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| Arbitration | * | |
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| LAKE GENEVA JOINT #1 SCHOOL DISTRICT | * | |
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| and | * | |
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| SOUTHERN LAKES UNITED EDUCATORS | * | ARBITRATION AWARD |
| (LAKE GENEVA ELEMENTARY CUSTODIANS) | * | |
| | * | |
| re | * | |
| | * | |
| WERC Case 15, No. 44382 | * | Decision No. 26825-A |
| INT/ARB - 5735 | * | |
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ISSUES

Although five issues are listed as being in dispute in the final offers, there is agreement on three of them. The two on which there is disagreement are wages and whether the employee contribution for health and dental insurance for employees working half time or more but less than full time should be pro-rated. The difference in wages is 15 cents per hour in '90-'91 and an additional 20 cents per hour in '91-'92 for the Cleaning Person classification and 10 cents per hour for the Custodian classifications in '91-'92.

INTRODUCTION

The Lake Geneva School District #1, hereinafter called the Board or the Employer, and the Lake Geneva Elementary Custodians a/w Southern Lakes United Educators, hereinafter called the Association or Union, reached an impasse in negotiations and petitioned the WERC for arbitration. The WERC furnished them with a panel from which they selected the undersigned arbitrator who was appointed by the WERC in an order dated May 8, 1991. A hearing was held on August 7, 1991. Appearing for the Board was Daniel Vliet, attorney of Davis & Kuelthau; appearing for the Association was Esther Thronson, Executive

Director, Southern Lakes United Educators. Briefs were mailed on October 3rd and reply briefs on October 21st.

WAGES

The Unit consists of three cleaning persons, four custodians and one part-time night cleaning person. There is not disagreement about the wage increase of the part-time night cleaner who works only 720 hours per year. The parties are in agreement about the '90-'91 wage of the custodians and 10 cents apart on the '91-'92 wage. The major wage disagreement amounts to 15 cents per hour in '90-'91 and 20 cents per hour in '91-'92 for the three full time cleaning persons.

Insufficient data were presented to enable the arbitrator to make a separate finding on the wage issue. Employer Exhibit 17 showed that 15 of the 17 districts it considered comparable did not have this position; one had not settled and one paid considerably less than proposed under either the Board or Union offers. Board comparisons with non-educational public and private sector employers also were not determinative. The Board made no comparison of Cleaners in the public sector (See Bd. Ex. 39) and its private sector survey of cleaners in five establishments suggested that they pay their cleaners less than is proposed under either offer.

The Association wage data also are not conclusive. The percent wage increases shown in the Table on page 16 of the Association brief suggest that the Board offer is not out of line. The tables on pages 17 and 18 of the Association brief compare Custodian rates and therefore do not help to resolve the difference in the proposed pay for the Cleaner classification. In the arbitrator's opinion, the basic position of the Association is that in its

final offer it proposed "the wages proposed by the district (and accepted by the Association) during mediation." (Association Brief, bottom of P. 5).

The lack of data which leads the arbitrator to make no finding on the wage issue is not important, however, because it is clear that the major issue is the question of pro-rating the employer health insurance contribution for part time employees. As the Union states, "There could have been a voluntary agreement except for the dispute over eligibility for insurance." (Union Brief, p.5). Under these circumstances, the finding of the arbitrator on the health insurance issue will determine which offer as a whole is selected.

HEALTH INSURANCE

The Board argues that internal comparisons should take precedence over external comparisons when considering a fringe benefit common to the internal groups. In this dispute, the Board points out that all of the employees of the District and those of the Badger UHS and Central Office which administers both the District and the Badger UHS are covered by the same health/dental insurance plan (Bd. Brief, p. 7). The arbitrator agrees that where a small group such as the eight person custodian and cleaner unit is included in the same plan as the other employees of the District (the teachers, the secretaries, the aides, the cooks and, probably, the administrators), there is the strong presumption that it should be governed by the same rules and policies as the other groups.

