STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

UNITED LAKEWOOD EDUCATORS

To Initiate Arbitration
Between Said Petitioner and

MUKWONAGO AREA SCHOOL DISTRICT

Case 40
No. 40355 INT/ARB-4853
Decision No. 25821-A

Appearances:

Mr. Larry Kelley, Executive Director, Lakewood UniServ Council, appearing on behalf of United Lakewood Educators.

Mulcahy & Wherry, S. C., Attorneys at Law, by Mr. Mark L. Olson, appearing on behalf of the Employer.

ARBITRATION AWARD:

On January 30, 1989, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to 111.70 (4) (cm) 6. and 7. of the Wisconsin Municipal Employment Relations Act, to resolve an impasse existing between United Lakewood Educators, referred to herein as the Association, and Mukwonago Area School District, referred to herein as the Employer, with respect to certain issues as specified below. The proceedings were conducted pursuant to Wis. Stats. 111.70 (4) (cm), and hearing was held at Mukwonago, Wisconsin, on April 28, 1989, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Final briefs were received by the Arbitrator on June 30, 1989.

THE ISSUE:

The only issue in dispute between the parties involves the Employer contribution for health and dental insurance. The Employer proposes to revise Article 15 of the predecessor Collective Bargaining Agreement as follows:

1. Article 15. INSURANCE BENEFITS: Revise A. Hospital and Medical Insurance: During the term of this contract the Board will pay as follows: $256.34 per month family, $99.36 per month single toward the health insurance premium, based upon the benefits now in existence in the WEA Trust Plan which include a One Hundred Dollar ($100) individual and Two Hundred Dollar ($200) family aggregate up-front deductible, a pre-admission review procedure for non-emergency hospital admissions, and an option plan for those individuals who have family insurance coverage, etc....(Remainder of Section A. to remain as stated in 1986-1988 contract).

In 1989-90, the Board agrees to pay $_____ per month family, $_____ per month single, which shall represent the full premium payment in 1989-90.

2. Article 15. INSURANCE BENEFITS: Section F. Dental Insurance: Revise first paragraph as follows: During the term of this contract the Board will pay $46.78 per month family, $14.94 per month single toward the premiums for WEA Trust Dental Plan I. In 1989-90, the Board will pay $_____ per month family, $_____ per month single on behalf of eligible employees, which shall represent the full insurance premium in 1989-90.

Remainder of Section F. Dental Insurance to remain as stated in contract.

The Association proposes that the language of the predecessor Collective Bargaining Agreement at Article 15 remain in place. The relevant provisions of the Collective Bargaining Agreement at Article 15, Sections A and F provide that during the term of the Contract, the Board will pay 100% of the premium based on the benefits now in existence in the WEA Trust Plan, etc.

DISCUSSION:

Wisconsin Stats. 111.70 (4) (cm) 7 direct the Arbitrator to give weight to the factors found at subsections a through j in making any decision under the arbitration procedures authorized in that paragraph. The undersigned, therefore, will review the evidence adduced at hearing and consider the arguments of the parties in light of that statutory criteria.

The positions of the parties are set forth in 88 pages of the briefs from the Employer and in 64 pages of the briefs from the Association. The Employer arguments are summarized under the following headings:

1. The proper comparison should be made with school districts that were established in the award of Robert J. Mueller and confirmed in the award of George Fleischli.

2. The Mukwonago average teacher salary settlement exceeds the 1988-89 settlement among the Mueller comparable pool.

3. The salary schedule maintains substantially above average salaries of those benchmarks where the majority of the Mukwonago teachers are placed.

4. The salary increases guarantee that Mukwonago teachers will receive salary and benefit increases that exceed the increase in the cost of living.

5. External salary settlements in the Village, the City of Waukesha and Waukesha County, as well as other settlements within the District, all support the salary settlement.

6. Acceptance of the Board offer is reasonable and necessary, since the health and dental insurance premium contribution by the Board for non-certified and administrative employees in the District is identical to that in the offer to the United Lakewood Educators in the instant dispute.

