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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

RIPON TEACHERS ASSOCIATION

and

RIPON SCHOOL DISTRICT

Case 10
No. 42530 MED/ARB-5318
Decision No. 26251-A

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: 113 Teachers

HEARING: February 26, 1990
Ripon, Wisconsin

RECORD CLOSED: April 10, 1990

AWARD DATE: May 20, 1990

APPEARANCES:

For the District: WISCONSIN ASSOCIATION OF SCHOOL BOARDS
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ARBITRATION OPINION AND AWARD

Ripon Teachers and Ripon School Board

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of a collective bargaining contract between the parties to replace their old contract which expired July 31, 1989.

The parties exchanged their initial proposals on approximately November 3, 1988 and met thereafter on four occasions in an effort to reach an accord. On July 13, 1989, the Association filed a petition with the Wisconsin Employment Relations Commission (Commission) requesting Arbitration pursuant to the Section 111.70(4)(cm) of the Wisconsin Statutes. On October 5, 1989, Sharon Gallagher-Dobish, a member of the Commission staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. On November 2, 1989, the parties submitted their final offers and Investigator Gallagher-Dobish notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On November 30, 1989, the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was notified by the Commission on December 12, 1989.

An arbitration hearing was held on February 26, 1990 in the Ripon School District offices in Ripon, Wisconsin. At that hearing exhibits were presented and testimony was heard. It was agreed that briefs would be submitted to the Arbitrator and each party through the mail postmarked by April 2, 1990. Reply briefs would be sent to the Arbitrator and each party postmarked by April 6, 1990. The parties agreed the record would be closed as of the hearing date for additional evidence other than some items that both agreed could be submitted after the hearing. Subsequently, briefs and reply briefs were filed with the Arbitrator as agreed, the last one of which was received April 10, 1990.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70(4)(cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm) 7 sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in the document that I have attached to this award as "Appendix A." For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public; (d) comparisons--other teachers; (e) comparisons--other public employees; (f) comparisons--private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

The employees involved in this proceeding compose of a collective bargaining unit represented by the Union which is described in the labor agreement as "all regular full-time and all regular part-time certificated teaching personnel employed as teachers by the Board including speech therapists, guidance counselors, librarians, psychologists,

teaching-nurse, basic skills resource teacher, gifted/talented project advocate, and assistant principals, but excluding superintendent, principals, senior high vice-principal, assistant principals with evaluative responsibilities, director of instruction, director of related services, substitute teachers, and aides." There are 113 (108.72 FTE) employees in the unit.

FINAL OFFERS AND STIPULATIONS

FINAL OFFERS

As required by statute, both parties have submitted proposals for a two-year contract. Based upon the final offers there are four issues involved in this dispute: wages in the form of the teachers' salary schedule for 1989-90 and 1990-91; amount of contribution of the District for health insurance; the amount of contribution of the District for dental insurance; and whether or not the Board-paid portions of the health and dental insurance should be retroactive and thus reimbursed by District. The two final offers of the parties reflect the following positions (see Appendix B and C for copy of actual final offers):

Wages

The Association proposes to retain the current salary schedule with a BA base of $19,189 for 1989-90 and $20,101 for 1990-91. This represents a 6.2% salary only increase in 1989-90 and a 6.2% salary only increase in 1990-91. Costing of this offer on a cumulative basis results in a salary increase of 12.8% or $3,517 per teacher with a total package increase for the two years of 15.3%.

The Board also proposes to retain the current salary schedule structure with a BA base of $19,095 for 1989-90 and $19,907 for 1990-91. This represents a 5.6% salary only increase in 1989-90 and a 5.1% salary only increase in 1990-91. Costing of this offer results in a cumulative wage increase for 1989-90 and 1990-91 of 10.7% on wages or $2,938 per teacher with a total package increase for the two years of 13.1%.

Health Insurance

For the first year of the contract (1989-90) the Association wishes to basically maintain the current contract language which establishes a dollar amount ($314.64 for the family plan) per month for the District's contribution to health insurance premiums. For the second year the Union proposes to add a percentage figure to the contract language (.95) (to be expressed in a dollar amount) which continues the approximate ratio of contribution established by the parties in recent years.

The District proposes the same dollar amount ($314.64 for the family plan) per month for the first year (1989-90) and a specific dollar amount

($377.58 for the family plan) (representing a 20% increase over 1989-90) per month for the second year. In addition the Board wishes to cap the District's obligation by inserting the words "up to" prior to the dollar amounts, and eliminating the words "--said amount reflecting recent years' proportions."

Dental Insurance

The parties in their final offers do primarily the same thing with the dental insurance as they proposed with the health insurance.

The Association, for the first year of the contract (1989-90), wishes to basically maintain the current contract language which establishes a dollar amount ($43.47 for the family plan) per month for the District's contribution to dental insurance premiums. For the second year the Union proposes to add a percentage figure to the contract language (.9138) (to be expressed in a dollar amount) which continues the approximate ratio of contribution established by the parties in recent years.

The District proposes the same dollar amount ($43.47 for the family plan) per month for the first year (1989-90) and a specific dollar amount ($45.64 for the family plan) (representing a 5% increase over 1989-90) per month for the second year. As with the health insurance, the Board wishes to cap the District's obligation by inserting the words "up to" prior to the dollar amounts, and eliminating the words "--said amount reflecting recent years' proportions."

Retroactivity of Board-paid Health and Dental Premiums

The Association seeks to guarantee that bargaining unit members will be reimbursed by the District for increased payments they made due to premium increases since the termination of the contract.

STIPULATIONS

Tentative Agreements

The parties resolved approximately six issues during their negotiations and/or the certification process. These tentative agreements are stipulations and are attached in Appendix D.

Eight-Period Day

During the arbitration hearing the parties submitted to the Arbitrator a Memorandum of Understanding regarding the Eight-Period Day. The Arbitrator accepted the Memorandum as a stipulation to be added to the list of stipulations found in Appendix D. The Memorandum is attached as Appendix E.

