

BEFORE THE ARBITRATOR

1989 OCT 10
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
JANESVILLE SCHOOL DISTRICT EMPLOYEES
LOCAL 523, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner and

JANESVILLE SCHOOL DISTRICT

Case No. 39
No. 41026 INT/ARB-5005
Decision No. 25853-A

Stanley H. Michelstetter II
Arbitrator

Appearances:

Thomas Larsen, Staff Representative, appearing on behalf of the Union.

Anne L. Weiland, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD

Janesville School District Employees, herein referred to as the "Union" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.70(4)(cm), Wis. Stats., between it and Janesville School District, herein referred to as the "Employer," with respect to the maintenance, custodial and food service unit and the Commission having appointed the Undersigned as Arbitrator on February 22, 1989; and the Undersigned having conducted a hearing in Janesville, Wisconsin on May 15, 1989, and the parties having each thereafter filed a post hearing brief and reply briefs, the last of which was received August 13, 1989.

ISSUES 1/

The following is a summary of the issues in dispute:

1. **SHIFT DIFFERENTIAL:** Both parties propose to change the shift differential of 15¢ per hour. The employer proposed to pay it for all hours worked in the period of 2:00 p.m. to 2:00 a.m., during any shift which begins on or after 2:00 p.m. The Union applies the differential to all hours worked during any shift which begins between 2:00 p.m. and 3:00 p.m., including employers, who have their starting times temporarily changed.

1/ The parties agreed that in addition to determining which final offer should be adopted, that whether employee White receives an increase rather than remains at his current red circled rate shall be determined on the basis of which party's final offer is adopted.

2. SICK LEAVE: Under current §7.06, employees may use up to 2 days paid leave deducted from sick leave for the illness of "a child or spouse" of an employee. The Union proposes to increase the scope of the application of the benefit from its current definition to the definition of "immediate family" as defined in the Wisconsin Family Law Act. The Employer opposes this, but does state that it will provide any benefit it is required to provide by law.

3. UNION BUSINESS: Except for incidental activities, unit employees are required to conduct Union business on their own time. The union proposes to add to current § 14.01 the following language:

"Employees selected as delegates shall be allowed necessary time off each year without pay for the purpose of attending Union conferences and conventions, the maximum time allowed shall not exceed ten (10) days in a contract year for all employees in the bargaining unit."

The Employer opposes any change in the current contract.

4. HEALTH INSURANCE:

A. Both parties propose to increase the drug prescription plan. The existing plan currently deducts \$2.00 to \$5.00. The Employer proposes to state the current premiums in §11.02. The Union's proposal appears to leave the premium from the previous agreement in the language.

B. The current plan has a deductible for the hospital, surgical-medical portion of \$100 per person and \$300 per family after three individual deductibles have been met.

The Employer proposes to add a separate, additional major medical annual deductible of \$100 for each individual and a \$300 limit per family after three individual deductibles have been met. The Union opposes the creation of a new separate deductible, but does propose to extend the current deductible to apply to major medical as well as hospital, surgical-medical.

C. Currently, under §11.05, retirees 55 or older with 10 or more years of service may continue in the prescription plan by self paying the premium. The Employer proposes to end this benefit, but permit these retirees to continue in the prescription portion of the major medical coverage. The Union opposes any change in the current benefit.

D. Currently, there is no deductible in the dental plan. The Employer proposes a \$25 per person annual deductible. The Union opposes this.

5. WAGES INCREASE: the parties each propose the following wage increase per cell in the salary schedule:

7/11/88
7/1/ 89

UNION
4%
4%

EMPLOYER
2%
3%

POSITIONS OF THE PARTIES

Both parties take the position that the establishment of a set of comparable school districts is an imported issue because there is no established schedule for the parties. The Union argues that Beloit, Madison, Sun Prairie, and Waukesha are comparable school districts. It relies on Madison, although considerably larger than Janesville, because it is the same athletic conference, has multiple high school buildings, and is 41 miles from Janesville (state highway map). The Union relies heavily upon the award between the district and its teachers, Janesville Education Association and School District of Janesville (Dec. No. 17169-A) (Kerkman, 2/80) to support the conclusion that districts within 50 miles with an enrollment of over 2500 were comparable. Both parties agree Beloit is comparable. Sun Prairie is in the same athletic conference and is within 50 miles of Janesville. It relies on Arbitrator Kerkman's decision to support the use of Waukesha as being comparably sized and within a 50 mile radius. In its view, Janesville has the highest earnings for production workers in the state. It agrees with the employer that the cities of Beloit, Janesville, Rock County, and Blackhawk Technical Institute are comparable.

