STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of the EDGERTON EDUCATION SUPPORT STAFF To Initiate Arbitration Between Said Petitioner and EDGERTON SCHOOL DISTRICT	Case 30 No. 40835 INT/ARB - 4975 Decision No. 25933-A

APPEARANCES:

Shannon E. Bradbury, Staff Counsel, Wisconsin Association of School Boards, Inc., on behalf of the District

Mallory K. Keener, Executive Director, Capital Area UniServ-South, on behalf of the Association

INTRODUCTION

On April 6, 1989, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.70 (4) (cm) 6 of the Municipal Employment Relations Act (MERA) in the dispute existing between the Edgerton Education Support Staff (hereinafter the "Association" or the "Union" or "EESS") and the Edgerton School District (hereinafter the "Employer", "District", or "Board"). On June 8, 1989, an arbitration hearing was held between the parties pursuant to statutory requirements and the parties agreed to submit briefs. Briefing was completed on August 15, 1989. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (4) (cm), Wis. Stats. (1985).

ISSUE

Shall the final offer of the School District or that of the Association be accepted by the Arbitrator?

CONTRACT TERM

There appears to be no dispute between the parties in this regard. The Contract shall run from July 1, 1988 through June 30, 1990.

LIFE INSURANCE

Although this issue was addressed in briefs, there appears to be no substantive disagreement between the parties. Both agree that the contract language shall be amended only in so far that the District's contribution to the life insurance premium shall be increased from 41%, as set forth in the previous contract, to 100% for all employees who work four (4) hours or more per day.

DENTAL INSURANCE

Although this language is in dispute between the parties, the dollar difference between the two is relatively insignificant. Therefore, this issue shall not be controlling, but shall be decided as part of the total award and shall not be discussed further here.

FAIR SHARE

The Association's Position:

This is a small Union, representing approximately twenty-five employees. Many of those employees are not Union members. For the most part, this group consists of newer employees who, it is argued, have not yet perceived the benefits of Union representation or services available through it.

Therefore, the burden of representation has fallen upon a relatively small group of senior employees who have accepted and support organizational representation through the Union.

The Union affirms that Fair Share is just and deserved and would not impose a burden upon the District, which already recognizes the Fair Share concept with other bargaining units with which it deals.

The District's Position:

The Board takes the position that the burden is upon the Union to show the arbitrator that Fair Share should be imposed through the arbitration process. Therefore, it has not felt compelled to offer lengthy testimony or support in briefs in opposition to the Union's demand.

The arbitrator is urged to reject a proposal for language which has not been adopted in bargaining over a period of years of Union representation. It points out that it would be a burden to administer the program. Absent a showing of real need, the Union's Fair Share language should not be adopted.

Discussion:

It is well established that arbitrators are reluctant to impose contract language upon parties in binding, final offer arbitrations. Such changes should be resolved by the parties at the table, where a give and take is possible that does not exist when the process has reached this stage.

As a result, I have subscribed to a three-prong test adopted by other arbitrators in evaluating proposed contract language in arbitration. This test is:

1. Does the present contract language give rise to conditions that require change?

2. Does the proposed language remedy the condition?

3. Does the proposed language impose an unreasonable burden upon the other party?

In many awards, this last test is defined as a "quid pro quo", and that may in fact be a guide as to reasonableness. However, it is also possible that no direct quid pro quo is involved in the analysis.

The burden of supporting the language change is upon the party proposing it, and the District is correct here in its ascertion it is under no obligation to concentrate upon the issue, if it chooses not to do so.

Assuming for the moment that the Union has sustained the first test, let us turn now to the second and third. Fair Share, and its implementation, are not unusual in Wisconsin or in this school district. The language proposed here is similar to that in effect in the Edgerton School District and elsewhere. Thus, it is reasonable to find that the proposed language would remedy the condition and that, notwithstanding some representations made by the Board here, its implementation would not impose an unreasonable burden upon the District.

The root question, then, is whether the absence of Fair Share gives rise to a condition that requires change.

The Association's position that equity alone requires support of its proposal has merit. Fair Share has become more usual than not in this State for public sector employers and employees. The arguments enlisted here have been made many times elsewhere and many of the statements made cannot be disputed. This is particularly true when one considers the large number of employees in this unit who take advantage of Union representation without assuming the burden of paying its cost. New-hires are typically difficult to recruit into Union membership until experience convinces them of its benefits.