The Board claims that the internal comparisons shown on the chart on page eight of its brief support its claim that there is a pattern of pro-rating the Board contribution for part time employees. Although the chart is impressive, the arbitrator doubts whether this claim is accurate if one considers the proportion of employees in the District covered by pro rating. Essentially, it

appears as if neither the largest unit, the teachers, nor the second largest unit, the aides and secretaries, have agreed to pro rate health insurance benefits of part time employees. And, in fact, excluding the administrators, only the cooks - - - who are probably few in number and not organized - - - have a pro rated health insurance benefit.

The major unit, the teachers' unit, which is traditionally the lead unit and the largest unit does not pro-rate benefits - - - at least as pro-rating is usually conceived. Under the recently issued grievance arbitration award (WERC Case #16, MA-6583; 9/16/91), Arbitrator Daniel Nielsen upheld the teacher claims that pro-rating was not the past practice and that teachers working more than 50% but less than full time should receive the full contribution rather than the pro-rated contribution which the Board claimed was proper. Presumably, this past practice will govern for the duration of the '90-'92 teachers' contract.

Although data were not provided, the arbitrator assumes that the aides and secretaries are the second biggest unit in the District. This group is seeking its first contract and is currently in arbitration. Prior to recognition, the Board pro-rated benefits for part time employees hired after 7/1/89. If the final offer of the Board prevails, the Board contribution will be pro rated for part time employees. If the Association position prevails, part time employees will receive full benefits (See Bd. Exs. 5 & 6).

The arbitrator therefore disagrees with the Board contentions on page eight of its brief in which it argues that the Association is "asking the Arbitrator to break the pattern set by the internal comparables, to sanction the Custodian's "holdout" position and to allow the Custodians to enjoy unique health/dental insurance benefits." At this moment in time, this arbitrator

faces the question of whether or not it is preferable under the statute to initiate a pro-rating plan for a small unit when the large unit does not have such a plan or to defer pro-rating within the small unit until such time as the dominant unit, the pattern setter, negotiates pro-rating language.

The question is further complicated in this instance in that the Badger High School into which the District feeds and which shares a central office with the District has adopted pro-rating plans for all of its employees including the teachers. And since the insurance plan includes both Badger and District personnel, the Board includes the Badger High School groups on its list of internal comparables and argues that they should be treated as such by the arbitrator.

This arbitrator prefers to side step that argument pointing out only that even if he accepted this Board argument, it would not negate the fact that the largest unit, the District's teachers do not pro rate and that the District's teaching group (78.98 FTEs) is larger than the Badger UHS group (65.65 FTEs). The arbitrator then reviewed again the external comparables for guidance, even though he concurs with the philosophy that internal comparables are usually more important in the determination of fringe benefits.

The data about external comparables is confusing to say the least as can be seen from the examples discussed below taken from Board Exhibit 28 which summarizes paid insurance benefits for custodial employees and from the Board's back up documents as well as the table on page 19 of the Association brief and the back up documents of the Association. For example, the Board claims that custodial employees at Union Grove working less than 1330 hours per year receive pro rated benefits. Yet Board Exhibit 34 ('89-'91 contract) and an Association exhibit ('91-'94 contract) suggest that employees working

1330 hours receive full benefits and make no mention of benefits for employees working less than 1330 hours.

Those contracts cover custodial employees at the Union Grove High School. A different contract seems to cover custodians at the Union Grove Elementary and Middle Schools. It also makes no mention of pro rating the benefit for part time employees and does not specify how many hours need to be worked in order to qualify as a full time employee for health benefits. The arbitrator concludes therefore, contrary to Board Exhibit 28, that there is no pro rating for part time employees at the Union Grove schools.