7. The bargaining history supports the Board offer on the issue of health insurance and dental insurance premiums.

8. A substantial majority of the comparable districts' health and dental insurance language supports the Board offer.

9. The Board offer which does not result in any out of pocket expenses to bargaining unit members is congruent with expert opinion in the area of employee benefits.

In reply to the Association argument, the Employer arguments are capsulized as follows:

1. The United Lakewood Educators cannot be allowed to "shop" for new comparables to support its position in this proceeding.

2. The history of tentative agreements achieved by the parties is a relevant consideration in the outcome of this dispute.

3. United Lakewood Educators' contentions that Mukwonago insurance rates are below average, and the rate of premium increases moderate, are patently false.

4. The District has fulfilled the requisite criteria to merit acceptance of its offer.

The Association arguments are summarized as follows:

1. The Employer's proposal in arbitration is either moot or will result in litigation, and should, therefore, be rejected.

2. The Mueller comparables should be amended to include only those contiguous and athletic conference schools posited in Waukesha County.

3. No need is established by the facts to merit changing the status quo insurance premium payment language.

4. No quid pro quo was offered and none discussed for changing the insurance language at issue.

5. The bargaining history of the instant matter should provide no weight in determining the outcome of this arbitration.

In its reply brief, the Association makes the following argument in response to the Employer's position in its initial brief:

1. Sufficient relevant facts exist to realign the comparables.

2. The Mukwonago average teacher salary settlement does not exceed the 1988-89 pattern of comparables.

3. Mukwonago benchmarks have declined substantially.

4. There is no economic dispute in this case, but the Employer's arbitrated economic offers have been lower than average since 1985-86.

5. There is no evidentiary basis for comparing Village, City or County employees with teachers.

6. The insurance premium language proposed by the Board, although implemented for administrators and non-certified employees, is neither reasonable nor necessary.

7. The bargaining history does not support the offer of the Board on health and dental insurance premiums.

8. The parties differ on the comparables and their view of the effect of weight to be accorded the comparables.

9. Revisiting the 1985-86 insurance change finds that both parties were fairly advantaged, which is not the case here.

Turning first to the question of a determination of where the comparables reside, the undersigned finds it unnecessary to resolve that dispute for several reasons. First, the sole issue in dispute is how the terms of the contract shall read relative to the Employer's contribution for health and dental insurance for employees in the bargaining unit. There is no issue in dispute as to wage rates or the amount of contribution during the term of the Contract that is necessary to be resolved. Comparisons are most persuasive, in the opinion of this Arbitrator, to determine issues such as whether the offer of the parties conforms to the patterns of settlement which are established in the bargaining between other unions and other employers; or to establish whether the wage rates generated by each party's proposal will result in wage rates which are comparable to rates being paid for employees performing similar work in comparable communities. In the instant dispute, none of the foregoing is present, and, consequently, the importance of establishing the comparables pales. Second, and more important, the conclusions drawn from the evidence with respect to comparables as it impacts the method which an employer uses to make contributions on behalf of the employees' health insurance and dental insurance are not appreciably different whether one considers the Mueller comparables; or whether one considers the Mueller comparables, plus Arrowhead and Elmbrook; or whether one considers the Association's espoused comparables, which would include Hamilton, Kettle Moraine, Menomonee Falls, Muskego, New Berlin, Oconomowoc, Waukesha, Arrowhead and Elmbrook. Employer Exhibit No. 26 sets forth the Mueller comparables and the method of contributing health insurance and dental insurance premiums on behalf of the employees in the collective bargaining units among the Mueller comparables. The record evidence establishes that if one considers only the Mueller comparables, 8 of the 12 express premium contribution in a dollar amount. (Waterford Union High School expressing it as "100% expressed as a dollar amount", and Menomonee Falls fixing a cap at less than the premium, but expressed as a percentage of 94.2%.)[1] Thus, 8 of the 12 Mueller comparables, other than Mukwonago provide for either a dollar figure or a percentage cap less than 100% of premium. If one were to consider the Mueller comparables, plus the two conference schools of Arrowhead and Elmbrook espoused by the Association, those figures become 9 of 13. Association Exhibit No. 1 establishes that the Arrowhead contract provides for 100% employer contribution for health and dental premiums. Association Exhibit No. 1 also provides for the settlement terms of the Elmbrook contract, however, there is no provision in those settlements for Elmbrook which sets forth the amount of premium contribution for health and dental insurance. Consequently, the undersigned is unable to ascertain the method or amount of contribution made in that district. Therefore, only Arrowhead is included, establishing that 9 of 13 of those districts provide for either a dollar amount or a cap at less than 100% of premium. Finally, if one considers only the districts advocated as comparables by the Association, i.e., Mueller comparables, plus the two athletic conference schools of Arrowhead and Elmbrook, but deleting all of the school districts outside of Waukesha County, which consist of Burlington, East Troy, Elkhorn, Waterford and Whitewater; one finds that 4 of 8 districts provide

