STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of the WAUTOMA AREA SCHOOL TRANSPORTATION RELATED EMPLOYEES To Initiate Arbitration Between Said Petitioner and WAUTOMA AREA SCHOOL DISTRICT	Case 48 No. 41306 INT/ARB - 5068 Decision No. 25881-A

APPEARANCES:

William Bracken, Director, Employee Relations, Wisconsin Association of School Boards, Inc. on behalf of the Wautoma Area School District

David W. Hanneman, Executive Director, Central Wisconsin UniServ Council - South, on behalf of the Union

INTRODUCTION

On February 14, 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 Wautoma Area School Transportation Related Employees (hereinafter the "Employees" or the "Union") and the Wautoma Area School District (hereinafter the "Employer", "District", or "Board"). On March 30, 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?

BACKGROUND

The Wautoma Area School District is primarily rural in composition. As a result, many of the District's students are bused to schools in Wautoma or Red Granite. Each school is served by a number of morning and afternoon routes. There are separate routes to serve its kindergarten students and additional "athletic" routes which return students from after-school activities. All regular drivers are members of the bargaining unit whether they drive one route each day or the practical maximum of four routes each day.

Historically, some of the District's school buses have been parked upon the District's premises at the maintenance garage in Wautoma or at the school yard in Red Granite. However, the vast majority of the school buses have been parked at the home of the individual driver. These drivers would prepare their buses for each route, drive to the beginning of the route, complete the route, and return to their residence in the school bus. Drivers would arrange for gasing of vehicles and vehicle maintenance as required. However, at the beginning of each route, the bus would be located at the driver's residence.

The District has been engaged in an analysis of vehicle maintenance and other costs for some time. In the Fall of 1988, the District's transportation supervisor conducted an analysis of the costs associated with storing school buses at the driver's residence. The result of this study indicated that the District would realize substantial savings if the vehicles were to be parked on the District's property, at the maintenance garage. The first year savings were estimated to be in excess of $10,000 with additional savings to be realized in subsequent years. The main savings would be realized by elimination of "dead heading"

from the end of bus routes to the residence of the driver. Moreover, some additional savings would be realized by improved maintenance scheduling.

As a result of this study, the District's School Superintendent recommended to the Board of Education that the District implement a policy of parking buses on the District's premises in November, 1988. As a result of this change in policy, drivers had to drive their personal vehicle from home to the District's parking lot before each route and use their private vehicle to return home at the end of each route. This meant that some drivers were making four round trips in their personal vehicles from home to the parking lot each day.

As might be expected, this change in policy was not well received by the Union members and some drivers terminated their employment forthwith. However, because the parties were engaged in bargaining for this contract, it was agreed between the parties that the issue would be a subject for contract bargaining, rather than grievance arbitration.

Therefore, because the parties were able to resolve all other matters in dispute, the sole subject of this present arbitration is what compensation, if any, should be granted to the bargaining unit members under the terms of a policy which has been instituted without objection by the Union.

The District's Position:

The District proposes to pay each driver who completed the 1988-89 school year in the District's employ a one-time flat payment of $500, irrespective of the number of routes driven by that driver to the end of the school year. In other words, a driver who drives one route each day would be paid precisely the same amount as the driver who drove four routes each day.

The District arrived at this payment by estimating the approximate savings to be realized by the District during the 1988-89 school year as a result of implementation of its new parking policy. The suggested payment is intended to pass on approximately one-half of the first year's savings to the drivers. The single, lump sum payment would be easy to administer and eligibility would be undisputed.

The Union's Position:

The Union believes that it has given up without dispute a substantial benefit which can only be made whole by substantive concessions by the School District. Therefore, its final offer contains three elements. The first is a $2.60 payment for each route driven by a Union member. The second element would be a change in contract language calling for route assignments on the basis of seniority only, rather than the seniority and other factors presently set forth in the agreement. The last element is a guarantee by the Employer to hold the drivers harmless for any damage which might be done to drivers' vehicles while parked on District premises. Furthermore, the Union wishes to have a separate parking area designated for the exclusive use of bus drivers.

