RECEIVED
FEB 11 1991
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Arbitration

of

WEBSTER SCHOOL DISTRICT

and

CHEQUAMEGON UNITED TEACHERS

re

WERC Case 27, no. 44354
INT/ARB -5729

ARBITRATION AWARD

Decision No. 26617-A

INTRODUCTION

On July 23, 1990, the Chequamegon United Teachers, hereinafter called the Union, filed a petition for arbitration pursuant to Sec. 111.70(4)(cm)6 of the MERA on behalf of the bargaining unit consisting of all non-teaching staff of the Webster School District, hereinafter called the District. An investigator for the WERC determined that the parties were deadlocked and obtained final offers by August 29, 1990. The WERC ordered arbitration and furnished the parties with a panel of arbitrators on September 10, 1990. The parties selected the undersigned who was appointed arbitrator by the WERC in an order dated September 29, 1990.

The arbitrator convened a hearing on December 11, 1990 at which exhibits were exchanged and testimony was presented. Appearing for the District was Stephen Weld, Attorney of Weld, Riley, Prenn and Ricci; appearing for the Union was Barry Delaney, Executive Director, Chequamegon United Teachers. Post-hearing briefs were submitted in January, 1991 and the last rebuttal brief was received by the arbitrator on January 29, 1991.

The parties had multiple disagreements on three major issues, wages, health insurance and subcontracting. These are summarized below. Final offers are included as appendices to this award.

ISSUES

Wages: The District and the Union agree on the '90-'91 salaries for 18 of the 30 employees classified as bus drivers, custodians or instructional assistants and disagree by 6 to 8 cents per hour on the maximum salaries for 13 employees classified as cooks, teacher aides and secretaries. (One individual is a cook as well as a bus driver and therefore is counted twice.)

The District and the Union agree on the '91-'92 large bus driver salary but disagree on salaries for the other categories by amounts ranging from 2 to 19 cents per hour on the maximum rates. The District estimates that its offer for the '90-'91 year raises salaries by 5.18% compared to 5.29% under the Union offer and, in the '91-'92 year raises salaries by 4.44% while the Union offer raises salaries by 5.00%. (Er. Ex. 15)

The dollar difference between the '90-'91 offers is $341; the dollar difference between the '91-'92 offers is $2,166. On the '89-'90 salary base of $306,674, these differences are approximately one tenth of one percent in '90-'91 and seven tenths of one percent in '91-'92. (Calculations based on Er. Ex. 15).

SubContracting: The District offer would not change the following language in the '88-'89 Agreement.

> . . .The Employer does agree that prior to any decisions to subcontract work out the Union will be notified and given the right to bargain as required by Wisconsin Statute. (Union Exhibits 140 C&D)

The Union's offer would change the language to read:

> . . .The District shall not subcontract bargaining unit work if such subcontracting reduces the working hours of any bargaining unit member. (Union Ex. #1-A)

Health Insurance: The District proposes that the share of the health insurance premium which it pays be reduced to 94% of what it had been during

the '89-'90 contract. The Union proposes the continuation of the existing District payment schedule of 100% of the premium of employees who work 1500 or more hours per year, 88% of the premium of employees who work 1,000 to 1,500 hours, and 70% of the premium of employees who work 1,000 hours or less per year.

In addition, both final offers provide for a change in carrier. The District proposal allows such a change effective in '91-'92 provided that the benefits are "substantially equivalent." The Union proposal allows such a change in '90-'91 but requires that "no benefits or services be reduced" from what they are in the '89-'90 plan except for certain specified reductions to which both parties have agreed.

DISCUSSION

Comparables: Before analyzing the three issues on which there is disagreement, the arbitrator first must resolve the difference of opinion on the question of which are the proper comparables. A dispute about the terms of the '85-'86 dispute involving this same bargaining unit required Arbitrator Fred Kessler to select the districts which he would use as comparables. In that dispute, Kessler stated that it was inappropriate to compare organized to unorganized districts when organized districts were available. Also, he indicated "some geographic proximity and similarity of size" (Un. Ex. 7-H) is needed if districts outside of the athletic conference are to be considered comparable. Since there was only one settled organized district in the Upper St. Croix Valley Athletic conference, the conference to which Webster belonged, Kessler selected the ones suggested by the Union, namely those settled organized districts in the Upper St. Croix Valley Athletic Conference,

plus the settled organized districts in the Lakeland and Indianhead Athletic Conferences (Un. Ex. 7). Kessler ended up with eleven comparables.

