STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of the WEAC UNISERV COUNCIL #10 To Initiate Arbitration Between Said Petitioner and OAK CREEK-FRANKLIN SCHOOL DISTRICT	Case 45 No. 41734 INT/ARB - 5168 Decision No. 26034-A

APPEARANCES:

James Gibson, Executive Director, WEAC Uniserv Council #10, on behalf of the Oak Creek Custodial Employees

Mark L. Olson, Attorney, c/o Mulcahy & Wherry, S.C., on behalf of the Oak Creek-Franklin School District

INTRODUCTION

On June 22, 1989, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Arbitrator pursuant to Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act (MERA) in the dispute existing between the Oak Creek Custodial Employees (hereinafter the "Union") and the Oak Creek-Franklin School District (hereinafter the "Board", "District" or "Employer"). On September 7, 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 December 23, 1989. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.70 (7), Wis. Stats. (1987-88).

ISSUE

Shall the final offer of the Union or that of the School District be incorporated in the labor agreement between the parties?

ARBITRATOR'S NOTE

Subsequent to the filing of initial and reply briefs by the parties. I was provided with a copy of Arbitrator George R. Fleischli's award in the matter of interest arbitratiion between this District and its Clerical Employees. This decision was provided to me by the Union.

On December 23, 1989, I received a letter/brief from counsel representing the Oak Creek-Franklin School District objecting to this, setting forth the reasons for this objection and requesting that I not consider this award in arriving at a decision here.

It is my understanding that many of the issues in that arbitration are the subject of debate here and that the Union would have me accept that award as, for all intents and purposes, "res adjudicata" in these proceedings.

Upon reflection, I have decided that Section 111.70(7)(i) of the Wisconsin Statutes permits me to recognize the existence of this award and its results. Therefore, I have reviewed the exhibits presented to me by the parties and have indicated the final resolutiion of the Clerical Employees contract upon them where appropriate.

However, I have not read Arbitrator Fleischli's award, nor have I adopted his reasoning or analysis in the course of preparing this document.

THE UNION'S POSITION

Wages:

The Union is of the opinion that if wages were the only matter in dispute between the parties, this bargaining would have been completed without recourse to the arbitration process. In its brief, it has described the wage issue as a "red herring" which remains unsettled for the purposes of diverting the arbitrator's attention away from the true issue, that of sick leave reinstatement.

The employees recognize they are not being exploited on wages, but they argue that at the same time they are not being excessively compensated. The Union does not accept the Board's position that wages and benefits are so far out of line in this District as to require amendment of the contract in order to bring total compensation, including sick leave reinstatement, into line with comparable employee units.

Sick Leave Reinstatement:

The sick leave reinstatement provisions of this labor agreement antedate the first collective bargaining agreement between the parties. The identical provisions have been incorporated in every contract ever negotiated between the parties and on only one previous occasion has the District even suggested dropping the sick leave reinstatement clause. This was in the course of bargaining for the present agreement and the proposal was dropped when the Union refused it then.

Now the Board has again introduced the issue in this bargaining and has coupled it to a wage offer that is, in the Union's view, only modest. This in spite of the fact that the provision has not proved difficult to administer, only one person has "taken advantage" of it, and when all other represented District employees have the same benefit as this unit. Not only that but other employee units would continue to enjoy the benefit even if it were taken away from this unit in these proceedings.

The Union understands that present unit members would be "grandfathered" under the District's offer and that only new hires would not receive this benefit. Such discrimination in benefits as between members of this unit and between this unit and other employee groups would not be condusive to the best interests of the public as set forth in the statutory criteria.

To these arguments the Union adds its belief that the "quid pro quo" offered by the Board is totally inadequate to require the arbitrator to find that the present contract language should be altered.

For these reasons, the Union urges the arbitrator to adopt its final offer.

THE DISTRICT'S POSITION

Wages:

The District has presented a detailed analysis of wage comparables. Not only that, it has also analyzed benefit levels obtained by comparable units and asks the arbitrator to find that the total wage and benefit package enjoyed by members of this unit is substantially higher than the average package available elsewhere. The District avers that it has emphasized the total compensation package, not wages alone, and asks for relief from this unfair burden through arbitration. Its lower wage offer is part of a two-pronged attack upon the problem, and therefore its detailed comparisons set forth in brief do not, by any means, constitute an attempt to divert the arbitrator's attention.

Sick Leave Reinstatement:

No comparable bargaining unit enjoys the sick leave reinstatement benefit provided to Oak Creek-Franklin employees. Like comparable employers, the District makes long-term disability insurance benefits available to its workers. But Union members may choose to continue on sick leave beyond the date for which they would become eligible for long-term benefits. They do this because under this contract they will have one-half of the sick leave benefits used restored to their sick-leave bank when they return to work if they have accumulated 35 or more sick days at the time of illness. As the exhibits provided by the District indicate, an employee with 120 days of accumulated sick leave could use them all and, upon returning to work, 60 days would be put back into the bank. If that worker became ill again before earning any added sick leave, and the illness lasted for the entire 60 days, 30 days would be restored to him upon returning to work. Thus a worker with 120 days of sick leave could be gone for 180 days, draw full sick leave benefits during that entire period and still have 30 days of sick leave available upon returning to work.

In the District's view, this amounts to "double-dipping" a benefit and renders the long-term disability insurance purchased by the Board, in effect, worthless. This benefit was granted at a time when disability insurance was not available to its workers and has become obsolete since the insurance was purchased. Added to the generous wage and benefit package the employees presently enjoy, a condition has been created that demands correction and relief.

