

REC'D
JAN 22 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Interest Arbitration
Between

OPINION AND AWARD

KIEL AREA SCHOOL DISTRICT

Case 8

and

No. 43473 Int/Arb 5557
Decision No. 26549 -A

KIEL EDUCATION ASSOCIATION

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the District: Paul C. Hemmer, Attorney - Mulcahy & Wherry, S.C.

On Behalf of the Union: Ellen M. MacFarlane, UniServ Director - Kettle Moraine UniServ Council

I. BACKGROUND

On May 15, 1989, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on June 30, 1989. Thereafter the Parties met on eight occasions in efforts to reach an accord on a new collective bargaining agreement. On January 16, 1990, the District filed a petition requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On April 19, 1990, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by July 3, 1990, the Parties submitted to the Investigator their final offers, written positions regarding authorization of inclusion of Wisconsin nonresidents on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon, and thereafter the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remained at impasse.

On July 13, 1990, the Commission ordered the Parties to select an Arbitrator. The undersigned was selected and his appointment was made by the Commission on August 27, 1990. A hearing was conducted on September 11, 1990. The proceedings were transcribed and post-hearing briefs and reply briefs were filed. The reply briefs were received November 16, 1990.

II. ISSUES

The only issues which could not be resolved by the Parties were (1) the salary schedules for 1989-90 and 1990-91 and (2) whether beginning in 1990-91 teachers should contribute 5% toward the applicable monthly health insurance premium.

The Board's salary schedule for 1989-90 has a BA base of \$20,938 and a schedule maximum of \$34,548. For 1990-91 the BA base is \$22,065 and the schedule maximum is \$36,407. The Board calculates, as part of their final offer, that their 1989-90 offer yields an average salary-only increase of \$1,750 or 6.05% per teacher. Their 1990-91 offer yields, according to Board costing, \$1,843 per teacher at 6.04%. This conflicts with Employer Exhibit 41 which shows the value of their 1989-90 offer as \$1,766/6.17% and their 1990-91 offer as \$1,866/6.03%. According to Employer Exhibits 41 and 42, the Association's offer is valued at \$1,690 or 6.16% for 1989-90 and \$1,742 or 5.6% for 1990-91.

The Association offers the following cost analysis of the offers:

	<u>1989-90</u>	<u>1990-91</u>
Association	\$1,735/5.94%	\$1,745/5.64%
Board	\$1,776/6.08%	\$1,879/6.0%

The BA base for 1989-90 under the Association's offer is \$20,300. The schedule maximum is \$34,916. The BA base for 1990-91 is \$21,300, and the schedule maximum is \$36,636.

Regarding insurance, as noted, the District requests a 5% employee contribution beginning in 1990-91. The Association offer provides for the status quo to be maintained. Previously, the Board paid for the full cost of the health insurance program.

III. STATUTORY CRITERIA

- (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 any 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)

A. The Association

The Association presents its arguments in the form of a step-by-step application of the statutory criteria to the relevant issues. Before doing so they address the ancillary issue of comparable school districts. They note, in this regard, that this case is unusual since there have been no previous arbitrations; therefore, a comparable group has never been established. The Association considers the following school districts, which make up the Eastern Wisconsin Athletic Conference, as primary comparables: Chilton, Kewaskum, Kiel, New Holstein, Plymouth, Sheboygan Falls, and Two Rivers. However, because at the time of the arbitration hearing, there were three (3) arbitration awards and just one voluntary settlement in the athletic conference, or four (4) settlements out of the seven comparable districts, they seek to expand the comparable group. They look to the area school districts settled for 1989-90, including the districts of Brillion, Cambellsport, Fond du Lac, Hilbert, Kimberly, Kohler, Manitowoc, Reedsville, Sheboygan, and Valders as a second group of comparables. For 1990-91 their second group includes Brillion, Fond du Lac, Kimberly, Kohler, Manitowoc, Reedsville, Sheboygan, and Valders. They also present data on schools statewide.

The Association does not believe that the following statutory criteria are relevant or have a significant bearing on this dispute: (1) lawful authority, (2) stipulations of the parties, and (3) changes during the pendency of the dispute. Of the criteria that do bear on the dispute, the Association addresses the "interest and welfare of the public" first. This argument is based on the premise that a high-quality public school system best meets the interests and welfare of the public in any community and that the salary of teachers impacts on the quality of the school system.

