

REC'D (C) 11/15/90
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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Interest Arbitration
Between

OPINION AND AWARD

ELKHART LAKE--
GLENBEULAH SCHOOL DISTRICT

Case 19
No. 43193 Int/Arb 5465

and

Decision No. 26491-A

ELKHART LAKE--
GLENBEULAH EDUCATION ASSOCIATION

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Employer: Ellen M. MacFarlane, UniServe Director--
Kettle Moraine UniServe Council

On Behalf of the Union: William G. Bracken, Director of Employee
Relations Services--Wisconsin Association of School Boards

I. BACKGROUND

On April 27, 1989, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement, which agreement expired in June 30, 1989. Thereafter the Parties met on six occasions in efforts to reach an accord on a new collective bargaining agreement. On November 24, 1989, the Association filed the instant petition requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. Then on February 6, 1990, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by May 10, 1990, the Parties submitted to the Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. The Investigator then notified the Parties that the investigation was closed and advised the Commission that the Parties remained at impasse.

Next, the Parties were ordered by the Commission on May 22, 1990, to select an Arbitrator. The undersigned was selected and his appointment was confirmed by the Commission on June 25, 1990. By letter the same date, the Arbitrator was notified of his selection by the Commission.

A hearing was set for August 29, 1990, and at the hearing the Parties submitted evidence. Post-hearing briefs and reply briefs were submitted. Reply briefs were received by the Arbitrator on October 25, 1990.

It should be noted that for convenience sake and with no disrespect to the Village of Glenbeulah, the District may at times be referred to as simply "Elkhart" or "Elkhart Lake."

II. ISSUES AND COSTING

The Association proposes (1) to increase each cell of the 1988-89 salary schedule by 5.1% for 1989-90, (2) to increase each cell of the 1989-90 salary schedule by 5.1% for 1990-91, (3) to maintain the status quo on Article XV (Insurance) which provides, among other things, that the Employer pays for full cost of health insurance, and (4) that "The Board will pay the cost of the Sheboygan County Education Association In-Service."

The District proposes (1) that each cell of the 1988-89 salary schedule be increased by 4.5% for 1989-90, (2) that each cell of the 1989-90 salary schedule be increased by 5.25% for 1990-91, and (3) with respect to Insurance, the District's offer is as follow:

"Effective July 1, 1990, the District shall deduct from each payment an amount equal to \$30 per month per full-time teachers with a family premium and \$10 per month per full-time teacher with a single premium. For part-time teachers, the District shall similarly deduct a pro-rated amount of the aforementioned amounts."

The Parties' costing is virtually identical on a per teacher increase basis. The Board's costing--which the Arbitrator accepts as workable--is as follows:

	<u>Salary Only</u>		<u>Total Package</u>	
	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
<u>Board</u>				
1989-90	1686	5.9	2615	6.9
1990-91	<u>1935</u>	<u>6.4</u>	<u>2740</u>	<u>6.7</u>
Two-Year Total	3621	12.3	5354	13.6
	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
<u>Association</u>				
1989-90	1860	6.5	2854	7.5
1989-90	<u>1900</u>	<u>6.2</u>	<u>2970</u>	<u>7.3</u>
Two-Year Total	3760	12.7	5824	14.8
<u>Differences</u>				
1989-90	174	.6	239	.6
	(A/B)	(A/B)	(A/B)	(A/B)
1990-91	35	.2	230	.6
	(B/A)	(B/A)	(A/B)	(A/B)
Two-Year Total	139	.4	470	1.2
	(A/B)	(A/B)	(A/B)	(A/B)

According to the Association, the total salary dollar difference for 1989-90 is \$8,595, and the total salary difference for 1990-91 is \$1,750, for a total salary dollar difference of \$10,345 over the two years of the contract.

The current language in the Contract concerning health insurance is as follows:

"XV. INSURANCE

- A. Medical Insurance: District offers to pay full family or single premium for Blue Cross-Blue Shield with major medical and diagnostic for all full-time teachers. For part-time teachers, the district offers a percent of the premium of full-time employed, with the teacher paying the remaining percent."

III. STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70 (4) (cm) 7, Wisconsin Statutes, as follows:

- (7) 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator/arbitrator shall give weight to the following factors:
- (a) The lawful authority of the municipal employer.
 - (b) Stipulations of the parties.
 - (c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
 - (d) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
 - (e) Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
 - (f) Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
 - (g) The average consumer prices for goods and services, commonly known as the cost of living.
 - (h) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays, and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 - (i) Changes in all of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (j) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. ARGUMENTS OF THE PARTIES (SUMMARY)

The Parties each presented extensive briefs and reply briefs. As a result, the following is a limited summary of their arguments:

A. The Association

Before addressing the merits, the Association presents arguments on the other school districts it believes to be comparable for purposes of criteria (d), (e), and (f). The Association considers the following school districts, which make up the Central Lakeshore Athletic Conference, as primary comparables: Cedar Grove-Belgium, Elkhart Lake-Glenbeulah, Howards Grove, Kohler, Northern Ozaukee, Osstburg, and Random Lake. This is supported by general arbitral considerations on comparability and two previous arbitration awards which held Elkhart Lake to be comparable to the athletic conference schools.

However, they note at the time of the arbitration hearing there were just two (2) voluntary settlements and one arbitration award in the seven athletic conference schools.¹ Consequently, they expand the comparables on the basis of geographic proximity to include other settled schools. For 1989-90 they use the districts of Brillion, Cambellsport, Fond du Lac, Hilbert, Kewaskum, Kimberly, Manitowoc, Reedsville, Sheboygan, Two Rivers, and Valders. They use Brillion, Fond du Lac, Kewaskum, Kimberly, Manitowoc, Reedsville, Two Rivers, and Sheyboygan for 1990-91. They justify this expanded set as a logic consequence of the 1986 modifications to the statute. They cite cases in support of this. The Association also submitted a group of comparables including the settlements statewide.

The Association presents its argument in the form of a step-by-step analysis of the offers in light of the statutory criteria. For a variety of reasons, the Association does not believe that the following criteria are relevant or significant to this dispute: (1) Criteria "A" - lawful authority of the municipal employer and (2) Criteria "B" (Stipulations of the Parties), (3) Criteria "F" (Private Section Comparisons), and (4) Criteria "I" (Changes during pendency).

Criteria "C" is the first criteria addressed by the Union. It is their position that it is in the interest of the public to have a high-quality school

¹Two arbitration awards were rendered near the close of briefs in two other athletic conference schools (Random Lake and Howards Grove). They were, consistent with the procedures agreed upon by the Parties, made part of the record.

system. Acceptance of the District's offer would affect the teacher morale negatively and, therefore, would affect the quality of the school system. The District insurance offer without a "quid pro quo" impacts on their salary offer, and as a result, the Board's salary and insurance offers are well below the wages and conditions of employment of other teachers within the athletic conference. The impact of this would continue into the future without an equitable "buy out" that will continue beyond the 1990-91 school year.

Regarding the Association's proposal for the Board to pay for the in-service day, they note that, at present, teachers pay the \$10 fee to attend the SCA in-service programs. They submit it is in the Board's interest to provide in-service opportunities for its teaching staff. They raise an equity argument as well since the teachers are required to attend the in-service. Additionally, they submit, based on detailed financial analysis, that the District has the "ability to pay" this aspect or any other aspect of their offer. In short, based on numerous studies, they contend that the welfare of the public will be best served when the needs of the overall education program are recognized and teachers receive salaries commensurate with their contributions to society.

The Association offers extensive arguments concerning Criteria "D" on the health insurance and salary issues. First they note that the average settlement in the five (5) athletic conference schools for 1989-90 was \$1850 per teacher. The Association at \$1860 is +\$10 above this. The District is -\$164 below at \$1686. Four athletic conference schools are settled for 1990-91 at an average of \$1930 per teacher compared to \$1900 for the Association and \$1936 for the District. They suggest that, while the District is closer to the average in 1990-91, the out-of-pocket expense required to fund the insurance contribution by the teachers will reduce the actual settlement far below that which is reasonable. They also compare the offers with the geographically proximate districts and districts statewide. They contend that regardless of the comparison group used, the final offer of the Association is closer to the average. They emphasize that the salary proposals cannot be considered without examining the impact of the insurance concession on the salary level. This amounts to \$260 per year for those with family coverage and \$120 per year for single coverage.