Retroactivity of Board-Paid Health and Dental Premiums

The District, in a letter to Investigator Gallagher-Dobish dated October 17, 1989 and attached to the Tentative Agreements/Stipulations, expressed the Board's understanding that their final offer would be retro-active to the point when teachers assumed additional premium costs for 1989-90. (See page 2, Appendix B, "Stipulations."

Based upon this letter and discussions at the arbitration hearing, it appears there is no dispute about whether employees will be reimbursed for Board-portions of health and dental insurance premiums for 1989-90 made by the teachers. Therefore, I will consider that the parties have stipulated to the retro-activity of Board-paid health and dental premiums and will not discuss this issue in this Arbitration Opinion and Award.

Comparables

The Board's comparability evidence relies almost exclusively on the East Central Athletic Conference--Ripon's athletic conference. The District points to the fact that two recent prior arbitration awards have relied upon the East Central Conference as the comparables for Ripon. The District believes there should be no dispute over the districts with which Ripon is comparable.

While the Association presents data on schools other than the East Central Athletic Conference (primarily other school districts in Fond du Lac County), in its brief it "...urges the Arbitrator to adopt the East Central Conference as the appropriate comparability group and to eliminate Hortonville as an appropriate, contemporary comparable over the 1989-91 period in dispute." The Association concedes that the East Central Athletic Conference will probably prevail in this case, but asks the Arbitrator to consider as supplemental comparables the other districts in Fond du Lac County.

Although the parties certainly are not completely stipulating to the comparables in this case, there appears to be enough agreement to declare the East Central Athletic Conference as the primary pool from which the comparable group should be established. (The issue of the inclusion of Hortonville will be discussed below.)

Regarding the use of supplemental comparables, because of the few (only three in 1989-90 and two for 1990-91) settled districts in the Athletic Conference, it is tempting to go elsewhere to find settlement trends in the Ripon region. Without much in depth study, the districts suggested by the Union appear to be fairly comparable to Ripon. There remains strong doubt in my mind whether the parties have used these districts as comparables in the past, or will use them in the future. While I won't eliminate these districts completely, they will receive very little weight when doing comparisons on wages and benefits.

Costing

The costing of each party's proposal is not really disputed in this case. The Association submitted some data different than the District, but then corrected it in its reply brief. The parties are in agreement with the Employer's costing figures.

ISSUES SUBJECT TO ARBITRATION

After moving the "Retroactivity of Board-Paid Health and Dental Premiums" to the stipulations and removing the comparability and costing issues, it leaves three disputed issues related to the final offers: Wages, Health Insurance, and Dental Insurance. (For brevity, the Health Insurance and Dental Insurance issues may be combined under "Insurance" when appropriate.)

SUMMARY OF PARTIES' POSITIONS

In this section I would like to briefly summarize the positions of the parties. More detail of each of the parties' positions will be provided as I discuss each of the issues in the "DISCUSSION" section of this award.

ASSOCIATION'S POSITION

The Union strongly maintains that the changes in the health and dental insurance language and method of capping District-paid monthly premiums proposed by the District should not be imposed by the Arbitrator. A long standing principle is that arbitrators ought not impose changes in status quo language, especially language which has been the result of years of bi-lateral negotiations. The insertion of the words "up to" and the attempts at "double capping" are changes that are not needed and, in fact, will not solve the problem and probably only place the Association at a disadvantaged position in future bargains. Contract language and insurance premium co-payment schemes should be made voluntarily, and not forced upon parties by arbitrators.

On the salary issue, the Association believes that the statutory criteria supports its offer. With Hortonville justifiably removed, the East Central Athletic Conference comparables supports the Union's offer by way of average salary, dollars per returning teacher increases, percent increases in dollars per returning teacher, and benchmark dollar and percent comparisons. The other criteria generally also support the Association's offer.

DISTRICT'S POSITION

The Employer believes the Arbitrator should put great weight on the overall compensation criteria and that the economics of this case should

determine the outcome. With the Arbitrator using the Athletic Conference (including Hortonville), it is clear that the District's offer is more reasonable than the Union's. With no evidence that catch-up is warranted, the settlement trend in the Conference, as measured by dollar and percent increases, clearly supports the District's economic package. The interest and welfare of the public relating to tax relief favor the District's lower salary proposal.

Regarding the insurance issue, the District strongly argues, contrary to the Union's assertions, that there is absolutely no change in the status quo of its language proposal. In fact, the Board's proposal is more reasonable because it deals with the whole package concept and approaches bargaining with certainty. The Board's proposal responds to the sky-rocketing costs of health insurance by proposing a fair way for the parties to share the risk of insurance increases and forces the parties to negotiate a specific amount the Board will contribute to the insurance premiums.

DISCUSSION

INTRODUCTION

> "This dispute is one of these 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 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."

So begins Arbitrator Byron Yaffe in a recent arbitration award (West Allis-West Milwaukee School District and West Allis-West Milwaukee Education Association, Case No. 41972, 2/25/90; page 9) regarding a dispute over health insurance. Arbitrator Yaffe expresses well some of the feelings I have regarding this case. Although it is true these cases are not identical, the economics involved with the insurance in the instant case, especially the health insurance, over-shadow the dispute over wage increases, and make the two cases similar enough for this Arbitrator to share sentiments with Arbitrator Yaffe.

The parties in this dispute set it up this way. The Association is asking the Arbitrator to over-look the economic impact of its proposal because the Employer is trying to force on the employees through

arbitration new language related insurance premium contribution sharing with which the Union disagrees. The Employer is asking the Arbitrator to over-look significant changes in the parties' contract language and past practice because the economics of the situation warrant it. To be frank, both parties are making less than reasonable requests. As did Arbitrator Yaffe, I wish the parties had tried a bit harder to find some middle ground. But they didn't, so one of the two unreasonable positions must prevail.

Since both request/proposals are basically unreasonable, the job of the Arbitrator will be to determine which offer will do the least damage to the parties in the short and long run. In doing this, I will need to decide which is more important in this case: the economics or the imposition of contract language changes.

