STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of the OSSEO-FAIRCHILD EDUCATION ASSOCIATION To Initiate Arbitration Between Said Petitioner and OSSEO-FAIRCHILD SCHOOL DISTRICT	Case 12 No. 42822 INT/ARB - 5388 Decision No. 26203-A

APPEARANCES:

James C. Bertram, Executive Director, Coulee Region United Educators, on behalf of the Osseo-Fairchild Education Association

Steven J. Holzhausen, Staff Representative, Wisconsin Association of School Boards, Inc., on behalf of the Osseo-Fairchild School District

INTRODUCTION

On October 30, 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 Osseo-Fairchild Education Association (hereinafter the "Association", the "Union" or the "Teachers") and the Osseo-Fairchild School District (hereinafter the "Board", "District" or "Employer"). On November 29, 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 January 17, 1990. 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 Association or that of the School District be incorporated in the labor agreement between the parties?

COMPARABLES

The Board's Position:

The Board would have the arbitrator exclude two conference members from the list of comparables. The Cloverbelt conference consists of two essentially disparate groups of schools. The first is the large, urban, industrialized districts of Altoona and Mosinee. The remaining districts are smaller, closer geographically and of an essentially agricultural nature.

When the Osseo-Fairchild District is placed along side its athletic conference peers, it resembles the second group of districts more than it does the two larger conference members.

The District has offered numerous previous arbitration awards in support of its position. It argues that a long line of arbitrators have agreed that it is improper to compare the rural districts with their smaller, less affluent populations and limited resources to the two larger districts. Moreover, these two districts, expecially Altoona, are under the influence of larger metropolitan zones and must tailor their school programs and resources to compete with their neighbors.

For these reasons the Board asks the arbitrator to limit comparable consideration to the members of the Cloverbelt conference other than Mosinee and Altoona.

The Association's Position:

The Union would accept the District's list of comparables if this contract were to be for a single year. A sufficiently useful number (9) conference schools were settled for 1989/90 to provide a proper conparable group without including Mosinee and Altoona.

However, the parties here are agreed on a two year contract extending through June 30, 1991. Altoona and Mosinee are settled for 1990/91. Only three other districts had contracts settled for that school year at the time the record here was closed. The Union believes that three schools do not constitute an adequate comparable group and it is therefore necessary to include the two larger districts to come close to establishing an adequate pool. The Association argues that if Altoona and Mosinee are to be included for the second year of the contract term, they must logically be included for the first contract year.

Discussion:

It is flattering (and a trifle un-nerving) to be cited with approval by both sides of a dispute in support of their disparate positions on an issue. Moreover, both sides are correct in their use of that citation. Under ordinary circumstances both Altoona and Mosinee should be excluded from the list of comparables. Not only do they have demographic conditions that contrast with those of the other conference schools, the weight of arbitral authority would clearly require their exclusion here were there an adequate pool of conference schools settled for the 1990/91 school year. Such is not the case here and therefore they should be considered for the list of comparables in this matter.

A review of the exhibits tends to support inclusion. It must be granted that Mosinee and Altoona have wage/benefit packages that are in the upper portion of the conference in most respects. The Association is correct in asserting they are not so out of line as to prevent their consideration. It must also be remembered here that many of the issues raised by the parties in this matter deal with new benefit proposals and the way conference schools deal with existing benefits. In these respects one is struck by the fact that all Cloverbelt conference districts have information in their agreements that are of use in analyzing the final offers in Osseo-Fairchild.

For these reasons the entire list of settled conference schools for the first and second year of this proposed contract period (11 for 1989/90 and 5 for 1990/91) shall be relied upon here. The Association's comparable group is therefore accepted.

SALARY

The Board's Position:

The District argues against bench mark comparables on salary only. As parties have manipulated salary schedules through bargaining to, in effect, fit the peculiar needs of a teaching staff, bench marks have declined in accuracy as a method of evaluating final offers. The Board points to the fact that increases in Osseo-Fairchild have been weighted to favor the "right hand" portion of the salary schedule as an example of this manipulation. The teachers here are a relatively experienced group, with many of them in the MA section of the schedule. Therefore the 1988/89 schedule was adopted knowing full well that parts of the schedule would suffer in comparison to the favored positions of that schedule.

