

SEP 24 1992

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration
Between

OPINION AND AWARD

THE SCHOOL DISTRICT OF
RHINELANDER

Case 33
No. 46536 INT/ARB-6212
Decision No. 27136-A

To Initiate Arbitration
Between Said Petitioner and

THE RHINELANDER EDUCATION
ASSOCIATION

APPEARANCES:

On Behalf of the District: Ronald J. Rutlin, Attorney - Ruder, Ware & Michler, S.C.

On Behalf of the Union: Gene Degner, Director - WEAC UniServe Council No. 18

I. BACKGROUND

On January 29, 1991, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement that was to expire August 25, 1991. Thereafter the Parties met on six occasions in an effort to reach an accord on a new collective bargaining agreement. On June 4, 1991, 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 August 12, 1991, a member of the Wisconsin Employment Relations Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and by January 11, 1992, 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.

Thereafter, the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

On January 24, 1992, the Commission ordered the Parties to select an Arbitrator to resolve their dispute. The undersigned was selected, and his appointment was made by the Commission on February 18, 1992. A hearing was held on May 4, 1992. The Parties submitted briefs and reply briefs; the latter of which were received June 18, 1992.

II. ISSUES AND FINAL OFFERS

There are two issues before the Arbitrator. They are, generally speaking, salary for 1991-92/1992-93 and health insurance. Both Parties make salary proposals, and the Employer makes a proposal to modify the current health insurance plan. The current plan is self-funded, and employees do not pay any part of the premium. However, there are provisions in the plan for a \$75 up-front deductible for an aggregate of \$300 per family.

As an alternative, the District proposes the following:

- "2. Item 17 - Insurance. Revise the group medical and hospitalization insurance plan to incorporate an 80/20 co-pay, which requires employees, after meeting the current deductibles, to pay 20 percent (20%) of all covered claims up to a maximum of \$2,000 per person. Maximum out of pocket costs to an employee covered under the single plan would be \$475 (\$75 deductible plus 20% of next \$2,000 in claims equals \$475). Maximum out-of-pocket for an employee covered under the family plan would be \$1,500 (\$300 deductible per family plus 20% of next \$2,000 in claims for up to three members in the family equals \$1,500). At the same time that the 80/20 co-pay is implemented, a Section 125 plan would be implemented allowing employees to reduce their taxable income by an amount up to their exposure for out-of-pocket medical, dental and optical expenses not covered under the District's insurance program. Both the 80/20 co-pay and Section 125 plan would be implemented the first month after receipt of the arbitration award or January 1, 1992, whichever is later."

Regarding salary, both Parties propose to retain their unique two-lane salary schedule. There are two lanes (a BA lane and an MA lane) with 13

steps to each lane. In addition to the BA lane and MA lane, the employees receive a yearly amount per credit for a maximum of 30 credits. This dollar amount per credit varies with the kind of credit, whether it be a CEU or graduate credit. This is determined by Item 18 of the collective bargaining agreement. Under the predecessor contract teachers earned \$50 per graduate credit for credits earned prior to September 1, 1987, and \$100 per graduate credit for credits earned after September 1, 1987. Teachers also receive compensation for curriculum in-service credits (CIC) at the rate of \$35 per credit.

The District's offer proposes to maintain the current credit payments under Item 18. The Association, on the other hand, proposes to increase the graduate credits earned after September 1, 1987, from \$100 to \$105 in 1991-92 and \$111 in 1992-93. It is also proposing to increase the credits earned prior to September 1, 1987 from \$50 to \$52 in 1991-92 and \$55 in 1992-93. Additionally, the Association's final offer increases the CIC credits from \$35 to \$37 and \$39 in 1991-92 and 1992-93 respectively. It should also be noted that, in addition, the Parties have mutually agreed to make the following change in payment: "Effective September 1, 1990, when the maximum number of graduate credits has been earned, the graduate credits earned after September 1, 1987, shall replace credits earned prior to September 1, 1987."

In terms of adjustments to the 1990-91 salary schedule, the Association proposes to increase these rates by 5.3% in 1991-92 and 5.1% in 1992-93. This results in a schedule as follows:

1991-92 SALARY SCHEDULE

BA	MA
\$21,970	\$25,575
\$22,409	\$26,070
\$22,850	\$26,569
\$24,003	\$27,779
\$25,157	\$28,991
\$26,312	\$30,203
\$27,465	\$31,414
\$28,621	\$32,626
\$29,775	\$33,838
\$30,930	\$35,049
\$32,083	\$36,260
\$33,237	\$37,471
\$34,392	\$38,683

1992-93 SALARY SCHEDULE

BA	MA
\$23,090	\$26,879
\$23,552	\$27,400
\$24,015	\$27,924
\$25,227	\$29,196
\$26,440	\$30,470
\$27,654	\$31,743
\$28,866	\$33,016
\$30,081	\$34,290
\$31,294	\$35,564
\$32,507	\$36,837
\$33,719	\$38,109
\$34,932	\$39,382
\$36,146	\$40,656

