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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE INTEREST ARBITRATOR

-----X
In the Matter of the Petitioner
of
WEST DE PERE SCHOOL DISTRICT
to Initiate Arbitration Between
Said Petitioner and
WEST DE PERE EDUCATION ASSOCIATION
-----X

Case 25
No. 42218 INT/ARB-5252
Decision No. 26140-A

APPEARANCES: Mulcahy & Wherry, Attorneys at Law, by DENNIS W. RADER, appearing on behalf of the District.

RONALD J. BACON, Executive Director, United Northeast Educators, appearing on behalf of the Association.

ARBITRATION AWARD

West DePere School District, hereinafter referred to as the District or Employer, and West DePere Education Association, hereinafter referred to as the Association or Union, were parties to a collective bargaining agreement which expired on June 30, 1989. The parties were unsuccessful in their effort to negotiate a successor agreement, covering the 1989-1990 and 1990-1991 school years, and the District, on May 12, 1989, filed a petition with the Wisconsin Employment Relations Commission (WERC), wherein it sought to initiate interest arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act (MERA). A member of the WERC's staff investigated the petition and, on September 5, 1989, the WERC certified that the conditions precedent to the initiation of arbitration pursuant to said provision of the statutes had been met and ordered that the matter be submitted to

arbitration. The parties selected the undersigned, from a panel of arbitrators provided by the WERC, and, on September 25, 1989, the WERC issued an order appointing the undersigned arbitrator, to issue a final and binding award pursuant to Section 111.70(4)(cm)6,

and 7 of the MERA. A hearing was held at Oshkosh, Wisconsin on November 30, 1989, at which time the parties presented their evidence. Pursuant to arrangements made at the conclusion of the hearing, the parties thereafter submitted certain corrections, modifications and additions to their exhibits. Initial briefs were filed and exchanged on January 16, 1990. Reply briefs were filed and exchanged on January 29, 1990. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

ISSUES IN DISPUTE

There are essentially five issues in dispute. They are: (1) the question of whether the health insurance carrier and dental insurance carrier that are to provide health insurance and dental insurance for the duration of the agreement and their plan numbers should be identified in the agreement, as proposed by the Association; (2) the question of whether a new provision, calling for compensation for teaching a sixth class should provide for payment equal to one-sixth of the BA base salary, as proposed by the District, or one-sixth of the teacher's base salary, as proposed by the Association and what other limitations should apply; (3) the nature and extent of the modifications in the provisions of the agreement dealing with early retirement which

should be made, in light of changes in the law pertaining to early retirement; (4) the percentage increase which should be applied to the 1988-1989 salary schedule in each of the two years of the agreement; and (5) the base figure which should be utilized for purposes of computing extra duty co-curricular payments in each of the two years of the agreement.

HEALTH AND DENTAL INSURANCE

The 1987-1989 collective bargaining agreement contained the following two provisions dealing with health insurance and dental insurance:

"ARTICLE XI - INSURANCE

. . . .

"B. The Board assumes the responsibility of paying 100% of the single premium and 95% of the family plan premium of a teacher health insurance plan including a prescription drug plan (\$2.00 deductible), to be selected by the Board.

. . . .

"F. Dental Insurance

The Board will contribute 100% of the single and family premiums for dental insurance. The Board retains the right to designate the carrier."

During the term of the prior agreement the District purchased health insurance and dental insurance coverage from Employers Insurance Company. In its initial proposal in bargaining, made on January 31, 1989, the District proposed to place a cap on the premium amounts it would agree to pay during the term of the new agreement. Thereafter, the parties discussed that proposal and

other proposals, including a Board proposal that the insurance plans be changed to require "pre-certification." Ultimately, the District solicited bids from several insurance carriers, who were instructed that the bids should be based upon no loss of benefits. Thereafter, the District selected Wausau Insurance Company to serve as the carrier for health insurance and WPS Insurance Company to serve as the carrier for dental insurance. According to evidence presented by the District, a number of efforts were made to communicate with the Association and staff concerning the proposed change, both before and after it was finalized by Board action on June 26, 1989.

District's Proposal

In its final offer, which is dated August 21, 1989, the District included information concerning the identify of the insurance carriers and the premiums it was agreeing to pay in the first year pursuant to the above quoted provisions, but proposed no change in the wording of those provisions.

Association's Proposal

In its final offer, which is dated August 22, 1989, the Association proposes to include the name of the insurance carriers and plan numbers for both health insurance and dental insurance in the agreement. The intended effect of this proposal would be to preclude the District from changing either insurance carrier or plan during the term of the agreement, without the agreement of the Association.

WORK LOAD

The 1987-1989 agreement contained the following provisions, dealing with the number of class assignments for teachers in grades 7 through 12:

"ARTICLE XV - ASSIGNMENTS, TRANSFERS, REASSIGNMENTS, AND STAFF REDUCTION

"A. Assignments

. . .

2. Teaching Conditions

- a. The Board and the Administration will attempt to limit the number of classes in grades 7 through 12 to five (5) fifty five minute classes per day, or the equivalent time, plus one preparation period and one study hall or duty period. (Duty period means within one particular period; not after school) A teacher with five (5) preparations will not be assigned a duty period."

Both parties propose to modify this provision, by providing for compensation for certain teachers in grades 7 through 12, who are assigned to teach a sixth class. However, their proposals differ as to the placement, amount of such compensation, and the circumstances under which a sixth class may be assigned.

District's Proposal

In its final offer, the District proposes to add a new subsection "c" to read as follows:

"Bargaining unit teachers who teach grades 7-12 and are assigned a sixth class will be compensated an extra one-sixth (1/6) of the BA base salary. (Excluded from this provision are bargaining unit members who have full-time positions in guidance, special education, library or music.)"

Association's Proposal

In its final offer, the Association proposes to add language

to subsection "a" to read as follows:

"Bargaining unit members who teach grades 7-12 and are assigned a sixth class will be compensated an extra one-sixth (1/6) of their base salary. (Excluded from this provision are bargaining unit members who have full time positions in Guidance, Special Education, Library, or Music.) A sixth class assignment will only be assigned when part-time appropriately certified teachers cannot fill the vacancy."