1/ In the 1989-91 Agreement the 94.2% becomes 94%.

a capped dollar amount or a cap of less than 100% if Elmbrook is not included in the data for the reasons previously stated. Since there is adequate support among all of the comparables for the proposed change, no matter which view of the comparables is considered, it follows that it is not necessary, in order to resolve this dispute, to make a determination as to which party's set of comparables should be adopted. The Arbitrator, consequently, makes no findings with respect thereto.

A considerable volume of evidence and extensive arguments were presented by the Employer in support of the proposition that the salary settlement exceeds the comparable settlements for 1988-89; that the Board offer maintains substantially above average salaries at the benchmarks; that the final offer guarantees that the teachers will receive salary and benefit increases that exceed the increase in the cost of living; and that the external salary settlements of the Village, the City of Waukesha and Waukesha County, as well as other settlements within the District, all support the salary settlement. The Association in its reply brief devotes many pages of its reply brief responding to the salary arguments of the Employer, contending that: the average teacher salary settlement does not exceed the 1988-89 patterns of settlements; that the Mukwonago benchmarks have declined substantially; that there is no economic dispute in this case, but that the Employer's arbitrated economic offers have been lower than average since 1985-86; that there is no evidentiary basis for comparing Village, City or County employees with teachers. The issue before the Arbitrator is whether the language of the predecessor Contract should remain in place, which provides for a contribution for health and dental insurance premium on the part of the Employer of 100%, or whether the proposed changed by the Employer to a dollar figure equal to 100% of the premium should be adopted. Because the parties have both proposed the identical salary settlement which establishes a voluntary agreement on that point, the undersigned deems it unnecessary to devote any time to what he considers to be a moot issue, i.e., the amount of salary to be paid, and the justification for the salary to which the parties have voluntarily agreed. Furthermore, the agreement to the salary schedule suggests that the parties have agreed to an increase which satisfies the cost of living criteria of the statute. Given the foregoing, it follows that it is unnecessary to address any of the statutory criteria dealing with the wage rates in this matter. The sole issue in dispute is how the amount of insurance premium contributions by the Employer will be expressed. That is the issue which this Arbitrator will address, based on the evidence adduced at hearing, the statutory criteria, and the arguments of the parties.

We turn first to a consideration of industry practice. The industry practice with respect to how employers participate in health insurance and dental insurance premiums on behalf of their employees has already been set forth supra. As noted above, there is adequate support for the Employer's proposal based on the provisions found in other collective bargaining agreements, irrespective of whether the Mueller comparables are followed, or the Mueller comparables plus the two athletic conference schools of Arrowhead and Elmbrook are considered, or whether the Mueller comparables, excluding districts outside of Waukesha County, and including Arrowhead and Elmbrook are considered. From the foregoing, it is clear that considering only industry practice with respect to health insurance premium contributions by the Employer, the proposal of the Employer to establish dollar amounts equal to 100% of the premium is supported by those practices.

We turn now to a further consideration of whether the record establishes a need for the change proposed by the Employer. The Association argues that no need has been established. The Association further argues that the Employer has failed to meet those standards of proof required by arbitrators generally to establish the need for change, citing arbitration awards which have held that the party proposing the change must support that change by clear and convincing evidence. This Arbitrator

concludes that there is sufficient evidence to support the changed proposed by the Employer for a number of reasons.