It is the belief of the Association that the District's proposal to reduce the Board's contribution for group health insurance to 95% without a significant and lasting corresponding "quid pro quo" represents a substantial change and could significantly impact on the salary aspect in these procedures. This would then, in turn, have a negative effect on teacher morale in the Kiel Area School District and, therefore, affect the public interest.

The Association asserts that when the insurance concession is factored in the equation, the Board's salary and insurance offers are well below the wages and conditions of employment of other teachers within the athletic conference. Thus, teachers of the Kiel Area School District would find themselves out of sync with their colleagues if the Board's proposal is accepted. In this regard, the Association does not agree with the Board when they argue that the dollars per returning teacher in its 1990-91 proposal provide a trade-off for insurance

concessions and keep the anticipated settlement within range of comparable school districts. The Association argues that the Board's "buy out" is not substantial enough to guarantee that the salary schedule will not lose value among the comparable settlement pattern both in the years in dispute, as well as for the future. Further, the District argument fails to acknowledge that the employee contribution would be adjusted by increases in higher premium amounts in future years. Accordingly, the Board's offer does not guarantee an equitable "buy out" that will continue beyond the 1990-91 school year. There is no reason they couldn't either, says the Association, since they have the "ability to pay."

The Association also believes 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. In this regard, they cite and discuss a number of well-known studies on education and teaching. They note, too, the importance of the national public interest for competitive teachers' salaries has been recognized by arbitrators. For example, they cite Arbitrator Zeidler in Watertown Unified School District, Case 23, No. 37069, MA-3913, March 11, 1987.

The Association next turns to criteria "(d)" - comparisons to other employees performing similar services. These comparisons demonstrate in a meaningful manner that the Association's offer is more reasonable when viewed in light of the pattern of settlement among the comparable districts. They direct attention to data which shows that for 1989-90 the average dollar increase per returning teacher in the Eastern Wisconsin Athletic Conference is \$1,762, or an average increase of 6.01%. The Association's final offer deviates (-) \$27 less than the dollars per returning teacher average, while the District's final offer is (+) \$14 more than the average. The percentages of increase of the Parties' final offers are equidistant from the average. In 1990-91, the average increase of the comparables is \$1,820, or an average increase of 5.9%. The Association's final offer is (-) \$75 lower than the average dollar increase and the percent increase is (-) 0.26 lower than the average of 5.9%. The District's final offer is (+) \$59 higher than the dollars per returning teacher average of the comparables and (+) 0.17 higher than the average percent of increase.

At the surface this tends to support the District's offer. However, the Association stresses emphatically that the District's offer must be reduced by the out-of-pocket money dollars required by the insurance change. According to Board figures, the 5% insurance concession will result in \$208 additional out-of-pocket expenses for a family subscriber and \$82 additional out-of-pocket

expenses for a single subscriber. Thus, using either the single or the family figures reduces the Board's salary offer in 1990-91 so significantly that it is the Association's final offer that is more reasonable over the two years of the contract. The real value of the Board's \$1,879/FTE would actually equal less than the Association's final offer. Subtracting the respective additional expenses from the average dollars per returning teacher and averaging the differences yields an average of \$1,675 per teacher under the Board's offer.

The Association also presents data on a statewide basis which, they contend, supports their offer, particularly after the out-of-pocket contribution is considered.

The Association also presents a benchmark analysis. They assert that their offer best matches the prevailing settlement trend measured by the dollar increase on the salary schedule benchmarks. They conclude that the Association's final offer is closer to the settled average increase compared to the Board's offer in 12 of 14 cases of dollar increases on the seven salary schedule benchmarks. Moreover, over the two years of the contract, benchmark rankings are maintained or improved in all of the seven benchmarks except MA Minimum and MA-Step 10 with the Association's final offer.