More specifically, they contend that the Board's 1990-91 salary offer does not offset or "buy out", the proposed employee contribution to monthly health insurance premiums. It is their opinion that the Board's 1990-91 salary offer would not allow the teachers in the Elkhart District to keep pace with the comparables when the insurance concession is applied to the salary proposal. Subtracting the respective additional expenses from the average dollars per

returning teacher, the average teacher in Elkhart under the Board offer would get only a \$1576 increase after they paid for family insurance premiums. Thus, the real value of the Board's 1990-91 salary and insurance proposal is \$1696, or \$234 less than the average of the comparables. Accordingly, they submit that the Board's offer cannot possibly be viewed as offsetting the cost of their proposed employee contribution to insurance, nor can it be construed as keeping pace with the comparables.

The Association also questions the need for the shared contribution, noting the District's insurance costs are less than average. For instance, in 1989-90 the rates in Elkhart Lake were \$42.43 per month lower for a family plan and \$18.31 per month lower for a single plan than the average premium rates of the seven comparable school districts.

As for the status of premium sharing in athletic conference schools, they note that in 1988-89, six of the seven comparable districts paid full or 100% of the premiums for the teachers. They submit there is no consistent pattern in 1990-91. For 1990-91, teachers in Random Lake and Kohler will continue to enjoy the benefits of full payment of health insurance benefits by the District. As the result of arbitration awards for the board, Cedar Grove teachers pay 2.5% effective with January 1, 1990, and teachers in Howards Grove will contribute 5% of the insurance premium. As the result of a voluntary agreement that included significant quid pro quos, the Northern Ozaukee teachers voluntarily agreed to an employee contribution based upon a quid pro quo that contained a number of elements. The quid pro quo included: (1) increased extracurricular rates, (2) higher than average dollars per returning teacher (1989-90--\$2005 per FTE; 5% per cell; 1990-91--\$2086 per FTE; 5% per cell, and (3) the establishment of an IRS Section 125 Plan to reduce the out-of-pocket expenses for employee contributions to health insurance. None of these is present in this case.

Criteria "E" is examined in the context of looking at administration and support staff benefits and salaries. They suggest that they still will enjoy 100% of the premium as well as average increases of 7-9% or \$2708 per administrator in 1989-90 and 8.27% in 1990-91. They range from 4.1% to 14.3%. This favors the Association's offer since their offer is closer to the administrator's settlement for 1989-90, both in dollars per returning teacher and percent.

The cost of living is considered next. They note that comparable settlements have never been consistent with the cost of living and that

arbitrators have given greater emphasis to the settlement pattern. Finally, the Association suggests that the Arbitrator should give some consideration to the fact that the Elkhart Lake teachers, especially those at the top of the salary schedule, have been without a wage increase for a considerable period of time.

An analysis of total compensation, Criteria "H" is difficult, the Association avers because it is hard to acquire this information in a consistent manner from comparable districts in view of the fact school districts use a variety of methods to compensate their teachers--salary, longevity, payment for credits, tuition, reimbursement, etc. In addition to this, the various insurance benefits (including coverage levels) provided to employees vary from district to district. For example, criteria for UCR payments vary greatly from carrier to carrier. Insurance plans are difficult, at best, to interpret, let alone to make comparisons reasonably from district to district. Thus, for this and other reasons expressed in their brief, the Association urges the Arbitrator not to use the average "total compensation rates" or "total package" arguments provided by the District.

The Association asks the Arbitrator to pay particular attention to the last criteria, "J," factors normally taken into consideration in collective bargaining. Generally speaking, the Association asks the Arbitrator to recognize the burden arbitrators place on the party seeking a change in the status quo. The District, in this case, seeks to change the status quo by imposing an employee health insurance contribution, thereby imposing an additional out-of-pocket expense and reducing the actual take-home value of the salary portion of the final offer. These payments would be in after-tax dollars resulting in even more expense to the teachers.