In essence, the Union's position is that it should receive a wage increase comparable to that received by similar employees among comparable employers and that, in spite of the increase in the cost of the health insurance benefit, that the benefits should remain essentially unchanged and without diminution of the wage increase.

As to the shift differential, the Union concedes there are no night shift employees in the unit. Its proposal, unlike the Employer's, may affect unit employees rescheduled for snow shoveling duty. It relies on the testimony of Steven Johnson for the proposition, that day shift workers who were required to work night shift hours received the night shift differential.

The Union argues its family leave proposal will avoid employee confusion about their rights under the law and the agreement. It argues that its proposal for 10 days unpaid union business leave (per year for the entire unit) is for the purpose that employees can participate in the democratic process of their union. It relies upon its comparisons to the 4 external units; 2 of which provide more time and 2 of which provide a similar benefit with less time.

The Union agrees the health insurance issue is a major issue in this dispute. It notes that this is a self funded plan in which the Employer sets its own "premium equivalent" rates. It, also, notes that since 1985-86, there has been little change in

the premium equivalency rates and in 1987-8 the Employer did not increase the rates. It charges that the Employer deliberately failed to do so in a year when no bargaining contracts were open for negotiations in order to "create" a crisis in bargaining in this year. It alleges that the premium equivalent increase by the employer merely brings the premium into the range of premiums among local comparably sized employers. It denies that there is any need for conformity of benefits between the units. It alleges that the issue of an additional deductible for the highly paid teacher unit is far less important to them than it is in this unit with its many lower paid positions. It, also, seeks to discredit the Employer's uniformity position by noting that the Employer did not seek to increase the maximum dental benefit in this unit from \$400 to \$800 (the maximum in all other units). It, also argues that none of the comparables offered by the Employer or Union have deductibles for both ordinary medical and major medical. It denies that the addition of a new deductible is likely to reduce overall costs and affirmatively alleges this is more likely to simply result in cost shifting to the employees. It believes its proposal is a more reasonable way of cost shifting with a more reasonable impact. For the reasons outlined above, the Union does not see the need to drop the early retirees from the \$5 deductible fully paid prescriptions benefit. It concedes that retirees will still have 80% prescription coverage under major medical after the \$100 per person deductible is met.

Finally, the Union still believes that the general wage increase is the primary issue. It asserts that the wage increase comparisons offered by the Employer and Union both support its proposed general increase for both years. It argues the consumer price index from April, 1988, to April, 1989 of 5.1% supports its general wage increase.

The Employer agrees with the Union that the establishment of the appropriate set of comparables is a primary issue because there are no comparables established between the parties. The Employer argues that the school districts within a 30 mile radius are the appropriate comparison districts because they are within the distance from which all unit employees have been hired. It sees no reason why size of the employer should be important in these comparisons because unit work is similar in all size districts and all share the same economic circumstances. It argues^{2/} that for support personnel, the appropriate labor market is a reasonably short commute. Citing Dr. Steven Johnson's testimony that all of the support personnel hired by the district have been hired from the district's substitute list and live in the Janesville local area. It believes at least 80% of the unit jobs (custodian and food service workers) are comparable to similar jobs in all of the school districts without regard to size and, therefore, has included all as comparables. It notes the

^{2/}

citing Public Sector Labor Relations (3d Ed., 1988) @pp. 7-13.

EAV/ADM comparison essentially shows Janesville as average ability to pay. The Employer, also, believes that other area public employers are secondarily comparable based on specific position comparisons.

