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**WISCONSIN EMPLOYMENT
RELATIONS COMMISSION 1**

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

In the Matter of the Petition of

**WEST ALLIS-WEST MILWAUKEE
SCHOOL DISTRICT**

**To Initiate Arbitration
Between Said Petitioner and**

**WEST ALLIS-WEST MILWAUKEE
EDUCATION ASSOCIATION**

**Case 62
No. 41972
INT/ARB-5215
Decision No. 26089-B**

APPEARANCES:

**Herbert P. Wiedemann, Esq., on behalf of the District
Sandy Schwellinger on behalf of the Association**

On August 21, 1989 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned conducted a public hearing on November 14, 1989 and an arbitration hearing on November 28, 1989 in West Allis, Wisconsin during the course of which the parties presented evidence and arguments in support of their respective positions. Post hearing exhibits and briefs were filed by the parties by February 8, 1990. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

ISSUE:

The District and Association are parties to a collective bargaining agreement in effect from July 1, 1987 to and including June 30, 1990. Said agreement provides, in pertinent part, as follows:

The parties hereto agree that, upon written notice by either party on or before February 1, 1989, this Agreement shall be reopened for negotiation of changes in Article XXIV, B, Health Insurance, to be effective August 30, 1989. Bargaining representatives on both sides agree, following receipt of notice of intent to negotiate, to present detailed proposals on or before March 15, 1989, and, thereafter to meet and negotiate in good faith at mutually acceptable times and places in a bona fide effort to arrive at a settlement, such negotiations to be conducted at reasonable intervals until such time as either a settlement is achieved or an impasse in negotiations is reached.

The District gave timely notice of its intent to negotiate, bargaining followed, an impasse was reached, and District then invoked the procedure of Section 111.70(4) (cm) 6, Wis. Stats., by filing a petition for arbitration.

As indicated above, the reopener covers only the subject of health insurance.

The District proposes that it shall become a participating local government employer under the Wisconsin Public Employers' Group Health Insurance Program ("State Program"). The Association proposes retention of the current health insurance program, without change. The current health insurance program provides coverage under an indemnity insurance arrangement ("District Standard Plan") or, at the teacher's option, enrollment in one of two health maintenance organizations (HMOs). The District Standard Plan is underwritten by Employers Health Insurance Company. The HMOs are Family Health Plan and Samaritan Health Plan. The District pays the full monthly premium cost for active teachers employed for at least six months. It also pays 50 percent of the monthly premium cost for certain retired teachers and for spouses of certain deceased teachers.

The State Program provides coverage under an indemnity insurance arrangement and optional HMO enrollment. The HMO options include eight in the Metropolitan Milwaukee area.

Under the State Program, a participating employer may contribute any amount which is between 50 percent and 105 percent of the monthly premium cost of the least costly plan within its service area. The District's final offer is to pay the maximum 105 percent for those individuals for whom it now pays the full cost of the District Standard Plan and 50 percent of that amount for those individuals for whom it now pays 50 percent of the cost of the District Standard Plan.

The monthly premium charged by Samaritan Health Plan, the least costly State Program HMO in the Milwaukee area, is \$118.96 for single coverage and \$282.20 for family coverage. 105% of these amounts establishes the District's maximum payment at \$124.91 for single coverage and \$296.31 for family coverage. Under the current District Standard Plan, the District is paying \$158.70 for single coverage and \$430.35 for family coverage. Rates for the current program are subject to change in September 1990, while State Program rates are not.

The District's current health insurance plan premium increased \$23.50/month for a single plan (21.89%) from 1988-89 to 1989-90 and \$77.00/month for a family plan (21.79%)

The monthly cost of the State Standard Plan is \$160.31 for single coverage and \$380.39 for family coverage. Thus, teachers electing participation in that plan would be required to make monthly contributions of \$35.22 for single coverage and \$84.08 for family coverage. Teachers electing an HMO would be required to contribute substantially less: from zero to \$17.90 a month for single coverage, and from zero to \$59.39 for family coverage.

The proposed effective date of the District's proposal is the first of the month which is at least 98 days after receipt of the Arbitrator's award.

DISTRICT POSITION:

If comparability is to govern in this case, the District concedes that it cannot possibly prevail. The State Program has only been available to municipalities since 1987, and the District cannot point to a single "comparable" school district in which it is in place.