The question to be answered remains, however. That is whether the present condition requires change. I think not. Surely Fair Share is desireable to the Union members and it may well be that other workers are benefiting from Union representation and support in an unfair manner. But, the District has other non-organized employee groups, as well as those who are in unions. The same condition occurs in other public sector employee groups in Edgerton and adjoining areas. In the absence of a showing that this employee group has been damaged by absence of Fair Share language, the Unions final offer on this issue must fail.

WAGES AND HEALTH INSURANCE

These two remaining issues are considered together here because of the close relationship between them as presented by the parties at the hearing and in briefs.

Comparables:

There is some dispute between the parties on comparables. However, within the basic comparable group there is agreement that all conference schools should be included, a group of six other school districts. A review of the exhibits presented by the parties would indicate that additions proposed by either side would work to that side's advantage but would not so alter the information to be learned by examining the conference schools alone

as to render that information meaningless. Therefore, the comparable group selected here shall be the conference schools of Brodhead, Clinton, Evansville, Parkview, Beloit Turner and Walworth. Reference here may be made to other comparable groups outside the basic list, but only in the context of the discussion.

The Union's Position:

The Association makes two basic arguments. The first is based upon a defense of the present contract language, which provides for full payment of health insurance premiums in each contract year, as set forth in the present labor agreement.

The second argument is based upon the Union's belief that the District's wage offer represents a quid pro quo that is insufficient compensation for giving up the present language.

It views the Board's final offer as an attempt to "divide and conquer" in two respects. Only nine of the Support Staff members avail themselves of health insurance benefits. By giving a larger wage increase than the Union is requesting, the employer is attempting to divide the employees between those interested in wages only and those to whom health and other benefits are of primary importance.

The Union also believes that the District's tactic here is designed to drive a wedge between the EESS and other represented District employees who presently enjoy a health insurance benefit similar to the support staff. It argues that imposition of this language will be used to justify a similar position in bargaining with larger employee units whose members take more advantage of this benefit than do the support staff workers.

The District's Position:

The Board's primary motive in making its offer is to attempt to limit the cost of health care premiums. It believes the recent up-surge in health costs requires it to take a stand in an effort to limit cost exposure in its area.

It is acknowledged that employees who choose to continue in the WEAIT health care plan will be required to contribute a portion of their wages to premiums, should the expected premium increases occur. And yet, the District's final offer would cover all the projected costs for the other health care package presently available to unit members, the Dean Care H.M.O. Thus, workers who choose the higher-cost plan would be required to pay more than they would were they to change to the lower-cost health plan.

The District urges the arbitrator to consider the fact that adoption of the Union's final offer here would result in a disproportionately high effective wage increase for those support staff members who continue to choose WEAIT as their health care carrier.

It should be remembered, the District argues, that its final offer on wages alone is higher than that requested by the Union. This increase represents a larger percentage increase than that enjoyed by comparable workers in comparable districts. Thus, its offer represents a more than adequate quid pro quo for contract language changes and should be recognized as such in this arbitration matter.

Finally, the District believes that by increasing the number of health insurance plans offered to its employees it will be allowing them to choose that health plan which most closely fits their personal and family needs for coverage, as well as cost. It has suggested making available a health care program through the Wisconsin Public Employers Group Health

Insurance program to effectuate this goal. Among the plans offered through this program is the Dean Care H.M.O., a plan presently available to support staff members.

Discussion:

Before embarking upon an analysis of the offers, I believe it would be helpful to review the present labor agreement. Section 15 of that agreement relates to Insurance Benefits. Under that section are contained provisions relating to health care insurance (15.03), life insurance (15.04), tax sheltered annuities (15.05), dental insurance (15.06) and long-term disability (15.08). Section 15.07 relates to claims for compensation and insurance benefits. Section 15.01 gives all the employees who qualify the right to be covered by the various insurance plans described in the contract.

Of particular importance here is Section 15.02. This section applies to all insurance coverages and gives the District the right to choose carriers provided the coverage is equal to or better than those in effect during the term of the agreement. Thus the District has the right to change carriers for any or all insurance benefits, once a contract has been put in place. The language in Section 15.02 is prospective in nature. Once the plan or plans go into effect, the Board is not able to offer lesser benefits. This language is a device used in many contracts to prevent an employer from reducing benefits during the term of the contract. It does not prevent a change from one carrier to another.