The Employer takes the position that it has experienced an unparalleled increase in the cost of insurance and, therefore, needs to make the changes which it proposes herein. It notes in previous years it has undertaken all appropriate cost saving measures short of the proposals made herein and acknowledges that it has had the full cooperation of the Union in doing so. These changes include changing from an insurance based system to a self-funded plan, pre-certification, out-patient diagnostic and minor surgery, and the existing employee deductible. Even though it has implemented these changes in 1987-8, it had one of the comparatively lower health insurance premium equivalents and now has one of the higher premium equivalents among its selected comparable districts. It notes that the past years reserves fell from the highest allowed by law to dangerously low and the amount necessary to restore a healthy reserve and maintain the current benefit is equivalent to over 5% of salary. Similarly, dental premiums have moved from 18 to third highest in the same period. It argues the purpose of its proposed change is not cost shifting, but to develop employee awareness and cost consciousness.

The Employer relies heavily upon the settlement with its teacher unit for the current year in which the teachers voluntarily accepted the proposed changes. They note that there was no buy-out in the teacher unit and the wage settlement was comparable to slightly less than accepted comparable school districts' settlements for the same year.

It, also, argues that the need for district-wide uniformity of benefits requires acceptance of its proposal as to health insurance, because it is unreasonably expensive to administer two systems of benefits for health insurance and multiple systems makes fiscal planning too difficult for this system.

It also notes the deductible has been in place since the middle 1960's and no longer fairly represents the same economic benefit level as it originally did. This deductible has been the same in all of its bargaining units. It believes its proposed deductible still represents less economic burden to the employee than did the original deductible when it was adopted.

In reply, the Union objects to the use of a thirty mile radius because the Employer is effectively ignoring the size of its district. It notes that the facilities in this school district include multiple and larger buildings. It notes that some of the smaller school districts do not have maintenance employees and others do not have full time employees in some of the categories Janesville does. Further, it notes that the Employer has ignored the fact that in the teachers' unit, it sought a group of the larger school districts within fifty miles. It, also, notes that because of road conditions in the area, a commute from Madison

would take about the same time as 30 miles on some of the rural roads. Finally, it notes that the differences in wages here and in the Employer's comparable districts demonstrates that wages here were never set with reference to those districts' wages.

As to health insurance, the Union reiterates its allegation that the Employer deliberately did not adjust its self insurance premium equivalent in the previous year because there was no bargaining and, therefore, created the insurance crisis. The Union indicates that it has no objection to the Employer showing the cost of insurance in the contract, but does allege the Employer could communicate it to employees by, for example, showing it on their paycheck stubs.

The Union argues that the Employer's argument for adoption of its insurance proposal based upon its claimed need for consistency is not well taken. The Union notes that other units have higher maximums on the dental insurance and continues its arguments that the board has maintained minor differences among the units in the health insurance benefit. The Union finds it inappropriate that the fact that it has agreed to cost saving measures should be used as a basis to rationalize more changes; otherwise, they would never agree to any such changes. Moreover it notes that in the past, it has been agreeable to cost saving measures, but the proposal of the Employer is cost shifting, rather than cost saving. Finally, it notes that the teachers' unit which is consistently higher paid has less of an interest in this issue than this unit and their increase (being of a far larger dollar amount) more fully covers the loss of this benefit.

The Union sees no ambiguity in the shift differential proposal and believes that its Union leave time proposal is very well supported when one looks at the benefit provided teachers. It notes that the comparison to smaller districts which do not have the flexibility of work force that Janesville does is not relevant and that if the Employer wanted modifications of this proposal it should have sought them in bargaining. It finds that its family leave proposal is consistent with the law and its purposes.

It reiterates its position that the Employer has simply deliberately created its insurance crisis by not increasing its premium equivalent in the last year, thus, saving all of the increase for the year when it bargained with the union. On this basis it takes the position that the total package should be adjusted to exclude the health insurance premium equivalent increase. It notes that while the Employer's wage proposal does maintain its wage leadership position with the much smaller districts selected by the Employer for comparison, the fact is that the Employer's proposal substantially reduces that wage leadership difference. It argues that step increases which were negotiated in previous years should not be costed against the increase for this year. The Union denies that its proposed increase is the sole cause of tax increases and discounts the Employer's argument on that basis because no figures were provided.

