

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

RECEIVED
JUL 29 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Stipulation of
FALL CREEK SCHOOL DISTRICT

and

WEST CENTRAL EDUCATION ASSOCIATION

Case 9
No. 44341 INT/ARB-5727
Decision No. 26756-A

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To Initiate Arbitration
Between Said Parties

APPEARANCES:

On Behalf of the Employer: Steven J. Holzhausen, Membership
Consultant - Wisconsin Association of School Boards.

On Behalf of the Union: Jeffery L. Roy, Executive Director - West
Central Education Association.

I. BACKGROUND

The Association is the exclusive collective bargaining representative of certain employees of the District, in a collective bargaining unit consisting of all regular full-time and regular part-time support staff employees of the District. On February 21, 1990, 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, 1990. Thereafter the Parties met on five occasions in efforts to reach an accord on a new collective bargaining agreement. On July 23, 1990, the District and the Association filed the instant stipulation requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On October 16, 1990, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by

January 2, 1991, the Parties submitted to the Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon, and thereafter the Investigator notified the Parties that the investigation was closed. The Investigator also advised the Commission that the Parties remained at impasse. On January 23, 1991, the Commission ordered the Parties to select an Arbitrator to resolve their dispute. The undersigned was selected and was appointed on February 6, 1991.

An arbitration hearing was held on April 2, 1991. Post-hearing briefs and reply briefs were filed. The last of these briefs were received May 24, 1991.

II. ISSUES AND FINAL OFFERS

A. Health Insurance

The Union proposes that for the 1990-91 school year the Board pay up to \$138.06 per the single plan and up to \$351.54 for the family plan. The actual premiums for the plan are \$138.06 and \$356.54. The premiums for 1991-92 are not known and the Union proposes that the District pay full premium for the single plan and all but \$5 per month of the family plan.

The District proposes that they pay \$125 for the single plan and \$330 per month for the family plan in 1990-91. For 1991-92 they propose payments of \$145 and \$390 for the single and family plans.

B. Wages

The Association proposes to increase all rates under Article XVI by 4% in 1990-91 and 4% in 1991-92. They propose a \$10 per hour rate for Music Aides for 1989-90 and that this rate be increased 4% each year of the contract.

For Bus Drivers, they propose the following:

- "1. Increase wage rates by 4% for 1990-91 and 4% for 1991-92.
2. Insert (Osseo Cluster) after the word Capstone.
Increase \$7.70 by 4% for 1990-91 and 4% for 1991-92.

3. Delete \$13.25 and \$13.50 and insert 2 hr. minimum, increase per hour rate 4% for 1990-91 and 4% for 1991-92.
4. Increase 1989-90 dollar amounts by 4% for 1990-91 and 4% for 1991-92."

The District also proposes \$10 per hour for Music Aides. They also propose to increase all Article XVI rates by 3% each year of the contract. For Bus Drivers they propose the following:

- "1. Increase wage rates by 3% for 1990-91 and 3% for 1991-92.
2. Insert (Osseo Cluster) after the word Capstone.
Increase \$7.70 by 3% for 1990-91 and 3% for 1991-92.
3. Increase 1989-90 dollar amounts by 3% for 1990-91 and an additional 3% for 1991-92.
4. Increase 1989-90 dollar amounts by 3% for 1990-91 and an additional 3% for 1991-92."

C. Subcontracting

In the previous contract (1989-90) between the Parties, which was their first, the following Memorandum of Agreement was agreed to by the Parties:

"The Board and the Union agree that the District shall not subcontract any services now being performed by bargaining unit members prior to the ratification of a successor to the 1988-90 collective bargaining agreement. It is expressly understood that the Memorandum of Agreement will expire on the ratification of such successor agreement."

The Union, in its final offer, proposes to maintain the Memorandum of Agreement in this contract by changing the dates to "1990-92."

D. Retirement Contribution

The Association proposes the following:

- "D. Change second sentence to read: The District will pay up to 5% of the employee's share for 1990-91 and 6% of the employee's share for 1991-92 into the Wisconsin Retirement System."

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Association

1. Insurance

The Association notes that the District has always paid the full premium amount for the single premium and all but \$5 per month of the family premium. Under the District proposal, if it were to be awarded, the employee taking the single health plan would have to begin contributing 9% or \$13 of the premium for 1990-91 and an unknown percentage for 1991-92, as the rates have not yet been set by the insurance company. For the employee taking the family plan, it would mean changing the current \$5 per month contribution to paying 7% or \$26.54 of the premium for 1990-91 and again an unknown percentage for 1991-92. Thus, the District's proposal, in their view, is a "drastic change" in the status quo. Yet the District has not, as Arbitrators often require, offered a quid pro quo, nor is there any evidence of a compelling need to make such a change.

