Arbitration	*	
of	*	
RANDOM LAKE EDUCATION ASSOCIATION	*	
and	*	
SCHOOL DISTRICT OF RANDOM LAKE	*	
re	*	ARBITRATION AWARD
Final Offer Arbitration of contract for '89-'90 & '90-'91 school years. WERC Case 17, No. 42947, Decision No. 26390. INT/ARB-5408	*	Decision No. 26390-A

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INTRODUCTION

Negotiations between the Random Lake Education Association, hereinafter called the Association, and the School District of Random Lake, hereinafter called the Board or the District, commenced on April 27, 1989. Failing to reach agreement, the Association filed a petition for arbitration on October 12, 1989. After an investigation on January 18, 1990, by a WERC staff member, the WERC found that an impasse existed under Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, and on March 29, 1990 issued an order initiating arbitration. The parties selected the undersigned from a panel submitted to them by the WERC and, in an order dated May 3, 1990, the WERC appointed the undersigned as arbitrator.

No public hearing being requested, the arbitrator met informally with the Board and the Association on July 16, 1990. The Board was represented by Michael Spector, attorney of Quarles & Brady; the Association was represented by Debra Schwoch-Swoboda, UniServ Director of the Cedar Lakes Educators Council, WEAC. Exhibits and testimony were presented and written post hearing briefs were filed on August 28, 1990 and rebuttals on September 7, 1990.

ISSUES

The final offers of the District and the Association incorporated all provisions of the 1988-89 collective bargaining agreement as modified by the tentative agreements except for wages and insurance. The District final offer on salary and insurance provided:

1. Salary:

   For 1989-90, increase the 1988-89 salary schedule by $1775 average per returning teacher.

   For 1990-91, increase the 1989-90 salary schedule by $1800 average per returning teacher.

2. Health and Dental Insurance

   A. 1989-90 - Status quo

   B. 1990-91 - Change language to provide that the Board shall pay ninety-five percent (95%) of the employee's health and dental insurance premiums, single or family as appropriate.

The Association final offer provided:

1. Salary:

   Increase the 1988-89 salary schedule by $1850 average per returning teacher

   Increase the 1989-90 salary schedule by $1900 average per returning teacher.

2. Insurance - status quo

DISCUSSION

The arbitrator turns first to the comparability question because it is this question of which districts are comparable that, according to the last paragraph on page 14 of the Association Brief, has prevented the parties from reaching a voluntary settlement. In their numerous exhibits and extensive arguments in their briefs, the parties quoted various arbitrators in support of their respective choices of comparable districts. In particular, the

parties refer to the comparables chosen by Arbitrator Weisberger in her Random Lake August, 1986 decision (MED/ARB-3409).

This arbitrator wishes to point out that the selection of comparables by arbitrators is complicated by such factors as who has settled, was it the second year of a two year agreement, were there special factors operating in particular districts, as well as the usual criteria of size, geographic proximity, and financial status. Frequently, arbitrators select several districts common to both lists of proposed districts, simply because both sides are claiming that these districts are comparable.

This arbitrator does not feel bound statutorily or from a common sense point of view by comparables selected by other arbitrators in districts other than the one under consideration. Where a previous arbitrator has selected comparables in the same district, however, it is necessary for the current arbitrator to examine carefully whether such comparables provide the basis for use in this and future disputes.

In this instance, for several reasons, this arbitrator does not find the particular comparables chosen by Weisberger to be binding. First of all, she used only the five contiguous districts which had settled. It appears to this arbitrator from his examination of the Weisberger award that if other contiguous districts of similar size and economic characteristics had settled, she would have included them. Second, she selected all four of the districts that had been proposed by both parties. Again, it appears that if other districts had been jointly agreed upon, she would have used them.

As the Association points out in its brief (p. 9), Weisberger regarded geographic location, size and economic characteristics as important factors in the selection of comparables. This arbitrator agrees on the importance of

those factors but would point out that depending on the number of settlements that are available and that both sides regard as relevant, arbitrators may have to extend the geographic area beyond the athletic conference and to expand the size-range of districts to be considered.

Third, the advantage of limiting the comparables to five made the data more amenable to analysis. The extensive experience of both parties and the availability of computer generated data permits the generation of so much data that many arbitrators feel inadequate to the task and wonder why they ever agreed to serve as arbitrators in interest disputes of teachers. I get the impression from reading Weisberger's award that she was pleased to limit comparables to five districts and believed these were sufficient for her to render her award. As she said, "there is no need to consider other . . . comparables." (Bd. Ex. 2, p. 5).