The Association also notes that health insurance premiums in Kiel are similar to the primary comparable districts, including the District's contribution level. For instance, in 1989-90 the health insurance premium rates in Kiel were \$27.97 per month lower for a family plan and \$3.49 per month lower for a single plan than the average premium rates of the seven comparable school districts. In 1990-91 Kiel's insurance rates for the family plan rank third among the comparables. Rates for the single plan increased at a slightly higher rate and now rank second. Rates are currently \$5.96 per month higher for a family plan and \$11.51 per month higher for a single plan than the average premium rates of the primary comparables. They contend that insurance rate increases in Kiel are not so extreme that they force premium sharing, especially when comparable school districts will be maintaining 100% Board-paid premiums for 1990-91. They note that for 1990-91, teachers in Sheboygan Falls and Two Rivers will continue to enjoy the benefits of full payment of health insurance benefits by the District. In Two Rivers the insurance is part of a three-year agreement on language that will continue through 1992. Teachers in New Holstein will contribute 5% of the insurance premium, including the payment of transplant coverage, as the result of an arbitration award for the Board. Kewaskum teachers will be contributing 3.5% of the full cost of monthly health and dental insurance premiums. However, they believe it is

important to note that Kewaskum teachers voluntarily agreed to an employee contribution based upon a quid pro quo that contained a number of elements, including (1) significantly improved salary index, (2) higher-than-average dollars per returning teacher, (3) improvements to the co-curricular salary schedule, (4) language on voluntary early retirement, and (5) the establishment of IRS Section 125 plan. The District did not offer the Kiel Education Association a lasting quid pro quo such as that contained in the Kewaskum settlement. In short, there is no pattern supporting insurance contributions, in their opinion. The Association stresses again that the initial loss of the 5% contribution would be compounded with every new premium increase, in every bargain, following 1990-91. The contribution would be perpetually a percentage of a larger number. The Association's ability to negotiate a fair settlement will be forever impacted by the compounded contribution.

The next criteria addressed is criteria "(e)," comparisons to other public sector employees. In this regard they look at the salary adjustments for administrators in the Kiel District. These ranged from a low of 4.91% to a high of 5.07% in 1989-90. Thus the average administrative increase was 4.99%, or \$2,063 per administrator. This is \$287 more than the Board offer to teachers. For 1990-91, administrative salary increases ranged from a low of 5.03% to a high of 7.25%, or an average of 5.93% per administrator. The average raise was \$2,358 per administrator. There is no justification for this disparity, in their opinion, particularly since the administrators' contracts were settled without any premium payment towards health insurance.

Regarding criteria "(f)," the Association notes that the District relies on comparisons to private sector employees. However, this evidence, in their opinion, lacks the specificity necessary to allow for a comparative analysis. Moreover, this incomplete public and private sector data prohibits any real comparison of plan design, size of deductibles, or payment of premiums, especially since the necessary correlation with salary settlements is missing from the record.

The cost of living, criteria "(g)," also favors their offer, the Association concludes. They believe that arbitrators give the pattern of settlements in comparables far greater weight in their determinations. Finally, the Association suggests that the Arbitrator should give some consideration to the fact that the Kiel teachers, especially those at the top of the salary schedule, have been without a wage increase for a considerable period of time.

In terms of overall compensation, criteria "(h)," the Association notes that it has not presented information regarding overall compensation because it is difficult to acquire this information in a consistent manner from comparable districts. Regarding the District's evidence, they believe it is difficult, for similar reasons, to come to any meaningful conclusions. Further, the average "total compensation rates" do not indicate the experience and education of the teachers in the various districts. One district may have 80% of its staff at the salary maximums and another district may have only 50% of its staff at the maximums. This will impact greatly on the average "total compensation rates."

Criteria "(j)" is addressed next, which the Association believes to be particularly applicable to the insurance issue. When making changes in the status quo, arbitrators have held the moving party to a higher burden of proof. They contend that the District hasn't met this burden of proof. They have not, the Association argues, demonstrated "compelling reasons." First they have not demonstrated that cost sharing will reduce health insurance costs. Second, as noted earlier, the District has failed to provide any "quid pro quo" for this drastic change in the status quo health insurance premium payment. Third, not only has the District not demonstrated a compelling need to change, the District has not shown that the language change being proposed is at all comparable to what exists in the other athletic conference districts. Only two districts in the athletic conference will require a teacher contribution, one voluntarily and one by an arbitration decision. Two districts do not constitute a compelling pattern, specifically when Sheboygan Falls and Two Rivers will continue with 100% paid benefits. Such an important change in contract language and premium co-payment schemes should be made voluntarily, not arbitrated.