The Union argues that its per route compensation more properly recompenses those drivers who drive their cars more often under the District's plan. Because many make four round trips each day, the Union believes they are entitled to a larger payment than would be made to a driver who makes only one round trip. In addition, the Union's plan would require payment to drivers for routes driven even if they left the District's employ as drivers prior to the end of the 1988-89 school year. It believes that contrary to the District's assertion, such a payment policy could be implemented without undue difficulty by the District.

In addition to a per route payment, the Union believes that the District should be required to accept a substantial quid pro quo for implementing its parking policy. For many years, the Union has attempted to obtain seniority-based job posting through negotiations and arbitration. In the Union's mind, the Union's acceptance of the parking policy without grievance objection entitles it to a substantial alteration of contract language. Because seniority-based job posting has been a long-term objective of the Union, it believes that it is entitled to attain this goal as a part of this labor agreement. The Union believes that acceptance of their language would clear up a continuing problem between the Union and management and between individual drivers and their supervisors regarding what the Union believes to be subjective selection criteria applied by the District when selecting drivers for available routes.

Seniority-based job posting would result in a single objective universally understood standard for route assignments.

Finally, the drivers appear to be concerned that their vehicles will be subject to vandalism or other damage while parked on the District's premises. They believe that the

District has an obligation to assure its drivers that if a vehicle is damaged while on the District's premises, the driver will suffer no out-of-pocket cost as a result of the damage. It argues that a vehicle parked in a public lot is exposed to risk of damage to a much larger extent than it would be exposed were it parked at the driver's home.

Discussion:

There is a wide discrepancy between the parties offers of cash compensation. Not only is there a difference in the total amount which would be paid, there is a substantial difference between the amounts which individual Union members would receive under the two offers. Although the Board argues that it would be difficult to administer the Union's cash compensation offer because of problems of substitute drivers for illness and the like, the Union maintains that a bargaining unit member would be entitled to payment only for routes actually driven because those would be the occasions for use of personal automobiles. And, it is the use of personal automobiles that concerns the Union.

It appears from the record that some bargaining unit members left the District's employ as soon as the new parking policy was instituted. These persons would receive no compensation whatsoever under either plan presented by the parties.

No showing was made as to what motivated other drivers who stopped working during the school year. It appears that in the past drivers have quit during the school year and it is possible that the new parking policy was not the cause of their voluntary termination.

On balance, it would appear that the Union's offer is the more reasonable of the two. Although the total cost to the District would be higher under the Union's offer, it is a one-time cost which would not be borne again by the District's taxpayers. The present pay scale depends upon the number of routes each driver drives each day, and no bonus or other payment is made to a driver who completes a school year. To tie the lump sum compensation to the end of the school year would appear to be inconsistent with the method of payment otherwise in effect in the Wautoma Area School District. Moreover, in the absence of specific information as to the reason drivers left the District's employ, it seems unreasonable to penalize a driver who left for personal, health, or career purposes unrelated to the parking issue simply because they failed to work the entire school year. It must be recognized that when a driver quits, the District is placed in the position of having to fill the route on an emergency, part-time, or temporary basis. However, this circumstance is not substantively different than what would occur were a driver to be unable to perform his or her duties due to illness. Therefore, so far as the final offers pertain to compensation to the drivers, the final offer of the Union would appear to be more reasonable.

Turning now to the "make whole" language proposed by the Union in this matter. The Union believes that the vehicles belonging to its members are subject to a degree of risk of damage and vandalism to which they would not be subject were they parked at the driver's residence. Because of this requirement, the Union believes that its members should not be subject to a risk of loss, whether covered by insurance or otherwise, irrespective of the source of the damage. The Union believes that the District presently has coverage or would have coverage available to it which would protect it from such exposure at a reasonable cost. It believes that its members should be protected even to the extent of deductible amounts under their present personal automobile insurance coverage.