Therefore, the language proposed by the District for Section 15.03 does not require a "new language" analysis similar to that used when considering the Union's Fair Share proposal. It represents an offer, made in terms of dollars, that will impact upon the employee group, just as any other offer would impact. Whether or not the impact is reasonable is another issue to be addressed later in this award.

The last contract describes the employer's contribution to health insurance premiums in terms of dollars. This reflects the premium costs in place at the time that contract went into effect. This cost is agreed to have been 100% of the WEAIT plan at the time that contract was bargained.

At first blush, The Union's offer of 100% of premium costs in this contract's second year would appear to constitute a change in language. Such is not the case. The Union is attempting to express by a percentage the language historically used in setting the District's contribution. Given the length of this contract and the obvious uncertainty regarding those costs in this contract's last half-year, the Union's language is found to be in keeping with the intent of the last contract and the first three-quarters of this contract, and will not be found to be an alteration in contract language requiring "new language" analysis.

With the "new language" issue behind us, it is now possible to review the final offers for health insurance and wages in the light of the statutory standards alone. This review will deal with both issues together, as that is the manner in which they are presented by the parties.

A review of the statutory criteria reveals that some are not applicable here. There is no dispute over the lawful authority of the employer, nor is there a dispute over matters stipulated between the parties. No argument is made over the District's financial ability to meet the costs of the settlement, nor have there been changes in circumstances during the pendency of these proceedings. Neither party has made an argument under factor "j".

The cost of living question was presented by the parties, but cannot control here since it appears that both offers exceed the index relied upon by the Board. Its offer, having a lower package cost, is closer to the CPI than that of the Union, but the difference is not substantial enough to cause a finding for the District on that criterion alone.

Factors "e" and "f" have been dealt with at some length here by both parties in exhibits and briefs. It is not my intention to dismiss these factors in a cavalier manner. However, the range of health insurance benefit plans and the wage structures cited in this matter are so diffuse and varied as to make meaningful comparisons difficult, if not impossible. A review of the evidence and the arguments presented by the parties appears to reveal that the District has made a wage offer which is generous by comparison, in the main. The employer's contribution to health premiums range from far below to more than that proposed by the Board, whether the comparison is made between public or private sector employers, represented or non-union.

Both sides do ask the arbitrator to give attention to other employees of the District. The Board points out that non-represented employees have accepted a health insurance benefit package similar to the one it proposes here. It applauds this group for helping the District deal with the tremendous increase in premium costs experienced in the recent past.

The Union counters that ascertion by reminding the arbitrator that these employees have not had the benefit of Union representation and thus are put into a "take-it-or-leave-it" bind because they do not have the right to bargain collectively or to take advantage of the statutory protection encompassed in the Statutes.

This argument is strengthened by the fact that the other unionized employment group in the District, the teachers, have and will continue to enjoy a health insurance premium contribution by the District exactly like the benefit now in force for the EESS which the District wishes to alter here.

Insofar as factor "e" is concerned, the position of the Union has merit. A change in benefit here would place the membership in a position clearly less favorable than that of other unionized District employees and, were this the controlling factor, the Union's final offer would be preferred.

We turn now to factor "d". As stated above, it is my belief that the six conference schools offer a sufficient comparable group for purposes of this award. A review of the exhibits indicates that for the years 1988/89 the entry wage for aides in these schools is $5.28 per hour. This wage is 38.9% higher than that proposed by the Union and 37.1% higher than the Board's final offer. Both would be below the entry wage for all other schools, which range from $4.02 in Evansville to $7.54 in Walworth.

A slightly different picture is presented when the maximum rate is considered. Here both proposals would rank third among the schools. The average wage is $6.62 and would be exceeded by 5.7% under the Union offer and 6.5% under the District's. The Union has characterized the Board's offer as constituting a badly needed catch-up offer in the entry level. At the maximum rate this District compares favorably with other units, but the Union points out that only three of its members would be paid in the maximum range and that it is only fair to grant a proportionately higher increase (this being a cents-per-cell increase) to those workers most in need of it.