B. The Employer

At the outset, the District believes that the appropriate school districts to utilize for comparison purposes should be limited to the Eastern Wisconsin Athletic Conference. The Board asserts that the athletic conference, as a comparable pool, provides the Arbitrator with the most logical and comprehensive basis for analysis of the final offers. Moreover, use of the schools in the athletic conference as comparables is also supported by the substantial weight of arbitral authority. In this regard, the Board submits that the Eastern Wisconsin Athletic Conference has historically been utilized by arbitrators to the exclusion of other districts in rendering arbitration awards involving Eastern Wisconsin conference schools. The basic indicia of comparability relied upon by prior arbitrators to support the selection of the

athletic conference as the comparable school districts, continues to validate this grouping based on a number of factors germane to the determination of comparable school district employers. In contrast, the Union has relied on districts in five different athletic conferences and schools with a wide variety of demographic features.

Limiting itself to comparisons in the athletic conference, the Board believes its wage and total compensation offer is more reasonable. Generally there are three reasons why they believe this to be true: (1) the Board is above average on wages only and total compensation on both a dollar and percentage basis for both years of the new two-year agreement, (2) the Board's distribution of increases improves the rank order of Kiel teacher salaries at five of the eight benchmarks; the balance of the benchmarks retain their rank-order position, and (3) the Board offer substantially improves the relationship of Kiel teacher salaries to the average salaries paid within comparable districts at every benchmark. These three arguments are detailed in their brief.

First, with regard to wage only and total compensation settlements, they note that even assuming the Association offer is selected in Plymouth, the average wages only settlement in the conference with longevity was \$1,778 (6.16%) in 1989-90 and \$1,826 (5.96%) in 1990-91. The Board offer in each year is \$1,766 and \$1,866 respectfully. The Union's is \$1,690 and \$1,742. Thus, the Board offer, which will be close to average in 1989-90 and above average in 1990-91, more closely approximates the average level of wage settlements within the comparable pool, while the Union offer is considerably below the average of comparable wage settlements in both 1989-90 and 1990-91. This favors the District's offer.

Next, with respect to the improvement in rank, the Board notes this is due to the fact that the Board offer is above average over the term of the contract and, in part, to a more judicious distribution of money through some slight modification (increase) in the lane and step increments under the Board offer. In contrast, they assert the Union offer contemplates a wholly new index structure with 2% lane increments and 4% step increments throughout. Additionally, under the Board offer, the relative position of Kiel teachers is maintained at three benchmarks and improved at five of the eight benchmarks over the term of the Agreement. Conversely, the Association offer results in loss of rank at the BA and MA Minimums, improvement at five benchmarks, and retention of rank at one benchmark position.

Regarding the actual dollar relationship of Kiel to the comparable average at the benchmarks, the District asserts that as the result of judicious redistribution of above-average salary dollars, the Board offer dramatically reverses the loss of position by the Kiel teachers at each benchmark where they were previously at average or substantially below average. In contrast, under the Association's offer they lose ground at four of eight benchmarks. Where they do improve is at the expense of other benchmarks.

The cost of living is addressed next. The District asserts that their present offer, as well as past settlements historically, far exceeds the cost of living. For example, at the MA maximum the increases since 1984-85 will amount to 31% if the Board offer is accepted. This compares to an 18% increase in the cost of living nationally over the same period.

Additionally, they contend their offer exceeds increases given to other private and public sector employees. Private sector union increases in the area averaged only 2.4% in 1989 and 3.1% in 1990, which is less than half of the District's offer. In the public sector, the area municipal settlements have included 0% in three Calumet county units. More importantly, several settlements have included employee contributions for health insurance.

Regarding their insurance proposal, they contend that it is supported by the evidence of record and the relevant standards applied in interest arbitration proceedings. First they have demonstrated a need for the change. They note that there has been a 92% rise in the family premiums since 1987 and a 33% in 1990-91 alone. These increases have outstripped those in comparable districts from 1988-89 to 1990-91. The need is also demonstrated by (1) an unwillingness or inability of the Kiel Education Association to address either structural changes or any other reasonable cost management strategies in the collective bargaining process over a long period of time; (2) the inability of the District to effectuate any meaningful moderation in the increasing costs of health insurance without the help and concurrence of the Association; and (3) the clearly established trend toward cost sharing of insurance premiums by both public and private employee groups in an effort to moderate future increases in the cost of health insurance. They also note that in 1985-86 health insurance was a mere 5.78% of the total package cost of the teacher contract. However, by the second year of this agreement, 1990-91, that amount will increase to 7.43% of total compensation under the Board offer and to 7.84% under the Association offer.