On the other hand, the District believes that it cannot be the insurer of its employees any more than it is the insurer of teachers and other staff who drive their automobiles to work and park them upon the District's premises. It further argues that it is not able to purchase insurance which would insure against liability under the language proposed by the Union here.

It appears clear that the District is willing to "make whole" damage to drivers' vehicles which are caused by the District's employees or equipment. However, further coverage would appear to be difficult to obtain or to administer. Parking lot damage is always difficult to evaluate. For that reason, a car owner must obtain personal insurance to cover damage which might occur in any public parking facility, whether publicly or privately owned or controlled. The District clearly covers its other employees to the extent they would be covered in a shoping center lot or on the street. That is, they accept liability in the event damage is caused by the District's actions or negligence.

The Union also asks for a reserved parking area for its drivers. This area is to be separate from the space used to park buses or other District vehicles. There is no question that parking away from buses, etc., is adviseable to reduce the chances of damage to private cars. It would perhaps be adviseable if the District were to reasonably segregate parking, if only to reduce the opportunity for damage. But, it does not appear reasonable to make the District assume a burden of liability which it does not assume for its other employees, most of whom must drive their own vehicles to their employment.

We turn now to the issue raised by the Union regarding seniority posting of routes. As the parties have stated at the hearing, by exhibits and in briefs, this has been a constant problem between the Union and the District, as well as between individual drivers and management. As was stated earlier here, the Union believes its proposed language will result in a single, well-understood and acceptable standard for allocation of routes. It answers the District's objection by reminding the arbitrator that management would retain the right to pull a driver off a route for which the driver is unsuitable should this become required. It has objected here as it has before to the intrusion of subjective standards in the route allocation process.

The problem faced by the Union here is that the present process has been determined to be proper in the past. Therefore, the Union is attempting to obtain language in this final offer arbitration which it has not been able to obtain through bargaining or through the grievance arbitration process. It justified this because it is entitled to a substantial concession from the Board in light of its acceptance of the District's unilateral change in working conditions during the past school year.

This position has merit. However, the fact remains that the Union is attempting to obtain a substantive change in contract language through the interest arbitration process and this is a step arbitrators have been traditionally reluctant to take. In the past this arbitrator has made clear a three-prong test will apply in such cases. The first of these would require the party proposing a change to sustain the burden of showing that the present contract language has given rise to conditions that require amendment. In this case, the present contract language and the manner in which it has been administered has been subject to an unusual measure of examination by other arbitrators.

The Union's position in favor of seniority job-posting has merit in that it will eliminate any subjective judgment from the route allocation process. However, the Union agrees that management will retain the right to pull a driver off a route for which the driver is not suited. Thus, an element of subjective judgment might remain if the Union's position were adopted. Moreover, the District's proper concern regarding overtime costs is valid and adoption of the Union's position would reduce the employer's ability to avoid overtime charges when assigning special-event routes. Finally, in light of the number of students making use of bus transportation each day, it would be inappropriate to limit the District's discretion where the health and safety of its charges is involved. For these reasons the present contract language is preferred over that proposed by the employees. The Union has failed to meet the first test in that it has not sustained the burden of showing that the present contract language has given rise to conditions that require amendment.

DECISION

Standing alone, the Union's payment proposal would be approved here. But, this is Final Offer arbitration, and it is required that one be adopted in its entirety and that the other be rejected. The proposed contract language regarding seniority only job posting constitutes such a substantial alteration in the manner the contract is to be administered that the Union's Final Offer must, as read as a whole, be rejected.

AWARD

Final Offer of the Wautoma Area School District shall be incorporated in the contract language.

DATED: July 21, 1989

ROBERT L. REYNOLDS, JR., Arbitrator