The District believes the arbitrator should recognize the importance of the fact that this is the first time these parties have ever gone to arbitration over a contract. The Association had to be fully aware of its salary position in relation to other conference districts when it voluntarily agreed to past contracts. To use bench mark comparables involving past positions would be bringing into litigation past decisions that are inappropriate.

The Board believes it is more appropriate to compare total package costs, including benefits as well as salary. And when this is done it feels it compares very well with other conference schools. This is especially true when one considers the parties here are agreed on providing a new benefit, dental insurance, in this contract. When the cost of this benefit is added to the District's salary offer and projected health insurance cost increases, the Board's offer is competitive with the other districts. When the package costs contained in the Union's offer are compared to comparable districts, the unreasonableness of the Association's final offer becomes obvious.

The Association's Position:

Although the Association quarrels with the costing used by the Board in evaluating the cost of the total package, it points out that the parties agree on the cost of the salary increases contained in the two final offers.

Total package costs are difficult to evaluate among comparables. Cost of insurance will vary from district to district depending upon experience and employee contributions. On the other hand, comparison of bench marks is simple, straightforward and easily understood.

And, when salary bench marks are compared, the Osseo-Fairchild teachers have experienced a deteriorating position that will become worse if the Board's final offer on salary were to be accepted. The Association believes that its final salary offer does not result in a sudden up-surge in ranking at bench marks and that it is asking for a percentage increase over the two years of this contract that is less than that already in place for schools settled for 1989/90 and 1990/91. Since the Union's final salary offer does not involve a catch-up position and since it is reasonable in comparison to the other settled districts, the Association urges acceptance of its final salary offer. Given the relatively minor differences in costs over the two year contract term, this final offer should be granted.

Discussion:

As the cost of fringe benefits increases, the utility of salary bench mark comparables is decreasing. One can regret the passing of a standard that, while it ilicited controversy, was stated in terms of dollars, a term of universal acceptance and comprehension.

Total package comparables will be harder to evaluate. Most comparable groups contain different carriers, deductibles may vary from plan to plan, many employers offer more than one health insurance plan, benefits are not always the same, and the carrier's experience with the covered employees may vary. One additional problem arises from the fact that insurance contracts expire and premium costs are established at a time not necessarily helpful when the labor agreement expires on a different date. In cases where a two year contract is being costed, the parties and the arbitrator must speculate entirely on the cost of at least 7/24th of the contract term.

Costing is particularly difficult in a district, like Osseo-Fairchild, where an entirely new fringe benefit will be put into place during the term of the agreement. There is some question as to the projected premium, and it is not possible to ascertain with certainty how many of the teachers involved will take advantage of the benefit at all.

For these reasons, this award will make use of salary bench mark comparables.

The District is correct when it states that use of historical bench marks amounts to litigation of past voluntary settlements in this bargaining. However, one need not look back further than the 1988/89 contract to learn that the Osseo-Fairchild teachers do not rank among the conference leaders in any respect. The salary schedule proposed by the Association would, if adopted, not result in a ranking, average salary, schedule average, percentage increase or cost that causes a substantial alteration in the comparative ranking of this group of teachers. The marginal improvement to be experienced by acceptance of the Union's final offer tends to narrow the gap between this teacher unit and those in comparable districts. For these reasons, the Association's salary schedule is preferred over that contained in the Board's final offer.

DENTAL INSURANCE

Teachers in the Osseo-Fairchild School District do not presently enjoy dental insurance benefits. It seems the issue was raised by the Association during bargaining and the Board responded by introducing its own language on this subject and thus both final offers contain dental insurance language. Because both parties are presenting language on this issue, it will not be necessary to submit the language to the analysis required when only one party requests a change in the contract's provisions.

The parties differ on date of implimentation, carrier, contribution toward premium costs and, most importantly, benefit level. The Union sets forth levels of coverage contained in Plan 1 offered by the WEA Trust Dental Health Plan. The District would provide that "benefits are substantially equivalent to those benefits provided under the plan initially agreed to by the parties."

The District's language is flawed in two important respects. In the first place, the parties have not agreed to any plan, although the District states it would use the benefits set forth in the Association's specified plan. However, there appears to be no side-letter of agreement setting this forth, and thus the issue remains to be settled by renewed consultations after the granting of this award.