The Association acknowledges that the premium rates stated in the District's final offer are the same in the teaching staff contract. However, they don't view the teachers as a comparable. More importantly, the teachers agreed to changes (deductible, etc.) in their coverage which lowered the rate. Additionally, the teacher insurance contribution has always been less than the support staff.

The Association also draws attention to the fact that relative to the external comparables, the districts of Altoona, Augusta, Eleva-Strum and, in the past, Fall Creek have always paid the premium at 100%. Only Osseo-Fairchild has a different premium payment, and even in this case, the Board paid 100% of the previous year's premium. The Association argues, too, that the insurance rates themselves are very comparable to the other districts and are even below the Altoona, Augusta, and Osseo-Fairchild premium rate. Accordingly, they view their offer to maintain the status quo as reasonable. It does not, as the District's offer, reduce the take-home pay of the employees.

2. Wages

The Association argues that their wage offer is more reasonable than the District's for a variety of reasons. First, they direct attention to the actual

dollar-and-cents increases in the comparable district for 1990-91. They argue that the increase sought in the final offer for 1990-91 is very comparable to the other school districts. On the other hand, the District Final Offer on wages is not comparable when looking at what a member takes home in his/her pocket. The employee in Fall Creek must pay 2% for WRS and, depending on which health insurance plan, a deduction for the health insurance which, in turn, would reduce their wages.

The Association also discounts the District's argument concerning the farm economy. Fall Creek, in their view, is not dairy dependent, whereas the comparable districts do produce more dairy products. In short, there is, in their opinion, no inability to pay.

3. Retirement Contribution

The Association argues that its offer is comparable with the other districts in relation to the Wisconsin Retirement System and, accordingly, is reasonable. They point out that Altoona pays for the entire amount with no cap on the employee percentage. Augusta, Eleva-Strum, and Osseo-Fairchild all pay the employee's contribution of 6%.

4. Subcontracting

The Association characterizes its offer as maintaining the "status quo." On the other hand, they argue that the District, because it wishes the date to expire in the new contract, would dramatically change the intent of the language by giving the District the right to contract for those services now being exclusively performed by bargaining unit members, thus the District would change the "status quo." They contend that the District has not justified the need for this change or offered a quid pro quo. Moreover, only one comparable district has a unqualified right to subcontract. Four others have a limited right.

B. The District

1. Wages

The Board notes that with respect to the wage issue, there is little difference between the final offers. The total package difference over the two years is \$12,833. In spite of this slight difference, they believe that their offer is more reasonable for several reasons. Looking at the wage levels in comparable districts for 1990-91 for the various classifications, they note that Fall Creek support staff employees generally rank second out of the five comparable school districts. The only exceptions are the Bus Drivers, who rank fourth, and the Food Service employees, who rank first. On the minimum wage rates, Certified Aides and Custodians rank second, Aides rank fourth, and Bus Drivers and Food Service employees rank fifth.

They also argue their position is that when considering the evidence above, its offer on wages should be found the most reasonable. Most employees in the District retain their salary rankings in relation to comparable school districts. Moreover, the Union has not shown that the District has had any problems attracting or retaining qualified employees.

The District believes that other relevant criteria support their offer. They make reference to the "overall compensation" criteria, as well as the "interest and welfare" of the public. They calculate that the average total package increase was 7.8% in the comparables. Their offer at 7.0% is closer to the Associations at 9.6%. The average is distorted by one unusually high settlement.

Regarding the interest and welfare of the public, they draw attention to a number of other factors, including (1) the possible impact of cost controls and (2) economic problems in the dairy industry. The present state in the dairy industry is important because the current economic conditions were not present when the majority of the comparables settled. Many of the external contracts were signed in 1989 and in the first three quarters of 1990.

2. Health Insurance

The Board notes that the previous contract specified the dollar amount to be contributed by the Board. For the second year of this contract, the District notes that the Association is proposing that they pay the "full amount" minus

\$5. The board views this as a change in the status quo which the Association has not supported. This changes the carefully negotiated dollar amounts in the contract which were specifically bargained not to reflect that the Employer was responsible for the "full" premium. This leads to automatic increases by placing the burden on the Employer to justify proposing in the future less than the "full" premium. Neither is there a quid pro quo.