In reply, the Employer challenges the Union's use of Arbitrator Kerkman's award with the teachers. It notes that Arbitrator Kerkman adopted the position of the Employer in that award that school districts within fifty miles of comparable size are appropriate comparisons because the Employer hired primarily in that area. All employees in this unit come from within 30 miles and, in the Employer's view, this should be the limit for labor market comparisons. It, also, notes that the size comparison offered by the Union is inconsistent because Madison is as much larger than Janesville as Janesville is larger than any of the comparison districts offered by the Employer. Although all of the districts offered by the Union are in the same athletic conference, that factor, in the absence of other comparability criteria, is not sufficient to make them comparable. It denies that exhibit 11 shows that earning for Janesville workers is higher than that in comparable districts in that exhibit 11 does not have data for the City of Janesville which comprises the Janesville School District.

The Employer denies that the teachers have a "better" benefit with respect to family leave. It does concede that their benefit is different in that it combines bereavement leave and family "serious" illness leave. As to shift differential, the employer reiterates its argument that the union's proposal is ambiguous and that the existing benefits are more than adequate. As to the union's convention days proposal, the employer notes that the teacher's proposal does provide for 24 hour notice and that the teacher unit is 6 times larger than this unit. It notes the union did research the comparables to see how many of those unions are affiliated such that leave would be relevant.

The Employer takes the position that total package is the appropriate consideration rather than wage increase alone. It argues that in the context of total package, its wage offer is more appropriate. In this regard, it takes the position that CPI comparisons are to be made to the total package and for the contract year following the year of the CPI. As to the dental plan, it notes that this unit has never sought the increased maximum, but the clerical unit did and was granted the benefit.

With respect to the health insurance, the Employer alleges that contrary to the unsupported position of the union, that the evidence of history in the teacher unit demonstrates that the increased deductible has resulted in significantly reduced health costs. The Employer views the Union's argument that the Employer deliberately manufactured the health insurance crisis by not raising its premium equivalents in the previous year as frivolous and unwarranted. It cites the fact that in 1987-8, the reserve for health insurance started out at its legal maximum and by the end of the year had become dangerously low. Thus, the Employer was prohibited or, at least, had no practical reason for changing its premium equivalents for the beginning of that year. Further, it notes that the Union never brought this up in bargaining. It urges the arbitrator to ignore this argument.

DISCUSSION

Comparables

The list of districts proposed by the Union as primary comparison school districts includes school districts of the same or larger size in a fifty mile radius from Janesville. All are in the district's athletic conference and all were used essentially for the foregoing reasons by Arbitrator Kerkman in establishing the comparison group used for the teachers since 1980. The comparison school districts offered by the Employer include all of the school districts in the 30 mile area without regard to size. All, but Beloit, are substantially smaller than Janesville. The Employer has reduced the size of the geographic area it successfully sought in establishing the teacher group, from fifty miles to thirty miles on the basis that unit employees in this unit are recruited from the smaller area than the area teachers are recruited from. Both parties agree that other large public employers in the area, to the extent comparable, form a secondary comparison group. They disagree as to the emphasis to be placed on this group.

The Employer is correct that the comparison group necessarily used for teachers does not necessarily apply to this unit. The undisputed testimony in this case is that unit employees are hired almost exclusively from the Janesville area and well within thirty miles of the the city. Under these facts, the thirty mile area does constitute a labor market from which employees are selected and comparisons to the districts of Madison, Sun Prairie and Waukesha are not warranted. Additionally, Madison is significantly larger than Janesville and comparison on that basis is not warranted. However, while the local area is the primary comparison area, there is only one school district which is nearly Janesville size, Beloit. Size of districts is an appropriate consideration because of the ability of larger districts to pay, their ability to use their personnel more effectively and the often greater complexity of their work and structure. Both parties correctly agree that Beloit is closely comparable because it is in the local area, is approximately the same size and shares a similar urban make up. Among the school districts offered by the Employer, five others in this area, Delevan-Darien, Fort Atkinson, Milton, Oregon, Soughton are of sufficient size (over 2,000 students) to be generally comparable.

The parties agreed that Blackhawk Technical Institute, City of Beloit, City of Janesville and Rock County are secondary comparables. I note that the classifications in this unit bear a much closer relationship to similar classifications in the secondary comparables than do the teachers. For that reason, the secondary group would, to the extent practically relevant, have more weight than is given them in the teacher unit negotiations.

Wages

As one would expect in this comparison group, the wages in

this district tend to be among the highest. The following 1987-8 comparison demonstrates this relationship.

