

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

STOCKBRIDGE SCHOOL DISTRICT

To Initiate Arbitration
Between Said Petitioner and

STOCKBRIDGE EDUCATION
ASSOCIATION

Case 8
No 43487
INT/ARB-5563
Decision No. 26502-A

APPEARANCES:

Jeffrey J. Wickland on behalf of the Association
Dennis W. Muehl on behalf of the Association

On June 20, 1990 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on September 11, 1990 in Stockbridge, WI. Briefs were exchanged by the parties by November 8, 1990. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

ISSUES:

The issues remaining in dispute between the parties are the salary and extra curricular schedules and health insurance for 1989-90 and 1990-91

With respect to the salary schedule, the Board is proposing a BA Base of \$19,525 and \$20, 835, respectively. The Association is proposing a BA Base of \$19,325 and \$20,350 respectively. The Board has proposed to maintain the same salary schedule structure that existed in the parties' prior agreement, while the Association proposes adding \$40 and \$35 to each step in the schedule in 1989-90 and 1990-91 respectively.

The Board proposes capping its contribution toward health insurance at 95% in 1990-91, while the Association proposes that the District continue its 100% contribution. It also proposes changing the contractual guarantee of "substantially" the same coverage to a guarantee of "reasonably" same coverage.

The Board proposes continuing the utilization of an amount which is \$550 less than the BA base for the base which is utilized in the calculation of the extra curricular schedule, while the Association proposes utilizing the new BA base for that purpose.

The Board calculates its offer to amount to a 7.25% and 7.32% salary increase, and 8.12% and 7.91% total package increase. Per returning teacher salary increases would amount to \$1,666 and \$1,803 respectively. It calculates the Association's offer to be a 7.5% and 7.3% salary increase, and an 8.4% and 8.2% total package increase, which would generate approximately \$1727 and \$1801 salary increases per teacher. The value of the total package per returning teacher would be \$2451 and \$2582 under the Board's offer and \$2541 and \$2680 under the Association's. There is no appreciable difference between the parties' costing of the final offers.

The parties are a total of approximately \$1,800 apart in the first year and \$3,750 apart in the second year.

The parties are in agreement regarding the primary set of comparables which should be utilized in this proceeding, but disagree as to what if any weight should be given to other sets of secondary comparables. The primary set of comparables are Brillion, Elkhart Lake, Hilbert, Reedsville, and Wrightstown. All of the comparables except Elkhart Lake are settled for 1989-90 and 1990-91.

BOARD POSITION:

On the health insurance issue, employees in the District must begin to assume a direct economic stake in this benefit so that they will become better health care consumers with a direct interest in health insurance cost containment.

In the last two years alone the District's family premium has increased an astounding 51.4 percent. In the past 10 years the District's health insurance costs have increased over 300%. The percentage value of fringe benefits (to total compensation) have increased from approximately 22% in 1985-86 to over 32%. Such increases have created an absolutely critical need for the District to get a handle on the amount of money to be spent on health insurance.

In exchange for this requested concession, the Board is willing to commit the entire 5% cost savings, and more, to the salary schedule. This will result in increases in excess of the District's comparables, i.e., 7.3% salary increases in

each year of the contract, well above the 6.6% and 6.4% settlements of the comparables, and higher than previous Stockbridge settlements.

What in effect the District is proposing is an ordinary economic internal reallocation of compensation. It is not a long-term substantial change in the status quo, nor does it significantly reduce an expensive and valuable benefit. At worst, it is a technical change in the status quo on a par with the annual changes in the salary schedule.

Even if the arbitrator concludes that the Board is proposing a substantial change in the status quo, it has compelling reasons for doing so.

Two recent settlements and a final offer among the District's comparables support the District's position on this issue.

The Reedsville School District negotiated a 20% cap in 1990-91 on health costs. The teachers in that District already pay the first \$2.50 of the monthly health insurance premium. Since that District's premiums increased by 22.1%, they will be paying more. In the Wrightstown School District the Board agreed to pay up to a 20% premium increase in 1990-91, but also agreed to shift any savings from increases that were less than 20% to the salary schedule. The Hilbert School District teachers have contributed toward the cost of the family health insurance premium since 1986-87. Their contribution has been approximately 5%. In Elkhart Lake-Glenbeulah, a similar health insurance issue is before an interest arbitrator.