EARLY RETIREMENT

The 1987-1989 agreement contained the following provisions dealing with retirement and early retirement:

"ARTICLE XVIII - RETIREMENT

- "A. The Board will pay the teacher's share of payment to the Wisconsin Retirement System to the extent of 6% of the teacher's eligible earnings.
- "B. District contributions to health insurance premiums for teachers retiring after the age of 62 will be made in the following manner:
1. One month premium will be paid for each 2 full days of accumulated sick leave.
 2. Contributions will be made at the rate of 95% of the family premium and 100% of the single premium.
 3. Such contributions shall not exceed 35 months.
 4. To qualify for this benefit teachers must have 20 years of continuous service to the District.

"ARTICLE XIX - VOLUNTARY RETIREMENT

- "A. Early retirement benefits shall be available to teachers who are at least 62 years of age and who resign from their regular full time duties.
1. Teachers who have taught at least 20 years in the District shall be eligible to receive early retirement benefits from the WRS as authorized by Wisconsin Statutes 42.245(2)(bm).

2. Teachers who plan to take early retirement shall notify the District of their intent to do so by February 15th preceding their expected date of retirement.
3. Teachers shall only be permitted to retire under this policy at the beginning of the school term following their 62nd birthday.
4. The District shall make payment to the WRS pursuant to the requirements of the Wisconsin Statutes 42.245(2)(bm) and the administrative rules of the WRS for each teacher who retires between the ages of 62 and 65. The amount of the District payment shall be that calculated by the WRS. Current actuarial tables used by the WRS to determine the Board's contribution shall be appended to this agreement.
5. The District shall provide a letter of agreement specifying the amounts to be paid to WRS in behalf of the retiring employee. Such letter shall bind the Board to make the payments as specified. A copy of said letter shall be forwarded to the Association.
6. In the event that the early retiree should die prior to payment of the benefits of this policy, the unpaid balance of the amount stated in the letter of agreement shall be paid to the WRS if possible, or to the estate of the retiree.
7. This program will terminate three (3) years from the effective date of this agreement, or until the statutory authority is withdrawn unless renewed by the parties providing, however, that all participating at that time shall continue under the program until their individual program agreement expires.
8. Employees electing to retire under this program shall retain no re-employment rights with the District nor any other rights or benefits except those specified within this early retirement provision.
9. The parties agree that these payments shall be in lieu of unemployment compensation benefits, if any, for which the employee may be eligible. Should unemployment compensation benefits be required by the State, the retiree shall be obligated to take all substitute teacher assignments offered within

their certification."

District's Proposal

As part of its final offer, the District proposes to modify Section B. of Article XVIII, set out above, so that it would read as follows:

- "B. District contributions to health insurance contributions for teachers retiring pursuant to Wisconsin Statute, Section 40.23 (2m), will be made in the following manner:
1. One (1) monthly premium will be paid for each two (2) full days of accumulated sick leave to a maximum of thirty-five (35) months.
 2. After the thirty-five (35) months, teachers will be eligible to receive payment of monthly health insurance premiums at the dollar amount of up to two (2) accumulated sick days per month calculated at the appropriate rate under the contract in effect when the employee retired for a maximum of 24 months.
 3. Contributions under subsections 1 and 2 of this Article shall not exceed a total of fifty-nine (59) months and shall cease when a teacher reaches age sixty-five (65).
 4. Contributions will be made at the rate of ninety-five percent (95%) of the family premium and one-hundred percent (100%) of the single premium.
 5. To qualify for this benefit, the teachers must have twenty (20) years of continual service to the District.
 6. For purposes of this section only, teachers will be allowed to accumulate one hundred twenty (120) sick leave days as credit for health insurance premium payments.
 7. Teachers who plan to take retirement shall notify the District of their intent to do so by February 15 preceding their expected date of retirement.
 8. Teachers shall be permitted to retire under this policy at the beginning of the school term follow-

ing the birthday on which they attain the age allowing them to retire under Wisconsin Statute Section 40.23(2m)."

Association's Proposal

As part of its final offer, the Association would delete existing Article XIX and replace it with the following new language:

"ARTICLE XIX - VOLUNTARY RETIREMENT

- "A. Early retirement may be elected after a teacher reaches the age 57. (If a teacher reaches the age of 55 before June 30, 1990, this provision will apply.)
- "B. Age shall mean the age of the teacher on June 30 of the school year which shall be the last year taught in the District.
- "C. The teacher must have spent at least ten (10) years in the West De Pere District.
- "D. Early declaration of retirement shall be delivered in writing by March 15 of the final teaching year. Exception will be made in the case of unexpected illness or injury that would preclude teaching.
- "E. During each year of early retirement the teacher shall receive the same medical and dental insurance benefits as regularly full-time employed teachers until the retired teacher reaches his/her 65th birthday."

SALARY SCHEDULES

The 1988-1989 salary schedule contained ten lanes, reflecting various levels of graduate credit between a bachelor's degree and a master's degree with 30 credits, each having 12 steps beyond the entry level. In addition, it contained "post schedule increments" or longevity pay steps ranging between 14 and 20 in number. It is attached hereto and identified as Appendix A.

District's Proposal

The District does not propose to make any structural changes in the salary schedule during either year of the agreement. It proposes to increase the base by 4.21%, from \$18,160.00 to \$18,925.00, for the first year of the agreement and to increase that base by 4.07%, from \$18,925.00 to \$19,695.00, for the second year of the agreement. According to the District's calculations, which are not disputed by the Association, this will generate an increase in wages and longevity of 5.62% in the first year and 5.41% in the second year. The average salary per returning teacher would increase by \$1,732.00 in the first year and \$1,758.00 in the second year. When the value of fringe benefits is included (utilizing an assumed 25% increase in the cost of health and dental insurance in the second year) the average increase per returning teacher amounts to 5.52%, or \$2,259.00 in the first year, and 6.82%, or \$2,944.00 in the second year.