By requiring teachers to participate in paying for the cost of health insurance, they will have a direct stake and a vested financial interest in reducing the cost of health insurance and this may inspire the Association to consider cost-reducing features that they have previously resisted. Moreover, arbitrators have stated that employee participation in the cost of health insurance premiums is the preferred cost-saving alternative in arbitration. They also cite national studies which suggest that requiring members of the collective bargaining unit to pay a small part of their monthly health insurance premiums will have a positive effect on health care claims experience.

The District also believes that there is a growing trend of employee participation in health insurance cost. One study noted that nationally 70% of employees in the private sector taking family coverage are required to pay health insurance. Nationally, in 1987 already 32% of the teaching employees surveyed participated in single plan coverage while 65% contributed to family plan coverage. Overall, 33% of public employees contributed to single coverage and 66% contributed to family coverage. Contributions toward coverage range widely; however, the employee's share of premiums averaged \$16 per month for individual coverage and a substantial \$72 per month for family coverage. They also present data for school districts in the seven county area surrounding Kiel. Of the 34 districts in this grouping with settled contracts for 1990-91, 24, or 71%, provide for payment by bargaining unit members of some part of the single and/or family plan premium. More specifically, they note that of the four settled districts in the athletic conference, teachers in Kewaskum and New Holstein pay toward their premiums. Moreover, if the Association prevails in this case, the Board will pay the highest single and family premium contribution in the conference. Additionally, even though the Association's final offer was selected in Sheboygan Falls, the District's proposal on cost sharing was preferred. They also note cost sharing among local private and public entities.

The District also contends its offer contains a quid pro quo for the change in insurance. First, they added a MA+12 and MA+18 lane. The Board's offer also provides \$200 above-the-average settlement in additional compensation to members of the Association over the term of the contract. There is a quid pro quo, too, in the fact that they distribute their dollars more evenly throughout the schedule, whereas the Association penalizes lower benchmarks in favor of higher paid teachers.

V. OPINION AND DISCUSSION

At the outset the Arbitrator, after studying the record, can say with certainty that both offers are unreasonable. This declaration is easy. While both offers have positive aspects, in each instance these aspects fail to outweigh the negative facets of the proposals. The difficulty in this case is measuring and judging, side by side, the relative unreasonableness of each offer.

The positive aspects of the Board's offer are found in (A) the fact the salary schedule yields better-than-average teacher increases over the two-year period while the Association's offer yields less than average increases,¹ (B) the fact that the Board's offer is structured in a way which improves the schedule, as a whole, better than the structure of the Association's offer,² and

¹Based on Association costing, the average per teacher increase in the athletic conference in 1989-90 was \$1,778 (ranging from \$1,601 to \$1,896). The average in 1990-91 was \$1,823, a two-year total of \$3,601. The Board's offer combined for two years is \$3,655, \$54 greater than the average. The Association's offer combined for two years is \$121 below the average at \$3,480 or \$175 less than the Board's offer.

²This is based on an analysis of the following data which contrast the relationship between the Kiel benchmarks and the athletic conference in 1988-89 and the same relationships which would exist under the 1990-91 final offers.

Longevity Included	<u>1988-89</u>		<u>1990-91</u>			
	\$	%	<u>Board</u>		<u>Association</u>	
			\$	%	\$	%
BA Min.	+896	4.67	+1,183	5.67	+418	2.0
BA&	+500	2.08	+973	3.58	+382	1.5
BA Max.	-1,081	-3.66	-934	-2.88	-1,322	-4.08
BA30	+4	.14	+613	1.75	+674	1.91
MA Min.	+1,203	5.87	+1,470	6.57	+1,048	4.68
MA10	-159	-.6	+158	.5	+56	.18
MA Max.	-1,214	-3.64	-808	-2.21	-747	-2.04
Sch. Max.	-2,148	-6.2	-1,435	-3.75	-1,221	-3.19

It can be seen from this that the positive differential at the BA Minimum, BA7, and MA Minimum, which existed in 1988-89, is eroded under the Association's offer and advanced under the District offer. The previous negative differential at the BA Maximum is reduced under the Board offer and advanced under the Association's Offer. There is very similar advancement at BA +30 under both offers. At the MA10 the previous -159 negative differential is flip-flopped for a +158 differential under the Board's offer. There is less advancement under the Association's offer. The only points at which the Association's offer is better is at the MA Maximum and Schedule Maximum. Their offer closed the negative differentials to a greater degree. However, the Board movement is not insignificant here.