Additional support for the District's position on this issue can be found by looking at the practice among the districts in the CESA 7 Insurance Consortium. Thirteen districts belong to that consortium, and the Wrightstown School District is the only District comparable that is not a member. Of the twelve reporting member districts, five, or 42 percent, have their teachers paying a portion of the health insurance premium. This ratio is consistent with statewide statistics, where 141 of 337, or 42 percent of the reporting districts have their teachers paying a portion of the premium.

Also, the Association's position on this issue is not supported by statewide or national collective bargaining trends, the prevailing practice among other public and private employers, or arbitral opinion in interest arbitration proceedings in Wisconsin (Citations omitted).

The proposed change in the contract from "substantially" to "reasonably" same coverage is supported by the comparables. The District's contract is the only one among the comparables that has a proviso that potentially restricts the District's ability to change insurance carriers. Even with the

proposed modification, the Stockbridge contract will remain the most restrictive in this regard. In addition, the difference between the words "reasonable" and "substantial" is marginal and of little impact from the employees' perspective.

With respect to the salary structure issue, structural changes like those proposed by the Association are matters that should only be accomplished through voluntary agreement. Arbitrators have been reluctant to render awards effectuating such proposed changes absent extremely persuasive reasons (Citations omitted)

In this case the substantial structural changes proposed by the Association would not enable the District to attract qualified staff at the BA Base. After four years of ranking last at the BA Base, in 1987-88 the parties agreed to freeze placements on the salary schedule for one year in order to effectuate a structural increase which allowed the District's BA Base ranking to be raised to third. Under the Board's proposal, the BA Base will ascend to first place.

The District has historically increased each cell on the salary schedule by flat dollar amounts. The District proposes continuing that trend. Although during the preceding five years the parties have negotiated a new lane, adjusted lane credit requirements, added a longevity provision, and frozen schedule placement, the one constant in the salary schedule has been the increment structure.

The District is quite small and is not in a position to offer the types of salary schedule structure, salary increases, and fringe benefits offered by its comparables. Thus, the District must focus on the niche in the marketplace where it can remain competitive, i.e., at the B.A. and other lane bases. Since over 70 percent of the District's staff are still relatively new to the District the Board does not believe that it should sacrifice its need for a strong hiring rate.

In 1989-90, 35% of the staff are in the BA lane, and all of the teachers in this lane are between steps 0 and 6. All of these teachers will receive above average increases based upon comparable settlements. In fact, a majority of the District's teachers will be better off under the Board's salary proposal than under the Association's.

Relatedly, the record does not support the Association's assertion that most schedules are indexed, i.e., each step being a percentage of the BA or lane base. Instead, the record indicates that four of the District's comparables have salary schedule structures with dollar increments, Elkhart Lake has a

percentage vertical increment and a dollar horizontal increment, and only Brillion has a percentage indexed schedule.

The record indicates that the four settled comparable districts have established a clear settlement pattern supportive of the Board's position on salaries. In both years the Board's salary proposal is closer to the comparable settlement pattern based upon both dollar and percent increases. Its proposed salary and total package increases are all above the settled averages on a percentage basis, and nearer to the average increases than the Association. In fact, in 1990-91 the Board's salary offer is at the settled average.

Using benchmark comparisons, the Board's offer is also superior and closer to the average benchmark increases than is the Association's offer. The Board's offer is above the average comparable increase in 7 out of 14 dollar increases on the benchmarks. On a percentage basis, it is at or above the average prevailing settlement rate in 8 of 14 benchmarks.

In addition, the Board's salary proposal reflects a significant increase over the salary increases that have been bargained in the District in the past. Under the circumstances present herein, there is clearly no justification for increases of the magnitude proposed by the Association

The Board has made a good faith effort to increase the ranking of the Stockbridge teachers among comparable schools. The District's proposal would increase its benchmark ranking over 1988-89, and though it would still rank last in terms of overall benchmark rankings, it would narrow the gap more than the Association's proposal. Under the conditions present herein, no further catch up is justified.