Association's Proposal

In its final offer, the Association proposes to increase the base salary by 4.5% in each of the two years of the agreement. This would generate a new base salary of \$18,977.00 in the first year and \$19,831.00 in the second year. The wages and longevity only increase in the first year would be 5.92% or \$1,822.17 per returning teacher in the first year and 5.84%, or \$1,905.38 per returning teacher in the second year. The Union does not dispute the accuracy of the District's calculations concerning the total cost of its package, including fringe benefits, based upon the

assumption concerning health and dental insurance increases utilized by the District.

EXTRA DUTY CO-CURRICULAR SCHEDULE

The 1987-1989 agreement contained an extra duty co-curricular schedule setting forth certain rates per event and establishing a "base" of \$1,220.00 for the 1988-1989 school year, for the purpose of computing the compensation for numerous co-curricular activities. Actual compensation for each of the co-curricular activities is computed by applying an index number to the agreed to base figure. As part of their tentative agreements, the parties agreed to add a new co-curricular payment of .80% of the base for "volley ball (7th and 8th grades)." Otherwise, neither party proposes to make any changes in the index numbers in of the extra duty co-curricular schedule.

District's Proposal

In its final offer, the District proposes to increase the base used for computing co-curricular payments by \$50.00 in the first year, from \$1,220.00 to \$1,270.00, and by an additional \$60.00 in the second year, from \$1,270.00 to \$1,330.00. This amounts to an increase of 4.1% in the first year and 4.7% in the second year, for a compound increase of 9% over the two years.

Association's Proposal

The Union proposes to increase the base used for computing co-curricular payments by 4.5% in each of the two years of the agreement. This would generate a base figure of \$1,274.90 during the first year of the agreement and \$1,332.27 during the second

year of the agreement. This would amount to a compound increase of 9.2% over the two years of the agreement.

DISCUSSION

The five issues in dispute will be discussed separately, in the order that they are set forth above.

HEALTH AND DENTAL INSURANCE

Of the five issues in dispute, this issue, like the issues relating to early retirement and salary schedules, is deemed to be of much greater significance than the other two issues in dispute. Its relative weight among the three significant issues will be discussed further below.

Association's Position

In making this proposal, the Association notes that the WERC and courts have generally held that the identity of health insurance carriers, and not just the coverage provided, is a mandatory subject of bargaining. In fact, the importance of the identity of the health insurance carrier, for the purpose of determining defacto benefits is demonstrated by the evidence in this case, in its view. Thus, even though the District went to great lengths to attempt to insure that there would be no significant changes in the plan's coverage, both before and after the change was made, Superintendent Randy Freese acknowledged that his office had received some complaints about claims not being paid under the new plan that would have been paid under the old plan. This evidence demonstrates the importance of naming the carrier and plan in the agreement, so that it cannot be unilaterally changed

by the District in the future, according to the Association. This experience is consistent with the view of most persons involved in the insurance industry, it argues.

According to the Association, if the status quo represented by the existing language of the agreement remains intact, the District will be able to unilaterally change insurance carriers without even asking for input from the Association. For this reason, and because the naming of the insurance carrier is a mandatory subject of bargaining, the Union contends that the identity of the insurance carriers and the plan numbers should be included in the agreement as a protection for the employees covered.

District's Position

The District's position on the Association's health insurance proposal is essentially threefold: the Association's proposal constitutes a change in the status quo; the Association has failed to present evidence justifying the proposed change; and the evidence concerning relevant comparables (the Bay Athletic Conference) support the District's position.

Numerous arbitrators have held that the proponent of a change in the status quo has the burden of proving the need for a change and the reasonableness of its proposed change, the District notes. Here, an important indicator of the reasonableness of the proposal is reflected in the available evidence concerning what comparable school districts provide. Seven out of the ten comparable districts do not include the identity of the health insurance

carrier or plan number in their 1988-1989 agreements and six out of the ten do not include the identity of the dental insurance carrier or plan numbers in their 1988-1989 agreements. Of those settled for 1989-1990, only one continues to identify both carriers and only one continues to identify their dental carrier. Neither of the two districts settled for 1990-1991 have added such identification to their agreements.

Citing arbitration awards requiring proof that the existing language is unworkable, the Board also argues that the Union has failed to meet the burden of proof in that regard as well. In support of this, it reviews the chronology of its efforts to negotiate changes in the agreement on insurance, to insure that no changes in benefits occurred and to help employees understand their rights under the new policies, when the changes were made.

Again citing the decisions of arbitrators, the District argues that the Union has failed to prove that its proposal would not put an unreasonable burden on the Employer. Prior to the change of carriers, the District had the second highest family premium among the comparables and, as a result of the change, the District experienced only an 8% increase for 1989-1990, while other districts experienced increases ranging from 13% to 42%, or an average of over 28%. An even greater savings was achieved in the case of dental insurance, the District notes. The combined savings, for no change in benefits, amounted to \$36,327.05, for a benefit which costs the District over a quarter of a million dollars annually. Anticipating correctly that the Association will

argue that the change of carriers has resulted in an actual change in coverage or benefits, the District contends that it did not. According to the District, the evidence will only sustain a finding that one employee complained about a denial of coverage and that situation was corrected to the satisfaction of the employee, through a phone call from the superintendent. One complaint is insignificant, it argues, since it is reasonable to assume that complaints occasionally arose under the old policy as well.

In reply to the Union's argument that the change is necessary to protect its right to bargain, the Employer argues that it is not, since the evidence discloses that the Employer was sensitive to the Union's right to bargain such matters, as reflected in the discussions which preceded the change. In effect, the Union is attempting to convince the arbitrator that the District is going to ignore the rights of the Association, when the evidence is to the contrary, the District argues. On the other hand, if the agreement is changed as proposed, the District's ability to deal with skyrocketing insurance premiums will be severely limited.