The burden of justifying a change in the status quo includes a demonstration of need and the offerance of a reasonable quid pro quo, the Association argues. In terms of need, they note again the District's lower-than-average premiums. Moreover, they suggest that the Board has not provided any evidence that the increase in health insurance rates is the result of an abuse of the health insurance by bargaining unit members.

The Association also directs particular attention to Arbitrator Stern's comments in the recent decision in The School District of Random Lake, Dec. No. 26390, 10/3/90. He stated:

"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 comparable. 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 possible, 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."

Also in terms of a lack of compelling need, the Association notes that only three districts in the athletic conference will require a teacher contribution, one voluntarily and two by arbitration decisions. Three districts out of seven do not constitute a compelling pattern, especially when Random Lake and Kohler will continue with 100% paid benefits. Thus, they argue the District is attempting a major change through arbitration without showing a compelling need, any quid pro quo, or a convincing pattern among the comparables.

It is also the Association's position that shifting a portion of the cost of the health insurance premium to the teachers will not produce cost containment as the District claims. In this regard, in addition to the Random Lake decision noted above, they cite Arbitrator Malamud's decision in Antigo, Dec. No. 25728 (March 20, 1989). They also cite a study which suggests that premium sharing and other such mechanisms have not curbed rising health care costs.

Last, the Association maintains that such changes in contract language and premium co-payment schemes should be made voluntarily, not arbitrated. In fact, voluntary collective bargaining, not arbitration, is the proper forum for changes in the status quo that restructures the Parties' relationship. Any premium co-payment scheme must be worked out on a voluntary basis and not arbitrated.

B. The District

The District, like the Union, sees the need to expand the comparables in this case because only four are settled in 1989-90 and three in 1990-91. Among the athletic conference schools, the District notes that only one conference district, Kohler, has settled without an insurance concession. They don't view Kohler as particularly comparable because of its relatively high

salary, the fact it has no employee participation in health insurance, and the fact it has an average income twice that of Elkhart. For similar reasons, Northern Ozaukee is not as comparable as rural districts.

The Board believes their expanded set of comparables is more reliable than the Association's "hodge-podge" of comparables. The District utilizes the athletic conference schools and the comparables used in Howards Grove. Howards Grove is an adjacent district in the athletic conference schools and the comparables there are more rural in nature and more similar in size than the larger districts advanced by the Union. They note that in the recent decision in Howards Grove School District, Arbitrator John Friess refused to consider the larger districts advanced by the Union.

As for the Association's grouping, the District contends that they present no rationale for including geographic proximate or statewide school districts. For instance, there is no mention of community of interest, tax rates, levy rates, number of teachers, number of students, or other financial information that would render these districts comparable. They believe arbitrators, in general, have not given credence to using geographic proximity as the only determinant of comparability.

The District addresses first the health insurance issue which they view as the main issue in this case. By way of introduction, the District notes its salary offer is \$35 more per teacher than the Union's in 1990-91. They state that this is the Board's way of recognizing that it is asking that single teachers contribute \$10 and family teachers contribute \$30 towards health insurance. There are 11.375 FTE on the single plan and 33.5 FTE on the family plan. So, the \$35 average salary increase spread over the entire 49.25 FTE staff more than covers the actual employee contribution towards health insurance. They assert the entire staff gains \$605 under their proposal.

The Board states it is not naive enough to believe that the employees' payments solve the entire health insurance problem. But they do believe that it does bring the point home of just how expensive the health insurance benefit is. The Board believes that employees should be willing to pay a small portion to maintain this expensive fringe benefit. The Association's refusal to cost share violates the clear trend in this regard. They note that there are four recent settlements in the relevant group of comparables that contained a change in health insurance. In the Northern Ozaukee School District, the employer achieved a concession of 3.0 percent towards the single or family health insurance premium in 1990-91. In the Reedsville School, the parties agreed to

a 20 percent cap in 1990-91 on health costs. The premium increased 22.1 percent, thus the teachers will be paying 2.1%. Also, Arbitrator Daniel Nielsen, in a neighboring district, selected the Board's offer which contained a 5% employee contribution.