However, if ever there is a case when another factor should be recognized as decisive, this is it. That factor, designated by the statute as factor c, is: The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

All but a small fraction of the District's tax burden is borne by West Allis and

West Milwaukee. These are not affluent bedroom communities. In 1980, the last census year, the median house value in the District was lower than it was in all but one of the other Milwaukee County suburban school districts.

These are communities whose economic well being is dependent upon a concentration of industry within their borders. In the past that industrial base permitted support of the schools in a generous manner, notwithstanding the fact that the residents were people of more moderate means than people residing in neighboring communities. Now, however, after several years of drastic industrial decline, the residents must pay dearly, and their circumstances are such that they are hard pressed to do so.

The record demonstrates that the residents of the district have been faced with the loss of well paying jobs, the decline in industrial property values, the modest growth in the overall tax base, unsatisfactory growth in per capita income, and rising property tax rates.

For 1988, District residents had an average income, per Wisconsin income tax filer, of only \$23,413--less than all but two of the other Milwaukee County school districts, Cudahy and St. Francis. Yet its 1988-89 school tax rate was the highest of all Milwaukee County districts.

A significantly higher percentage of income for the average person in the District goes to pay property taxes than is true in other communities; for 1988-89 it was 14.6 percent in the District and only 4.6 percent in Elmbrook and 8.6 percent in Wauwatosa.

In spite of the above, in 1988-89 the average teacher salary in the District was second highest in Milwaukee County and the average total compensation was the fourth highest. Of the 21 largest school districts in Wisconsin, District teachers ranked first in average salary and second in average total compensation. Moreover, the District's benchmark salary rankings are also high and the times required to reach the respective maximums are short, thus precluding the possibility that average salaries are merely a reflection of longer than average service.

Furthermore, the District has made numerous efforts to reduce its expenditures, including:

1. Closing schools whenever that action has been possible by reason of decreased enrollment.
2. Reducing teaching staff.

3. Reducing the number of administrators.
4. Selling substantially all of its surplus real property, including closed schools and land held for future expansion.
5. Imposing severe limits on expenditures for supplies.
6. Deferring maintenance projects.
7. Reducing educational programs.
8. Removing capital expenditures from its annual budgets by borrowing, thereby spreading costs over a period of years.

In spite of these efforts, the extent of the problem has been such that the District was left with two choices: increasing the tax levy or utilizing its operating balance to absorb some of the costs.

The Department of Public Instruction recommends that a school district maintain its operating balance at about 12 percent of its annual budget. To avoid or at least delay further tax increases, the Board opted to reduce its operating balance, over several years, to levels far below 12 percent. At its lowest level, reached in 1987, it was equal to only about 2 percent of the annual budget.

When the operating balance reached the point at which further depletion was not an option, the tax levy had to go up, and it did so in 1987-88 and again in 1988-89. In 1988-89 and 1989-90 the District was the highest tax rate district in the County.

Although the District's use of the operating balance is controversial, its use emphasizes the seriousness of the District's financial situation.

In January 1989 the West Allis Taxpayers' Association was born. In early April three candidates supported by the Association won election to the Board, a clear reflection of taxpayer sentiment in the District.

In light of all of these considerations, there is clearly justification for a reduction in the District's cost for health insurance. The District's final offer will provide such a reduction. The Association's final offer will not.

Under the District's proposal, each teacher will have a wide choice of options, including choices which will provide excellent health care coverage without any cost to the teacher. If a teacher wants coverage that appears to be

better suited to his or her particular circumstances, a contribution will be required. This strikes a reasonable balance between teacher and taxpayer interests.

Taking into consideration all of the circumstances of this case, if there were no compulsory arbitration law, it is virtually inconceivable that this reopener would end, as the Association proposes, without any change in health insurance.

The following constitutes the District's response to arguments raised by the Association in this proceeding:

It would not be necessary for a teacher to elect the Standard Plan to remain with the doctor of his/her choice. With the numerous HMO options offered, it is virtually certain that every doctor is a provider under at least one HMO, and probably more than one.

An HMO option is not something inferior to the Standard Plan; it is simply something different.

Acceptance of the District's proposal will most certainly have a substantial impact on the 1990-91 tax rate.

The record does not demonstrate that the Association has accepted lower settlements than other suburban districts.

Since the State Program has only been available to municipalities since July 1, 1987, the lack of utilization is understandable in that short a time interval, particularly given the delay which is commonplace in the Chapter 111.70 procedure.