They also present a large amount of evidence on the rising cost of health insurance generally and efforts through collective bargaining to control these costs. Cost sharing is one such method. More specifically, they draw attention to the fact that Fall Creek's health insurance rate increases were substantially greater than the increases experienced by comparable school districts. The Board's offer is an attempt to mitigate increasing insurance costs by having employees pay a greater portion of the health insurance premium. Employees also have an option which would allow them to avoid paying a portion of the premium. If the employee wants 100 percent of their health insurance premium paid, all they need to do is shift to the HMO, as opposed to the traditional indemnity plan provided by the WEAIT.

The District also looks at the practices in comparable districts. Employees in the Osseo-Fairchild School District currently contribute \$18.26 per month for single coverage and \$42.84 per month for family coverage. Moreover, only regular, full-time 12-month employees are eligible for the for the family contribution in Osseo. Full-time school-year employees can take the family health insurance, but the Board will only pay at the single rate. Osseo also lists the Board's insurance contributions as a dollar amount. Clearly, the Board's final offer is reasonable when compared to employee contributions in Osseo-Fairchild. In contrast, any regular, full-time support staff employee (school year or 12-month) in Fall Creek working more than 37.5 hours per week is eligible for the dollar contribution in the contract for family or single coverage. They suggest that increases in Altoona are paid by the employee. Part-time employees receive a pro rata amount. Similarly, in Eleva-Strum, employees who work less than 230 days a year receive pro rata benefits. Additionally, out of the seven collective bargaining agreements in comparable school districts, only two of them (Augusta and Eleva-Strum) designated the Board's contribution toward health insurance as a percentage or the word "full."

3. Retirement Contribution

The total required employee contribution under the WRS is 6%. The Board proposes no change to the current situation where it pays 4% of the employee's required contribution to the WRS. While they acknowledge that on the basis of comparability the Union's offer is more reasonable, they look at this issue as part of the total package cost. The Board submits that when the final offers are compared on a total package basis, its offer is the most reasonable.

4. Subcontracting

The Board submits that the Union's proposal is such a substantial change in the status quo and so severely alters the bargaining relationship between the Parties, that the Union's final offer should be rejected on the basis of its subcontracting proposal alone. They note that in the initial bargain between the Parties, the Board agreed not to exercise its contractually bargained right to subcontract until a successor to the initial collective bargaining agreement was ratified. They have lived up to this agreement and in return got the right to subcontract. The Union's proposal would effectively prohibit subcontracting work in the future. The Board contends that they should not have to negotiate this issue twice.

The Union has not, in their opinion, justified the change in the status quo based on need or a quid pro quo, nor is it justified in the comparables. They note that every comparable school board currently has a limited right to subcontract.

IV. DISCUSSION AND OPINION

Both Parties spend a great deal of energy, in the course of discussing the subcontracting and health insurance issues, pointing fingers. On both issues they accuse each other of trying to change the status quo, of failing to demonstrate a need for change and failing to offer a quid pro quo. The Board says that the Union is changing the status quo and has the burden on both subcontracting and health insurance. The Union, not surprisingly, claims the opposite.

This is a case, with respect to these two issues, where half of the Parties are right half of the time. Both have a laboring oar. It is the determination of the Arbitrator that the Employer is changing the status quo on health insurance and the Union is changing the status quo on subcontracting.

Regarding the health insurance issue, it is the Arbitrator's opinion that no matter whether the contract had dollar amounts or referenced "full" or 100%, the Employer is changing the status quo since never before had employees contributed more than \$5 per month on the family plan and they had never contributed on the single plan. Thus, for the first time, employees, if the Employer offer were accepted, would contribute more than nominal amounts. On the other hand, the Union isn't changing the status quo by asking for the "full premium minus \$5" in the second year since the premium cost is unknown. Given this fact, there was no other practical way to express their offer to be consistent with the fact that under the prior contract employees made no contribution to the single premium and only \$5 per month to the family premium.

The Union is changing the status quo on subcontracting because by its nature the side letter is to expire and thus the constructive status of the contract regarding subcontracting is no less than silence. In view of the wording of the side letter, there is no way the Association can breath life into the letter and argue that the temporary ban on subcontracting is the status quo. To do so is simply anomalous and contradictory to the expressed intent of the letter. To represent the letter as the status quo mischaracterizes the intent of the letter.

Not only does the District and the Association have the burden on the issues of health insurance and subcontracting respectively, they both have failed to sustain that burden. Both offers are unreasonable with regard to the changes they seek to introduce.