In this arbitration, the Union selected the districts that Kessler had designated as comparables. The District, did not include unorganized districts but, using size and proximity as a guide, added four districts from the nearby Heart of the North Conference to the settlements in the Lakeland and Upper St. Croix Valley Conferences. Also, it included two districts from Upper St. Croix and Lakeland which had not settled - - - Frederic and Lake Holcombe.

After considering the arguments in favor of each pool of comparables and after a careful reading of Kessler's award, this arbitrator selected as the proper pool of comparables for this arbitration, the ten districts which were included in both the District's and the Union's list of comparables. Those comparables are Unity (the only settled organized district in the Upper St. Croix Valley Conference) and the settled organized Lakeland Conference districts of Birchwood, Bruce, Cameron, New Auburn, Northwood, Shell Lake, Siren, Weyerhauser and Winter.

The primary reason for the selection of these ten districts is that all of them were regarded as comparable by both the District and the Union. Also, the number of districts were sufficient to provide a data base and were not too cumbersome to handle.[1] Using these comparables, the arbitrator turns next to a discussion of each of the three issues.

---

[1] As an aside, the arbitrator wishes to note that in this dispute involving thirty employees in which the parties were very close on the wage issue, the experienced and able advocates submitted 199 exhibits, many of which were multiple page exhibits, and briefs and rebuttals which totaled 145 pages. This probably is not so unusual and this arbitrator only wishes to note for the record that he (and he believes, other arbitrators as well) feel overwhelmed by the wealth of information and extensive arguments supplied by the parties.

Key Issue: Before, doing so, however, it should be noted, as was stated when the issues were posed, that so far as economic impact is concerned, the health insurance issue is the key issue. Over and above the significance of changing from no reduction in benefits to substantially equivalent, the dollar difference in the insurance offers of $12,673 over two years far exceeds the $2,507 salary cost difference in the offers over two years. Also, as was made clear to the arbitrator when he asked the parties to attempt one final effort after the hearing to settle the dispute, "the parties are irretrievably split on the insurance issue." (12/17/90 letter of the District to the Union).

Wages: Although the wage offers do not differ substantially, the District calls the attention of the arbitrator to the fact that the maximums for '91-'92 under the Union offer for the cook, head cook, high school secretary, secretary and teacher aide classifications exceed the District offer by 15 to 19 cents. The District argues that, since its percent wage increase is greater than that of most of the comparables (Dist. Ex. 42), the arbitrator should select the District offer. The Union argues that, since Webster salaries are lower than those of most of their comparables, the percentage increase has to be greater in order to keep the actual salaries comparable. The Union argues that the actual dollar amount of the salaries is more important than the percent wage increase.

The arbitrator reviewed the exhibits showing the wages of the classifications cited by the District for which the Union offer exceeded the District offer by 15 to 19 cents in '91-'92 and found that in '90-'91 these Webster salaries placed Webster below the median in most cases. The arbitrator therefore concluded that although either wage offer was fair and could have been selected, the wage offer of the Union was slightly preferable because the

Union offer placed the Webster employees more in line with the comparables than the District offer.

The District makes reference to wage increases and benefits in county governments in the area but does not include the wage scales in those units. The absence of wage data makes it impossible for the arbitrator to determine whether Webster wages for key classifications are higher or lower than those paid elsewhere, such as Burnett County. The arbitrator agrees that from a labor market point of view, the wages and benefits paid to organized employees doing the same work (custodial, secretarial, bus driving and cooks) for other public and private employers in the area (Spooner, for example) are relevant under Section 111.70(4)(cm)7, Wisconsin Statutes.

Subcontracting: Of the 10 comparables used by the arbitrator three allow subcontracting (Unity, New Auburn and Shell Lake) and two are silent on the issue and therefore presumably do not bar it (Bruce and Cameron). Four specifically bar subcontracting if it causes a layoff of some employees (Birchwood, Northwood, Siren and Weyerhauser) and one (Winter) has a maintenance of standards clause that arguably provides much the same protection. Given the even split among the comparables and the fact that no evidence was presented to show that subcontracting was a problem, the arbitrator would not select the Union offer on this issue if it was standing alone.

