STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of the WOODRUFF-ARBOR VITAE JOINT SCHOOL DISTRICT NO. 1 To Initiate Arbitration Between Said Petitioner and UNITED LAKELAND EDUCATORS	Case 28 No. 42780 INT/ARB - 5377 Decision No. 26268-A

APPEARANCES:

Roland J. Rutlin, Mulcahy & Wherry, S.C., on behalf of the Woodruff-Arbor Vitae Joint School District No. 1

Gene Degner, Director WEAC UniServ Council No. 18, on behalf of the United Lakeland Educators

INTRODUCTION

On January 25, 1990, 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 Woodruff-Arbor Vitae Joint School District No. 1 (hereinafter the "Board", "District" or "Employer") and United Lakeland Educators (hereinafter the "Association", "Union" or "Teachers"). On March 16, 1990, 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 April 28, 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?

The Issues·

This arbitration involves three unsettled contract provisions. The parties are not in agreement on wages or on language for Early Retirement, where conflicting proposals have been made by both parties. The third issue involves health insurance where the District has proposed new contract language while the Association is content with the present provisions. This issue is of primary importance to the parties as reflected in their exhibits and briefs and will be discussed more fully than the first two areas of contention.

WAGES

The District's Position:

The District has made a wage offer in excess of that requested by the Union. The purpose of this higher offer is to induce the Association to accept changes in other contract provisions and, in these proceedings, to convince the arbitrator of the over-all reasonableness of the Board's final offer.

In evidence and argument the District supports its position that its wage offer is more than generous when compared to increases granted and wage scales in place in comparable employment units. It is intentionally structured to benefit the particular needs of this bargaining unit. The teachers here are predominantly in the upper brackets of the wage schedule and thus they will benefit more (and the District will pay more) than might be true in a unit where the members are more equally distributed across the schedule.

And, by weighting the increase in the second year of the contract, the District has to a large extent reduced the immediate impact of any contribution towards health insurance premiums. Even if insurance costs were to increase by 33% in the second year, all the teachers on the District's staff would receive a net wage increase in that year.

The Board feels its wage offer is reasonable in light of the statutory criteria and grants the Association sufficient compensation to justify alterations in contract language regarding health insurance premium contribution.

The Association's Position:

The Association understands that the District has made a wage offer in excess of that requested by the Teachers. Nonetheless, it rejects the Board's assertion of adequacy on two grounds.

The first ground regards the District's reading of comparables. The Union's analysis is that the offer would not result in a substantive beneficial impact upon its members' position when compared to comparable employee groups.

The second ground is more important to the Association. It does not accept the Board's statement that its offer on wages is sufficient to compensate the Teachers for the institution of cost-sharing of insurance premiums. Were that offer sufficient, the Association would have accepted the language change. The Union believes that it has the right and duty to judge that adequacy and this offer does not pass muster. It would prefer the funds contained in the District's offer be allocated to a benefit it wants, rather than to a benefit it does not desire.

Discussion:

The wage offers will not decide this arbitration. Both offers might be found reasonable and controlling if it were. Both are in general line with increases bargained in comparable units. Both satisfy the statutory criteria. Standing alone as an issue, the Union's lower offer would be preferred as being closer to the CPI since both exceed it. There can be no doubt that the Association would benefit more than the District if the Employer's offer were accepted. Therefore, judging the issue solely on the basis of benefit to the Teachers, the Board's wage offer would be preferred.

VOLUNTARY EARLY RETIREMENT

The Association's Position:

The Association would change only one paragraph in the present contract, leaving the balance of the contract's language regarding Voluntary Early Retirement in place.

The change is needed because of a change in the State of Wisconsin statutory language during the time covered by the present contract. Section XX E of the present contract is the only section directly affected by the statutory change and, it appears, both parties believe that this requires amendment in this agreement. The Association believes its suggested language incorporates the expired contract language and thus does no more than leave in place the purpose and intent of the expired statutory terms. It therefore affirms that its suggested terminology does not really constitute an alteration in present language. It describes the benefits granted without the reference to a specific statute that is no longer in force.

Based upon the fact that its proposed language would subject the Board to no more financial exposure than it would have had had the statute been re-enacted or prolonged, the Union asks the arbitrator to accept its final offer language relating to Voluntary Early Retirement.

The District's Position:

It is the Board's position that its language reflects the status quo in this area subsequent to the change in the statute that occurred after the present contract went into effect. It argues that the Union's proposed language represents a change in that status and that it has failed to justify a return to presently obsolete terminology.