While the District's proposed total package dollar increase falls below that of the comparables, the dollar increase per returning teacher is much less meaningful than the relative increase per returning teacher. In the latter regard, the District's proposal is well above the comparable average.

The Board's good faith effort in this regard must be considered in the context of the fact that no other public or private sector employees are receiving increases of the magnitude offered by the Board. It also should be viewed in the context of cost of living changes, which indicate that under the Board's offer the teachers would again enjoy real and meaningful income gains above the inflation rate.

The arbitrator should also consider the fact that the District receives significantly below average state aid and depends largely on local property

taxes for its support. The District's gross property tax rate in 1989 was the highest among the comparables. This is particularly noteworthy since the average taxable income in the District is below the comparable average.

With respect to the extra-curricular salary issue, under the Board's proposal extra-curricular salaries would increase by 6.6% in 1989-90 and 6.9% in 1990-91. The Association proposal would result in an 8.6% increase in 1989-90 and a 5.3% increase in 1990-91, an unnecessary increase based upon the District's comparables.

Relatedly, the parties did not intend for the "artificial base" to expire on July 31, 1989. The sunset clause in the 1987-89 contract provides, in pertinent part: "Return to negotiable item for 1989-90". This reflects only an intent to reopen the issue for negotiations. To assume that this provision reflected an intent to have the "artificial base" expire, and to return to the status quo which existed prior to the 1987-89 contract is simply incorrect.

ASSOCIATION POSITION:

The Association's extra curricular proposal should be preferred because it better represents the traditional manner in which the parties constructed their extra curricular schedules. The Board has not met its burden of justifying a change in the status quo in this regard.

With respect to the salary schedule issue, since the District's schedule is not indexed, the only way it can be adjusted proportionately is to increase the vertical and/or lane increments. The same dollar increase at each step of the schedule as proposed by the Board is a greater "structural" change than the Base and vertical increment increases proposed by the Association. In effect, both parties have proposed schedule adjustments; however, the Association's structural proposal is fairer to all staff members than is the Board's. The Association's BA Base increase is closer to the pattern of comparables. Relatedly, the Board has not shown a need for the disproportionate increase it is proposing at the hiring rate. In fact, the record indicates that the District has had no difficulty in recruiting qualified teachers.

Even if the arbitrator concludes that the Association's proposal disturbs the status quo, the record justifies such a change.

In 1985-86 the District's vertical increments were very close to the comparable average. Under either offer in 1989-90, that relative position in real dollars has eroded, and the Board's offer erodes that position further. The Board offer of no increment increase stands alone and is \$40 short of the

average increment increase. Similar conclusions apply in 1990-91.

The Association has also provided the District with significant quid pro quos in concessions relating to layoffs and recall and probationary teachers

Most importantly, the Association's proposal is supported by benchmark comparisons. The Association's proposal is consistent with the approach used by comparables, i.e., increases in both increments and base salary. The District's ranking at the BA Base increased from sixth to fourth between 1984-85 to 1988-89. The Board proposes to move the District into first place in that regard in the forthcoming agreement. The Association's offer would keep the District in fourth place at the BA Base in 1989-90 and would increase it to second place in 1990-91. However, the Board's offer would increase the erosion at the maximums on the lanes, other than in the Bachelor's lane.

Even if one considers the longevity pay provision on the District's salary schedule, it should be noted that two other comparable districts, Wrightstown and Elkhart Lake, also have longevity provisions.

The Association's offer balances the Board's claimed need for competitive hiring rates with the needs of experience teachers to upgrade their standard of living, and to share more equitably in the increases offered by the Board.

The record indicates that the District has had the smallest increases at the benchmarks, by a considerable amount, at each of the benchmarks except the BA and MA Minimums. The Board's proposal exacerbates this problem, while the Association's represents an attempt to distribute the dollars more evenly on the schedule. In this regard the District is definitely in a catchup position within the comparables.