	1987-8			
	top entry cust	top cust	head cook	top maint.
Beloit	8.37	11.14	-	11.31 <u>3/</u>
Delevan/Darien	6.39	9.62	6.42	9.83
Fort Atkinson	8.37	9.25	9.25	10.06
Milton	7.75	9.65	6.70	
Oregon	10.11	10.11	7.23	11.01
Stoughton	9.40	9.40	-	9.75
average	8.40	9.86	7.40	10.39
Janesville	8.88	10.21	7.76	10.88
Blackhawk Tech.	8.00	8.00	-	9.24
City of Beloit	6.82	11.11	-	11.11
City of Janes.	8.36	9.66	-	10.22 <u>4/</u>
Rock County	9.57	9.57	7.22	9.76
average	8.19	9.59	7.22	10.08 <u>5/</u>
Janesville	8.88	10.21	7.76	10.88

There isn't any serious dispute that the Union's proposed wage increase is generally close to comparable in all of the comparison groups to the extent information is available, while the Employer's proposed wage increase is generally significantly less than comparable to the wage increase adopted in other comparable units. I conclude, the offer of the Employer slightly erodes the wage leadership position.

3/
Skilled trades

4/
The Employer denied that the City had any comparable position on the basis that the city either did not have the position, or sub contracted custodial positions. The Union produced the city department of public works contract which includes mechanic II which is likely to be comparable to the highest maintenance in this unit and grounds maintenance I and III which are respectively likely to be comparable to entry custodian and highest custodian. It is, also, likely the laborer I is comparable to custodian. I have averaged 1987 and 1988 rates.

5/
I have relied upon Local 1077, except for food service worker.

	1988-9			
Wage Increases				
Beloit	2.98%	5.38%	-	5.30%
	.25	.60	-	.60
Delevan/Darien	5.63%	5.61%	5.76%	5.69%
	.26	.54	.37	.56
Fort Atkinson	3.46%	3.46%	3.46%	3.48%
	.29	.32	.32	.35
Milton	4.00%	3.93%	3.73%	-
	.31	.38	.25	-
Oregon	3.46%	3.46%	3.7%	5.0%
	.35	.35	.27	-
Stoughton	3.19%	3.19%	-	3.79%
	.30	.30	-	.37
average	3.79%	4.17%	4.16%	4.65%
average	.29	.42	.30	.47
1987-8 rate	8.88	10.21	7.76	10.88
Janesville (Er.)	2.00%	2.00%	2.00%	2.00%
	.18	.20	.16	.22
Janesville (Un.)	4.00%	4.00%	4.00%	4.00%
	.36	.40	.31	.44

Private Sector (By local wage survey) 1988 6/

	start	mean	highest
cleaner/custodian	4.77	5.48	10.00-11.99
cook	5.18	5.75	7.00-7.99
maintenance pers.	6.58	7.70	12.00-13.99

In general, the record strongly supports the wage proposal of the Association and does not support the wage proposal of the Employer.

Health and Dental Insurance

A central issue in this case is what impact, if any, the large increase in health insurance costs should be given. One aspect of this, is the Union's position that part or all of this increase should properly be treated as allocated to a prior contractual year and, therefore, not be given weight in this proceeding.

The Employer maintains a self-funded insurance plan. It is undisputed that for 1987-8, the Employer kept its premium equivalents at the same amount as the previous year. That agreement was for a two year period, during the second year of which (1987-8), the employer had agreed to bear the increased costs of insurance, if any. The Employer, in its direct presentation adduced testimony supporting the proposition that the Employer's

6/
Data for the non school comparison group is insufficient to make a meaningful comparison.

setting of the premium equivalent was based on legitimate assumptions. Specifically, that the reason for this was that the reserves were at the legal maximum and that the expenditure assumptions were correct at the time made, but that unforeseen changes had occurred in hospitalization rates and other medical costs during the contract year after the premium equivalents had been set. The Union's position in this matter has been that the health insurance increase should be given less weight in this matter for a number of reasons. In its brief, however, for the first time it alleged that the Employer deliberately failed to raise its premium equivalents in a non bargaining year solely to create an insurance crisis in this, a bargaining year. This is the sole reason the Union has advanced for seeking to have the arbitrator find that part of the increase is properly attributable to a prior year and, therefore, should not be treated as part of this contract's package. There is no dispute that for the last year of the parties' prior collective bargaining agreement, the Employer agreed to assume the full cost of any increase in health insurance costs. Instead, the Employer argued this claim was frivolous and had not been addressed at the bargaining table and should, therefore, be ignored.