At the time the Association prepared its exhibit 24, it appeared that four conference schools had settled the health insurance issue for 1988/89. Of those, three, Clinton, Orfordville and Turner, had agreed to pay 100% of the cost of insurance under the WEAIT

plan. The fourth, Evansville, was paying 100% of the BC-BS plan, a program less costly than the WEAIT plan.

For 1988/89, the Brodhead District will pay 94% of the cost of a W.P.S. single person plan and 91% of a family plan. Walworth, though the matter was still in negotiations at that time, indicates a 100% contribution to a W.P.S. plan.

The information cited above is flawed by the fact that no 1989/90 data is included. However, based upon the information available, it would appear that the Union's final offer on wages is not so far below that established in other districts as to cause it to fail and that the District's offer on health insurance constitutes a change in status so significant as to cause its final offer to be rejected, based upon a comparison with other employees performing similar services.

The last criterion, factor "h", is the most important of the factors. It is this factor that has been emphasized by the parties, and I believe it should control the discussion of the wage/health insurance issue.

In effect, both parties seek to justify their final offers as a "buy-out" or a "quid pro quo". The Union believes it has made an offer sufficiently modest to justify a continuation of the present benefit levels. The District believes it has made a wage offer sufficiently generous to justify a reduction in benefits.

Health insurance costs have been recently increasing at an unprecedented rate and both sides agree that something must be done to curb them. One problem has been that employers have had no way in which to deal with the rise in costs other than to seek out less expensive plans, which may impact upon the level of services or to ask that employees begin to assume an increased portion of the costs, which may impact upon compensation.

The Union agrees with the analysis, but argues that the problem of increased costs extends far beyond the Edgerton School District and it is unreasonable to ask this group of lower-paid employees, many of whom work for the benefit package as much as wages, to bear the brunt of the solution.

The District points out that the majority of non-union members do not subscribe to health insurance. It is these workers, who are primarily interested in wages alone, whom the Board feels would benefit from its higher wage proposal and it maintains the Union is preferring one group of employees to another.

The Association thanks the Board for its concern for its people but feels it and it alone is capable of representing the will of the EESS without the employer's assistance. The Union's final offer was not arrived at capriciously but represents the agreed upon position of its membership. As such, it should be evaluated without consideration of the District's ascertion as to what is best for its workers. It is of no significance that a majority of the EESS does not subscribe to health insurance benefits. The situation can be compared to the salary schedules in place in many school districts, where separate pay schedules are established for teachers holding a Bachelor's degree and those with a Master's degree. If a teacher does not wish to earn a higher degree he/she may continue in the lower schedule to retirement. The choice is voluntary, and so is the choice here. The benefit exists for those who wish it. It is of no moment whether one or all of the union members subscribe.

In its brief, the Union touched upon what I believe is the controlling issue here. That is the nature of the benefit itself. This is a relatively low-paid employee group. Using the "Employee A" and "Employee B" tables in the briefs, the health insurance benefit

constituted 26.96% of the wages for the higher-paid Employee A's annual compensation and 43.69% of Employee B's compensation for 1987/88. Thus it is possible to accept the Union's position that many of its members work for the benefit almost as much as for the wage.

Furthermore, the District would disturb a doctor-patient relationsip presently in existence by requiring the workers, in most cases, to choose between leaving a present provider or incurring a substantial financial burden to retain the provider. If weight is to be given to the freedom of choice now within the ability of the employee to obtain, the mere financial aspects of the offers must give way. I think this is true here and I must find that the District's higher wage offer is not sufficient reason to impose an increased cost and the lost non-monetary benefit upon the EESS.

DECISION

It is obvious at this point that the decision on Fair Share and on wages and health insurance oppose each other. The conflict must now be resolved.

To do so, the impact of each issue must be weighed. The Fair Share offer would have a minor financial impact upon those workers who would be required to pay Union dues. It has already been established that it would have a minor impact upon the District.

On the other hand, the unfavorable impact upon the EESS of the employer's final offer would be considerable. Benefits, both monetary and emotional, would be reduced with only a minor wage net recovery to be attained through wages. Taken together, it is obvious that adoption of the Union's final offer would have a lesser impact upon the losing party than would occur were the District's final offer to be accepted.

AWARD

The final offer of the Edgerton Education Support Staff shall be incorporated into the 1988/1990 labor agreement between the parties.

Dated this 8th day of November, 1989, at Madison, Wisconsin.

ROBERT L. REYNOLDS, JR., Arbitrator