Analysis

The District is correct in its assertion that the Association is proposing a significant change in the status quo. That status quo includes a contractual commitment to pay 100% of the single premium and 95% of the family premium for health insurance and 100% of both premiums for dental insurance for the duration of the agreement. The problem, if there is one, is the lack of a contractual commitment to bargain with the Union concerning any

change in the health insurance or dental insurance carriers or plans for the second year of the agreement. The record does not establish with certainty whether the District could legally change either insurance carrier or plan during the term of the agreement without bargaining with the Association. Essentially, the answer to that question would depend upon whether the WERC and courts would conclude that the Association had clearly and unequivocally waived its right to do so, by the language of the agreement or otherwise.

While the evidence of record suggests that it is far from certain that the WERC and courts would find a clear and unequivocal waiver, in the view of the undersigned, it is perhaps more significant that the evidence suggests that the District would not attempt to change either during the term of the agreement, at least not without an increase in premiums exceeding 25% and bargaining to an impasse. It must be remembered that it is the Union that is proposing a change in the status quo, for purposes of this analysis. Thus, since the evidence will not support a finding of past abuse by the District, it would appear that the Association has failed to meet a significant part of its burden in this case.

Turning the coin over, the Association has proposed language which would not only require the District to continue its commitment as to its percentage contribution toward the cost of both insurance plans, but would also preclude it from making any change without the Union's agreement. Thus, even if the relative

bargaining power reflected in the current arrangement is deemed to tilt in favor of the District, the Association's proposal would tilt it entirely in the direction of the Association. No matter how much the insurance premiums increased during the term of the agreement or after its expiration, the District would be obligated to continue to pay the required percentages unless and until the Union's agreement or an arbitration award was obtained permitting such a change. The only incentive for the Union to agree to a change would have to be found in the 5% contribution required by those members receiving family health insurance and the possibility of an improvement in benefits.

It is also significant, as the District points out, that the Union's proposal is not supported by the relevant comparables. On the other hand, the status quo is. This is true, both in terms of continuation of the existing percentage contributions and the lack of any identification of the insurance carriers or plans in the agreement.

WORK LOAD

Like the issue relating to the extra duty co-curricular schedule, this issue is of significantly less importance to the outcome of this proceeding, in the view of the undersigned. Even so, consideration of the relative merits of the parties' proposals contributes to an overall evaluation of the two final offers.

District's Position

According to the District, each proposal on this issue should be evaluated on its relative merits, since both parties are

proposing a change in the status quo. In its view, the Association's proposal should be rejected because it is clearly excessive. Under the Board's proposal, a teacher assigned to teach an additional class in 1989-1990 would earn an additional \$3,154.17. In 1990-1991, the additional compensation would amount to \$3,282.50. Under the Association's offer, this same teacher could earn as much as \$7,182.33 in 1989-1990 and \$7,505.50 in 1990-1991.

According to the Board, it has offered to compensate teachers assigned an extra class, even though it has never done so in the past and, in its view, the Union would have been unable to sustain its burden of proving the need for a change in the status quo. Its proposal offers adequate compensation, it argues, and is equal to or better than two of the three comparable districts which have language requiring such compensation. Of the comparable districts that have settled for 1989-1990, only one (Clintonville) has added a requirement of such compensation (16% of the BA base) and it is reasonable to assume that the others who now provide such compensation will not change their provisions this year.

In reply to the Union's contention that its proposal is justified by the additional preparation time required for an additional class, the District argues that it is not reasonable to assume that an extra assigned class will always require an additional preparation.

Association's Position

According to the Association, both parties recognize the need

to compensate bargaining unit members for overload work when teaching a sixth class and the only difference between the two final offers on this issue relates to what constitutes a reasonable amount of compensation. Because salary schedules recognize experience and training and that experience and training is brought to bear when teaching an additional class, it is appropriate, in the Association's view, to compensate teachers on a prorata basis for teaching an extra class. The additional class requires the same preparation, grading, and classroom effort and there is no rational reason why the teacher should receive less compensation for such efforts, in its view.

Analysis

It was necessary, in describing the parties' proposals on this issue, to interpret the apparent intent of their final offers. Based upon the wording of the final offers and the arguments presented, the undersigned has interpreted both final offers to propose additional language to be added to Article XV, Section A.2., without eliminating the language contained in Article XV, Section A.2.a. So interpreted, it will continue to be the case that the administration will be under an obligation to attempt to limit the number of classes in grades 7 through 12 to the normal load, as defined, and a teacher with five preparation periods will not be assigned a duty period. Additionally, if the Association's proposal is adopted, the District will not be able to assign a sixth class to such teachers, unless it can show, if challenged, that "part-time appropriately certified teachers cannot fill the

vacancy."

When the two final offers are evaluated in light of these restrictions and proposed restrictions, and the evidence concerning comparables, the District's proposal would appear to be more reasonable than the Association's proposal. While there is some force of logic to the Union's argument that an additional class is equal to a one-sixth increase in work load, there are numerous factors which might affect the actual increase in work load of a given teacher. Thus, it could be that the additional class will help bring about a lower class size for the same teacher. It also may be the case that an additional class will not require an additional preparation. And, it will always be the case that an additional class will be in lieu of the duty period. More importantly, the amount of additional compensation provided under the District's offer for the first time during 1989-1990 is substantial and strongly supported by the comparables. For all of these reasons, the District's proposal is deemed more reasonable.

EARLY RETIREMENT

Of the three significant issues, this is undoubtedly the most significant, in the view of the undersigned. Not only are there major differences between the two final offers, the selection of either final offer will have a significant impact upon those teachers who are eligible for early retirement and the District's educational program. This would be true in any case, but is especially true in this case, because of the large number of employees who are "off schedule" and receiving longevity pay.

According to the District's evidence, there were 22 teachers who had 20 years of service as of June 1989 and an additional 5 teachers will acquire 20 years of service before June of 1991. Six of the 22 teachers with 20 years of service as of June of 1989 will be eligible under the "rule of 85" for early retirement in June of 1990.