The Association's proposed average dollar increase is also significantly more comparable in 1989-90 than the Board's. The District will never catch up, or even maintain its relative position if percentage increases form the comparison basis. In cases such as this, percentage comparisons must be disregarded because they perpetuate unjustified disparity between the salaries in the District and its comparables.

Utilizing statewide teacher salary averages, both proposals result in average salaries in the District near the bottom of the range.

On the health insurance issue, the Board's offer represents a substantial change in the status quo.

The salary increase proposed by the Board already falls behind the comparable average. The premium sharing arrangement proposed by the Board would reduce the value of that increase by another \$200 per year for someone on a family plan, and \$72 per year on a single plan. Under such circumstances, it cannot reasonably be said that the Board has offered an economic quid pro quo for the change it proposes.

Relatedly, it is important to note that the teachers in Reedsville and Wrightstown were offered significant quid pro quos for their acceptance of twenty percent caps on health insurance increases. In fact, in Wrightstown the 20 percent cap generated an extra \$119 per teacher on the salary schedule.

In addition, the Board has offered no evidence of abuse or over utilization of the health insurance benefit, nor is there any evidence in the record to suggest that the proposed premium shift would be an effective cost containment measure.

In addition, holding something to a "reasonable" standard is not the same as holding that same thing to a "substantial" test. The Boards' proposal in this regard constitutes an important substantive alteration in the contract language. The Board's proposal erodes existing protections against arbitrary unilateral changes in benefits and service.

Lastly, the differences in terms of the dollar impact between the Board's offer and the Association's offer are negligible. Thus, it must be concluded that both offers have similar impacts upon the interest and welfare of the public as well as the District taxpayers

DISCUSSION

With respect to the health insurance issue, the record clearly supports the District's effort to effectuate a change in the status quo. This conclusion is based primarily upon the staggering increases in the cost of health insurance, and in the trend that appears to be developing among the District's comparables in this regard. However, the undersigned is not persuaded that the District's efforts in this regard, in the context of its total final offer, are sufficiently meritorious to justify selection of its position on this issue as being the more reasonable of the two at issue herein. This conclusion is based upon the following considerations:

While the District reasonably wishes to begin sharing some of the costs of this benefit, not only to protect its' economic interests, but also to induce its' teachers to become more concerned stakeholders in this problem, it

attempts to achieve these ends without giving adequate recognition to the legitimate rights and interests of the teachers affected by its proposed change. In this regard, it proposes total packages which are less, in dollar value, than comparable total package averages in both years. Thus, it is requesting teachers to make economic concessions regarding this important benefit without really offering them a meaningful economic incentive to do so. While the District argues that its proposed total packages exceeds the value of comparable averages in percentage value, the undersigned is persuaded that comparably, in this context, is most fairly measured by actual dollars rather than percentages. Over reliance on percentages when making comparisons between comparables has the tendency of perpetuating, and in some instances, exaggerating the inequities and disparities which often exist in relationships between comparables, while dollar comparisons tend to result in more uniformity in the economic value of the bargains the parties reach, thereby allowing the parties to more effectively address such inequities. Though relationships between comparables may change as a result, the status quo in this regard is not something which the undersigned deems to be of significant importance.

Relatedly, the undersigned is not persuaded by this record that the District is unable to afford a comparable total package, measured in actual dollars, particularly where, as here, the total cost difference between the parties over two years is less than \$6,000. Though historically the District has had less state aid than many of its comparables, that appears to be changing, and in addition, it reflects an assessment by the State that the District has been better able to support its educational system without state assistance than most of its comparables. Accordingly, in the undersigned's opinion, this record simply does not support a conclusion that the District is financially unable to afford a total package which is at least as good as the comparable average, when it is requesting important economic concessions of its employees regarding their health insurance benefits.

In addition, the undersigned is of the opinion that the District's goal of inducing its employees to become more concerned and informed health care consumers would better be achieved by a co-payment rather than a premium sharing proposal. Though premium sharing may arguably induce affected personnel to become more concerned about premium cost containment, particularly during the negotiations process, it seems to the undersigned that a co-payment system would more likely make each affected individual a more concerned and informed health care consumer, not just during the negotiations process, but whenever he or she is forced to confront the costs of acquiring health care services.