These decisions will be accomplished in two parts of this "DISCUSSION" section. In the first, PARAMETERS OF ANALYSIS, I will respond to the parties suggestions as to how the evidence is to be viewed and establish the procedures by which the offers will be analyzed.

In the second part, ANALYSIS AND OPINION, I will analyze the data and substantive arguments proffered by the parties on each of the issues utilizing the parameters established in the PARAMETERS OF ANALYSIS. In both parts I will summarize briefly each party's specific position on the pertinent issue(s) and criteria.

PARAMETERS OF ANALYSIS

The parties in this case have presented evidence and argument both as to the way they believe the Arbitrator should proceed to analyze the evidence in the record as well as to the favorableness of their case on the issues being contested. In this section I will respond to the parties' objections, arguments and suggestions on how the evidence should be analyzed, and then establish the procedures and parameters by which the parties' final offers will be analyzed.

Evaluation of Evidence

Use of Surveys

The Association, at the arbitration hearing and in it brief, raised objections to a number of exhibits submitted by the District. Specifically, the Union objects to the Employer Exhibits 13, 16, 59, 60, and 68-107.

The Association objects to these exhibits based on the fact the exhibits lack credible, supportive documentation. The Union maintains these exhibits were developed from WASB Teacher's Benefit Reports which were completed mostly by unidentified persons. The only person available to testify as to the accuracy of a report was Michael Heckman of Ripon--the others filing the reports were not present in order to verify

the represented data. The Arbitrator should not allow such bulk of non-documented and non-source-supported data in a case as important as this.

I cannot agree with the Association's objection to this data and will allow these exhibits into the record for three reasons. First, as both parties know, obtaining data through the use of surveys is a common and necessary practice in public sector bargaining and arbitrations. There is little other way for the parties and arbitrators to get some types of information (about such things as benefits, total package costs, etc.) other than through the use of surveys. Of course, the integrity of the practice must be maintained--objectivity, neutrality, equity and accountability. In this case I think integrity has been maintain and the data derived from the surveys ought not to be excluded merely because it is based on surveys. Until a neutral (governmental?) agency takes on the task of compiling this data, the parties and arbitrators are going to have to rely on the parties themselves developing and conducting surveys.

Second, while I agree with the Association that accountability is important in order to check reliability, there was enough other data submitted in the current record to spot check the data submitted in the surveys. Two examples of a number of such checks by me revealed the following:

Little Chute 1988-89: B-166 (3rd survey) p.2, A.,(3). Monthly premium: single = 96.34; family = 252.58

U-14 p.9. "Health Insurance"
1156 / 12 = 96.3333
3031 / 12 = 252.5833

Winneconne 1989-90: B-167 (7th survey) p.2, A.,(3). Monthly premium: "District pays" single = 120.83; family = 292.15

U-31 p.2. "Health Insurance" "Board agrees to pay" single = 120.83; family = 292.15

Spot checks such as these which verify the data indicate to me that most, if not all, of the data is accurate. Since each survey contains a contact person and telephone number, the Union could have checked each and every survey entry for accuracy. That way, if inaccuracies were found, the Union could have presented concrete evidence that the surveys were inaccurate and suspect as reliable evidence. As it is, the evidence in the record, some of whicn was submitted by the Union, supports the accuracy of the surveys.

Finally, Union Exhibit 13 (p. 3-5), and Union Exhibit 15 (p. 5-6) contain settlement data for Hortonville and Lomira, respectively. These documents are survey forms from WASB very similar to, if not exactly like, the survey forms to which the Union is objecting being submitted by the Employer. It is very difficult for me to disallow submitted evidence (in

this case, surveys) when the objecting party submits evidence in the very same form (same and/or similar surveys).

Based on this, the surveys and resulting data and charts submitted by both parties are accepted and will be used in the determination of the reasonableness of the offers.

Comparables--Use of Multi-Year Settlements

The Association argues that Hortonville is distinguishable based upon the timing and duration of the agreement and, thus, should be eliminated from the comparisons. The Hortonville settlement, a three-year contract negotiated nearly two years ago during the 1987-88 school year, was "front-end loaded" in order to gain the most in earning power over the three years. The result was a settlement that is very low in its third year, and therefore averages that are flawed. For this reason, and the fact that it has not settled for 1990-91, the Association eliminates Hortonville from the comparisons for both years.

The District, without much elaboration, flatly maintains that the data relating to the final year of Hortonville's three-year settlement are relevant and must be considered.

I think that where previously the parties and arbitrators looked closely at settlements and perhaps discounted or eliminated settlements from the analysis that were the result of multi-year contracts, with the law now requiring two-year contracts in arbitration, multi-year settlements are more the norm and the overlapping years should be placed on a more equal footing with single-year or even two-year contracts.

The third year of Hortonville's contract (1989-90) is certainly lower than the other two settlements for that year. But, because this dispute is over a two-year contract, it does not make sense to eliminate one-third of the settlement data in 1989-90 (Hortonville) based on the fact it is the result of a three-year contract. If the parties argue for the use of certain comparables (as they did here with the Athletic Conference), then as much settlement and bargaining data from those comparables ought to be utilized in the decision-making process.

Accordingly, Hortonville's settlement will be included in the comparability data for 1989-90.

Comparables--Use of Final Offers

The parties do not discuss this issue directly, however, in this case, the use of certified final offers in the place of settlements is an important issue. The Association, in its data of the primary comparables, uses only the two settled schools for 1989-91 (Little Chute and Waupaca). The District, on the other hand, in addition to its data on the three schools, presents data relating to certified final offers of two other

districts in the Conference (Berlin and Winneconne). With only three districts of eight settled for 1989-90 and two settled for 1990-91, there is not nearly enough data upon which to test the reasonableness of the parties' final offers using settlement data only.

While final offers are certainly not settlements, they offer a range of settlements that is probably fairly accurate. Because of the limited number of actual settlements among the comparables, these final offers will be used. However, where feasible, any calculations (e.g. averages) will be made using both the higher and the lower of the offers.