District's Position

At the outset, the District notes that the agreement already contains provisions providing benefits for early retirement at age 62, with 20 years of service. According to the District, its proposal brings the language of the agreement into line with Section 4.23(2m) of the Wisconsin Statutes and enhances the current early retirement benefits, without assuming extraordinary expenses. On the other hand, it argues, the Union's proposal makes extensive changes in the status quo, significantly increases existing benefits and costs and adds a new benefit, all without a significant quid pro quo.

The existing language offers teachers who retire early a significant benefit consisting of a maximum of 35 months of paid health insurance benefits, in exchange for 70 days of accumulated sick leave, and the Board's offer would add an additional 24 months of eligibility for health insurance premium payments, based upon the dollar value of 48 additional days of sick leave. Otherwise, the Board's offer maintains the status quo, which includes 95% and 100% contributions for health insurance premiums, but also requires 20 years of service and notice by February 15. On the other hand,

the District argues, the Union's proposal changes the entire structure of the benefit.

Under the Union's proposal, the work requirement would be reduced by half; the insurance benefit would be increased by eliminating the accumulated sick leave credit system; dental insurance would be added as a new benefit; and the retirement notification deadline would be extended. According to the District, the Union's offer constitutes "over reaching" and should be rejected.

In particular, the District argues that the use of sick leave credit to pay for the health insurance benefit is not a "detriment" to the teachers, including those who will be eligible for early retirement in June 1990 under the "rule of 85." The amount of money available on a monthly basis to pay for health insurance will range from a low of \$410.84 to a high of \$459.62. This far exceeds the current family health insurance premium of \$286.19, it notes.

The cost of the addition of dental insurance, as required under the Union's proposal would currently add \$515.00 per retiree to the annual cost to the District, it notes. Further, that cost would undoubtedly increase in the future, even though the Union has offered no quid pro quo in exchange for this new benefit. The addition of any new benefit should be viewed as a "big ticket" item, according to the District, and the combination of this new benefit and the proposed requirement that the District pay all but 5% of the family health insurance premium for early retirees constitutes a major change in the "economic relationship of the

parties," it argues.

In reply to Association arguments, the District argues that the Association mischaracterizes the existing guarantee of insurance benefits for early retirees, who are only guaranteed participation in the program; the District's offer actually improves upon the existing benefits which are provided; the Association incorrectly suggests that dental insurance benefits are currently provided; and the Association's arguments suggest that eligible teachers must retire and therefore need the extended and added benefits, when in fact early retirement remains voluntary.

Association's Position

According to the Association, its proposal on early retirement is closer to the status quo than the District's proposal and should be preferred, because many potential retirees would not be able to retire at age 57, if the District's proposal is selected.

According to the Association, the existing language pertaining to voluntary early retirement is no longer operable, because the legislature has enacted a new retirement provision, which allows teachers to retire under the "rule of 87." Under the old agreement teachers could retire after age 62 and use accumulated sick leave to buy insurance for 35 months or until they reached age 65. Under the Association's proposal, teachers will be able to retire under the terms of the new law and still obtain full insurance benefits to age 65, as was the case under the old law and contract language. On the other hand, the District's proposal does not necessarily allow teachers to retain insurance benefits to age 65. For that

reason, the Association's proposal is actually closer to the status quo, it argues.

The Association notes that a teacher eligible for early retirement under the law would not be eligible for full insurance benefits to age 65, if he or she retired more than 59 months prior to reaching the age of 65 and no teacher who retired more than 35 months prior to reaching the age of 65 could be certain of full health insurance benefits, because of the District's proposed method of funding the benefits. Because teachers could not be certain whether or not they would have sufficient benefits to pay for such coverage, they would not be able to retire at age 57, as provided in the law, because of this uncertainty. This would be the case even though they might be age 57 with 30 years of experience.

In summary, the Association argues that the expired agreement allowed teachers to retire early and continue to receive full health insurance coverage to age 65 and the new provision does not do so. For this reason, and because it is more understandable to a teacher who is attempting to prepare for early retirement, the Association argues that its proposal should be adopted.

Analysis

By their proposals, both parties would modify the status quo, which has already been disturbed by the enactment of new legislation. Therefore, like the proposals dealing with work load, the proposals on early retirement should be judged on their relative reasonableness under the new circumstances and under the

statutory criteria.

A careful comparison of the two proposals discloses that the Board's proposal could easily be described as "modest," while the Union's proposal could easily be described as "generous." The Board's proposal recognizes the right of teachers to retire early under the new law and continues their eligibility to participate in the health and dental insurance plans until age 65. Further, it continues to provide up to 35 months of health insurance benefits on the same basis as if they were working and adds an additional 24 months of potential benefits, through the formula payment. As a practical matter, this combination will no doubt provide full health insurance benefits for a period one month short of five years for any employees retiring under the term of the current agreement (provided they have sufficient sick leave in their account). On the other hand, those teachers who retire early during the statutory "window" or the rule of 87, prior to reaching age 60, will have to pay for their own health insurance coverage for up to five years or three years, respectively, unless they obtain such coverage through employment elsewhere. Further, as was the case before, all retirees will be required to obtain their own dental insurance or pay their own dental expenses, unless they obtain such coverage through employment elsewhere.

On its face, the Association's proposal has the potential to substantially increase the pool of teachers eligible for contract benefits. In addition, it would grant expanded benefits to all employees who qualify under the statutory provision, even though

they may have worked for the District for as few as ten years. All employees retiring would not only be entitled to participate in the health insurance plan, but would be entitled to receive up to ten years of health insurance benefits on the same basis as if they were still working for the District, regardless of how much sick leave they may have in their account, and they would be entitled to full dental coverage as well. Finally, employees considering early retirement would have additional time in which to make up their mind, thereby causing the District to incur certain problems and potential expenses in the process of offering contracts for the following year.

In its arguments, the District repeatedly questions where the "quid pro quo" is for the Association's more generous proposal. The lack of a satisfactory answer to that question, along with the lack of any compelling evidence among the comparables require a finding in favor of the District's proposal.

