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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of Arbitration
:
between
:
MENOMONEE FALLS SCHOOL DISTRICT
EMPLOYEES UNION, LOCAL 2765,
:
WISCONSIN COUNCIL #40 OF COUNTY
AND MUNICIPAL EMPLOYEES, AFSCME, :
AFL-CIO
:
and
:
MENOMONEE FALLS SCHOOL DISTRICT
-----X

Case 56 No.
INT/ARB-5736
Decision No. 2691

APPEARANCES:

For the Union: David White, Staff Representative
For the School District: Warren L. Kreunen, Esq. and
Jennifer S. Walther, Esq.

The undersigned was designated by the procedures of the Wisconsin Employment Relations Commission to determine an interest arbitration dispute existing between the parties. A hearing was held at Menomonee Falls, Wisconsin on September 26, 1991 at which time the parties had the opportunity to present evidence and argument. Thereafter, they submitted post hearing briefs and the District submitted a reply brief which was received on November 25, 1991. After considering the entire record, the undersigned has prepared the following opinion and award.

The final offer submitted by the District reads as follows:

"Amend Section 14.01 to provide that the District will pay a dollar amount equal to 94% of the full premium for medical insurance for both family and single plans for full-time employees; regular part-time employees eligible for health insurance will pay \$15 a month for the family plan and \$7.50 a month for the single plan in the first year of this contract, in the second year of this

Contract, they shall pay \$18 a month for family plan and \$9 a month for single plan; the Board will create an IRC [Section] 125 plan for the payment of the employees' portion of the health insurance premium.

Increase all wages on the attached "June 30, 1990" Schedules by 5 1/2% effective July 1, 1990. Effective July 1, 1991, increase the July 1, 1990 rates by 6%. These increases are in addition to the .62% increased cost from the new job classifications."

The final offer of the Union would provide for a two year contract commencing on July 1, 1990. The Union is proposing the status quo, namely that the District pay the full amount of the premium for health insurance (expressed in dollar amounts). The Union also proposes to increase all wages on the attached "June 30, 1990" Schedules by 4-1/2% effective July 1, 1990 and effective July 1, 1990, increase the July 1, 1990 rates by 4-1/2%.

Through their bargaining the parties also had reached a tentative agreement providing for a maximum allowance of \$55 per year to each regular full time maintenance and custodial employees and \$37.50 per year for each regular part time maintenance and custodial employees for the purchase of work clothing of the type to be specified by the District. They also reached agreement on the District's full payment of the dental insurance expressed in dollar amounts and also agreed to add Memorial Day as an additional paid holiday. The parties also agreed to provide four new classifications of Assistant Foreman with appropriate pay differentials.

The principal issue in dispute is the District's desire to require the employees to contribute to the health insurance plan. In consideration of that proposal, the District has

raised its wage offer to 5-1/2% effective on July 1, 1990 and an additional 6% on July 1, 1991. The Union, as mentioned, in consideration of the District's continuing to pay the full payment of all premiums for health insurance, would only increase the wages by 4-1/2% on July 1, 1990 and 4-1/2% on July 1, 1991. The remaining issue might otherwise be stated as whether the District's offer of paying 2-1/2% over the two year period above the Union's proposal in wages is enough of a quid pro quo to require the employees to pay 6% of the health insurance cost. Both parties introduced extensive exhibits showing the wage rates and health insurance premiums paid by the District and by comparable communities. This data is essentially not in dispute.

The District's case is essentially one of internal comparability. The District points out that it's other bargaining units, both represented and non-represented, which is comprised of 266 teachers, 26 clerical employees and 20 administrative employees, all pay 6% of their health insurance costs. The clerical unit is also represented by the same Union which is a party to this proceeding. There are in this unit 44 custodial employees; 16 of which are part time and 28 are full time.

The basic District argument is that, since the custodial employees are the only unit for whom the District continues to pay all of the health insurance, it is a source of friction between the District and the other represented employees who have to pay 6%. According to the District, this friction is

substantial among the clerical employees who are represented by the same bargaining representative as the Union herein.