The District notes the skyrocketing cost of health insurance in the last ten years. Since 1980-81, single and family health insurance costs have increased an average compounded rate of 32 and 30 percent per year, respectively. This alone demonstrates the need to control cost. They cite studies, too, that show it is a statewide and nationwide trend to require workers to pay for health insurance. (Seventy-six percent of employees contributed something in 1988.) Plus costs continue to rise. Additionally, in 1988-89 teachers in all Wisconsin districts contributed to the single premium in 25% of all school districts and 40% contributed to the family plan. In 1989-90 the percentage of districts requiring employees to contribute toward the single premium has increased to 29% and to 42% for the family premium. The average teacher contribution is 3% for the single rate and 5% for the family rate. A similar rate is seen in CESA No. 7. In 1988-89 28% of the CESA No. 7 districts required employees to contribute toward the single premium and 53 percent required contribution towards the family premium. In 1989-90 the percentage of districts requiring a contribution has increased to 32% requiring a contribution on the single premium and 54% requiring a contribution on the family premium.

The Board asks the Arbitrator to take note of these trends and the fact they are not asking employees to cut any benefits, instead are merely asking for employees to have a stake in the cost of maintaining the current health insurance program. Thus, in that sense, benefits remain the same and their proposal doesn't change the status quo. In fact, they don't see any special reason to justify this change since it is like the Association's proposal to increase the salary schedule, which doesn't require a justification as a status quo change. There is another advantage to the Board's proposal in that it is a flat dollar amount which "caps" the employee's contribution. It is unlike the percentage which is found in Northern Ozaukee, Cedar Grove, and Howards Grove, which can escalate. Even though the change shouldn't require justification as a change in the status quo, the District believes they have met the test. They believe they have articulated compelling reasons to do so. They direct particular attention to the recent Friess award in Howards Grove and Ripon Dec. No. 26251 (5/20/90), Sheboygan Falls (Oestreicher), and Winneconne (Yaffe) which favored cost sharing by employees.

The District also believes their proposal reasonably addresses the need for cost sharing. The Board believes it is reasonable to ask employees on the single plan to pay \$120 per year, \$10 per month, or 33 cents per day to have an excellent health insurance plan. The Board also thinks that it is reasonable for family plan employees to pay \$360 per year, \$30 per month, or 99 cents per day to maintain their existing health insurance plan. This is especially true since the average salary in Elkhart Lake-Glenbeulah in 1990-91 will be \$32,369 under the Board's offer. This is not an unreasonable burden, in their view. It is mitigated by their "quid pro quo;" namely, the higher than average salary schedule offer in 1990-91 and the outstanding array of fringe benefits teachers already receive. Even so, the Board does not believe a "quid pro quo" is absolutely necessary in light of the above increase in health insurance. They also note that the average settlement in comparable districts in 1989-90 and 1990-91 that already required employee health contribution was \$1697 and \$1774, generally \$150 below the District's offer. On the other hand, the Union's offer is \$532 per teacher above is same average total package increase established by comparable settlements. They also assert the Board's offer was structured in such a way as to "phase-in" the concept of employees paying a small portion of the premium.

Regarding the recent award in Random Lake (Stern) which rejected cost sharing, the District submits it is not reflective of the views of a majority of arbitrators. They cite a host of awards to the opposite effect. Moreover, it is distinguished since, in the instant case, the Board's offer is \$135 above the Random Lake Board's 1990-91 offer. This is because the Elkhart Lake-Glenbeulah Board is offering more money to achieve the health insurance change. Thus, perhaps this higher salary would have made a difference in the Random Lake decision. Moreover, they suggest that Arbitrator Stern's comparability analysis now demands acceptance of the Board's offer in this case since a majority of conference schools do provide for a portion of the premium to be paid by employees.

The following represents the District's argument on salary schedule. They assert the Elkhart Lake-Glenbeulah Board's offer is very competitive with the settlements reached in the comparable school districts. The average settlement for their comparables in 1989-90 and 1990-91 is \$1774 and \$1847 per teacher respectively. This favors their offer of \$1686 and \$1935. Moreover, Elkhart Lake teachers have received above average salary and total package settlements each of the last two years.