The undersigned recognizes that the "quid pro quo" for generous early retirement benefits are often found to exist by employers desirous of reducing their payroll, either numerically or in terms of salary levels. Here, the evidence discloses that the District employs many senior teachers. Therefore, it must be assumed that the District is aware that adoption of the Association's proposal is likely to have a much more dramatic impact in that regard. It nevertheless resists the Association's proposal as excessively generous and unnecessary. While the District does not make an assertion one way or the other, it may

be that it prefers to retain a larger percentage of its senior teachers, rather than encourage them to retire en mass during the "window" period and immediately thereafter. In either event, the Board has apparently made a decision to provide some additional encouragement to those teachers interested in early retirement, but nor nearly so much encouragement as the Association would prefer.

If the encouragement of a larger number of early retirements was in fact a quid pro quo from the District's point of view, it is reasonable to assume that it would have made a more generous offer or agreed to the Association's proposal. There is nothing else in the Association's offer on early retirement or the other issues which would serve to supply this missing element. Therefore, it must be concluded that the Association's offer is lacking in a sufficient quid pro quo to justify its far more generous terms.

The undersigned has looked elsewhere in the record to see if there is justification for the Union's proposal. The only justification found in the record consists of the fact that one of the relevant comparables, Marinette, has apparently adopted a similar plan, which is in some respects even more generous. However, nothing in the record establishes why the school district of Marinette agreed to those provisions, i.e., whether it perceived an inherent quid pro quo or received some other quid pro quo. On the other hand, none of the eight other school districts in the conference have early retirement plans which are more generous than the plan offered by the District here.

For all of these reasons, the undersigned concludes that, on this most important issue, the Board's final offer should be preferred.

SALARY SCHEDULES

Ordinarily, an issue pertaining to salary schedules would not only be deemed a significant issue, but the most significant issue. However, that is not the case here. In the last analysis, the difference between the two final offers as to salary schedules is not sufficiently great to require that it be given controlling weight in this proceeding or even equal weight to the early retirement issue.

District's Position

According to the District, the Bay Athletic Conference is the appropriate comparable pool for purposes of evaluating this issue and comparisons within that pool demonstrate that its offer is the more reasonable offer. Further, if its offer is compared to the settlement pattern in that comparable pool, or even statewide, and appropriate consideration is given to changes in the cost of living and the interests and welfare of the public, its offer must be favored.

The Bay Athletic Conference is the appropriate comparable pool, the District argues, because its use has been sanctioned by a number of arbitrators in cases involving conference districts, including Arbitrator Zel Rice, in a case involving the West DePere

School District.¹ If both parties are not held to this historic utilization, they will be encouraged to "pick and choose" and destabilize their bargaining relationship. Further, this comparable pool is supported by data concerning student enrollment and FTE staff and other traditional factors utilized for purposes of establishing comparisons.

According to the District, its offer is more reasonable when compared to the salaries and benefits in the comparable pool, because it will maintain the District's rank at the various benchmarks. Except for the BA base benchmark, the District has been and will remain in somewhat of a leadership position, it argues. This is true for the five other districts which have settled for 1989-1990 and for the two other districts which have settled for 1990-1991. According to the District, there is simply no basis for the Association's contention that the District is "slipping in rank."

Further, when appropriate consideration is given to the effect of the longevity provisions on the teaching staff (most of whom are beyond the twelfth step) the reasonableness of the District's proposal becomes even more evident, it argues. Under the circumstances, it is perhaps more important to consider average salaries paid, rather than benchmark figures. Under that comparison, the District still compares very favorably, it argues.

If comparisons are made based upon dollar increases, the results are the same, according to the District. Thus, while the

¹Decision No. 23687-A, (11/86).

Association argues that dollar increases at the various benchmarks lag behind the other districts, an analysis of benchmarks rankings reveals that the District is and will remain a leader among the comparables. What is in fact occurring, according to the District, is that the other districts are "catching up," which is to be expected under the arbitration law.

While the Association has attempted to show, through statewide data, that the District is "falling behind," that same data establishes that it is not the District which is falling behind, but the whole athletic conference. More importantly, the data relied upon by the Union is one-sided and ignores the important impact of the longevity increases received by teachers in the District.

Similarly, the District argues, its offer is more reasonable in light of settlement patterns within the comparable districts and statewide. The average dollar increase in the first year under the Board's offer is greater than the conference average and the percentage increase is only slightly lower. While the total package cost in the District is lower, this is the result of the much smaller than average increase in insurance premiums experienced by the District during the first year of the agreement. It has no affect on the actual compensation received by teachers. Further, it should be noted that, in 1990-1991, the Seymour settlement requires that any increase in insurance premiums over 15% be paid for out of the salary increase agreed to for that year. Statewide comparisons yield similar results, according to the

District. The average dollar increase during the first year of the agreement exceeds the statewide average by \$12.00 under the Board's offer. For 1990-1991, the results are similar, with the statewide average reported to date being a mere \$42.00 above the Board's offer, it notes.

Internal comparisons also support the District's offer, it argues. Wage increases and retirement pickup granted in lieu of wage increases for 1989-1990 range between 4.9% and 5.5%, the District notes. Further, increases received by local and private sector employees are generally lower.

Utilizing a cumulative comparison of increases received by teachers in the various lane progressions during the last nine years, the District notes that those increases far exceed increases in the cost of living during that same period. Thus, the District's offer serves to continue and preserve the increase in economic well-being provided District employees during that same period. Further, the District's contribution toward the cost of health care has far surpassed the medical component of the Consumer Price Index, during that same period, the District notes.

Finally, the District argues that the interests and welfare of the public would best be served by its offer because of the relatively rapid rate of increase in its tax levy in the last ten years, combined with its relatively low equalized valuation, among the comparables. According to the District, its residents are paying "the second highest property taxes in the county for almost the lowest valued property."