First, it is generally acknowledged that the rising costs of health insurance have become critical items at the bargaining table, both in the private and public sector. Employer Exhibit No. 49 C establishes that monthly family insurance rates have increased from $71 per month in 1977 to $270 per month in 1988. The same document at page 2 establishes that dental rate has increased from $20 per month in 1977 to $38 per month in 1988. Thus, the dental insurance premiums on the average have increased 190% in the span of 11 years, and the medical insurance rates for family have increased by 380% during that same 11 year span. Employer Exhibit No. 50 A establishes that the Mukwonago School District medical experience from January, 1988 through December, 1988, resulted in accumulated premiums deposited of $934,839 and accumulated losses totaling $1,529,143 for the same period. The accumulative loss ratio amounts to a loss of 163.5% of premium for 1988. Employer Exhibit No. 50 B establishes that the medical insurance premiums for the Employer have been increased in an amount of 26.4% from $202.75 family premium to $256.34 effective September 1, 1988. All of the foregoing establishes that a serious problem exists in Mukwonago with respect to the rapidly escalating costs of health insurance in the School District. The foregoing circumstances satisfy the Arbitrator that the Employer is justified in taking steps which would tend to bring the rapidly escalating costs of health insurance under control. The question, however, remains whether the instant proposal of the Employer to convert to dollar amounts will achieve that goal.

The Employer exhibits establish that the private sector is also taking steps in an attempt to control the runaway escalation of health insurance costs. Employer Exhibit No. 52 reports on a survey conducted by Hewitt Associates, an international consulting firm specializing in employee benefits and compensation programs. Hewitt conducted a nation-wide survey of private companies by polling 240 major companies, including 74 of the Fortue 100 Industrials each year between 1982 and 1987 to chart trends. In 1982, the Hewitt poll found that 29% of all companies in the survey incorporated front end deductibles, and by 1987 that total had risen to 65%. The poll further established that in 1982, 86% of the respondents to the poll had deductibles of 100% or less, and in 1987 only 30% did. The poll further determined that 80% paid all hospital room and board charges in 1982 and that in 1987 only 32% did. Finally, the poll showed that 38% of the respondents required participation of the employees in contributions to their plans, compared to 47% in 1987. The significance of the Hewitt poll as it relates to this dispute is the fact that premium participation on the part of employees has risen in the private sector from 38% to 47%. Thus, it appears a trend has emerged for premium participation on the part of employees. Employer Exhibit Nos. 51 A through 59 B have been carefully examined by the Arbitrator, and he is satisfied that all of those exhibits establish that a severe problem exists in health care costs. However, except for the reference in Employer Exhibit No. 52, the undersigned has found nothing else in Exhibit Nos. 51 A through 59 B supporting the proposition that a cap on Employer contributions to health care costs will help control the runaway cost of providing insurance. A cap of less than 100%, obviously, would lessen the impact of the cost because the employees would be sharing those costs with the Employer. That, however, is not the situation here, because the Employer has proposed a dollar cap equal to 100% of the premium during the term of the Collective Bargaining Agreement which is being arbitrated here. Therefore, it remains to be determined whether there is sufficient evidence in this record to support the change which the Employer advocates, changing the Contract language from 100% of premium payment on the part of the Employer for health and dental insurance to a dollar amount equal to 100%.

The Union has argued that the question of changing the Employer participation for health insurance and dental insurance premiums in the Collective Bargaining Agreement would be prematurely adopted if the Arbitrator were to award for the Employer here. The Union bases its position on the fact that the parties have agreed to establish a study committee to investigate ways to control health insurance costs and to report back their findings by December, 1989. The Employer, under this agreement, has agreed to put up $2500 of seed money to be utilized by the committee to seek out professional guidance in their efforts. The undersigned has considered the Union argument, and finds that it has some merit. While the undersigned acknowledges that the Union argument proposing to leave the question of Employer premium participation for health insurance purposes to the committee recommendation and subsequent negotiations in the successor Labor Agreement, the undersigned does not find those facts to be controlling. Consequently, the undersigned will consider additional evidence contained in the record.