The District also presents a benchmark analysis based on dollars and percent. They conclude that the Board's final offer is superior or close to the settled average increase compared to the Union's offer in 18 of 28 cases of dollar and percent increases on the seven salary schedule benchmarks with one tie. Not only is the Board's offer closer to the settled dollar and percent increase, but it is also above the average comparable increase in 7 out of 14 dollar increases on the benchmarks. On a percentage basis, it is above the average prevailing settlement rate in 8 of 14 benchmarks. Moreover, Elkhart Lake-Glenbeulah ranks competitively at the benchmarks. It is noted as well that Elkhart Lake has the fifth highest average salary in 1988-89 of 11 comparable schools.

Turning its attention to other public employees and private sector employees, the Board contends that no other public or private sector employee has received increases of the magnitude offered by the Board. The average pay for the entire State of Wisconsin increased only 4.5% in 1988. Pay increases for state employees would amount to 3.5% in 1988-89 and 4% in 1990-91. Their offer also exceeds the increase in the cost of living. They present a historical comparison of salary schedule increases and increases in the cost of living. They also reject the Union's anticipated argument that the Consumer Price Index should receive less weight and have the Arbitrator turn to comparable settlements.

The District also asks the Arbitrator to consider the overall compensation and other benefits of the Elkhart Lake teachers. For instance, Elkhart Lake is one of the three districts to offer longevity. Longevity is 3% above the Step 14 salary. They cite a number of cases legitimizing a total compensation analysis, particularly in a case where insurance is an issue. In the instant case, the Board has agreed to pay 100% in 1989-90 and all but \$10 or \$30 in 1990-91 of the monthly cost of the teachers' health insurance at a time when the health insurance rates have increased 24% in the first year and 22% in the second year.

The interest and welfare of the public are advanced by their offer, the District argues. There is no teacher turnover problem, and therefore, it must be presumed that salaries are high enough to retain existing staff. The District also believes their offer is particularly appropriate given the Elkhart Lake taxpayer paid 4.9% more than the comparable average full value gross rates and 5% more than the comparable average full value effective rate and because of the farm economy. In general, there is a need for property tax relief which

can only come from spending restraint. In addition, national studies do not support the higher wage offer of the Union.

Last, the District addresses the position of the Union's final offer that requires the Board to pay the cost (currently \$10 per teacher) to attend the Sheboygan County In-Service. They believe it is important for the Arbitrator to realize that the teachers are already being paid their salaries for this day since it has been bargained as part of the total number of contracted days. In the Board's view, there is no reason to change the existing practice. It is simply an unjustified escalation in cost.

V. OPINION AND DISCUSSION

A. Comparables

At the time of the hearing and probably at the time the Parties began writing their briefs, only three of six other athletic conference schools were settled for 1989-90 and two for 1990-91. At the hearing it had been agreed that the record would remain open until the filing date of briefs (October 8, 1990) for any settlements that might occur after the hearing. Arbitrator Stern issued his Random Lake award on October 3, 1990. The Friess award in Howards Grove was issued September 25, 1990. Thus, after the receipt of these awards, there was settlement data available for all but one other athletic conference school for 1989-90 and for 1990-91; four of six other athletic conference schools are settled. Consequently, because of these changes during the pendency of the dispute, it is difficult to conclude that there is a compelling reason to expand the traditional comparable group. If the traditional comparable group is useful and meaningful at all, it must be considered quite instructive when five of six and four of six schools are settled.

There might be a need to look beyond the traditional comparable group if, in the throws of analysis, the data from this group is inconclusive. In other words, an expanded group might be used as a criteria 'D' "tie breaker," so to speak. In the event this is necessary, the Arbitrator rejects the Associations' expanded group. The indiscriminate choice of geographically proximate schools without regard to size, for example, as well as other traditional factors of comparability, is not persuasive. It makes very little sense to compare Elkhart Lake with 49 teachers to Sheboygan with 571, Manitowoc with 247, Two Rivers with 126, or with Kimberly and Kewaskum with 104 and 115 respectively. The Howards Groves comparables (which include three schools

also in the Associations's expanded set) better fits the traditional factors of comparability. The Arbitrator would add to this, however, from the Association's list, Hilbert and Campellsport. This is justified because it gives a secondary group of seven, which is more instructive than five, and based on their size, proximity and other similarities. Accordingly, the secondary group of comparables will be:

Campbellsport	Mishicot
Chilton	Brillion
Valders	Hilbert
Reedsville	.