In response to the "catch up" argument advanced by the Association, the District reiterates its contention that any drop in statewide rank at the various benchmarks is the result of a drop in rank of the entire conference and does not establish a need for "catch up."

Association's Position

According to the Association, its final offer on salary schedules should be favored in order to allow for needed catch up in relation to other Bay Conference schools and statewide and because it best meets the interests and welfare of the public criterion.

Relying upon its exhibits, introduced at the hearing, the Association contends that teachers in the District have lost ground at the seven benchmark positions (BA minimum; BA 7th step; BA maximum; MA minimum; MA 10th step; MA maximum; and schedule maximum) over the last five years in relation to the other Bay Conference schools. Further, teachers in the District have lost a total of 83 places and the average of those same seven benchmarks in comparison to the statewide pool data compiled by the Wisconsin Education Association Council.

In terms of average teacher salaries, District teachers have lost ten places in the past ten years, according to another WEAC study, the Association notes. Thus, its proposed 4.5% cell adjustment for each of the two years will afford a modest amount of needed "catch up" in its view.

In support of its contention that its offer best meets the

interests and welfare of the public criterion, the Association reviews the results of a number of studies conducted by national study commissions and groups and the award of Arbitrator Frank Zeidler, discussing that criterion, in Watertown Unified School District, Case 23, No. 37069, MA-3913, March 11, 1987. In particular, the Association makes the following points:

1. The report of the National Commission on Excellence, entitled A Nation at Risk, placed great emphasis on the need to increase teacher salaries, to make them professionally competitive.

2. When the governors reviewed the various studies on improving education in their report in 1991, entitled Time for Results, the Governors' 1991 Report on Education, they concluded that it was necessary to improve teacher compensation at the entry level and throughout the career of teachers and that, even though salaries have improved greatly in recent years, they have not yet regained the "levels of 1970 in real dollars."

3. In the report of the Carnegie Forum on Education and Economy, entitled A Nation Prepared: Teachers for the 21st Century, the Report of the Task Force on Teaching as a Profession, it was noted that, "as in past economic and social crises, America turns to education" in its effort to deal with its eroding ability to compete in world markets, and recommended that teachers' salaries and career opportunities be made "competitive with those of other professions." In that same report, it is concluded that teachers' salaries rank below those of most occupations requiring a college degree and that more competitive pay and conditions of employment

are necessary to recruit the most able college graduates. It specifically recommends that teachers' salaries parallel those of accountants, ranging from \$21,000.00 to \$60,000.00.

4. The Carnegie forum also concluded, in its same report, that maintaining the status quo will actually cost more in the long run and that the cost of needed improvements will be exceeded by the revenues generated.

5. The conclusion that average teachers' salaries actually declined by 15% between 1971 and 1981 is supported by the study done by the National Center for Education, entitled The Conditions for Education: 1983, and were cited by the Rand Corporation in its study, entitled Beyond the Commission Reports: The Coming Crisis in Teaching.

6. While there is a "second facet" to the interests and welfare of the public criterion, related to the economic cost of any proposed increase in salaries, the evidence here demonstrates that the Employer can afford to pay the proposed increases without producing any hardship on the taxpayers. The District maintains a comparatively low levy rate, the lowest in the Bay Conference, and the requested increases are relatively modest, perhaps too modest.

7. As Arbitrator Zeidler noted in the above cited decision, the interests and welfare of the public in establishing higher teacher salaries requires that any tax relief afforded local communities must be provided by the state or federal governments, rather than being achieved at the expense of that goal. He further

stated that the proven need to catch up, combined with the results of these studies outweighed any "budget pressure" which might otherwise exist. Here, there is also a proven need for catch up and there is no real evidence of budget pressure, it argues.

In reply to District arguments concerning appropriate comparisons, relative rank within the Bay Conference and increases in the Consumer Price Index, the Association argues that it is not inappropriate to utilize the Green Bay School District settlement, in addition to the Bay Area Athletic Conference settlements, because of the proximity of Green Bay; a careful examination of Association exhibits demonstrates that teachers have indeed been losing rank at several benchmarks in the last five years; and the District focuses on salaries and fringe benefits in relation to the Consumer Price Index, when the best comparison consists of salary increases received by comparables, who have experienced the same increase in the cost of living. According to the Association, its offer is more reasonable when compared with the pattern of settlements in the athletic conference and geographical area and there is no evidence to the effect that the District cannot afford to pay the cost of the Association's offer. On the contrary, it argues, West DePere has the lowest tax levy and highest ability to pay of any of the districts within the appropriate pool of comparisons.

Analysis

As noted above, the salary schedules issue is one of the three significant issues in dispute. Even so, in the view of the

undersigned, salary schedules probably would not be in dispute, and the parties would have been able to settle their negotiations voluntarily, if it were not for the dispute over health insurance and voluntary early retirement. This is so, because the difference between the two final offers on salary schedules is not particularly great. Measured in terms of wages only (including longevity) the difference in the first year is .3% or approximately \$90.00 per returning teacher. In the second year, the difference is .4% or approximately \$147.00 per returning teacher. The difference between the total cost of the two final offers is in the same magnitude, since there are no other issues, except for extra duty co-curricular schedule, which have an immediate cost attached to them, and both parties agree that the cost difference for the extra duty co-curricular schedule is minor. It would require undue speculation, not warranted by evidence of record, to attempt to calculate the short term (two year) cost difference between the parties' offers on voluntary early retirement.

The Association argues that its final offer should be preferred, primarily based upon the need to "catch up" with other districts in the Bay Conference and statewide. While the undersigned does not believe that the Association has made a strong case for "catch up," certain evidence does support the Association's position on that point. It is primarily for this reason that the undersigned believes that the Association's offer should be favored in this proceeding, even though the balance of the evidence and arguments of both parties would otherwise result

in a "draw" or "close call."