It is true that the argument of the Union is not supported by the record. Nonetheless, it does not follow that it should not be specifically dealt with or dismissed outright. While the air is best cleared at the bargaining table, arbitration is a substitute for labor strife and it is important to deal adequately with these suspicions and perceptions whenever they arise.

The testimony in this case does not support the view that the Employer deliberately failed to raise its premium equivalents and, on the other hand, provides a full explanation as to why this occurred. The testimony of Ms. Miller indicates that premium equivalents are set once per year for planning reasons. At the time the 1987-8 premium equivalents were set, the reserves were at the maximum legal limit. There was no testimony as to the methods and assumptions of setting premium equivalents. Ms. Miller did testify that, after the premium equivalents were set, there was an unexpectedly general rise in medical costs and an unexpected jump in hospital rates after the state rate review commission was disbanded. The preponderance of the evidence indicates that the Employer set its premium equivalents in good faith on the basis of its practice, the facts known at the time and sound planning assumptions. It did not do so for the purpose of creating an "insurance crisis." Had the opposite been true, the result in this case might well have been different because the costs involved would be properly allocable to a prior year in which the Employer assumed the cost.

The evidence indicates that among the comparable groups the insurance cost of this district for the 1987-8 year was comparatively low. However, both because of the need to recover for last year's excessive expenditures and the need to establish a high enough reserve for the expenditures expected during the term of this agreement, the premium equivalent expenditure here has

risen to be among the highest in the area without change in benefits.

	single premium		family premium	
	87-8	88-9	87-8	88-9
Beloit	69.49	215.98	84.98	199.96
Delevan/Darien	70.69	181.97	87.28	221.67
Fort Atkinson	71.33	198.97	89.33	248.95
Milton	73.46	188.46	91.40	238.60
Oregon	75.60	203.90	98.14	264.65
Stoughton	91.07	237.06	113.94	296.32
average	75.27	204.39	94.18	245.03
Janesville	70.00	193.00 <u>7/</u>	103.50	284.508 <u>8/</u>

(available current data)

Blackhawk Tech.	
City of Beloit	
City of Janes.	245.76
Rock County	300.00

The Employer provided a rationale as to why the non-school plans might be higher. It is not necessary to reach that issue here.

The same is, also, true of the dental plan. The evidence indicates that Janesville had among the lowest dental insurance premium of the comparable districts. For 1988-9 on the same plan, the premium equivalent has risen to the among the highest.

dental premium

	single premium		family premium		deduct.
	87-8	88-9	87-8	88-9	
Beloit	14.10	14.10	36.02	36.02	none
Delevan/Darien	9.95	9.95	33.63	33.63	none
Fort Atkinson	12.36	9.13	38.22	33.63	none
Milton	12.76	12.76	39.44	39.44	none
Oregon	12.11	13.32	40.51	44.56	none
Stoughton	12.80	13.31	38.74	40.29	-
average	12.35	12.10	37.76	37.93	
Janesville	10.00	14.75	28.00	43.00	

Thus, the Employer is correct that there has been an inordinate rise in the cost of the health insurance. In response, the Employer has adjusted the total package it has offered and sought to institute cost saving measures beyond those already in effect. It appears from the testimony of Ms. Miller that these have had the impact in the teacher unit of cost shifting rather

7/
same in 1986-7

8/
comparative data for 1986-7 not available

than cost reduction because the general cost of medical expenses is rising both for this unit and the teacher unit, while the proportion of those actually paid by the insurance in the teacher unit is significantly less than in this unit. The specific most significant changes which the Employer seeks are the adoption of the additional deductible for major medical, creation of the \$25 deductible on dental, and elimination of the essentially fully paid prescription benefit for retirees. These are the same changes the teachers accepted in their settlement.

The addition of the new deductibles for major medical and dental insurance are unusual in that none of the comparable employers have deductibles of this type. Some, however, do not provide a fully paid insurance benefit. It appears that Janesville is unique among its comparables in having the prescription benefit for retirees.