Lastly, and perhaps most importantly, the undersigned is persuaded that the

District's proposal to change the standard of health insurance coverage from "substantially" the same coverage to "reasonably" same coverage is a significant change in the status quo which is not supported in the context of this dispute. The WERC has held that although a public employer may change insurance carriers without negotiations, it may not do so under 111.70 Wisconsin Statutes if such change has a significant effect on benefits. (Walworth County Handicapped Children's Education Board vs Lakeland Education Association, 11/79 Dec. No 17433) The parties' current agreement arguably tightens that standard to assure affected employees substantially the same coverage. The former standard connotes importance. The latter also connotes importance, but, in addition, specifies "to a large degree" or "in the main" (Websters Seventh New Collegiate Dictionary). The District's proposed new standard of "reasonably" the same coverage however imposes a new and subjective standard of fairness and/or rationality which, depending upon how said criterion were defined and applied, might allow for the unilateral change of insurance benefits in a substantial or significant manner under some conditions. In the opinion of the undersigned the District's proposed new criterion would significantly alter the contractual rights of the District's teachers, to their possible detriment; it is not supported by comparability evidence; no significant quid pro quo has been offered; and no persuasive arguments have been presented justifying such a significant change.

With respect to the salary schedule issue, several factors must be considered by the undersigned in determining which of the two final offers on this issue is the most reasonable.

In 1989-90, the total salary only difference between the parties' proposals is slightly more than \$1100, a negligible amount, particularly as it affects the welfare of the public. The Association's salary proposal, in terms of the average dollar salary increase teachers would receive, is closer to the comparable average, while the District's proposal, in terms of the percentage value of the salary increases teachers would receive, is closer to the comparable average. Based upon these comparisons, neither party's salary proposal is appreciably more comparable or reasonable in the undersigned's opinion

In 1990-91 the parties' salary proposals, when described in terms of average dollar and percentage increases, are even more alike. The total dollar difference between the parties' salary proposals is less than \$1200, and there is essentially no difference between the proposals in average dollar and percentage increases. Again, based upon such comparisons, neither party's proposal in this regard is appreciably more reasonable than the other's.

When the value of total packages is considered, the Association's proposal is more comparable and reasonable when the value of said proposal in actual dollars is utilized, and the District's is more comparable and reasonable when the value is measured in terms of percentages. Again, neither party's proposal clearly emerges as being more reasonable than the other's.

The foregoing analysis reflects the fact that in terms of overall economic impact, neither party's salary proposal is significantly distinguishable. The proposals however are distinguishable in the manner in which they distribute dollars among affected personnel. In this regard the undersigned deems the Association's salary proposal to be clearly the more reasonable of the two.

What the District has proposed is to target salary improvements so they affect most dramatically new and recent hires. On the other hand, the Association proposes distributing a similar amount of salary improvement money throughout the salary schedule in order not to further aggravate the disparity that already exists between the District's salary schedule and the salary schedules of its comparables.

Utilizing benchmark comparisons, the record evidence indicates the following:

At the BA Base, the District proposes increases and an actual salary which far exceed the comparable average in both years of the proposed agreement. There is no evidence in the record pertaining to any hiring difficulties the District has experience--in fact, the District indicates that it has not had such problems-- nor has any other persuasive reason been presented why the District feels compelled to offer significantly better salaries than its comparables at this benchmark. The Association on the other hand proposes far more comparable increases and salaries at this benchmark. Accordingly, the Association's proposal is deemed to be the more reasonable of the two in both years of the proposed agreement at this benchmark.

At the BA 7th Step, the Board's proposal is deemed to be the more comparable and reasonable of the two in 1989-90 in that it reflects above average increases which would bring the District within approximately \$500 of the comparable average. However, in 1990-91 the Association's proposal is deemed to be more reasonable than the District's since it is closer to the average value of comparable settlements, while at the same time it still reduces the gap between the District and the comparable average to approximately \$350.