For the reasons advanced by the District, the undersigned does not believe that great weight should be attached to the Association's statewide "catch up" arguments. Far more important, in the view of the undersigned, is the relationship between salaries in the District and the other districts in the Bay Conference. While it is true, as the District argues, that the actual placement of District teachers on the salary schedule (or beyond it) tends to render less meaningful, the benchmark analysis relied upon by the Association, the fact remains that it is important for the District to maintain a comparatively attractive salary schedule, especially if its somewhat senior faculty begins to retire in large numbers. The Association's evidence discloses that the District ranks low within the conference at the BA minimum and has suffered some erosion of rank at that benchmark and at least two other benchmarks (BA 7th and BA maximum). Further, the evidence discloses that the dollar difference between the District salaries and the average salaries in the conference has increased at three significant benchmarks, where the District is below average (BA minimum, BA 7th, and MA minimum).

The average dollar increase (including longevity) for the five conference districts which were settled when the District prepared its exhibits (Clintonville, Marinette, New London, Pulaski, and Seymour), was approximately \$1,704.00 or 5.94%. While the District proposes an average increase in the first year of \$1,732.00, that increase represents 5.62%. The Union's offer in the first year

would generate \$1,822.00 per returning teacher, which is clearly more generous, but does so at a percentage cost which is nearly identical to the conference average, 5.92%. The undersigned recognizes that these figures are based upon average salaries, which could be distorted by the large percentage of District teachers off schedule. However, if the District's offer is selected the BA minimum will be \$236.00 below the average of the five conference districts settled. The Association's proposal in the first year will only succeed in trimming this figure by approximately \$52.00. However, it may trim the difference further in the second year.

Turning to the other evidence and arguments, the following general observations would seem to apply:

1. The other, internal settlements either support the Association's position or the District's position, depending upon the treatment accorded step increases in longevity payments.

2. The external comparisons, both public and private, tend to support the District, but are not viewed as particularly persuasive in comparison to settlements for teaching personnel in the Bay Conference.

3. The District's cost of living analysis is subject to the criticism that it focuses on a hypothetical new teacher, who begins employment at the outset of a period spanning a number of voluntary agreements. More relevant for present purposes is the inflation rate which occurred during the 12 months immediately prior to the expiration of the agreement, which was in the range of 5.2% to

5.3%, by the broadest measures (CPI-U and CPI-W).

4. While both parties invoke the criterion dealing with the interests and welfare of the public, it is clear that the evidence regarding the comparative wealth of the District is mixed and the District can afford to pay competitive salaries without suffering a significant impact on its levy rate. Again, it would require undue speculation to attempt to predict which offer would cost less in the short run (two years) if the Association's offer were implemented, along with its voluntary early retirement proposal.

For all of these reasons, and based upon the other evidence and arguments of record, the undersigned concludes that while the parties' proposals on salary schedules are both reasonable in relation to the statutory criteria, the Association's proposal should be favored slightly over that of the District because of its impact on the BA minimum and certain other points in the salary schedule.

EXTRA DUTY CO-CURRICULAR SCHEDULE

Because this issue is, by far, the least significant issue in dispute, it is not necessary or appropriate to analyze it in great detail. Even so, a judgment must be made as to which final offer, if either, should be favored on this issue, since it contributes to an overall evaluation of the two final offers.

District's Position

According to the District, its proposal on the extra duty co-curricular schedule should be favored primarily because it maintains the "obvious correlation" between the hourly rate and the

base figure set forth in that schedule. Thus, the "hourly rate" in 1988-1989 was \$12.20 per hour while the base was \$1,220.00. Under the District's offer, the hourly rate would increase to \$12.70, with a base of \$1,270.00, in the first year and to \$13.30, with a base of \$1,330.00, in the second year.

The Board also argues that its proposal is supported by the evidence concerning the rates paid by other districts in the Bay Conference and by increases in the cost of living.

Association's Position

The Association relies upon the fact that its proposal on the extra duty co-curricular schedule amounts to the same percentage increase called for in its proposal on salary schedules and argues that the approximate \$5.10 difference in the base for the first year and \$2.00 difference in the base for the second year, should not constitute a determining factor in which final offer is selected. The Association notes that the total cost difference with regard to this issue is "inconsequential" when compared to the total cost difference between the two final offers.

Analysis

Based upon a strict reading of both final offers, it is not at all clear that the District's proposal would maintain a preexisting relationship between the hourly rates and the "base" in the extra duty co-curricular schedule, or that the Association's proposal would not do so. The District's proposal is to "change the appendix B base to \$1,270.00 for 1989-1990, \$1,330.00 for 1990-1991." On the other hand, the Association's proposal is for "4.5%

base and co-curricular." Further, a review of the comparative data contained in the District's exhibits fails to establish that either proposal should be favored, because of the mixed nature of the results of that comparison, and the minor difference between the two proposals. For these reasons, the undersigned believes that the selection between the two proposals on this issue should be tied to the selection between the two proposals on salary schedule. Consequently, the Association's proposal on the extra duty co-curricular schedule is deemed more appropriate for inclusion in the agreement, provided the Association's proposal on salary schedules is included.

SUMMARY AND CONCLUSION

Of the five issues in dispute, only three, those involving health and dental insurance, early retirement, and salary schedules, are deemed to be significant. For the reasons stated, the District's proposals on health and dental insurance and early retirement, as well as its proposal on work load, are favored over the Association's proposals on those issues, as being more reasonable and consistent with the statutory criteria. While the Association's proposals on salary schedules and the extra duty co-curricular schedule are deemed more reasonable and consistent with the statutory criteria than the District's proposals on those issues, the District's final offer overall is favored over the Association's final offer overall because of the relative significance of the differences between the parties' final offers on health and dental insurance and early retirement, compared to

the differences between them on salary schedules. Therefore, the undersigned renders the following

AWARD

The final offer of the District is selected for inclusion in the parties' 1989-1991 collective bargaining agreement, along with all changes agreed to by the parties, and the provisions contained in the 1987-1989 collective bargaining agreement which are to remain unchanged.

Dated at Madison, Wisconsin, this 27th day of March, 1990.



George R. Fleischli
Arbitrator