Based upon the above, the following East Central Athletic Conference schools are determined to be the appropriate comparables for this arbitration: Berlin, Hortonville, Little Chute, Waupaca, and Winneconne. The other Conference schools of Omro and Wautoma will be eliminated because of a lack of bargaining data for both years, 1989-90 and 1990-91.

Organization of Issues

As indicated above the parties set the stage for this dispute by asking the arbitrator to decide which is more important: the economics of their offers, or imposition through arbitration of the insurance language changes. Therefore, I will discuss the issues in this award under these headings: "Economics" and "Imposition of Language Changes."

Reasonableness Tests

As mentioned earlier, the statutes require the Arbitrator to judge the reasonableness of the offers based upon ten criteria. The relevancy each criteria will be establish for the economic issues. For the language issue, the Union suggests a test which would fall under the "Other Factors" criteria. These tests will be outlined here.

Economics

In this section, I will address the relevancy of each of the 10 criteria--the criteria which will provide the parameters of analysis for determining the reasonableness of the parties' offers on the economics of this dispute.

Lawful Authority

The lawful authority of the Employer has not been challenged or denied, so this criterion will not be used in this decision process.

Stipulations

The Association states in its brief (p.36) that the tentative agreements between the parties reveal no evidence of a large concession on the part of the Employer which would counter-balance what the Union believes to be a major language change proposed by the District.

The parties do not really discuss this criterion very much. Since the Board does make a strong argument that over-all compensation should receive great weight (discussed below), it will be important to consider the economic parts of the stipulations with the total package. And since the Employer is proposing a significant change in the insurance language, it will be important to look to the stipulations to determine any "quid pro quo." A small amount of weight will be placed on this criterion.

Interests and Welfare of the Public

Both parties place some importance on this criterion with the District devoting a moderate amount of its brief and the Union mentioning this criterion in its brief relating to the insurance issues and language change proposed by the District. The Association maintains that the Board does not argue an inability to pay, therefore that portion of the criterion is not applicable.

The interests and welfare of the public is indeed an important criterion in an interests arbitration, and this case is no exception. The Union is correct that there is no ability to pay argument here being made by the District, so that portion of the criterion will not be considered. Interests and Welfare of the Public will receive a moderate amount of weight in this case.

Comparisons--Other Teachers

There is not much disagreement as to the weight to be placed on this criterion--it is a major criterion for both parties. The Association spent approximately half of its brief and devoted a majority of its exhibits to comparisons with other teachers. The Board devoted a substantial amount of its brief and its exhibits to comparisons with other teachers. Therefore, a major amount of weight will be place here.

Comparisons--Other Public Employees/Private Employees

The Board submitted some exhibits and presented some argument related to pay rates and salary increases among other employee groups, both locally and state-wide, public and private.

The Union rejected such comparisons for several reasons. First, arbitrators traditionally have not compared professionally trained,

unionized employee groups (teachers) with other non-unionized or non-professional groups (non-teachers). Second, education and training requirements of teachers will always be greater than the vast majority of public employees thus making comparisons inaccurate. And third, the data presented by the Employer in this case does not separate nonunionized settlement data from unionized settlement data.

I think the Union's arguments make sense only if one is making dollars to dollars comparisons (comparing wage scales). Of course, pay for a teacher (professional) ought not to be directly compared to, say, a secretary (non-professional). However, if the comparisons are based upon a percentage increase over a previous year, then comparing the percentage increase a teacher receives to that of a highway worker (or whatever) is more valid. When utilizing percentage increases, what is being talked about is the over-all labor economy for a given area. This is important in negotiating wages--it is important in arbitrating wages.

But there are a couple of important problems with the District's evidence in this case. First, while it may be nice to know the state-wide average salary increases for 1988, the comparable districts in this case are in Fond du Lac, Winnebago, Green Lake, Waushara, Waupaca, and Outagamie counties. Specific wage rate and compensation data from these areas would be more relevant.

The other problem has to do with the District's historical data. Employer Exhibit 110 contains very important historical data on the wages increases of other public employee groups in the district (e.g. Ripon administrators, support staff, etc.). But the record does not contain (at least I couldn't find), data relating to what these other groups (including the administrators) received in 1989-90 and 1990-91. Without this information it is difficult to use this data to draw a conclusion as to the comparable reasonableness of each the final offers.

In light of this discussion, the comparisons with other employee groups (public and private) is found relevant, but will be considered under one heading: "Comparisons--Other Employee Groups. This criterion will receive a small amount of weight.

Cost of Living

The Board strongly agrees with Arbitrator Neil Gundermann who departed from previous attempts by other arbitrators to weigh and define the "cost of living" criterion in terms of the settlement pattern among the comparables. The District maintains that the two criteria ought to be separate, and that this criterion ought to receive substantial, independent weight.

The Union submits that most arbitrators conclude that the voluntary settlement pattern is the best indication of the weight given to the cost of living by the parties in collective bargaining.

While the parties disagree over how to define cost of living, they think it is relevant and so do I. But, it is unclear just how the parties used cost of living information in their bargaining, so a small amount of weight will be placed on this criterion.

Overall Compensation

The District clearly states in its brief (p.32): "...the 'overall compensation' criterion is the most important one and should receive the most weight from the Arbitrator." The Board firmly believes that a total package approach is essential given the tremendous increases in health insurance costs to the District in recent years. Numerous arbitrators are cited by the Board to support their position that concentrating on only salary would be inappropriate in this case

I agree with the District that in this case over-all compensation is an important criterion. While there is the issue of the language change with the insurance issues, the three issues are primarily economic in nature. In bargaining (and arbitration) economic issues normally are inter-related and are dealt with as a package. This case is no exception. How much an employer increases its employees' wages is usually directly related (usually inversely) to how much it increases its spending on benefits for the employees.

This is an important, relevant criterion. It will receive substantial weight.

Changes

The parties mention little about any changes that have occurred during the pendency of the arbitration proceedings. However the Association mentions the changes in the Ripon economy since the onset of the negotiation process between the parties. Therefore, this criterion also has some relevancy and will receive a little weight.