First, regarding the health insurance, no specific need for cost sharing has been established. The premium in Fall Creek is not out of line with other districts. Moreover, it has not experienced grossly disproportionate increases. The 1990-91 premium (single and family) is the second lowest comparable group. Only Eleva-Strum pays less. Three districts pay in the neighborhood of \$370-374 per month versus Fall Creek's \$356 per family. Nor did Fall Creek have the highest premium increase from 1989-90 to 1990-91. Eleva-Strum had a 25% increase versus Fall Creek at 19% compared to 13% to 14% for the other three districts. Thus, there isn't any particular need demonstrated--

relative to comparable districts--to impose a cost share greater than the traditional \$5 per month contribution for the family premium.

Another negative aspect of the Employer proposal is that there is no quid pro quo for this change. If employees stayed in the WEAIT plan, the savings would be not insignificant. It would be even greater if employees switched to the HMO option where the premium is \$310 per month. The savings to the Employer would be nearly \$50 per month. It seems reasonable that some quid pro quo be offered for this change and cost savings. A natural trade off would have been the increased WRS contribution. Also, there is no quid pro quo either for the fact that the Employer's offer constructively forces employees to give up their choice of plans if they wish to maintain insurance without substantial cost to themselves. If the Employer wants to effectively change to the HMO, they ought to make a proposal which does this directly.

Regarding the subcontracting issue, the Union's proposal is unreasonable for several reasons. First, many comparable employers have a modified right to subcontract. Second, it is rather repugnant to decent and fair bargaining to agree to a temporary restriction on subcontracting which was expressly understood to expire and then immediately turn around and propose it again. To add insult to injury, they argue the temporary ban is the status quo. The District is right that they shouldn't have to bargain this twice. They shouldn't have to refight this battle absent some compelling circumstances which are not apparent in this record.

Thus far, it is clear that both offers have an unreasonable component. No matter what the Arbitrator does, an unreasonable and unjustified proposal will find its way into the contract. While the health insurance and subcontracting matters are not directly related, the Arbitrator cannot find one of these proposals more defective or dangerous than the other. In effect and to put it in football terms, they are off-setting penalties.

Accordingly, in the Arbitrator's view, the dispute must be resolved on the basis of the wage and retirement issues. The wage offers are not far apart in total dollars. They are only 1% apart or about, generally speaking, \$.10 per hour the first year and \$.15 per hour the second year for all various classifications. This amounts to roughly \$16 to \$26 per month for each employee depending on the classification. To the Employer, it is a total of \$5452. Moreover, neither offer changes the rank of Fall Creek among the comparables. Certainly on the face of it, neither wage offer is unreasonable.

A close examination of the settlement rates in the comparables, however, tips the balance slightly in favor of the Union. The settlement rate in 1990-91 is clearly more consistent with a 4% increase. The settlement ranged from 3.7% to 5% in Altoona, depending on the classification. The settlement was 4% across the Board in Augusta and 9 to 10% in Eleva-Strum (evidently catch-up). The Board's offer of 3% is out of line with each of these settlements for 1990-91. The District unsuccessfully attempted to distinguish the economic environment of these settlements and the instant final offers. However, most of these settlements occurred in August 1990 and the final offers were made in November, 1990. Moreover, the economic circumstances have not dramatically changed in these intervening months. As for 1991-92, it cannot be said that the economic circumstances will change that much from 1990-91. The Governor's cost controls were a speculative scenario at the time of the hearing, and as for the general economy, recovery is just as possible as a continued recession.

Accordingly the Union offer is more reasonable on the settlement rate. Acceptance of the Board offer would be inconsistent with the comparables and result in slight erosion. On the other hand, there would be no advancement under the Union offer.

Regarding the WRS issue, the comparables clearly support the Union. As far as a quid pro quo, the more compelling the pattern, the less a quid pro quo is required. While no quid pro quo is apparent, the phased-in nature of the proposal buffers the impact moderately. Moreover, the Employer has enjoyed a savings as a result of the lower WRS contribution over the past.

The Employer doesn't dispute that the comparables support the Union's WRS proposal but asks the Employer to look at the total package cost when considering the WRS issue. This is problematic for two reasons. Clearly the Union is in a catch-up position with respect to the WRS issue. If this catch-up is going to be charged against them and they are also held to the comparable pattern, they will never catch up on this issue. The general pattern is not as relevant in a catch-up position. It is noted in this regard when the WRS cost is discounted, the Union's offer is not out of line with the other settlements.

In summary, the Employer's insurance proposal is as unreasonable as the Union's subcontracting proposal. The deciding factor is that the Union's offer on the other issues is marginally more consistent with the external comparables, whose economic circumstances are not distinguished from Fall Creek.

AWARD

The final offer of the Association is accepted.



Gil Vernon, Arbitrator

Dated this 23rd day of July 1991.