The State Program is designed to offer to each participating employee a wide range of choices, more than any one employer could possibly provide. That certainly is a reasonable alternative to less flexible single employer plans, albeit the details of those plans are negotiable.

No plan provides coverage for every conceivable eventuality. The State Program however provides a wide range of plan options so that each individual with special medical needs or particular coverage desires can weigh the cost-benefit tradeoffs most important to himself or herself.

The District is seeking economic concessions, just as the Association, regularly and repeatedly, as each contract expires, seeks economic concessions from the District. If the rule were that there must be a quid pro

quo for every economic concession, there would have been many no-increase salary settlements in the State of Wisconsin. A quid pro quo can't be rationally required of a party proposing economic concessions.

If there were to be a quid pro quo requirement, the District has in fact already given a quid pro quo. In exchange for the Association's agreement to negotiate health insurance concessions, the District granted both additional salary and three years of protection from the adverse effects of the cost containment bill then pending in the legislature.

ASSOCIATION POSITION:

Unlike the District's case, the Association does rely on the comparability of the seventeen County suburban school districts to support the reasonableness of its position. In this regard the record demonstrates that the health insurance premiums and the District's contribution level are similar to other suburban Districts. The State Health Insurance Plan, proposed by the District, is offered in only two districts in the State--Monona Grove and Blackhawk Tech.

Under the District's proposal, it could cost a teacher with family coverage, who wants to select his or her own physician under the WPS Standard Plan, \$1008.96 per year. This contribution would also be in after tax dollars.

The District has the financial ability to meet the cost of the Association's proposal. In fact, the District's budget for the 1989-90 school year includes an amount sufficient to pay the full premiums for the current health insurance plan. Furthermore, if the Arbitrator selects the District's proposal, the 1989-90 tax rate will not be impacted. Relatedly, the issue of the next school budget and the tax levy rate are outside the scope of this arbitration proceeding.

Relatedly, the record indicates that the property value supporting each student in the District is too high for the District to receive much equalized aid.

Although the District has undertaken a number of cost cutting measures over a period of years, the District has made some unwise decisions regarding its budget and tax levy rates. That poor fiscal planning over many years, not teachers' salaries and benefits, has resulted in huge tax levy increases in some years.

Since the 1982-83 school year thru 1989-90, the District has had five years of virtually a zero percent tax levy increase (including a decrease for this

year). To accomplish this, the District has depleted its operating balance.

If the District had left its operating balance intact, it would have had to borrow less money and pay less interest each school year. The short term interest expense on a per pupil cost has gone from \$33.00/per pupil in 1983-84 to \$121.96/per pupil in 1989-90. If the District had not spent its operating balance, it would not have had to make-up these operating fund dollars in each subsequent budget year. The District's tax levy increase would have been small amounts over a number of years instead of the the large increases which occurred in 1983-84, 1987-88, and 1988-89.

The teachers should not be expected to pay for their health insurance coverage (in order to see the doctors of their choice) in order to subsidize the District for poor financial decisions of former school boards.

The arbitrator should also give some recognition to the lower settlements that the Association has accepted in past years compared to other suburban districts. In this regard the record demonstrates that at all of the salary benchmarks except the B.A. Maximum, the District's salary schedule lost ground when compared to the average of the benchmarks of the suburban districts since the 1985-86 school year.

In response to the District's unsupported assertion, there was no agreement between the parties than the insurance re-opener was designed to reduce the settlement the teachers in the District received during the term of the Agreement.

Also supportive of the Association's position is the fact that under the State Plan there is no possibility of teachers bargaining changes in the coverage that is provided in order to meet their needs in a particular district. In addition, the WPS Standard Plan does not provide the same coverage as the Plan currently in effect. Relatedly, teachers would have a difficult time determining which option to select based upon the limited information regarding coverage which the State Plan provides in its informational material.

The District has also failed to provide any quid pro quo for the drastic change in the status quo health insurance benefit available to teachers. Such a requirement in disputes of this sort has been recognized by a majority of arbitrators.

The Association has offered on numerous occasions to modify the current plan and change carriers. Voluntary modifications have included participation in a cost containment program which includes mandatory

precertification for hospital stays in the 1985-87 Agreement and a change in the prescription drug card in the 1987-90 Agreement.

Furthermore, in April, 1989 the Association requested that the District put both the current plan out for bids and its settlement offer which contained a \$100/200 front-end deductible with an 80/20 coinsurance. Both Blue Cross-Blue Shield and WEAIT provided premium information. Under the WEAIT proposal for the period July 1, 1989 thru July 1, 1990 the District would have saved \$131.52/year for each teacher covered by a single plan and \$396.12/year for each teacher under a family plan. Said proposals however were not acceptable to the District.