Other Factors

No other factors relating to the economics are mentioned by the parties or seem relevant for looking at the reasonableness of the final offers.

Summary

In summary, in determining whether the parties' offers are reasonable on the economics, the following seven criteria have been found relevant: stipulations, interest and welfare of the public, comparisons with other teachers, comparisons with other employee groups, cost of living, overall compensation, and changes.

Imposition of Language Changes

As the Association points out at great length, arbitrators over the years have been very reluctant to impose changes, particularly language changes, on parties through the arbitration process. The Union cites numerous other arbitrators who have maintained that changes through the arbitration process should not come easy--the burden on the proposing party should be very great to show the change is justified and ought to be ordered, over the objection of the other party, by the arbitrator.

Apparently the District also agrees with this principle--in its reply brief (pp. 5-6) the Employer maintains it meets all tests suggested by the Union, even though the District believes it does not have to meet them.

I too subscribe to this long held and important arbitral principle and believe it is not in the best interest of the parties or the public for an arbitrator to order, without good cause, significant changes in contract language over the objections of one of the parties. The main reason is so that the arbitrator does not intrude into, or change significantly, the bargain relationship between the parties. The arbitration process, with all its stages and steps, is to promote bargaining and settlement. Arbitration ought to be a last resort, and ought not to be used lightly by the parties. If it becomes easy for parties to impose contract changes on each other through arbitration, certainly their bargaining relationship would suffer, but more importantly, the interests and welfare of the public would suffer.

The Union proposes this Arbitrator subscribe and utilize what might be called the "Reynolds test." This test, utilized by Arbitrator Robert Reynolds and appearing in a 1988 interest arbitration decision, consists of three elements which the proposing party must prove: 1) that the present contract language has given rise to conditions that require amendment; 2) that the proposed language may reasonably be expected to remedy the problem; and 3) that the alteration will not impose an unreasonable burden on the other party. This test, the Union maintains, should be applied whenever a party asks an arbitrator to involuntarily impose language changes.

It appears from the evidence provided by the parties that the Employer subscribes, if not totally, then in part, to the principles outlined above in the "Reynolds test."

I agree with parties that the "Reynolds test" can provide a framework by which to evaluate the parties' offers on the insurance language. Therefore, I adopt this test and will use it in this case. The three-pronged test consists of proof that: 1) the change is required; 2) the change will remedy the problem; and 3) there is no unreasonable burden.

This test will be implemented under the following:

1) all three of the criteria must be passed in order for the test to be passed and the proposed language found reasonable.
2) "remedying the problem" must include a close look at the proposed language to see if it is clear, concise, unambiguous and that it matches the intent of the proposing party.
3) as suggested by the parties, an "unreasonable burden" can be offset or diminished by a "buy-out" or "quid pro quo."

Clarification of Issue

The Union in itsbrief claims that the District is attempting to make major changes from the status quo in the parties' contract. The District maintains that its language constitutes no change in the status quo, and that in fact the Union's offer seeks to use a percentage figure to calculate a dollar amount which has not been done previously.

Because the insurance language issue is a crucial issue in this arbitration decision and award, it will be important that the issue is clear. What is unclear at this point, based upon the claims of the parties immediately above, is whether changes are being proposed by one or both parties. A relevant question here is whether the Reynolds test should be applied to one or both offers.

To review briefly the positions of the parties, the Employer proposes dollar amounts for the two years with the second year calculated at 120% of the first year's premium. (The same method is used for dental insurance but 105% is used to calculate the dollar amount.) In addition, the District adds the words "up to" before each of the dollar amounts and drops language relating to how the Employer's contribution will be calculated if the premium is unknown. The Association proposes the same dollar amount for the first year as the District but inserts the words ".95 of the 1990-91 family monthly rate (expressed in dollar amounts)" in lieu of a dollar amount in the second year. (The same method is used for the dental insurance but .9138 is used.)

It would appear that both parties are proposing changes in their contract. Both parties are adding words that appear to change their contract: the Employer's "up to" words and 20% capping concept, and the Association's .95 and .9138 percentages calculation figures rather than dollar amounts. Are both parties proposing changes?

It is clear to me that the District's insurance language is indeed a change in the status quo in at least two ways. First, the "up to" language did not appear in previous contracts and does change the meaning of the dollar amount that appears following the words. Previously, the flat dollar amount was a precise amount. Now, if the words "up to" are added, the amounts become variable.

Second, the District in the second year is proposing to "cap" the amount of increase in Employer premium contributions at 20%, effectively decreasing the ratio of the contribution of the District. There is no evidence that the parties have ever used such a method of calculating a cap on increases, and perhaps more importantly, that they ever agreed to even capping increases in the first place. Thus, I find the District's proposed language _is_ a change in the status quo.

A stickier question is whether the Association's offer constitutes a change. It could be argued (as is done by the District) that the Association is also proposing a change in the status quo. That using a percentage figure to calculate a dollar amount is a change in a well established past practice of bargaining over dollar amounts to which the Employer has not in the past, and would never in the future, agree. To properly analyze whether or not the Union is proposing a change, it will be necessary to look closely at the past practice of the parties.

It is a fact, as revealed in the exhibits submitted by the parties, that every contract back to 1980-81 contained dollar amounts to reflect the Employer's contribution to the health and dental premiums. Employer Exhibits 61-67, which are excerpts from the parties contracts back to 1980-81, clearly show the contribution amount in dollar amounts. Since a main contention of the District is that the Union's offer breaks past practice because the parties always bargained over dollar amounts, it will be important for the Arbitrator to see if the record can substantiate this claim of the Employer. Since the parties have not provided any specific testimony as to how they bargained these amounts, I will need to try to glean it from the exhibits and briefs.

Employer Exhibit 68-77 contains historical data related to the health insurance premiums, the percentage of Board contribution, and the cost to the District of these contributions for each year 1980-81 through 1989-90. These data clearly show that for the years 1980-1984 (four years) the percentage amounts varied from 92% to 96%. Based on this, although not conclusive, I think it is reasonable to conclude that the parties were probably negotiating dollar amounts.