DISCUSSION

The Union appears to be justified in its assertion that wages alone are not an area needing separate discussion here. However, the wage issue is a part of the final offers of both parties and will thus be included in an analysis of the final offers viewed as a whole.

As frequently occurs, most of the statutory criteria set forth in Section 111.70(7) of the statutes are not at issue.

There is no dispute over the lawful authority of the municipal employer nor the stipulations between the parties. Some comparables are meaningful here and will be discussed later. However, the nature of the duties and conditions of employment in other employment units in the public and private sector limits the usefulness of direct comparisons of wage and benefit packages.

Neither party has extensively argued cost-of-living and it appears that both wage offers are equal to or in excess of the C.P.I. Nor has there been a change in circumstances during the pendency of the arbitration proceedings other than the award dealing with the District's clerical employees. That award will be discussed in another part of this award.

It may be assumed that the final offers here, as in other arbitration proceedings, will impact upon the overall compensation received by the employees, especially in view of the fact that these final offers relate to more than one item of compensation.

The District does make an argument under the interests and welfare of the public, though it does not assert it is unable to meet the costs of either proposed settlement. Sound management of the taxpayer's dollar requires it to be diligent in avoiding waste. In its view, the double-dipping permitted here and the fact that its long-term disability premium is not buying benefits at the desired level all require adoption of its final offer in the public interest.

The Union believes that adoption of the Board's sick leave reinstatement language will create an unfortunate disparity between the benefits received by workers within this bargaining unit and between it and other represented and non-represented District employees. It argues that this disparity will cause substantial dissatisfaction among its members, which is not in the best interests and welfare of the public.

In many arbitration cases it is possible to accept the position of both parties without choosing either as prevailing, especially when the criterion being applied is not found to be controlling. In this proceeding, the impact of this criterion is not found to be of overriding importance and will not be controlling here.

Section 111.70(7)(e) presents a different problem. In the Oak Creek-Franklin District enough comparables exist that have the identical sick leave reinstatement benefit to provide an important internal comparable group. There can be no doubt that acceptance of the District's final offer here would result in a disparity of benefits between this bargaining unit and other represented employees. Sick leave reinstatement is a benefit shared by teachers and clerical workers and they will continue to receive the benefit during the term of this contract. Based on this comparable group, it would appear that the Union's final offer would be more reasonable than that of the Board under this criterion.

We turn now to the last of the statutory criteria, 111.70(7)(j). It is this standard which arbitrators use when discussing proposed changes in contract language and within this discussion arbitrators generally express their reluctance to impose changes in contract language through the arbitration process.

One of the reasons arbitrators shy away from this task is because it requires the arbitrator to evaluate the adequacy of a "quid pro quo" offered by the proposing party to buy out or alter a benefit or condition previously agreed to by the parties at the bargaining table. If the quid pro quo is adequate, the parties would agree to it in negotiations without resort to arbitration. Even if one accepts the fact that the intransigence of one of the parties makes it proper to ask an arbitrator to evaluate the adequacy of a proposed quid pro quo from time to time, such an evaluation requires application of subjective standards to issues that ought more properly to be decided objectively.

In an attempt to arrive at an objective analysis, the District here will bear the burden of showing:

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

2. Does the proposed contract language remedy the condition?

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

To prevail here, the Board must satisfy all three standards. The standards do not need to be applied sequentially, but may be considered separately.

The District prevails in the second standard. The language revision would, if adopted, remedy the condition.

It might also be possible to find that the proposed language would not impose an unreasonable burden upon the Union membership if the only question were the length of time they have had the benefit available. There is some weight to be given to the historical record, but of even more importance is the actual impact of the language upon the workers. As things stand, an employee needs to be employed by the District for a considerable length of time before the required 35 days of sick leave have been credited to his bank. There is also a considerable length of time before a Union member becomes eligible for disability benefits. This contract provision will allow a worker to become eligible for disability more rapidly than would be possible if reinstatement were not a part of the benefit package. When the limited sick leave to which these workers are entitled is compared to the unlimited sick leave available to District administrators, it becomes even more apparent that the proposed language would impose an unreasonable burden upon the Union membership.

The sick leave reinstatement benefit is unique to these workers when compared to benefits available to comparable workers in other districts. However, the Board appears ready to continue the reinstatement benefit for comparable internal bargaining units in Oak Creek-Franklin and does not propose to limit the sick leave benefits granted to administrators. It is difficult to find an unreasonable condition here when it does not exist among other District employees entitled to the same benefits.

The Board points to what it terms an "abuse" of the benefit by a bargaining unit member. It also appears that only one such occurrence has taken place in the history of the benefit, a period of many years. No abuse has been cited in any of the other units which have the benefit.

Based upon the difficulty Union members have in accumulating the maximum number of sick days set forth in the Employers examples, it would appear that the one incident complained of was unique in itself. The benefit has been around for many years. The fact that only one incident has occurred among a District-wide work force far larger than this single bargaining unit makes it clear that the present contract language has not given rise to conditions that require change.

The District has argued that the entire wage/benefit package provided to these employees constitutes a condition that requires change. They do receive a competitive package of wages and benefits but, with the sole exception of the sick leave reinstatement, they do not receive so much more than their peers as to require such a finding.

For these reasons the District has failed in its burden of establishing that it is entitled to receive amended contract language through the arbitration process.

DECISION

The Oak Creek-Franklin School District has not prevailed under the statutory standards for the reasons set forth above.

AWARD

The final offer of the Oak Creek Custodial Employees and the stipulations agreed to between the parties shall be incorporated into the labor agreement between the parties.

DATED this 22nd day of February, 1990.

ROBERT L. REYNOLDS, JR., Arbitrator