B. Insurance, Salary Schedule, and In-Service

The Parties focused much of their attention on the health insurance issue. Indeed, it is an important element of this case, but not the only element. When an arbitrator is deciding whether a change in the status quo is justified, he/she is really weighing and balancing evidence on four considerations: They are: (1) if, and the degree to which, there is a demonstrated need for the change, (2) if, and the degree to which, the proposal reasonably addresses the need, (3) if, and the degree to which, there is support in the comparables, and (4) the nature of a quid pro quo, if offered.

All four of these elements should be present to some degree and the degree to which any one or more of these considerations must be strongly evidenced depends on the facts and circumstances of each case. What is ultimately determined to be an acceptable mix of these considerations will vary from unique situation to unique situation. In bargaining, one case is rarely identical to the next. For example, if 11 out of 12 comparables have the sought-after language or benefit in similar form in their contracts, then the burden to demonstrate intrinsic need and quid pro quo are diminished. However, if the proposal goes somewhat beyond the comparables' language or benefit, a greater degree of other factors may be required. Additionally, and of course, the particular change must be weighed with other facets of the moving party's offer and the offers as a whole must be weighed against each other.

In this case, the Arbitrator finds that there is substantial intrinsic appeal to the idea that employees--given the extremely high and accelerating cost of health insurance--should, to some degree, share in the cost. This is not because it helps lower the cost of health insurance. There is no conclusive proof of this. It is because, as the District argues, health insurance costs are such a

major problem that it deserves to be mutually addressed. It raises consciousness as to this problem and directly gives employees a stake in addressing it. It shouldn't be lost that employees have always had a stake indirectly in the cost of benefits. The rising cost of benefits in general always impacts on the amount of the pie which can be sliced into direct wage payments. However, with health insurance fully paid, it is too easy to ignore it, to accept it as a given, and to take it for granted.

With a direct stake in the cost of health insurance and with consciousness heightened about the problem, it may inspire the Parties to be more aggressive about even more cost reducing features in their health insurance. As "partners" it may inspire other action to address what clearly is or will be the most difficult problem facing labor and management in the 90s. In fact, it will likely be, depending on the degree of success labor and management have in addressing the problem, one of the great challenges of the nation as a whole. In fact, political solutions might have to be explored. In any event, any action taken by the Parties mutually to reduce health insurance costs is in the public interest. Mutual action is more likely with teachers directly participating in costs.

Criteria "E" and "F" also support the idea that cost-sharing arrangements are appropriate in education. As the data of the District shows, cost sharing is becoming more prevalent in private and general public employment. It is not inappropriate to take this into consideration (1) because the statute says the Arbitrator should and (2) because basic benefits are subject to easier comparisons between teachers and other employees than are wages. The wages and working conditions of a computer operator, policeperson, or truck driver are difficult to compare to teachers, particularly given the dynamic state of education. However, insurance is insurance is insurance. No doubt, as collective bargaining in education began in earnest in the 1970s, teachers indirectly or directly garnered support for the idea they should have paid health insurance from the broad spectrum of employment, private and public.

Regarding Criteria "D," it is noted that three of the other six schools have some form of premium cost sharing--a dead heat. When the expanded group of comparables is reviewed, it is noted there is no premium information for Campsport or Hilbert. However, four of the other five schools have premium sharing ranging from 3% to 8%.

While generally speaking the Arbitrator finds the idea of cost sharing supported by the aforementioned statutory criteria, he must seriously question

whether the Employer's proposal reasonably addresses the need, in light of similar arrangements, in comparable schools. In short, the District's proposal this year asks for a greater contribution than any other school. In view of this, there isn't a sufficient enough quid pro quo, if any at all.