Currently, all qualified retired employees receive prescription benefits under the major medical portion of the retiree health insurance plan. This provides for a \$100 annual deductible and 20% retiree co-payment. Early retirees who retire at age 62 continue in the active insurance group and, therefore, receive essentially fully paid prescriptions.

Retirement benefits provided for long term employees are important, if not determinative, factors in the decision of long term employees to leave active employment. Once having left, they are usually precluded from returning to work at the income level that they once enjoyed. Once the employees are retired, the reduction of the planned benefits is an area which on its surface may seem a convenient area for an employer to make cost saving reductions. Thus, particularly, where there is a benefit which on its face is one which employees are likely to have relied in making such decisions or where there is a positive showing that such reliance occurred, arbitrators are very reluctant to grant proposals eliminating those benefits. In this case, it does not appear highly probable that this benefit was one which a person would primarily have relied in making a retirement decision and there is no evidence that anyone did so.

In this case the Union virtually ignores the substantial change in health insurance cost and loss of relative comparative rank, while the Employer uses this issue to substantially justify both a lower wage increase and reduction of benefits. In looking at the health insurance issue alone (as to whether to simply ignore the change or have significant changes in benefits, the strongest single piece of evidence as to what parties similarly situated would have done is the action of the teachers.

The evidence of bargaining history indicates that this unit has closely followed the teachers' unit settlements with respect to benefits. Differences in benefits have occurred when there have been differences in contract term. Further, there have been some minor differences in benefits. The teachers have an additional year of eligibility for the early retirement benefit and some minor maximums vary because of differences in bargaining.

The Union correctly points out that there are substantial differences between this unit and the teachers and, therefore, it should not necessarily be held to accept every settlement the teachers make. This is particularly true in this matter because the changes adopted disproportionately affect lower paid employees. While the teachers settlement is not directly applied as a comparable as to this issue, the parties' bargaining history and the facts and circumstances of the teachers settlement are weighed to determine the extent to which they provide evidence of how parties similarly situated might have addressed this issue.

The specific facts and circumstances of this case strongly indicate that parties similarly situated would have accepted the offer of the Employer as to health and dental insurance. The instant insurance plans are self-funded and, thus, all of the losses must be made up from Employer funds. There has been no evidence as to whether any of the external employers' plans are self-funded and it appears unlikely that any of the smaller employer plans are self-funded. The primary benefit change is the adoption of the additional deductible. The teacher's unit and this unit have consistently had the same deductible for many, many years. In this context, the teachers did not ignore the increase in health costs and, instead, adopted cost saving changes. It appears undisputed in this case, that the teacher settlement was not the result of a buy out and the wage settlement was at or below comparable teacher settlements. While there may have been non monetary incentives (non layoff assurances), I am satisfied that the teacher settlement is a strong indicator of how parties similarly situated to this unit would have handled the health insurance issue under the circumstances of this case.

Ms. Miller testified on the subject for the need of uniformity of this benefit, at least with respect to the specific changes proposed herein. She forthrightly resisted leading by the Employer's counsel and stated that because of computerization there would be no significant problem in administering these differences. She forthrightly testified that it would, however, be very difficult to make fiscal estimates necessary for the administration of the plans were these differences to remain. Other aspects of her testimony provided unplanned specific examples of this difficulty. For all of the reasons specified herein, the offer of the Employer is preferred as to this issue.

Shift Differential

There are no employees regularly assigned to a night shift and, therefore, this proposal does not directly affect existing employees, except that the Union's proposal may affect day shift employees who are called in early to do snow removal. There are considerable ambiguities in the Union's proposal which are not resolvable on this record. The Union's proposal appears unworkable and overbroad. Further, there is no demonstration of a need to change the current pay arrangement for employees who are called in early for snow removal. The Employer's offer on this benefit is preferred.

Sick Leave

The Association's proposal in this case is to expand the current contractual definition of "immediate family" by substituting the definition from the new statute requiring unpaid family leave thereby expanding the current contractual benefit. Contrary to the position of the Employer there is no ambiguity as to whether the additional circumstances for which days off would be required would be paid time off. The language clearly would require paid time off. Similarly, the language only expands the benefit and does not adopt the more restrictive definition of illness. The language is ambiguous with respect to parents, although neither party intends that interpretation. Given the agreement of the parties, I have chosen to construe the language as the parties have agreed in this proceeding. Accordingly, the ambiguity is given no weight in the propriety of adopting the language. Ambiguity does arise if the statute is changed during the contract term.