There are two other aspects of this process of selecting comparables which are seldom mentioned by arbitrators even though they are at least sub-consciously aware of them. The first is the concept of "a pattern" and the identity of the pattern setters. Settlement by major private firms and by unions in the larger cities in Wisconsin, and to some extent elsewhere in the nation, tend to establish the patterns to which the smaller bargaining units turn for guidance. Clearly, where there are no settlements in the athletic conference or in the contiguous area, the district in the conference which settles first must look at settlement patterns set by the pattern setters.

The second factor is supply and demand. For example, when the five largest school districts in Wisconsin hire teachers they set a BA base salary which influences the base salary offered both in the suburbs around the major cities and, even if only indirectly, in the smaller districts scattered around

the state. For example, in most arbitrations in the pattern following school districts, the change in the cost of living is not taken into account separately. Instead the parties argue that other settlements reflect the changes in the cost of living and that this factor has already been taken into account. This is true, but it means, however, that in the pattern setting negotiations, cost of living had to be considered separately as a factor influencing the wage settlement.

The purpose of the preceding paragraphs is to make clear to the parties that even though this arbitrator will give great weight in this dispute to size, geographic location and economic characteristics, he regards these as proxies for the fundamental factors determining salary changes. Settlements in nearby large districts such as Sheboygan and West Bend influence settlements in nearby medium sized districts such as Port Washington, Cedarburg and Germantown. All of these, in turn influence the smaller districts in the area. Salaries and working conditions may not be the same in the smaller districts as they are in the large, but the larger ones tend to set the "pattern" determining the salary increase in the smaller schools making up neighboring athletic conferences.

Having said this, the arbitrator will work with both sets of comparables, that is, he will accept for reference purposes both the list of smaller districts in the athletic conference and the smaller contiguous districts proposed by the District as well as the medium size and larger districts in the same geographic area proposed by the Association.

Salaries:

After reviewing the salary data, the arbitrator selected Association Exhibits 26-28 as a sound place to start his analysis. These exhibits show the

ranking of the District against the Association comparables at the usual seven schedule bench marks. Under the Board offer, the ranking in '89-'90 would be the same as it was in '88-'89 at five of the bench marks and would fall by one rank at the MA min and MA 10 steps. Under the Association offer, it would be the same at three bench marks, would rise by one rank at two bench marks and would fall by one rank at two bench marks. Against the Association comparables, the Association offer maintains its relative position somewhat better than the Board proposal in '89-'90 although the Board proposal only marginally lowers the ranking of the District.

Extending the same analysis to the '90-'91 salary schedule, we find that under the Board offer, the ranking in '90-'91 would be the same as in '88-'89 at four bench marks, and would fall by one rank at three bench marks. Under the Association offer, the ranking in '90-'91 would be the same as in '88-'89 at five bench marks and would be lower by one rank at two bench marks. Again, the Association offer maintains the position of the District slightly better than that of the Board against the Association comparables.

The arbitrator turned next to Board Exhibits 20 -39 to determine the change in rankings under each offer against the Board comparables at the same bench marks. These exhibits show that the '89-'90 rankings at all of the seven bench marks is the same under the Association offer as they are under the Board offer. In both cases, the '89-'90 rankings are also the same as the '88-'89 rankings at four of the bench marks but slip two ranks at the BA Min step, slip one rank at the BA 7 step, and gain one rank at the MA Min step.

The comparisons of the '90-'91 bench marks with the '88-'89 bench marks again show that the ranking at the seven bench marks is the same under the Board and Association offers against the Board comparables. Both maintain the

same ranking against the Board comparables at four bench marks and both improve by one rank the standing of the District at three bench marks.

The arbitrator concludes from his analysis of the proposed salary increases for '89-'90 and '90-'91 against both the Board and the Association comparables, that both offers are modest and do not alter the ranking of the District appreciably against either set of comparables. The arbitrator acknowledges that both the District and the Association make further arguments---such as those showing the deviations from the means of their respective comparables---in support of their offers but believes that an analysis of the second aspect of their dispute, health insurance, may make it unnecessary to explore the wage data further.