Furthermore, this same language is presently in place in comparable districts, has not been subject to grievance procedures on the part of the Association, and reflects properly the present qualification for early retirement which is set forth in the statute.

It also argues that the "savings clause" contained in its Final Offer will allow flexibility of interpretation should the statute be changed once again.

The health and dental provisions are virtually identical to those contained in the present labor agreement.

Discussion:

The present contract provides a special benefit to teachers eligible to take early retirement if they wait until they have reached age 60. If they wait till that age, the District would provide them with an annuity which would have the effect of providing the retiree with a retirement benefit equal to that which they would have enjoyed had they waited until age 65 to retire. This benefit was not available to teachers with less than 15 years consecutive years of service in this school district, nor would it be available to persons eligible to retire who were under 60 years of age. Teachers who desired the benefit had to apply for it in a timely manner and the Board had the right to deny requests for "any legitimate reason." Payments by the District to the State Teachers Retirement Fund would be limited to three years.

It is this provision of the contract, contained in Section XX (E) that was affected by the expiration of the statute during the term of the contract.

The present statute has expanded the early retirement eligibility. Any teacher who qualified under the so-called "Rule of 87" may obtain a retirement benefit from the State of Wisconsin Department of Employee Trust Funds (ETF).

The District's Final Offer would limit eligibility in only one respect· the teacher must have taught in the district for not less than 15 years.

The Association's Final Offer would require the Board to recognize age 62 as the normal retirement age. If an eligible teacher's request for early retirement is approved by the Board, ETF will compute the annuity to which that teacher is entitled at the date of retirement and that annuity to which the teacher would have been entitled had he or she waited until age 62 to retire. The Board would be required to make up the difference between those annuities either by means of a payment or payments to the ETF or by purchase of a private annuity.

It is impossible to evaluate the Final Offeres without reference to the present Wisconsin Statute. As the District's Final Offer indicates, any person elibigle for early retirement under the statute would be able to "take" it, would continue in the District's health and dental insurance plans until age 65, and would receive a contribution towards the insurance premium cost, if that person had been in this school system for not less than 15 consecutive years.

The Union's Final Offer raises problems. It appears that Section XX might be found to apply only to those teachers considered "eligible" under XX B. That is, only teachers who had obtained age 60 and had served in the system for 15 consecutive years. Those persons would be entitled to an annuity equal to that to which they would have been entitled at age 62 and to the health and dental insurance coverage and premium assistance.

If that is a correct reading, then those who retire when made eligible under the statute but who are not eligible under Section XX B would not be entitled to the age 62 annuity and would forego the benefits regarding health and dental insurance available under Section XX F because they are not receiving early retirement benefits "under this provision."

Where uncertainty exists, an arbitrator must be cautious before approving language. One of the objectives of the entire interest arbitration process is to avoid uncertainty such as that contained in the Association's Final Offer.

For this reason, the District's language regarding Voluntary Early Retirement is to be preferred.

INSURANCE PREMIUM CONTRIBUTIONS

The issue here is simple. The Board wants to institute a premium payment cap. The Union wants to retain the present contract language, which provides for full payment of health and dental insurance premiums by the District.

Rather than set forth the positions of the parties separately, this award will respond to the arguments put forth on either side as the discussion proceeds.

The District is requesting a change in contract language. In making that request, it is clear they recognize the general reluctance of arbitrators to impose language changes through the arbitration process, preferring that such vital issues be agreed upon by the parties at the bargaining table. At the same time, arbitrators have understood that resolution

through arbitration is sometimes needed and thus have accepted the responsibility for approving language changes where needed and where the moving party has borne the burden of convincing the arbitrator of the necessity of its final offer language.

Frequently, the parties make "quid pro quo" arguments in support of their position. The moving party will argue that its final offer, read as a whole, constitutes a proposal of such generosity that any reasonable party would accept the language in order to receive the benefits. It is for this reason that requests for language change are frequently coupled with other final offer sections that would not normally be made. An example here is the offering of a higher wage package than the Union has requested coupled with the proposed language change.

For its part, the opposing party dismisses the other side's offer as a mere bagatelle, asking that gold be exchanged for dross.