An even more important difficulty appears to arise from the use of the term "substantially equivalent." This phrase is inexact in both its words, and in view of the fact that this is new language that has never been administered by the parties, it must be rejected. The Association's language is not subject to further conflict or arbitration, and it is an important goal of this arbitration process to achieve finality insofar as possible.

Therefore, the Association's language on Dental Health Insurance is to be preferred.

HEALTH INSURANCE

Article VII, Section I, paragraph 2 of the present professional agreement reads, in it entirety, as follows:

> "School District shall pay an amount equal to 100 percent of the previous year's premium on the health insurance plan with not less than existing benefits in the 1980/81 school year."

The District asks that this language be retained without change in this contract.

The Association would replace this language in both years of the new contract with the following:

> "The District shall pay 100% of the premium on WEA Trust Health Insurance Plan 0379.0. Members of the Health Plan will pay the difference, should the annual increase exceed 10% of the current premium."

The Association's Position:

The Union believes that two flaws have crept into their language over the years. The benefit levels specified in the contract reflect language from a decade ago. Of even greater importance is the level of contribution by health insurance members to the cost of the premium.

The first should not be a problem to the Board. The contract specified in the Association's language is the same presently in force in Osseo-Fairchild. The parties are familiar with its terms having utilized it for about five years.

The contribution level is of much larger proportion. Until recently the Association members were in line with teachers in comparable districts. Where the District historically paid about 90% of the premium, this percentage has dropped recently. Therefore, teachers are not only making larger dollar contributions, which might be expected in times of rising premium costs, but are also making larger percentage contributions. The Union's language here is designed to bring these teachers in line with the contribution percentage being made by their fellow teachers in comparable districts.

The District's Position:

The main thrust of the Board's position is economic. It maintains that it is reasonable and proper for employees to contribute substantially to the sky-rocketing costs of health insurance. No matter how much the Association's members are paying or what percentage of the increase they are absorbing, the actual dollars paid for the benefit by the District is increasing at an alarming rate. A rate, in its view, that should be shared by the teachers as well as the taxpayers.

The Board also asserts that a possible increase projected for the second year of this contract might result in a drop in the employee's percentage that would restore them to the same contribution percentage level that they enjoyed a few years ago.

On another economic issue, the District objects to the specific designation of a health insurance carrier in the contract. It believes the right to choose a carrier within the

benefit limits is essential to cost control. Without that lever available to it, the Board loses a right it has had since the early days of bargaining between the parties, a right it must continue to enjoy.

Discussion:

Both sides of this dispute have addressed the issue of a "quid pro quo" for the Union's language. The Association argues it has provided a sufficiently modest request in its package to justify its language proposal for health insurance premiums. The Board denies this.

Arbitrators have been historically reluctant to impose changes in contract language through the binding arbitration process. One of the reasons is the sufficiency of a quid pro quo for alteration. It is obvious that if the parties had agreed in bargaining to the adequacy of a language buy-out, the issue would never have reached the final offer stage.

Although it may be proper for an arbitrator to examine the adequacy of a quid pro quo, it seems preferable to adopt a standard that, insofar as possible, avoids having to make what can only be a subjective judgment.

Therefore, the Association must 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?

The Union has argued that the Osseo-Fairchild teachers are shouldering a premium contribution burden that is far in exess of that required of teachers in comparable school districts. While other districts and their teachers have generally maintained the levels of earlier years, the language in the present contract as the parties have interpreted it in the past has caused this discrepency.

It is a bit uncertain how to evaluate increases in health insurance premiums. Their level may be affected by benefit levels, which can vary from school district to school district. Carriers also adjust premiums based upon their experience with the covered group. As a result, it is possible that these factors, among others, have been responsible for an increase in costs that has given rise to the condition of which the Union is complaining.

Although the above described factors may have had an impact upon the health plan members from this district, there can be no doubt that the present contract language gives Osseo-Fairchild teachers an exposure to rising costs that is in excess of that in comparable districts. The condition complained of is of relatively recent occurrence and the Board is correct when it states that a hypothetical increase in premiums could result in restoring the historical relationship with comparable bargaining units. Yet, the fact remains that the Association's members are faring less well than their peers, and that during the period for which firm data is available, the present contract language is responsible for this condition.

With the Union having sustained its burden under the first standard, we must now answer the question of whether the proposed contract language remedies the condition.

At the hearing and in their briefs, the parties devoted a substantial portion to the manner of computing the cost of health insurance. This costing discussion was directed mainly to the cost of the two final offers to the district.