In an earlier portion of this Award, we have considered industry practice and have found that the Employer's proposal is supported by the practice within the industry. In addition to the industry practice, the Employer argues that the proposal of the Employer here would present uniform treatment with respect to all of the employees in the employ of the Employer, both represented and unrepresented. The record establishes that support staff represented by AFSCME was awarded the same language proposed by the Employer here when Arbitrator William W. Petrie issued his award on July 21, 1988, in WERC Case 39, No. 39879, INT/ARB-4705, finding for the Employer. Petrie concluded in his summary of preliminary conclusion No. 5, page 31 of his Award as follows:

> In examining the Employer's proposal for the insertion of caps in the insurance premium payment provisions in the agreement, it is appropriate to require the District, as the proponent of a change in the status quo, to fully justify the change. On the basis of arbitral consideration of the Employer's motive in proposing the change, the overall bargaining climate in which the change was proposed, the nature of the Employer's final offer in its entirety, and the significance of comparisons outside of the primary external comparison group, the Employer has established a persuasive basis for the proposed change in the status quo. (Emphasis in original)

In arriving at his conclusions, among other things, Arbitrator Petrie relied on the fact that Dane County had established insurance cap and that insurance caps had been applied to other nonbargaining unit employees in the district. He further determined that:

> . . . the Employer has succeeded in establishing a persuasive case for its proposed change in contract language governing the payment of insurance premiums. It has established a good faith and positive motivation for the proposed change, it has offered the proposed change at a time when both the economic climate and the collective bargaining climate indicate the existence of substantial, genuine problems in the health insurance area, and the proposed change is supported by certain external and internal comparisons.

Petrie further considered the Union's argument that the change would result in a gun to the head of the Union during any Contract hiatus in the future negotiations. Petrie dismissed the Union argument, commenting that the charter of the Arbitrator was to decide the dispute at hand, and not to be concerned with the circumstances that would follow the expiration date of the contract he was arbitrating.

Furthermore, he opined that it should be "a mutual goal of the parties" to reach a timely completion of their negotiations which would foreclose the possibility that the question of a hiatus period would be inapposite.

The internal comparisons obviously favor the Employer position in this matter. Furthermore, the rationale supplied by Arbitrator Petrie speaks in part to the Association objections here to the Employer proposal dealing with the circumstances surrounding the hiatus period. This Arbitrator agrees with Petrie's conclusions. It follows that the Petrie Award and the internal comparables support the Employer position.

The Association has argued that there is no quid pro quo and the undersigned agrees that the salary schedule agreed to by the Employer and the Association fails to establish a quid pro quo for the proposed change in the Employer's contribution to health insurance and dental insurance premiums. The Association has further argued that the bargaining history of the instant bargain should provide no weight in determining the outcome of this arbitration. Turning first to the question of whether bargaining history should be considered, the undersigned concludes that it is appropriate to do so. The bargaining history establishes that there were at least two tentative agreements reached in committee, and, arguably, there is the possibility that a third tentative agreement might also have been reached. The undersigned makes no finding with respect to the third possible agreement, because, it is the opinion of the Arbitrator that the third possible agreement in committee is not relevant bargaining history to the instant dispute. What is relevant is that the Employer final offer in the instant matter mirrors an offer which the Employer made to the Association at a bargaining meeting on June 28, 1988, through the mediation efforts of WERC Chairman Stephen Schoenfeld. The Association bargaining committee was lacking a third ULE vote at that meeting due to an accident which prevented the third ULE committee member to be in attendance. The parties fully understood that the third committee member vote would be necessary for the purpose of finalizing the tentative agreement which had been reached. On July 12, 1988, Association representative Brenner wrote to Mark Olson, Counsel for the Employer, to determine whether there was a meeting of the minds on what the status quo meant to the Employer because he stated that the interpretation would be determinative in providing a third vote to effectuate a tentative agreement. On July 26, 1988, Olson clarified the intent of the language as it applies to the duration of the Contract, but refused to interpret the status quo as it would apply to the contractual hiatus in future bargaining and requested the teacher team to submit the issue to a ratification vote of the membership. On August 31, 1988, the ULE submitted the issue to the membership, and the membership took action to refuse offers not appropriately sanctioned by ULE bargaining team, and, secondly, to reject any notion of insurance premium caps.