Not always, but as a general rule, when parties negotiate dollar amounts they talk in terms of even amounts. When they negotiate percentages, they tend to end up with uneven amounts. Something which supports the contention that the parties bargained dollar amounts in the early years is that three of the four years the amounts placed in the contract were exact amounts ($84.00, $125.00 and $137.20).

But the data for the years 1984-85 through 1989-90 show a different story. In these years the percentage stays constant and the dollar amount in every year is an uneven amount. The Board may actually believe it was bargaining over dollar amounts all these years. But, if this is true, it is hard to understand why such odd figures (which all consistently just happen to equal 95% for health and 91% for dental) appear in their contracts. While not absolutely conclusive, these data certainly are persuasive in my suspicion that the parties have been using a percentage to calculate the dollar amount in the recent years.

By itself, this speculative analysis would be very suspect, if it were not for what the parties did in their contract during the last bargain.

The Employer, in its brief (pp. 44-45) states that the Arbitrator needs to understand what the parties did when they negotiated their last contract (1986-89). In looking over the clause in the master agreement (Union Exhibit 1) the crucial sentence reads: "Teachers who are eligible for family benefits as determined by the insurance contract are eligible to have $159.51 (86-87); $208.28 (87-88); $257.35 (88-89) per month paid by the School District towards the cost of a family plan--said amount reflecting recent years' proportions for Board shares." It would appear that indeed, as the Employer argues, that the parties negotiated dollar amounts, and that the phrase "...--said amount reflecting recent years' proportions..." is a descriptive statement only. And, in this context, the Employer is right, there really is nothing "prospective" about the statement which would bind the District to percentage increases in the future.

However, the Employer goes on to say:

> "In the parties' last three year Agreement covering 1986-87 through and including 1988-89, the parties agreed that the health and dental insurance coverage would remain stated in dollar amounts. The 1988-89 Board contribution was to be stated in dollar amounts using the recent Board proportion of payment. [citations] Also, the parties inserted a clause in the Master Agreement on health insurance that inserted the dollar amounts for 1986-87 and 1987-88 years and left open the 1988-89 year with the proviso that the dollar amount would be contributed by the Board at 'an amount reflecting recent years' proportions for Board shares.' [citations]" (Employer Brief, pp. 44-45)

This means that immediately following settlement, had the contract been typed up it would have probably looked like this: "Teachers who are eligible for family benefits as determined by the insurance contract are eligible to have $159.51 (86-87); $208.28 (87-88); _______ (88-89) per month paid by the School District towards the cost of a family plan--said amount reflecting recent years' proportions for Board shares." This is because, as the Employer implies, the parties didn't know what the premium was for the third year.

I am supposing what the parties did then. Upon receiving the new premium amount, they applied "the recent years' proportions" (.95 for health insurance and .9138 for dental insurance) to arrive at the dollar amounts which were then placed in the contract. This is a very important and crucial bit of information because it goes to the heart of how the parties, in their most recent agreement, handled unknown insurance premiums. It also implies that the first year amount could have been established by the same method--applying a percentage to determine a dollar amount.

Based upon this, I believe it is very probable that the parties used a percentage to calculate the dollar amount that appears in their agreement, and moreover, when faced with an unknown premium amount, they have a bargained-over and agreed-upon method to calculate the contribution amount when the premium ultimately becomes known.

But the question remains, does the Association's offer constitute a change in the contract? Well, technically it does, because no other previous contract contained that precise language. But in actual practice, I am not convinced that the Union's offer in any way changes what the parties did in their last bargain, nor in essence what the parties did during the five previous contracts.

Another important issue that is related to this question is how the parties would implement the Union's proposed language. If they did what I believe they did in their previous contract (replacing the blank with the dollar amount), they would probably proceed this way: 1) calculate the dollar amount of Employer contribution; 2) replace ".95 of the 1990-91 family monthly rate" with the dollar amount; and 3) strike "(expressed in dollar amounts)." This would result in contract language exactly as it appeared (except for differences in dollar amounts) in their previous contract. If this is what the Union's proposal implies, and it is the intent of the Union to proceed in this fashion, the Association's offer is essentially consistent with past practice. And I believe the parties would have to proceed in this fashion given the mandate in the Union's language: "expressed in dollar amounts." The final version of the 1990-91 contract then would contain only dollar amounts, but would probably still contain the phrase: "--said amount reflecting recent years' proportions for Board shares" (which, if agreeable with both parties, could drop out).

So, I think the Union's language offer does not really constitute a change of substance, and, further, that it is consistent with the past practice of the parties. Based on this, I find it will not be necessary to apply the "Reynolds test" to the Union's insurance language proposal.

ANALYSIS AND OPINION

In this section I will discuss the two main questions in this dispute (Economics and Imposition of Language Change) using the tests and criteria described above.

Economics

As indicated in the discussion above, determination of the reasonableness of the issues utilizing the seven relevant criteria will proceed by combining the wages issue with the economic portions of the health and dental insurance issues. Each criteria will be discussed separately.

Stipulations

In looking over the issues the parties agreed to prior to arbitration, it appears these stipulations a fairly balanced--that is, neither party seems to have gained or lost a great deal.

On this criterion both offers are reasonable.

Interest and Welfare of the Public

The District makes five basic points about the Union's offer under this criterion: 1) Ripon allocates more money for education, including teacher salaries and benefits, than the comparable districts resulting well above average pay and benefits, but more importantly, the highest comparison cost of all the comparable school districts; 2) there is no need to raise teacher salaries because there is an adequate supply of most teachers; 3) the Ripon School District has a very stable teacher work force--teachers are not leaving the district because of low pay; 4) while the farm economy seems to be improving, it is too early to say whether Ripon area farmers have recovered fully from the terrible economic beating they experienced in the last decade and 5) property tax relief can only come from spending restraint, which here means a lower salary increase for the Ripon teachers.