(C) The fact that the Board attempts to address, what the Arbitrator accepts to be, a demonstrated problem. That problem is the rising cost of health insurance.

The Arbitrator believes that the need for the District to curtail its health insurance cost is demonstrated in several respects. First, the District has gone from having the lowest family premium in 1988-89 of \$197.81 (the range of other rates in the athletic conference was \$218.90 to \$351.18 and the average \$240) to having--along with New Holstein--next to the highest at \$347 per month per family in 1990-91. (The range of other rates was \$331 to \$358, the average of which was \$340.) This represents a 76% increase in two years. The impact of such a dramatic short-term increase justifies some relief. There has been 222% increases since 1985.

The Arbitrator also finds some intrinsic appeal to the idea that because health insurance costs have become so significant that they deserve to be moved to the front burner of negotiations.³ While the cost of fringe benefits always is considered in negotiations, structuring a cost sharing scheme which requires out-of-pocket expenses heightens awareness as to the magnitude of the problem and its importance in negotiations. With insurance as strictly an indirect benefit, it is too easy to view health insurance, no matter what the cost, as a given in negotiations. The attitude, can be and may be in this case, that health insurance costs are the employer's problem only and that it really isn't part of bargaining. It must be kept in mind that the Employer cannot make any significant cost saving changes in the health insurance plan--save a different, less costly carrier--without the consent of the Union. In this case, the Employer couldn't find an alternative in the market place and the Union rejected all other attempts to institute cost savings mechanisms (more about this later). This demonstrates the problem. Certainly there is no proof that cost sharing reduces health insurance cost by lowering usage. However, it is difficult to deny that it is more likely than the Parties will seek other cost reducing solutions when the employees have a direct share in the cost.

The need and desirability of premium sharing is also supported by a growing trend in that direction. Two of the five athletic conference schools have premium cost sharing. When looking at an appropriate group of expanded geographic proximate non-athletic conference comparables, a majority of

³Health insurance cost at \$347 per family is now a full 10% of wages in this district. In 1985 when the family premium was \$156, it was only 6% of wage costs. It would be interesting to determine how insignificant a part of wages it was in 1980 when the family premium was only \$83.50.

schools have some form of cost sharing.⁴ Thus, the District's insurance proposal is supported under criteria "(d)." The evidence under criteria "(f)" (private sector) and "(e)" (other public sector) also support the notion of premium cost sharing.

One negative aspect of the Employer's offer is the fact that their salary offer is diminished by the health insurance contribution. This obviously brings it lower than athletic conference schools that have no contribution. This is tempered, to some degree, by the fact employees are receiving a slightly higher than average total compensation increase, due, no doubt, in large part to the high increase in insurance cost. The average total compensation increase over two years in the comparables is \$5,747. The cost of total compensation per teacher under the Board's offer will be \$5,905. Again, the teachers cannot ignore--as they seem to--that as health insurance costs go up, the Employer's contribution goes up and they receive the benefit of this cost.

Another negative aspect of the Employer's offer is that, as the Union argues, the quid pro quo isn't sufficient enough to fully convince the Arbitrator, relative to criteria "(j)" that their offer is justified. Usually major changes in a contract during the course of bargaining are "bought"--the proverbial "quid pro quo". Arbitrators like to see a sufficient enough quid pro quo to be convinced that if the dispute existed in the real world of bargaining, most reasonable parties would have struck a deal under such terms.

While the Arbitrator agrees with the Association that the quid pro quo offered by the District, on the whole, is inadequate, he rejects their notion, repeated throughout their brief, that there must be a dollar-for-dollar or better quid pro quo. They noted several times that the extra salary gained under the Employer's offer wasn't enough to offset the health insurance cost. This isn't critically relevant. Quid pro quos are sometimes unrelated in nature. They are rarely dollar-for-dollar economic tradeoffs. Bargains get struck and tradeoffs made when each party gives up something it values less than what it receives.