At the BA Maximum the Board's proposal is clearly closer to the average value of comparable increases, both in terms of dollars and percentages. In addition, its' proposal results in a salary which is less than \$1000 below the comparable average in each of the two years. While the Association proposes reducing that gap, the undersigned believes the salary gap at this benchmark is not sufficient to ignore the comparable settlement trend for similarly situated teachers at this point on the salary schedule. Thus, the District's proposal is deemed to be the more reasonable of the two for both years at this benchmark.

At the MA Minimum, in 1989-90 the Association's proposal is more consistent with the value of increases agreed upon in comparable districts, and again, the District will be paying within \$750 of the comparable average under said proposal. The Board's proposal would reduce that gap, but for the same reasons expressed above, there does not appear to be a need for the District to deviate significantly from the settlement trend at this benchmark. A similar analysis applies to the parties 1990-91 salary proposals at this benchmark. The Association's proposals are closer to the value of the increases agreed to in comparable districts, and the gap between the District and its comparables continues to be less than \$850. In the undersigned's opinion, that kind of salary differential does not justify a salary proposal which significantly exceeds the settlement trend, particularly where, as here, significant salary disparities need to be addressed elsewhere on the salary schedule.

At the MA 10th Step, MA Maximum, and Schedule Maximum benchmarks, the undersigned believes that the Association's salary proposal is significantly more comparable and reasonable than the District's. At all of these benchmarks the District's proposal is significantly less comparable than the Association's, in terms of the dollar and percentage value of the proposed increases, and, most importantly, in terms of actual salary comparisons. Noteworthy in this regard are the facts that at every one of these benchmarks in both years of the proposed agreement, the Association's proposed increases, in both dollars and percentages, are below the comparable averages, while the District's proposed increases are even more so. Even more importantly, under the Association's proposal, the District's benchmark salaries will range from approximately \$2000 to \$5000 below the comparable averages. Under the District's proposal, the differences would be even greater. While these figures may be somewhat misleading and/or unreliable when longevity and other adjustments such as salary schedule placement freezes are taken into consideration, it is essentially undisputed in this proceeding that there are very significant differences between the District's salaries and the salaries offered by comparable districts for teachers with a significant number of years of district service.

and graduate credits.

Based upon the foregoing analysis, the undersigned can find no basis for selecting the District's proposed salary schedule. The District clearly has a problem in developing a salary schedule which provides comparable incentives to induce teachers in the District to remain in the District. It would appear from the record that many of the District's teachers are recent hires, and it would further appear to the undersigned that it is clearly in the District's long term interest to develop a salary schedule which will provide them with comparable salary incentives to stay. The Association's proposed salary schedule constitutes a far more reasonable attempt to achieve such an end than does the District's proposed schedule, particularly in view of the fact that it utilizes total dollar parameters which are reasonably close to the District's. Accordingly, in the undersigned's opinion, the Association's salary schedule proposal is deemed to be the more meritorious and reasonable of the two proposals at issue herein.

Perhaps it should be noted that just as the Board has demonstrated a need to change the status quo regarding the health insurance benefit in the District, the Association has amply demonstrated a need to change the structure of the salary schedule to enable the District to address the disparities which exist when the District's salaries across the schedule are compared to its comparables. In both cases demonstrated need justifies a change in the status quo. Indeed, that is the purpose of the collective bargaining process--to enable the parties to periodically address problems and changed circumstances that inevitably arise during the term of collective bargaining agreements. When such need for change in the status quo is demonstrated, and the bargaining process does not result in change which is responsive to that need, the undersigned is of the opinion that it is appropriate that the interest arbitration process be available to effectuate reasonable changes in the status quo which are responsive to such demonstrated need

Lastly, with respect to the extra curricular schedule issue, the undersigned can find no evidentiary basis in this record, based upon comparability, status quo, or any other statutory criterion, justifying the Association's request to increase that schedule by an amount in excess of 8% in 1989-90, particularly where the Board's proposal would result in increases in that schedule that exceed 6.5% in that year. Absent evidence supporting the reasonableness of the Association's proposal on this issue, the undersigned believes that the Association's extra curricular proposal is both excessive and unreasonable, and would therefore select the District's proposal on this issue.

Based upon all of the foregoing considerations, the undersigned concludes that the Association's total final offer is clearly the more reasonable of the