Comparisons are hard to make when dealing with language issues. Money is money and has the same general meaning in every district whether comparable or not. Such is not the case in health care. The health delivery system varies widely in our state. Policies vary as to their terms. Costs vary as to the benefits offered and group use experience. Moreover, it is not unusual to find a number of carriers serving the employees of a single employer. And, the needs of each employee group may vary widely. Workers who are subject to injury or disability, such as highway or sanitation workers, want a different policy from office workers who may be looking for protection against long term illness such as cancer or heart problems. A unit consisting primarily of young women may want maternity benefits while a unit of relatively highly-paid persons may accept a higher deductible in order to reduce costs and increase other benefits. In at least one district, the workers felt strongly the benefit derived from an HMP, where they could select their personal physician, was more important than any other criterion for evaluating the employer's offer, which involved an HMO.

The difficulty in applying the statutory criteria extends to evaluation of a quid pro quo. The value of a health and dental insurance plan may be contained in non-monetary provisions of the plan, as was discussed above. Because of this, and because arbitrators have historically been reluctant to impose changes in contract language upon the parties, preferring instead that such alterations be settled at the bargaining table, this arbitrator has chosen to impose a more objective standard upon the party requesting the change. Therefore, the District shall have the burden of sustaining the following test:

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

2. Does the proposed contract language remedy the situation?

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

The present contract language is not responsible for the rapid increase in health insurance costs in the recent past. These costs have been rising owing to forces far beyond the scope of this or any other bargaining agreement. The present contract does give the employer the right to attempt to keep these costs in line by changing the insurance carrier so long as substantially equal benefits are retained. It now feels that this cost-containment method is unsatisfactory and is willing to give that right up in exchange for a shared contribution from the employee.

The Association asks to continue the present language feeling that, as the District stated in its brief, adoption of cost-sharing would give the Board an advantage in future labor negotiations . . . an advantage the Union is unwilling to give voluntarily.

It sometimes becomes possible to justify a change in language by examining comparables. The District correctly states that most, but not all, comparable employees have premium caps of some sort in their contract. It points out that the support staff here has agreed to accept contribution toward premiums and argues that, as an internal comparable, its position ought to be supported.

No matter which set of comparables is examined, it is clear there is no unanimity on this issue. What is apparent is that the contracts in every case appear to have been settled voluntarily by the parties. This is true of the support staff as well and is the preferred manner in which such important issues ought to be settled.

Where the reason for the cost increase occurs outside the corners of the agreement and when there is less than unanimity among comparables all of whom have voluntarily resolved this question, it is difficult to find that the contract language is such that change is required.

If one were to agree that the present contract language gives rise to conditions that require change because cost-sharing is needed, then the proposed language would be acceptable. If, on the other hand, the condition is rapidly increasing costs, it is hard to find that the District's proposed language will resolve the condition. The very moderation of its proposal reveals that during the time of this contract, the reduction in cost to the District will be non-existent in the first year and only modest in the second.

The role of the arbitrator does not extend to bargaining regarding future contracts. The District is of course free to raise this language issue at any time before this contract expires, but it is not for the arbitrator to provide either party with language alteration that will change the nature of those future negotiations.

The primary rationale behind the Board's Final Offer is cost reduction. For the reasons set forth above, the proposed contract language alone will not remedy the situation during this contract term.

Having found that the District has failed to bear its burden under the first two criteria, it may appear inconsistant to find that it has offered language which would not impose an unreasonable burden upon the Association's members.

In and of itself, contribution language does not impose an unreasonable burden upon an employee. If it did, there would be no such language in collective bargaining agreements anywhere. And the proposed language does not appear to seek to cure the problems attendant in health premium costs at the sole expense of the Association's members. Such a proposal might be found to be unreasonable. But here the proposed contract language does nothing more than ameliorate the expected burden of future cost increases.

Furthermore, the District's Final Offer gives back to the Union an important cost-control provision. By requiring a benefit level equal to that in the present contract from future carriers, the Board would no longer be able to shift to a policy that provided substantially equivalent coverage at a lower cost. The Union has argued that this is not a valuable provision, but in point of fact, the District has changed carriers for the purpose of reducing costs without dispute and has thus received a benefit it is willing to give up in these proceedings.

In using the three criteria set forth above, it is necessary for the moving party to prevail in all three areas, and the fact that one is found to satisfy the test does not result in the test being satisfied. For that reason, the Board's language must be rejected. Because the parties are agreed that the health insurance issue is the primary issue in dispute between the parties, the Union's Final Offer is accepted.

DECISION

The language contained in the Final Offer submitted by the United Lakeland Educators shall be incorporated in the labor agreement between the parties.

DATED this 12th day of October, 1990.

ROBERT L. REYNOLDS, JR., Arbitrator