The District has sought twice previously to require the employees to contribute to the cost of health insurance in two prior arbitrations. The first was in 1983 before June Weisberger in which the arbitrator found that, although the District had proposed an employee contribution of 7% and had offered 3% higher wage increase than the Union's offer, the District had not adequately justified its insurance proposal. In 1987, the parties again arbitrated the issue before Arlen Christenson. In that case the District proposed that the custodial employees make a de-minimus contribution of .3% to the health insurance premium while the Union proposed maintaining the District contribution at 100%. Arbitrator Christenson rejected the District's argument that the contribution was required to maintain equality and uniformity, finding the different units contributed different amounts of the insurance premiums. Since that time, however, all of the other units by agreement are required to contribute 6% toward health insurance costs.

POSITION OF THE PARTIES

The District acknowledges that it has the burden of showing that a change is justified. Namely, that the present contract language gives rise to conditions that require a change and that the proposed contract language would remedy the situation. Furthermore, that the proposed contract language would not impose an unreasonable burden on the other

party. The District points out that the health insurance premiums have risen 32% in the period from 1989 to 1990 and 314% over the last 10 years. The District is of the opinion that an employee contribution will be an aid in keeping down health insurance costs. The District cites a recent arbitration decision to the effect that requiring employees to share in costs is an aid in controlling such costs. However, the major argument for the District is internal comparables, meaning that, since all other employees including the large teacher unit are required to contribute 6%, it is only fair that the custodial unit should likewise be so required.

The District argues that its contribution requirement does not impose an unreasonable burden upon the employees because its wage offer for the first two years is greater than would be required for the employees contribution for health insurance. Furthermore, the District has proposed to implement a Section 125 "Cafeteria Plan" that would result in tax savings to employees.

By way of illustration, the School District assumes a base wage of \$26,000 and an employee contribution to health insurance of \$360; the tax savings from the Cafeteria Plan would be \$136. To further justify its proposal, the District gives the following examples. Under the District's proposal, the employee would bring home \$2292.63 per month in the contract year 1990-91 and \$2428.44 per month in contract year 1991-92 after considering the employees premium contribution and the Section 125 tax savings. This is computed by assuming

a first year annual base wage of \$27,708, an employee premium contribution of \$332 and a Section 125 savings of \$136. In the second year, the annual base wage would be \$29,370, an employee contribution of \$365 and a Section 125 tax savings of \$136. In contrast, under the Union's proposal the employee would bring home \$2286.83 per month in 1990-91 and \$2389.75 per month in 1991-92. This assumes, again, an annual base wage of \$27,442 without any employee contributions and without any tax savings. In the second year the annual base wage would be \$28,677, again without any employee contributions and without any tax savings. Therefore, the District believes that it has offered a sufficient quid pro quo to justify the acceptance of its proposal.

The District points out with respect to the external comparables that the majority of the other school districts do not employ part time people for which the District now pays the entire health insurance premium. While there may be part time employees in the other districts, most of them are not represented. The District also suggests that the external comparables in the private sector in its area support its proposal. In sum, the District states that because of the escalating cost of health insurance and out of consideration of internal comparability, a change is required by creating a shared ownership in controlling costs and equalizing employee contributions. All of this can be done without placing an unreasonable burden on employees because the District has more than compensated for the rise in health insurance rates by the

size of its wage increase coupled with the tax advantages.

It is the position of the Union that the District is improperly attempting to change the status quo through arbitration without justifying that compelling and special circumstances exists to support the change. The Union cites the prior decision by arbitrator Christenson wherein he stated, "When an issue has been resolved by prior agreement, the party seeking to change that resolution must carry the burden of establishing the need for change." The Union asserts that the District has not done this. The Union also cites a recent decision by arbitrator Petrie in an unrelated school district where he offered the opinion that, "...if an interest arbitrator concludes that the proposed change will not normally have been acceptable at the bargaining table without a quid pro quo flowing from the proponent of the change to the other party, he will be extremely reluctant to endorse the proposed change." While the Union concedes the problem of escalating insurance cost is very real, it asserts that requiring employee contribution will not likely have an impact on insurance rates.