Health Insurance: The Union agreed in negotiations to eliminate the well baby benefit and the extraction/replacement of teeth benefits that were in the 1989-90 plan and also agreed to increase the drug card deductible from $2 to $5. The Union claims that this saves the District $11.28 per month for each employee taking full family health insurance. The Union contends that this

is sufficient and that the arbitrator should reject the District offer because it does not offer a quid pro quo in exchange for the major change the District proposes, namely to reduce the District contribution to the health insurance premium to 94% of what it was previously.

The District claims that its wage offer includes a quid pro quo and presented evidence showing that the percent wage increase under its offer is greater than the percent wage increase of the comparables and that the wage increase for 1990 exceeds the increase in the cost of living in 1989.

The arbitrator does not believe that the District offer includes a quid pro quo commensurate with the 6% reduction in the portion of the health insurance premium which it is seeking. The arbitrator believes that the shift from fully paid insurance by the employer to a system under which the employee pays some percent of the premium is one which is considered very important by unions generally, as well as by the Union in this dispute.

The arbitrator has already stated that he believes that the wage offer of the Union is preferable to the wage offer of the District. Clearly, such a finding suggests that the arbitrator did not find a quid pro quo included in the District wage offer. Although, as noted by the District, the wage increase for 1990 in its offer exceeds the increase in the cost of living index for 1989, the reverse is true for 1991. The proposed increase under both the Union and District offers will fall short of the increase in the cost of living index in 1990.

The Union points out that the reduction in the Company share of the premium will actually reduce the income of the employee working less than 1000 hours per year (Level 3) by an amount that is greater than the wage increase offered to this employee. The wage increase of employees working 1000-1500 per

year (Level 2) will be cut in half by their increased payment of health care costs. And, when the increase in the cost of living is taken into account, the real wage of Level 1 workers (employees working more than 1500 hours per year) will be reduced.

In its brief, page 26, the District points out that, under its offer, it still will be paying $4.29 per hour for health insurance in '90-'91 for a part time janitor to be paid $7.46 in '90-'91 under its offer. As the District states this is "more than half this employee's regular salary!" The arbitrator calculated from the data in District Exhibits 5 and 6 and Union Exhibit 114b, that under the District offer, it's increase in health insurance cost for this individual would be about 41 cents per hour. However, this same individual would be paying an increase of 57 cents per hour under the District's offer. If the Union's offer prevails, the District will pay 69 cents per hour more and the individual will pay 29 cents per more. Neither prospect is at all attractive, but the District proposal seems less equitable to the arbitrator, given the financial situation of the District noted in the next paragraph.

The District argues that because of the rapidly increasing cost of health care it is necessary for employees to pay part of the premium. The arbitrator does not believe that the fiscal condition of the District justifies this claim. Union exhibits show that the District has a lower mill rate, a higher valuation per pupil and higher ratio of general fund balance to expenditures than any of the comparables included by the arbitrator (Un. Exs. 17 & 19-21). According to those exhibits, the District ratio of balance to expenditure ranks it first in the state.

The District argues the arbitrator should select its offer because of internal comparisons and cites various arbitrators' dicta in support of its

argument. This arbitrator, like the others cited, has been conscious of the importance of internal comparisons. In this dispute, however, the arbitrator rejects the District argument because the District has not seen fit to treat the support staff in the same way it has treated its teachers and non represented employees. Teachers and non-represented employees received a 9.4% increase in '90-'91, considerably greater than the increase offered to the non-teaching represented employees. Also the '91-'92 increase of the teachers exceeds the increase offered the support staff.

Another weakness in the internal comparison argument of the District is the absence of a dental plan for non-teaching employees while one is in effect for the teachers. The District argues that this is not relevant because a dental plan is not part of the health insurance package. The arbitrator believes that dental plans are frequently add-ons to existing health plans and therefore finds that the difference in dental coverage is relevant and further illustrates that internal comparisons provide no support for the District position in this dispute. If the District offer had provided a dental plan and a wage increase of the same magnitude that it offered to non-represented employees and teachers, other factors such as those noted below being equal, the arbitrator would have selected the District offer.

For the reasons explained above, the arbitrator finds the Union position on the health care issue preferable to the District position unless the following examination of the comparables shows that the Union position is out of line. The District argues that the pattern among the comparables is for employees to pay a portion of the health insurance premium. The arbitrator tested this proposition against the ten comparables he had selected.