Both the Association and the Board use Burlington as a comparable but the Association presents data about the secretarial unit while the Board presents data on the custodial unit. The custodial unit contract (Bd. Ex. 29) makes no reference to part time employees who presumably therefore get no employee contribution to health insurance, while the secretarial contract (Assoc. Ex., unnumbered, Burlington Ed. Sec. '90-'91 contract) provides for board payment of the full single contribution for part time employees who work more than 600 hours. The same secretarial contract provides the full family contribution for employees who work the school year (38 weeks) but not the full year. In this instance, the arbitrator finds the Board comparison more meaningful than the Association comparison.

Sometimes the summary provided in the Association and Board briefs and exhibits do not explain adequately what can be found in the back up documents. For example, the Board cites the '89-'90 Delavan/Darien service personnel contract (Bd. Ex. 31) which provides for full payment of the contribution if a person works 75% of the time (presumably 1560 hours) and pro rates the contribution for employees who work less time. Yet, on Board Exhibit 28, the

table summarizing the situation, the Board notes that 75% is considered full time but makes not mention of the fact that the benefit is pro rated for employees who work less than 75%.

The Association, in turn, cites the '90-'91 Delavan/Darien secretaries' contract which also provides for the full benefit for employees who work 75% of the time and pro rates the benefit for employees who work fewer hours. But in its brief, page 19, it claims that employees are eligible for fully paid health and dental premiums if they work 787.5 hours. The arbitrator does not think that this claim is correct.

Still another example which perplexed the arbitrator are the data for the Randall Educational Support Personnel and the Wilmot Union High School. The Association states in its brief that Randall employees who work 2080 hours get the full health and dental premium but makes no mention of pro rating part time employees. Yet the Randall Education Support Personnel Contract for '89-'91 which includes custodial staff, specifically calls for pro rating of health insurance benefits for part timers and even provides an 80% minimum contribution for current employees with ten years service if the pro rating procedure would otherwise call for a lesser contribution.

In its identification of comparables, the Association identifies Randall as a feeder to Wilmot Union High School. The Board cites Wilmot in Exhibit 28 claiming that part timers get no benefit and that employees who work at least four hours per day for a total of 1040 per year get the full employer contribution to the health and dental premium. Board Exhibit 37, the '89-'90 Wilmot contract for custodial and secretarial employees indicates that the unit consists of full time employees and part time employees who work more than 19 but less than 39 hours per week. And these employees, part time and

full time receive the full employer paid premium for health and dental insurance.

What then is the arbitrator to conclude when considering the external comparable of Randall/Wilmot? I concluded that Wilmot (cited by the Board) supported the Association claim because part time custodial employees working half time at Wilmot received full benefits. On the other hand, Randall (cited by the Association) pro rates and as such supports the Board position.

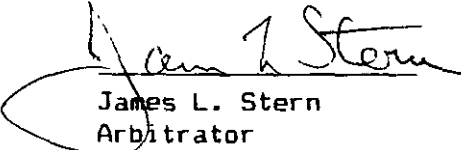
In this dispute, the arbitrator finds that, among the external comparables, pro rating for part timers who work more than half time but less than full time is more common than full payment of the benefit. However, the parties and the arbitrator have stated that internal comparables should be given greater weight than external ones when considering a fringe benefit common to internal groups such as health and dental insurance. Therefore, although the external comparables may favor the Board position, despite the diversity among the comparables and the problems in interpreting the data, the arbitrator, as already stated, agrees with the Board that the internal comparables are more important and will base his decision on the internal comparables.

The arbitrator concluded that since no unit of the District's employees have agreed in negotiations to the pro rating of the employer contribution to health insurance of part time employees that, under the statute, the position of the Association is the preferable one. If and when the teachers agree that the Board can pro rate its contribution to health insurance of part time teachers, it would seem logical and appropriate to apply the same standard to the smaller units of the Employer.

AWARD

After full consideration of the exhibits, testimony and arguments of the Board and the Association, the arbitrator selects the final offer of the Association for the reasons explained above and orders that it and the agreed upon stipulations be placed into effect.

11/13/91
November 13, 1991


James L. Stern
Arbitrator