It is the Association's position that the interests and welfare of the public will not be served by the Arbitrator imposing the Employer's language change on the teachers of the Ripon school district.

The Union's concerns about the effect of an imposition of an unwanted language change by the Arbitrator is countered by the District's concerns about the increasing taxes in the Ripon school district. Each presents a different interest of the public upon which arbitration may have an impact.

As I indicated above, I think it is important for arbitrators to very carefully and reluctantly approve and order unilaterally proposed changes in contract language. The Association's offer is reasonable on this point.

As to the interests of the tax-paying public of Ripon, it is probably true that a lower salary settlement might signal budget restraint. But with the total package differential between the two offers only about 1%, I wonder how much actual tax savings an average taxpayer would realize. On this point, the Employer's offer is somewhat more reasonable.

On the criterion of the interests and welfare of the public, the Union's offer is slightly favored.

Comparisons with Other Teachers

The Association, after eliminating Hortonville from the comparable list for 1989-90, makes four basic comparisons: average salary, dollars per returning teacher increases, percent increases of dollars per returning teacher, and dollar differences from average benchmarks. First, the average salary data for 1988-89 show Ripon in the middle but $959 below the average salaries of those two districts. Over the two years of the contract (89-90 and 90-91) the Association's offer barely holds its own--improving only $33 over the two years. The District's offer however declines a substantial $546 during the two years. On the dollars per returning teacher increases comparison, the Union's offer reflects a two-year cumulative difference of +$28, while on the other hand, the District's salary proposals have a cumulative difference of -$262. Both final offers show an improvement over the two-year period on the percent increases of dollar per returning teacher, but the Union's is more reasonable at only 29% above the average while the District's offer is 74% below the average. On the dollar differences from average benchmarks both offers fall essentially between the two other districts, but below the average of the settled benchmarks, and in some categories the District's offer benchmark slips below Waupaca in the ranking. And finally, the Association maintains that its final offer does a better job of spreading the increases throughout the salary schedule than does the Employer's offer. Based on these comparisons, the Union submits that its offer is preferred.

The District, including Hortonville in 1989-90 in its comparisons, argues that the bottom line is that the District's offer better matches the prevailing settlement trend both in terms of "salary only" and "total package" increases. In 1989-90, the Board's final offer, as shown in Table III (Employer brief, p.18), is closer to the average both in terms of the salary only increase and total package increase. In 1990-91, while the union's offer is slightly preferable on the salary only basis, the total package comparisons show the District only $18 below the dollar average and exactly equal to the percentage average. The Board believes that what tips the scale to its final offer is the fact the no other total package settlement comes close to the high Association demands in Ripon. Based upon Board Exhibit 55, the Board's offer is preferred by being superior to the Union's offer in 25 of 28 cases of dollar and percent increases on the seven salary schedule benchmarks. Not only is the District's offer closer to the settled dollar and percent increase, but it is also above the average comparable increase in eight out of fourteen dollar increases on the benchmarks. The Board maintains that this evidence compels the Arbitrator to select its offer as more favorable.

Since the Union excludes Hortonville from its comparisons in 1989-90, the Association's information really cannot be used.

Turning to the District's exhibits and charts, it appears the Employer's offer is closer to the dollars and percent average increases on the salary benchmarks. Employer Exhibit 55, as pointed out by the District, does show the Board's final offer to be closer to the settled

APPENDIX "B"

RECEIVED
OCT 16 1989
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

FINAL OFFER OF THE RIPON SCHOOL BOARD

OCTOBER 10, 1989

Note: All provisions of the previous Agreement shall continue in the successor Agreement except for any tentative agreements reached and the final offer below.

1. Salary Schedule

   1989-90 Salary Schedule - See attached.
   1990-91 Salary Schedule - See attached.

2. Health Insurance - Page 34

   Delete the second sentence and insert the following:

   "Teachers who are eligible for family benefits as determined by the insurance contract are eligible to have up to $314.64 per month during 1989-90 and up to $377.58 per month in 1990-91 paid by the School District towards the cost of a family plan."

3. Dental Insurance - Page 35

   Delete the second sentence and insert the following:

   "Teachers who are eligible for family benefits as determined by the insurance contract are eligible to have up to $43.47 per month in 1989-90 and up to $45.64 per month in 1990-91 paid by the School District towards the cost of a family plan."

BB
10/10/89

g56 CORRECTED!

Board Costout of Board Final Offer # _M_3__
(Cocurricular,Fxd.$ Ins. Increases Incl.)

PER MEMBER YIELD 10-11-89 "RUN" % INCREASE IN BD COSTS

********************** **********************

SALARY ONLY 1493.06 SALARY ONLY .056936737

TOTAL PKGE. 2422.46 FINAL COSTOUTS TOTAL PKGE. .065002995

(Fxd. Bd rate on known Ins. Hike)

G56 RIPON SALARY SCHEDULE CALCULATIONS FY 90

GRAND TOTAL 3013309.72 TOTAL DIFF= 108555.52

BASE ADJ.= 775.00 BASE DIFF.= 84258.00

SEXTANT A=	658.00	SEXTANT D=	768.00	
SEXTANT B=	761.00	SEXTANT E=	867.00	
SEXTANT C=	881.00	SEXTANT F=	1004.00	SXT. DIFF.= 16959.42

INCREASE DIF.BET.LANES (LANE DIFFERENTIAL)

B.....B+12=	30.00	(397)	
B+12..B+24=	30.00	(397)	
B+24.....M=	55.00	(935)	
M.....M+12=	30.00	(397)	
M+12..M+24=	30.00	(397)	LANE DIFF.= 7338.10