DISCUSSION:

This dispute is one of those unfortunate situations where parties with competing legitimate interests have opted to attempt to prevail in a final offer arbitration proceeding rather than trying to mutually address the very important and perplexing problems that spiraling health care costs have caused both public employers and employees, as well as the affected public, which ultimately foots the bill. In all candor, in the undersigned's opinion it is highly unlikely that any set of parties to a collective bargaining relationship can effectively and completely resolve such problems, but at least as an interim measure, they should recognize that these are problems which require some degree of sacrifice by all parties concerned, that they require creative, constructive, mutual solutions, and that such solutions need to address, in addition to the issue of cost sharing, the longer term issue of health care cost containment.

In this case, neither party's final offer is deemed to be particularly reasonable since neither position gives recognition to the mutuality issues discussed above.

The Association's position essentially ignores the real significance of the problem. It also fails to give any recognition to the fact that the District, and the public it serves, have legitimate and important concerns with respect to this matter that demand Association cooperation and attention. Whatever efforts were made by the Association in this regard in the negotiations which preceded this arbitration proceeding, the Association's final offer is deemed by the undersigned to be totally unreasonable based upon the severity of the problems raised by the District which are supported by record evidence. Health insurance costs in the District are very substantial, and the District has persuasively demonstrated that it has a legitimate economic and political need to address the problems that such costs have created. The Association's failure to address the issue at all in its final offer supports a conclusion that

said offer is unreasonable based upon its lack of constructive responsiveness to manifestly legitimate District concerns.

On the other hand, the District requests the undersigned to impose upon the parties a health insurance plan significantly different from anything the parties have ever negotiated in the past, that requires teachers wishing insurance coverage most comparable to the standard plan currently available to them to contribute toward the premium associated with such coverage an amount significantly greater than the amount of contribution required of any other teacher group in the area. Furthermore, the District's proposal removes from the parties any ability to negotiate constructive solutions to the problems addressed herein. Lastly, although the District has persuasively demonstrated that the problems it is trying to address are legitimate and significant, it has failed to convince the undersigned that the somewhat unique solution it has proposed fairly addresses the legitimate teacher concerns expressed by the Association, and perhaps more importantly, it fails to address the issue of long term health cost containment in a very meaningful fashion. Instead, it seems to be willing to shift that responsibility to those responsible for the administration of the State Plan.

In light of the above considerations, absent a showing of absolute necessity, which the undersigned deems not to be present in this proceeding, the undersigned does not deem the District's final offer to be a reasonable solution to the problems it is trying to address under the circumstances present herein.

The foregoing discussion is the basis of a very significant dilemma for the undersigned, namely, the mandatory choice between two unreasonable alternatives to a very real and significant problem. Absent the availability of final offer arbitration, it is the undersigned's belief that the bargain reached through the negotiations process would not reflect the position of either party in this proceeding. However, a choice between these two rather extreme and unreasonable positions must be made.

Of these two unsatisfactory alternatives the undersigned will opt for the status quo for the remainder of this academic year. This choice has been made in order to afford the parties at least one opportunity in the near future (a matter of a few months away) to address the issues raised herein in a constructive and mutual fashion, in the hope that the negotiations rather than the arbitration process will result in a solution which is more responsive to the legitimate interests of all parties concerned. The undersigned is disinclined to imposed upon the parties as significant a change as that proposed by the District absent a clear showing of absolute necessity, which, again, the undersigned does not deem to be present herein.

If however the Association continues in the next round of negotiations to be as unresponsive to the issues and problems raised by the District in this proceeding as they have been in their current final offer, the undersigned wishes to at least express his view that the District's position herein would be deemed much more meritorious the second time around.

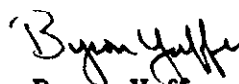
Clearly the problems raised in this proceeding need to be effectively addressed, and soon. If the parties are unable to do so in their next round of negotiations, then perhaps the interest arbitration process would be a more appropriate forum to address such issues.

Based upon all of the foregoing considerations, the undersigned hereby renders the following:

ARBITRATION AWARD

The Association's final offer shall be incorporated into the parties current collective bargaining agreement.

Dated this 2nd day of February, 1990 at Madison, Wisconsin.


Byron Yaffe
Arbitrator