The mere fact that the legislature has adopted a law with some provisions more generous and some more onerous than the contract does not, as the Union has argued, compel the adoption of the more generous portions into the agreement language. There is no substantial risk of confusion in this case.

Under this unit's agreement (current §7.06) family leave is limited to the spouse or child of the employee. Under the teacher's agreement the definition includes "spouse, parents, grandparents, sons or daughters, brothers or sisters, grandchildren, father- or mother-in-law, sister- or brother-in-law, daughter- or son-in-law". The Union is correct in its position that comparison with the teacher unit tends to support its position.

There is no relevant evidence of outside comparability relevant to this issue. Overall, while the Union's proposal is better worded in specific contract language rather than adoption of the statute by reference, the weight of available evidence supports the position of the Union.

Union Business

It is undisputed that an employee in the unit has regularly attended Union conventions. The Employer has had a practice of permitting the employee time off without pay for attending. The Employer challenges this proposal primarily on the basis that it is not comparable and is overbroad. The Union argues that among union employers the benefit is not inconsistent and that its proposal is comparable to that contained in the teachers' agreement.

Beloit and Fort Atkinson are the only two external comparison school districts with affiliated unions. Fort Atkinson has no similar benefit. Beloit provides for 32 hours unpaid leave with two weeks advance permission. No data was offered for non school district comparable employers. The teacher's

agreement provides a benefit similar to that proposed by the Union except that the association therein must provide at least 24 hour notice. It should be noted that the teachers' unit is substantially larger and that teachers have teachers' convention off.

The history of the parties and the comparative data support the establishment of a written benefit. It is unclear as to whether the amount of time specified is fully needed in this unit. Given the fact that individual employees may be vital and not immediately replaceable, a proposal without advance notice to the Employer is not warranted. Accordingly, the Employer's position is preferred on this issue.

COST OF LIVING

The parties agree as to the costing of their offers. The Employer is correct in including longevity and increments as they are cost items in this year. Employer's proposal for 1988-9 is 2.56% salary only and 6.54% total package. The Union's 1988-9 proposal is 4.57% and 8.38%. For 1989-90 the Employer's proposal is 3.67% salary only and 4.80% total package. The Union's 1989-90 4.65% salary only and 6.51% total package. The change in U.S. City Average cost of living from July, 1987-July, 1988 was 3.08% and from April, 1988 to April, 1989, was 5.1%. I apply cost of living against total package, since wages and benefits are all applied to meet employees' living expenses. Further, I apply the cost of living from the year before for evaluating a contract year. On the basis of cost of living, the Employer's offer is preferred.

PUBLIC INTEREST

The public interest involves maintaining a work force compensated at a level necessary to insure the hiring and retention of qualified employees consistent with the ability of the taxpayers to meet the economic burdens and maintaining the necessary level of services. Absent evidence that a specific allocation of the total package of compensation discourages accomplishment of that goal, carries with it undue administrative problems, or establishes improper public policy, it does not appear that there is a specific public interest in the allocation of a specific settlement package. In this light, the overall proposal of the Employer appears to be more consistent with public policy than the Union's.

CONCLUSION

The arbitrator is required to adopt the final offer closest to appropriate, without change. In this case the offer of the Employer is preferred on health and dental insurance and the offer of the Union is preferred on this issue of wage increase. The other issues in this matter do not bear substantially on the result of the overall case. The only total package comparison offered was to cost of living and the offer of the Employer is

more consistent with that criterion. It, also, appears from the record of the whole that the offer of the Employer is more appropriate. The health insurance cost here has not only risen at a high rate, it has risen to a rate inconsistent with other area plans. Further, without the changes proposed by the Employer it appears it will continue to rise at this inordinate rate. As with any benefit, the costs (both past and future) appropriately come from the total compensation of employees. Finally, the offer of the Employer does not substantially erode the wage leadership position of this unit. Accordingly, the offer of the Employer is adopted.

AWARD

That the final offer of the Employer be included in the parties collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 6th day of October, 1989.


Stanley H. Michelstetter II
Arbitrator