Health Insurance:

Board Exhibit 46 provides the health insurance comparison of the District with the ten Board comparables. In '90-'91, in four of these ten districts, the employer will continue to pay 100% of the health insurance premium, in two, the employer share will fall to 97% or 96.5% of the premium, and the matter is in doubt in the remaining four which are going to arbitration with this matter in dispute. In those four disputes, the employer final offer provides for some employee pickup of a share of the premium, while, presumably (data not included in the exhibits), the union offer maintains the 100% employer payment of the premium.

Essentially, Board Exhibit 46 shows that, while employee payment of a share of the insurance premium may prevail in half of the Board comparables in the future, it does not yet do so. Unless there is other evidence suggesting that it is proper under the statute for the District's employees to now start

paying a portion of the insurance premium, the comparison with the Board comparables does not justify such a conclusion.

The arbitrator draws the same conclusion from Association Exhibit 64a which shows that in '90-'91, in seven of its twelve comparables, the employer pays 100% of the premium, while in four there is an employee pickup of a portion of the premium, and in the remaining one there is a contingent employee liability that kicks in if the premium increases by more than 10%. Therefore, on the basis of comparables alone, the Association offer is preferable to the Board offer. However, there are other aspects of the health insurance question to address.

First of all, there is the question of whether there has been abuse of the health insurance program. No evidence was raised by the Board to suggest that there is such a tendency. Furthermore, as Association Exhibit 63 shows, the Random Lake health insurance premiums are about the same as those of the Association's comparables. Second, no statistical evidence was introduced in support of the idea that employee payment of a share of the premium would dampen the increase in health insurance costs.

At the margin, it is just as conceivable that payment of a share of the premium would encourage an employee to use a benefit that he pays for rather than to discourage him from using it because it will increase his costs. Quite possibly, most people's propensity to visit a doctor will not be affected.

Also, it should be kept in mind that this method of "cost shifting" affects all employees rather than just those who incur an illness. As is pointed out in the Board brief (p. 19), the Board believes that the more effective cost shifting procedure would have been to increase the front end deductible and to institute a new front end co-pay plan. However, no Board

comparables had opted for such an arrangement so the Board turned to the premium-sharing arrangement, an arrangement which at least a minority of other districts had instituted and which was sought in arbitration by others.

The arbitrator does not believe that the Board's premium sharing proposal would dampen the increase in health care costs. In the arbitrator's opinion, costly improvements in medical technology, increases in salaries in the health care industry and the general public's demand for good health services will continue to raise health care costs as a percent of total compensation. Cost containment measures such as those already adopted and cost shifting as proposed will have, at best, a marginal impact in the opinion of this arbitrator.

To sum up this complicated health care question, the arbitrator finds that a comparison with the Board's and the Association's comparables show that the practice still prevailing is for the employer to pay 100% of the premium. Clearly, this arrangement is being challenged by employers and the picture may be different by the time that the next negotiations take place. For now, however, the dominant pattern among the public sector comparable employers is still 100% payment by the employer.

The arbitrator recognizes that there is considerable change occurring in the private sector nationally as is reflected in Board Exhibit 44 (to which the Association rightly objects because of its last minute appearance). The arbitrator believes, however, objection aside, that little weight should be accorded to the three local programs instituted by private employers who do not deal with unions.

Finally, so far as health care is concerned, the arbitrator emphasizes that, when it comes, the impact of cost shifting on health care costs probably

will be illusory. Total compensation may be unchanged because cost shifting will just decrease the proportion of total compensation attributable to health care costs born directly by the employer and increase the pressure of employees for higher salaries to cover those costs which they would then be paying directly. And, all the while, total expenditures for health care will be increasing for the reasons cited above.

Conclusion:

On the whole, the arbitrator believes that the offer of the Association is preferable to that of the Board, mainly because the Board offer contains a premium sharing arrangement for health care costs which is less common than the one proposed by the Association. Furthermore, the Board proposal represents a shift from the present arrangement and is not justified either by comparisons with the District's comparables or general arguments in support of its effectiveness.

Furthermore, the arbitrator believes that it is this difference in opinion about health care premium sharing that sent this dispute to arbitration rather than a dispute about salaries which are equitable under either proposal and which are relatively close to each other.

AWARD

After full consideration of the exhibits, testimony and arguments of the Board and the Association, the arbitrator finds that, under the criteria listed in Section 111.70(4)(cm)7., the offer of the Association is preferable to the offer of the Board and hereby selects the final offer of the Association and orders that it be implemented.

10/3/90

October 3, 1990

James L. Stern
Arbitrator