The District's proposal of a flat dollar amount is atypical in form and substance of other premium-sharing arrangements in other athletic conference schools. The other schools, Howards Grove, North Ozaukee, and Cedar Grove, require a small percent payment of 5%, 3%, and 2.5% respectively. In substance, based on the premiums in effect in those Districts, no teacher pays more than \$15.70 per month, or \$188 per year (Howards Grove). The North Ozaukee teacher taking the family premium pays \$11.43 per month or \$137 per year. The teacher contribution in Cedar Grove for the family premium is \$7.55 per month, or \$91 for the year.

The Districts proposal requires \$30 per month for family, which is nearly 9% of the premium. This is also more than any other of the expanded comparables. The teacher contribution in Reedsville is \$8.73 per month, or 2.1% of the total premium. Hilbert and Brillion are at 5%. Only Valders and Mishicot at 7% and 8% approach the amount the District is asking the Elkhart teachers to contribute.

The fact that this District is asking the Elkhart teachers to contribute more than other teachers for health insurance premiums tends to suggest the need for a greater quid pro quo. With respect to a quid pro quo, the District contended that the higher-than-average increase in the second year was the quid pro quo. (The average athletic conference school settlement was \$1900 per teacher versus their offer of \$1935. They went on to state that when this advantage was considered versus the cost of the premium contribution, the unit as a whole gained \$605.)

The District is quite wrong about this. These calculations were based on a one-time calculation of \$30 and did not account for the plain fact that their offer requires a \$30 per month contribution. The math behind the District's erroneous assertion is as follows:

$$\begin{array}{l} \$35 \times 49.25 \text{ FTE} = \$1723 \text{ more to the unit account higher than average} \\ \text{settlement} \\ 11.375 \text{ FTE} \times \$10 = -113 \\ 33.5 \text{ FTE} \times \$30 = \underline{-1005} \end{array} \left. \begin{array}{l} \\ \\ \\ \end{array} \right\} \begin{array}{l} \text{Cost of one month's contribution to the unit} \\ +605 \text{ Gain to the unit for one month} \end{array}$$

However, when the \$1118 monthly cost to the unit is annualized, it is \$13,416. Thus, it is obvious the District is dead wrong that the quid pro quo covers the cost of the contribution. It actually dilutes the settlement as a whole by \$11,693.

For the teacher taking family coverage, the salary settlement will be reduced by \$360. Accordingly, the Board's \$1936 offer after contribution is \$1576. This is much lower than the settlements in Howards Grove and Northern Ozaukee after the cost of a family contribution is deducted. In Howards Grove the settlement is \$1663, and the Northern Ozaukee settlement is \$1949 after the same adjustment. Over two years the shortcomings of the District's offer is even more dramatic. The value of the two-year settlement in Howards Grove after a family premium adjustment the second year is \$3365. It is \$3954 in Northern Ozaukee after the same settlement. The nonadjusted settlements in Kohler and Random Lake over two years are \$3693 and \$3750 respectively. The two-year value--adjusted for the premium contribution--of the District's offer is \$3262.

In short, the Arbitrator cannot conclude that the Employer has justified its insurance proposal. If it had been expressed like other proposals (5% seems to be the most prevalent), it would have had a more modest impact and would have been easier to accept. If the needs had been greater, i.e., a significantly greater-than-average premium cost, their proposal would have been more palatable. Likewise, had their salary offer been greater, particularly in the first year, it would have been more attractive. The Arbitrator simply cannot conclude that their proposal was justified to such an extent that it could be said that the Association unreasonably resisted the change.

The insurance issue is difficult to separate from the salary issue. Certainly the fact that the Association fails to address the health insurance contribution issue distracts from their offer not only in that respect, but it puts their effective offer on the high side for two years. However, it is marginally more reasonable than the District's, in spite of these shortcomings, even when their in-service proposal is considered. It is not wholly inconsistent with the cost-of-living criteria as usually applied or any other aspect of the statute. As a result, the Association's offer will be awarded.

AWARD

The Final Offer of the Association
is Selected.



Gil Vernon, Arbitrator

Dated this 21st day of December, 1990.