It might be instructive to look at the Association's final offer in terms of its impact upon the individual teacher who is a member of the health plan and continues in service during the entire term of this agreement. It is, after all, the impact upon the members of the Association that has given rise to the condition complained of.

For purposes of illustration, let the base cost of the entire health insurance premium be expressed as $100. If the total premium were to increase to $110, the entire cost would be borne by the District. If the premium cost were to increase to $120, the increase would be shared equally by the member and the District, with each contributing $10. The share of the teacher would be 7% of the new premium. If the cost increase were to be $130, the District would pay $110 and the teacher $20, or 15% of the new premium.

Although this illustration of the impact of the Union's offer indicates the possibility of an increase beyond the goal sought by the Association, retention of the present contract language would result in payment by the teacher of $10 (10%), $20 (20%) or $30 (30%) of the new premium, respectively, resulting in a substantial improvement in position by Osseo-Fairchild teachers individually, were its language adopted.

Thus the proposed contract language may be said to remedy the condition complained of, although it remains, to some extent, imperfect.

We turn now to the third standard to find whether the proposed language imposes an unreasonable burden upon the other party to the contract.

The present contract language deals with two issues. The first is the allocation of increases in premium costs between the District and its teachers. The second is the level of benefits and choice of provider.

It is not clear whether the present level of benefits is the same as that contained in the 1980-81 contract. However, a long history of contract interpretation has resulted in agreement between the parties on the same contract specified in the Union's final offer and thus one must expect the level of benefits would remain the same as under the present contract.

Of more importance is the choice of carrier. Although the Association believes any savings that result from a change in carriers is a one-year phenomenon, the fact is that savings can be achieved by the Board through competition for its business. Savings are important to both parties, the teachers as well as the District. So long as the teachers retain the protection of benefit levels, the ability to impact upon the heavy burden of insurance costs ought not to be denied the District.

Although the Association has sustained its burden on the first two standards, it must pervail on all three to allow adoption of its proposed language change. For this reason, the Board's final offer on this issue must be preferred.

DECISION

This is final offer arbitration, and the award must accept one or the other in its entirely. Of the three issues dealt with here, the wage package offers are not so far apart as to require a decision based on either final offer.

The health insurance and dental insurance proposals are closer. The Association's dental insurance language is preferred over that of the District, while it appears more desireable to retain the present contract language as advocated by the District for health insurance.

At this point it is necessary to acknowledge a conflict between the discussion portions of this award relating to each issue. When dealing with dental insurance, the Association's final offer was accepted even though its language specified a particular carrier, rejecting the District's argument it should be able to retain the right to choose a carrier.

When discussing health insurance, the precise opposite result obtained, with the ability to select a carrier being one of the primary reasons for supporting the Board's position. Obviously, these positions must be resolved.

Dental insurance is a new benefit, with no past administrative record. The contract has maintained its present health insurance language for a decade. When a new benefit is installed in a contract, it is important to have as much detail as possible concerning it so most of the administrative problems may be laid out for the parties. Yet, the dental insurance program by its very newness contains questions of cost. It is only possible to speculate on cost as things stand now and that area will only become known over time.

At the arbitration hearing and in its brief the District has assured the arbitrator that the benefit levels contained in the dental insurance plan proposed by the Association would form the basis of benefit levels to be contained in the plan chosen by it eventually. In view of these assurances and the long history of successful contract administration by the parties, one may trust that the benefit levels will be satisfactory to the Union when proposed to it.

The second insurance benefit issue, cost, is even more of a problem. No one may be certain of the acceptability of the dental health plan to the Association's members. However, it is reasonable to expect that the eventual cost to the District and teachers will not be as substantial as the cost of health insurance.

Health insurance is a "big ticket" item. As such it is important that the party bearing the larger proportion of the premium cost would have some power to regulate that cost, so long as the benefit levels remain constant as they would in Osseo-Fairchild. The impact of this freedom can have a benefit to the teachers as well as to the Board, and for this reason alone the final offer of the Osseo-Fairchild School District is preferred.

AWARD

The final offer of the Osseo-Fairchild School District shall be incorporated in the professional agreement between the parties.

DATED this 17th day of March, 1990.

Robert L. Reynolds, Jr.

ROBERT L. REYNOLDS, JR., Arbitrator