The Union also points to the external comparables to show that virtually none of the other districts, except one, require any kind of employee contributions and that is minimal.

The Union also raises as an additional argument that the language proposed by the District is ambiguous as to the obligation of the District to continue to pay 94% of the

premium during the hiatus period between contracts. The Union points to the clerical contract which states that "The District shall pay 94% of the full monthly premium for hospitalization and medical insurance for both single and family plan. The balance of the premium (6%) shall be paid by the employee through payroll deductions." The Union states that language is different than the District's proposal because the District proposes to pay a dollar amount equal to 94% of the premium. The Union states the language is susceptible to an interpretation that the employees would have to pay 6% of the premium during the term of the contract and then they would have to pay all of the increase premiums during the period of the contract hiatus. The Union notes that during the hearing when the Union sought an explanation of the District's intention, the District's representative said they did not know what their position would be. Therefore, the Union argues the offer is so ambiguous as to invite litigation and should be rejected.

Again, while the health premiums have increased during the years, the Union argues that there is no greater need for a change now than there has been during the past decade when the previous efforts to impose employee contributions have been rejected by other arbitrators. The Union also wish to emphasize that it has moderated its wage proposal to take in consideration the increase cost of health insurance. Thus, its wage proposal is 1% lower than the District's offer during the first year and 1-1/2% lower in the second year. This rate

would still leave the employees in a good relative position with custodial employees employed by comparable districts. In sum, the Union states that it has made a more reasonable offer than the District based upon the statutory criteria and, therefore, the District's proposal should be rejected because they have not demonstrated a need for a change.

DISCUSSION

This arbitrator is persuaded that the District's offer should be accepted. The arbitrator has adopted the District's proposal because it has clearly demonstrated the need for a change based upon the internal comparables where all other employees of the District, including the much larger teacher unit, the clerical employees, who are represented by the same Union which represents the custodial employees, and the administrative employees, all contribute 6% to health insurance.

As for external comparables, this arbitrator has also considered that the District has paid 100% of the health insurance costs of part time employees, which are about 1/3 of the unit, while most other districts do not provide such coverage. With its wage offer, the District will be near the top of the external comparables.

The arbitrator is persuaded that the District has offered a sufficient quid pro quo to justify the change. Take home pay will be greater under the District's offer than under the Union's offer, even after considering the increased cost of health insurance and when the tax savings are added. The

average net increase in take home pay, as shown by the District's illustration for the year 1990-91 will be \$69.60 and \$464.28 for the year 1991-92. While the escalating cost of health insurance cannot be predicted for the future, the offer is fair and reasonable for the contract period, and is accepted.

As for the Union's concern that the employees might be required to bear an unreasonable burden during the hiatus period, the arbitrator rejects that argument, believing it is the District's intention in seeking uniformity of contributions, that the health insurance provisions shall be interpreted similarly for the custodial and clerical units. Namely, the District shall pay 94% of the fully monthly premium for hospital and medical insurance for both single and family plans, and the balance of the premium of 6%, shall be paid by the employees through payroll deductions. This means that the District will always pay 94% of the premium regardless of any changes in the amount of the premium. There seems little mystery about the District's intention especially since the District seeks uniformity of contributions from all of its units.

The arbitrator has not recited all of the statutory factors which can be considered in an interest arbitration for the reason that they were unnecessary. The only relevant comparisons here are the external and internal comparables. There was no issue concerning the ability of the District to pay, nor were there other unusual circumstances.

As to whether requiring the employees to make a contribution will have a salutary effect on escalating insurance costs, the arbitrator remains skeptical. Nevertheless, requiring an employee contribution cannot help but have some constraint; and it affords uniformity and internal stability when all of the employees of the District are required to make the same contribution.

Thus, for the reasons stated above, it is my

A W A R D

That the District's final offer is accepted.


December 16, 1991
Fort Myers, Florida



Arvid Anderson

STATE OF FLORIDA
COUNTY OF LEE

Sworn to and subscribed before me this 16th day of December 1991.



Notary Public
My commission expires 9/20/95.