The undersigned finds that the conditional tentative agreement of June 28, 1988, has probative value for the purpose of determining this dispute. The record evidence establishes that there were in attendance two of the required three ULE bargaining representatives at the June 28th meeting, who found the Employer proposal acceptable. The fact that the conditional tentative agreement was later rejected because it lacked the third ULE representative vote is not persuasive in view of the fact that the two representatives present at the meeting then found it acceptable. The third representative vote was withheld because the Employer refused to elaborate on the meaning of its proposal pursuant to request of representative Brenner. That fact is unpersuasive to this Arbitrator, because it seems that the Employer proposal is clear on its face and would require no further explanation. Furthermore, the record infers that the Bargaining Committee who were in attendance at the meeting of June 28th, 1988, must have fully understood the nuances of the Employer offer

because they were able to come to an agreement without any further questions or reservations. It is clear that the Employer made an offer on June 28, 1988, which was acceptable to the Association in Committee, although it was not fully approved by the negotiating team because of the absence of one required member.

The undersigned has held in previous cases that merely to award the offer of one party or the other solely because there was a failure to ratify a tentative agreement would potentially have a chilling effect on the bargaining process. That is not to say, however, that the bargaining history cannot be considered, because there is a certain presumption of reasonableness in a proposal where the parties reach a tentative agreement containing the proposal which later becomes an issue in arbitration. In City of Oshkosh (Public Library), Case 100, No. 38521, ARB 4346, Dec. No. 24800-A (2/23/88) the undersigned concluded:

> First of all, there was the tentative agreement in committee for the proposal which the Union now espouses in its final offer. The fact that the two committees entered into a tentative agreement displays a certain degree of reasonableness to the proposal, or the Employer committee undoubtedly never would have agreed to it on a tentative basis in the first place. The tentative agreement was rejected by the Employer Board on a tie vote of 3 to 3. Nevertheless, at least at the committee level, the negotiators found the proposal which is at issue here to be reasonable. Because the undersigned concludes that the committee has found the proposal to be reasonable, it would seem to follow that the Arbitrator should find that the proposal is reasonable as well.
>
> In finding that the committee's tentative agreement establishes a certain reasonableness to the union proposal here, the Arbitrator in no way infers that the Union should win its final offer in this arbitration proceeding merely because the tentative agreement was not ratified by the Employer Board. The undersigned has considered this type of situation in the past, and has rejected any argument on the part of parties who would enforce a tentative agreement which has been rejected by the ratifying group of one of the parties. The undersigned remains convinced that to adopt a final offer solely because there had been a tentative agreement would have a chilling effect on bargaining, and should be avoided in the interest of encouraging collective bargaining between the parties.

The undersigned applies the same rationale cited above to the instant dispute. It follows from the foregoing, that, the fact that there was a conditional tentative agreement reached which embodied the very terms the Employer is now proposing establishes a degree of reasonableness to the Employer proposal at issue here, and supports the position of the Employer in this dispute.

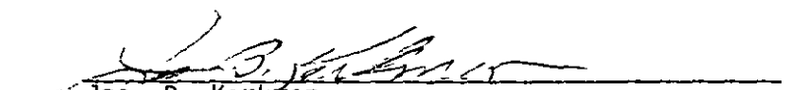
The undersigned has also considered the question of quid pro quo in the instant matter. The fact that the Association committee entered into a conditional tentative agreement on June 28, 1988, which contained the same terms relating to salary and insurance premium dollars as found in the Employer offer here, suggests that the salary schedule, which was acceptable to both parties, was a sufficient quid pro quo on June 28, 1988, for the change now advocated by the Employer. Therefore, the Association argument dealing with a lack of a quid pro quo is rejected.

For all of the foregoing reasons, after considering the record in its entirety, and the arguments of the parties, as well as the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties as they have been filed with the Wisconsin Employment Relations Commission, and those terms of the predecessor Agreement which remained unchanged through the bargaining process, are to be incorporated into the parties' written Collective Bargaining Agreement for 1988-89 and the 1989-90 school year.

Dated at Fond du Lac, Wisconsin, this 12th day of September, 1989.



Jos. B. Kerkman,
Arbitrator

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