In 1990, five of the ten comparables paid 100% of the premium of full time employees and five paid from 92% to 97%. The average for the ten comparables was 97.6% (Calculated by the arbitrator from Union Ex. 75), slightly closer to the Union's offer of 100% than to the District offer of 94%. For employees working 1440 hours, Union Exhibit 76 shows that five of the ten comparables still pay the full coverage while five pay slightly less, averaging 96.9% for the ten compared to 88% under the Union offer and 82.7% under the District offer. Union Exhibit 78 shows that for employees working 720 hours, only two of the ten comparables pay 100% and that the range among the other eight is from zero to 95%. The average for the ten comparables is 65.8%, which is the same as the percent proposed under the District offer and slightly less than the 70% under the Union proposal.

The arbitrator concluded both offers were close to the pattern maintained by the comparables and that neither was out of line. Perhaps, on the whole, the Union offer is preferable because it deviates less from the pattern than the District offer. The arbitrator also checked the trend among the ten comparables by comparing 1989 to 1990 and found that in '89, seven or nine (the two for which the data are not clear are Shell Lake and Unity) of the ten comparables had full payment according to District Ex. 29 and that only five of them continued to pay the full premium in 1990 according to Union Exhibit 75. Clearly, the trend favors the selection of the District offer. However, the arbitrator does not find that the trend among the comparables has sufficient weight to offset his preference for the Union's insurance offer for the reasons stated previously.

Another aspect of the dispute about health insurance on which the parties differ concerns the language governing a change in the carrier. Essentially,

the District seeks the freedom to find a carrier which will supply substantially equivalent benefits while the Union would make a shift in carrier contingent upon the maintenance of current benefits. So far as the ten comparables are concerned, the situation seems to favor the Union slightly.

Only three districts (Unity, Cameron and Weyerhauser) provide that the employer may shift carriers so long as substantially equivalent or better benefits are maintained. One (Northwood) does not mention this topic and two (Birchwood and new Auburn) are tied to whatever the teachers in those districts do but no data on shifts of carrier for those teachers are supplied. One (Shell Lake) provides that a shift in carriers can be made if equivalent benefits or better benefits are maintained. In two districts (Bruce and Siren) the Union must agree to the change in carriers. And, in one district (Winter), the contract provides that the district may change carriers so long as it maintains the level of benefits.

Maintaining the level of benefits is probably open to interpretation as is the difference between substantially equivalent and equivalent. Never the less it appears to the arbitrator that the District offer would give it more freedom than is possessed by the comparable districts---unless in those districts where the choice of carrier is determined by the teacher contracts such contracts provide for change if benefits are substantially equivalent. However, absent data on that point, the arbitrator does not find that the District can rely upon a pattern to support its proposal.

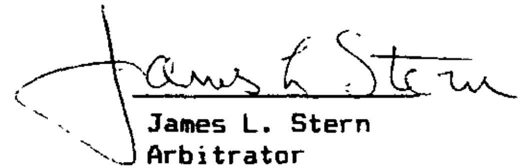
The review of the pattern among the comparables in so far as employee contribution, the right of the employer to change the insurance carrier, and whether the new plan must provide substantially equivalent, or equivalent, or the same benefits, shows that the Union offer is not out of line and therefore

for the other reasons mentioned previously, the arbitrator reaffirms his preference for the union offer on this key issue of health insurance.

AWARD

With full consideration of the exhibits, testimony and arguments of the District and the Union, the arbitrator finds that the final offer of the Union is preferable to the final offer of the District under the statutory criteria listed in Wisconsin Statutes Section 111.70(4)(cm)7 and therefore selects the final offer of the Union and orders that it and the jointly agreed upon stipulations be implemented forthwith.

2/5/91
February 5, 1991


James L. Stern
Arbitrator

III.

STATEMENT OF ISSUES

The issues in dispute in this proceeding are wages, health insurance and subcontracting language. The parties' final offers on these issues are as follows:

1. Wages

District

Increase the wage rates for bus drivers by 4.2% in both 1990-91 and 1991-92. For all other employees, increase the wage rates by 4.5% in 1990-91 and 4.2% in 1991-92.

Union

Increase the 1989-90 wage rates by the following percentages for 1990-91. Also, increase the 1990-91 wage rates by the following percentages for 1991-92.

