the reasons discussed above, the award here will turn upon the health insurance issue. The language proposed by the District has been found to constitute a substantial alteration in the contract terms. Furthermore, the District has not sustained the burden of supporting its proposed language alteration. For these reasons, the position of the Association will be adopted in this award.

AWARD

The collective bargaining agreement between the parties shall incorporate the language contained in the final offer of the Rib Lake Education Association.

DATED: August 18, 1989

ROBERT L. REYNOLDS, JR., Arbitrator