YR.EXP.	BA	BA+12	BA+24	M	MA+12	MA+24
0.00	19095.00	19492.00	19889.00	20824.00	21221.00	21618.00
0.50	19424.00	19821.00	20218.00	21208.00	21605.00	22002.00
1.00	19753.00	20150.00	20547.00	21592.00	21989.00	22386.00
1.50	20082.00	20479.00	20876.00	21976.00	22373.00	22770.00
2.00	20411.00	20808.00	21205.00	22360.00	22757.00	23154.00
2.50	20740.00	21137.00	21534.00	22744.00	23141.00	23538.00
3.00	21069.00	21466.00	21863.00	23128.00	23525.00	23922.00
3.50	21398.00	21795.00	22192.00	23512.00	23909.00	24306.00
4.00	21727.00	22124.00	22521.00	23896.00	24293.00	24690.00
4.50	22056.00	22453.00	22850.00	24280.00	24677.00	25074.00
5.00	22385.00	22782.00	23179.00	24664.00	25061.00	25458.00
5.50	22765.50	23162.50	23559.50	25097.50	25494.50	25891.50
6.00	23146.00	23543.00	23940.00	25531.00	25928.00	26325.00
6.50	23526.50	23923.50	24320.50	25964.50	26361.50	26758.50
7.00	23907.00	24304.00	24701.00	26398.00	26795.00	27192.00
7.50	24287.50	24684.50	25081.50	26831.50	27228.50	27625.50
8.00	24668.00	25065.00	25462.00	27265.00	27662.00	28059.00
8.50	25048.50	25445.50	25842.50	27698.50	28095.50	28492.50
9.00	25429.00	25826.00	26223.00	28132.00	28529.00	28926.00
9.50	25809.50	26206.50	26603.50	28565.50	28962.50	29359.50
10.00	26190.00	26587.00	26984.00	28999.00	29396.00	29793.00
10.50		27027.50	27424.50	29501.00	29898.00	30295.00
11.00		27468.00	27865.00	30003.00	30400.00	30797.00
11.50		27908.50	28305.50	30505.00	30902.00	31299.00
12.00		28349.00	28746.00	31007.00	31404.00	31801.00
12.50			29186.50	31509.00	31906.00	32303.00
13.00			29627.00	32011.00	32408.00	32805.00
13.50					32910.00	33307.00
14.00					33412.00	33809.00

BB 10/11/89

File: I 10 13 90A

10/31/89

BASE	20101.00	BA INC 1	709.00	MA INC 1	828.00
LANE INC	405.00	BA INC 2	814.00	MA INC 2	932.00
MA INC	955.00	BA INC 3	941.00	MA INC 3	1076.00

PER RETURN

BASE DIFFERENCE 912 1750

Experience		BA	BA + 12	BA + 24	MA	MA + 12	MA + 24
e	0.0	20101	20506	20911	21866	22271	22676
e	0.5	20456	20860	21266	22280	22685	23090
e	1.0	20810	21215	21620	22694	23099	23504
e	1.5	21164	21570	21974	23108	23513	23918
e	2.0	21519	21924	22329	23522	23927	24332
e	2.5	21874	22278	22684	23936	24341	24746
e	3.0	22228	22633	23038	24350	24755	25160
e	3.5	22582	22988	23392	24764	25169	25574
e	4.0	22937	23342	23747	25178	25583	25968
e	4.5	23292	23696	24102	25592	25997	26402
e	5.0	23646	24051	24456	26006	26411	26816
e	5.5	24053	24458	24863	26472	26877	27282
e	6.0	24460	24865	25270	26938	27343	27748
e	6.5	24867	25272	25677	27404	27809	28214
e	7.0	25274	25679	26084	27870	28275	28680
e	7.5	25681	26086	26491	28336	28741	29146
e	8.0	26088	26493	26898	28802	29207	29612
e	8.5	26495	26900	27305	29268	29673	30078
e	9.0	26902	27307	27712	29734	30139	30544
e	9.5	27309	27714	28119	30200	30605	31010
e	10.0	27716	28121	28526	30666	31071	31476
e	10.5		28592	28996	31204	31609	32014
e	11.0		29062	29467	31742	32147	32552
e	11.5		29532	29938	32280	32685	33090
e	12.0		30003	30408	32818	33223	33628
e	12.5			30878	33356	33761	34166
e	13.0			31349	33894	34299	34704
e	13.5					34837	35242
	14.0					35375	35780

File: I 10 13 89a

Glimilk 10/31/84 Pa

BASE	19189.00	BA INC 1	677.00	MA INC 1	788.00
LANE INC	385.00	BA INC 2	780.00	MA INC 2	889.00
MA INC	915.00	BA INC 3	901.00	MA INC 3	1028.00

PER RETURN

BASE DIFFERENCE 869 1750

Experience	BA	BA + 12	BA + 24	MA	MA + 12	MA + 24
e 0.0	19189	19574	19959	20874	21259	21644
e 0.5	19528	19912	20298	21268	21653	22038
e 1.0	19866	20251	20636	21662	22047	22432
e 1.5	20204	20590	20974	22056	22441	22826
e 2.0	20543	20928	21313	22450	22835	23220
e 2.5	20882	21266	21652	22844	23229	23614
e 3.0	21220	21605	21990	23238	23623	24008
e 3.5	21558	21944	22328	23632	24017	24402
e 4.0	21897	22282	22667	24026	24411	24796
e 4.5	22236	22620	23006	24420	24805	25190
e 5.0	22574	22959	23344	24814	25199	25584
e 5.5	22964	23349	23734	25258	25644	26028
e 6.0	23354	23739	24124	25703	26088	26473
e 6.5	23744	24129	24514	26148	26532	26918
e 7.0	24134	24519	24904	26592	26977	27362
e 7.5	24524	24909	25294	27036	27422	27806
e 8.0	24914	25299	25684	27481	27866	28251
e 8.5	25304	25689	26074	27926	28310	28696
e 9.0	25694	26079	26464	28370	28755	29140
e 9.5	26084	26469	26854	28814	29200	29584
e 10.0	26474	26859	27244	29259	29644	30029
e 10.5		27310	27694	29773	30158	30543
e 11.0		27760	28145	30287	30672	31057
e 11.5		28210	28596	30801	31186	31571
e 12.0		28661	29046	31315	31700	32085
e 12.5			29496	31829	32214	32599
e 13.0			29947	32343	32728	33113
e 13.5					33242	33627
e 14.0					33756	34141