The fact is the Employer's offer contains, to some extent, both dollar-for-dollar and other quid pro quos. While the Employer's salary offer is reduced by the 5% contribution, the average teacher, under the Employer's

⁴Sheboygan and Manitowoc are too large to be comparable. However, for insurance purposes, the other schools in Calumet, Manitowoc, and Sheboygan counties (which roughly comprise the CECA 10 schools) are comparable. Those having cost sharing are Valders, Reedsville, Brillion, Hilbert, Howards Grove, and Cedar Grove. Those not having it or for which there is no information are Stockbridge, Elkhart Lake, Kohler, Oostburg, and Random Lake.

offer, will receive \$175 more than they will under the Association's compared to the \$208 cost of a 5% health insurance contribution. The Employer also made more improvements overall to the schedule which will continue into the future. It is appropriate to consider the lane additions under criteria "(b)." Nonetheless, it is marginally short of convincing the Arbitrator that the change is supported under criteria "(j)."

While the Arbitrator agrees with the Association that the quid pro quo aspect of the Employer's is lacking and makes their offer unreasonable, the story doesn't end there. The Union doesn't win by default. The relative merits of their offer must be weighed. Questions must be asked and answered. How well does their offer address the salary issue? Does their offer address the health insurance issue? Does it address it in a more reasonable or less reasonable way than the Employer's?

As is obvious, the Association's offer does not in any direct way address the health insurance issue. It could be argued that it does address the issue indirectly by asking for a less-than-average increase. The money saved off the average two-year settlement (\$121) provides some relief for the short-term increase in rates, which are now comparable to other districts. This is a positive aspect of their offer.

The primary negative aspect of the Association's offer is that it does nothing directly to address the overall problem. Moreover, their offer--and this is most significant in this case--does absolutely nothing to alter their historical stance that the Employer should shoulder the entire burden of health insurance.

The record demonstrates that in 1983-84, the Union refused to increase the major medical deductible to \$100. In 1986-87 and then again for the 1987-89 contract, they refused to share the increase in the second year. In the current negotiations they did not agree to proposals for a flat \$300 or even \$100 up-front deductible. They wouldn't agree either to a streamlining of psychiatric benefits. While the Association negotiator claimed that their questions weren't answered concerning these proposals and that they didn't have time to consider them, the bottom line is they made no alternative proposals in bargaining to address insurance and made none in their final offer.

Even though the net value of the salary offer of the Employer will be less than other settlements, a ruling for the Association--given this history of resistance and these circumstances--would leave the Parties with much work to do in the future. The Arbitrator is fairly convinced that if he rules for the

Association meaningful changes in insurance will not take place without another arbitration or exceedingly high and probably unjustifiable concessions leading to a voluntary agreement. In any event, there would be more divisive bargaining in a district where the parties have never before gone to arbitration. Ruling for the Association would also weaken the benchmarks in the salary schedule. The Parties would also have to address these weakened benchmarks in the future.

In contrast, the Employer's offer generally improves the schedule. Also, ruling for the Employer begins to address the insurance problem and leaves the typical employee taking family coverage with effectively, for this contract term, only \$33 less than they would receive if their offer were implemented.⁵ Thus, an award for the Employer will leave the teachers with a better schedule for the future, only \$33 less money for someone paying the family premium and it breaks the historical standoff on insurance cost sharing in the face of the growing trend in other districts, as well as other public and private employment generally. This growing trend convinces the Arbitrator that this is a concession eventually that the Association would have to make.


By accepting the Employer's offer, the Arbitrator may be forcing the Association to accept more of a concession that, standing alone, might ordinarily be justified at this point in time. (For example, we note that some of the other districts require less than a 5% contribution.) However, the Employer's offer doesn't stand alone and must be weighed against the Association's. Their unjustifiable decision to do absolutely nothing on insurance under these particular circumstances leads the Arbitrator to conclude that requiring a 5% contribution is less unreasonable than requiring none.

In reaching this conclusion the Arbitrator recalls catch-up cases where districts have refused to address the need for catch-up at all, and where Arbitrators award for the union even though their proposal is somewhat more than justified. In this case, the analogy is reversed. The Association has done absolutely nothing to address insurance cost sharing or insurance cost as a general matter. The Employer is slightly off the mark in its proposal as a whole, but not so much that it must be rejected as less reasonable or more unreasonable than the Association's final offer.

⁵The Association per-teacher increases over two years is \$3,480 (\$1,745 + \$1,735). The Employer's is \$3,655 (\$1,776 + \$1,879). When adjusted by the 5% contribution, \$208, the net is \$3,447 or \$33 less than the Association's offer.

AWARD

The final offer of the District
is accepted.



Gil Vernon, Arbitrator

Dated this 14th day of January 1991.