1. (A) Large Bus
    1. 4.2%
    2. 4.2%
    3. 4.2%
    4. 4.2%

   (B) Small Bus - 4.5%
   (C) Extra-curricular, etc. - 4.5%
   (D) Owl Run - 4.5%

2. Custodian (full-time)
   (A) 4.5%
   (B) 4.5%
   (C) 4.5%

   Custodian (part-time)
   (A) 4.5%
   (B) 4.5%
   (C) 4.5%

3. Instructional Assistant
   (A) 4.5%
   (B) 4.5%

4. Cooks
   (A) 4.5%
   (B) 5.5%
   (C) 5.0%
   (D) 5.5%

5. Teacher Aides
   (A) 4.5%
   (B) 5.5%

6. Secretary/Teacher Aides
   (A) 4.5%
   (B) 5.5%

7. High School Secretary
   (A) 4.5%
   (B) 5.5%

2. <u>Health Insurance</u>

<u>District</u>

Revise <u>Article 10 - Insurance</u>, <u>Health Insurance</u>, to read:

A. The Employer agrees to pay 94% of the premium for family and single health insurance coverage for Level 1 employees.

B. The Employer agrees to pay 88% of its Level 1 employees' contribution toward the premium cost of family and single health insurance coverage for Level 2 employees.

C. The Employer agrees to pay 70% of its Level 1 employee's contribution toward the premium cost of family and single health insurance coverage for Level 3 employees.

D. In 1990-91, the health insurance coverage shall be provided by the same carrier as in 1989-90. In 1990-91, the health insurance coverage shall be the same as was provided in the 1989-90 school year except that the deductible shall be $100 per individual and $300 per family. The drug card shall be $5 (it was $2). Well baby care and extraction replacement coverage shall be dropped.

E. After the 1990-91 school year, the District may change the carrier provided the benefits are substantially equivalent to those provided in the 1990-91 school year.

F. The District will implement and administer a health insurance plan within the meaning of Section 125(c) of the IRC no later than November 1, 1990, for the purpose of permitting employees covered by this collective bargaining agreement to participate in a non-tax qualified Section 125(c) plan for the purpose of paying only the employee's portion of the

health insurance premiums to the insurance carrier. Both parties recognize that the documents for the plan may need to be amended from time to time due to changes in federal or state law. Any amount excluded from an employee's salary due to the employee's participation in the Section 125(c) plan shall be considered earnings for retirement contribution purposes. The District shall pay the costs of an administrator for this plan. The plan administrator shall submit an annual report to the Association and such report shall give a brief account of the operation of the plan during the past year.

Union

Article 10, page 7 - Two preamble paragraphs under the title Health Insurance shall be added. Such paragraphs shall read:

"The health insurance benefits and services shall remain the same as was in effect for the 1989-90 year with the exception that the drug card shall change from $2 to $5, well baby care will be dropped, and extraction/replacement will be dropped. The District may change insurance carrier or self-fund the health insurance provided that no benefit nor any service (except as described above) is reduced from what was in effect during the 1989-90 year. This means that the District can do one of the following:

1. Keep the present 1989-90 carrier and plan (except as modified above),
2. Change insurance carrier (provided that no benefits or services are reduced except as modified above),
3. Self-insure the health insurance (provided that no benefits or services are reduced except as modified above),
4. Change insurance carrier where some benefits and/or services are reduced and self-fund such reductions so that through changing carrier and partial self-funding, there are no benefits or services reduced (except as modified above).

The District will implement and administer an employee contribution to the health insurance plan within the meaning of Section 125(c) of the Internal Revenue Code, no later than November 1, 1990 (or within 60 days after an arbitration award), for the purpose of permitting employees covered by the Collective Bargaining Agreement to participate in a non-tax qualified contributed to the employees' share of the health insurance premiums (amount as described above) shall be placed into this Section 125(c) plan for the purpose of paying only the employee's

portion of the health insurance premiums to the insurance carrier. Both parties recognize that the documents for the plan may need to be amended from time to time due to changes in federal or state law. Any amount excluded from a teacher's salary due to the employee's participation in the Section 125(c) plan shall be considered earnings for retirement contribution purposes. The District shall pay the costs of an Administrator for this plan. The Plan Administrator shall submit an annual report to the Association and such report shall give a brief account of the operation of the Plan during the past year.

3. Subcontracting

District

Status Quo. Article 3(F) shall continue to read as follows:

> The right to close or expand the operation or any part thereof or reduce, alter, combine, transfer or cease any department, operations or service. The Employer does agree that prior to any decisions to subcontract work out, the Union will be notified and given the right to bargain as required by Wisconsin Statute 111.70.

Union

Article 3(F), pages 3 and 4 - delete the last sentence and replace with:

> The District shall not subcontract bargaining unit work if such subcontracting reduces the working hours of any bargaining unit member.