The Distirct proposes the following schedules:

1991-92 SALARY SCHEDULE

BA	MA
\$21,998	\$25,608
\$22,438	\$26,104
\$22,879	\$26,603
\$24,034	\$27,815
\$25,190	\$29,028
\$26,346	\$30,242
\$27,501	\$31,454
\$28,657	\$32,668
\$29,813	\$33,882
\$30,969	\$35,094
\$32,124	\$35,307
\$33,280	\$37,519
\$34,436	\$38,733

1992-93 SALARY SCHEDULE

BA	MA
\$23,140	\$26,938
\$23,602	\$27,459
\$23,067	\$27,984
\$25,282	\$29,259
\$26,497	\$30,535
\$27,714	\$31,812
\$28,928	\$33,087
\$30,145	\$34,364
\$31,361	\$35,641
\$32,577	\$36,916
\$33,792	\$38,191
\$35,007	\$39,467
\$36,224	\$40,743

The rate increases, under their offer, calculate to be approximately 5.4% in 1991/92 and 5.2% in 1992/93.

It is noted as well that there is no dispute between the Parties as to the appropriate group for comparability purposes. Both Parties utilize a group of schools consisting of schools in the athletic conference and the school district contiguous to Rhinelander. These schools are: Wausau, Stevens Point, Wisconsin Rapids, D. C. Everest, Marshfield, Antigo, Merrill, Tomahawk, Northland Pines, Lakeland UHS, Three Lakes, Elcho, Lac du Flambeau, Minocqua Jt. 1, Arbor Vitae-Woodruff, and Boulder Junction.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The District

The District argues in support of their insurance proposal:

1. That the 80/20 co-pay provision is essential as a cost containment measure in view of increasing premiums and is in the public interest.
2. That over half (four of seven) of the districts in the athletic conference have some kind of 80/20 co-pay, many of which are more restrictive. Moreover, most of the other plans do not have benefit levels as high as Rhinelander.

3. That co-payment plans have been upheld by other arbitrators and are consistent with the trend with other public and private sector employers.
4. That the District's proposal doesn't require a quid pro quo given the comparable support and its reasonableness.
5. That their proposal is supported by the fact they offer a Section 125 plan which allows sheltering from taxed money to pay insurance expenses.

In support of its salary proposal, the District argues that:

1. The benchmark data shows that in the past the District compensates its employees near or above the comparable average at all benchmarks but one.
2. The District's offer provides larger increases at the benchmarks than does the Association's offer. In 1991-92 the difference at the benchmarks ranges from \$28 to \$50 more than the Association's offer. In 1992-93 the range is from \$50 to \$87 more than the Association.
3. The District's offer provides for considerably higher wage increases than the comparable school districts in 1991-92 and near average increases in 1992-93.
4. The Association's proposal to increase credit reimbursement isn't justified because they were increased a few years ago. Moreover, the teachers have the advantage of receiving credit reimbursement as they earn them rather than waiting.
5. The District's final offer guarantees Rhinelander teachers' salary and benefit increases which exceed the increase in the cost of living.

B. The Association

Regarding the salary issues, the Association argues that:

1. The total salary schedule is a non-issue since there is little difference between the offers over a two-year period.
2. Their credit adjustment proposal is justified since it is reasonable to adjust credit reimbursement figures by the same percentages as the cells in the salary schedule. Moreover, they calculate that the average of the dollars per credit awarded by the comparable schools comes to \$108 for the 1991-92 school year, thus favoring their offer. They also contend that the fact that teachers earn credits faster does not result in a higher overall salary. It is also in the public interest to encourage further education.

Concerning insurance, the Association contends that:

1. The changes to insurance programs, and especially this one, should be changed voluntarily through collective bargaining. This is the only element of control since the plan is self-funded and controlled by a trust made of School Board members. They claim to have no redress through the insurance commission and that there has been mismanagement of the fund.
2. The Association made proposals in bargaining to pay 5% of the premium if the Employer went to a totally insured plan with premiums the same as Oneida County.
3. The comparables support the status quo for benefit level. They note that the Employer is proposing that there be an 80/20 co-pay for all basic, physician, and major medical benefits. However, all districts provide, subject to various deductibles, 100% of basic services. Regarding physician services, only two districts have an 80/20 co-pay plan. Moreover, only four of the sixteen schools have an 80/20 co-pay for major medical. Thus, they conclude that the comparables might support some employee contribution, they do not support a reduction to the 80/20 level.
4. The District's plan does not contain cost of health coverage but, instead, shifts it.
5. The Section 125 plan is no quid pro quo since it assumes that an employee will know how much medical costs will be and since any monies set aside and not used will be retained by the insurance

plan. Employees, the Association points out, because of the nature of illnesses, cannot predict if and to what degree they will need coverages.

IV. OPINION AND DISCUSSION

Of the outstanding matters in dispute, the health insurance issue is controlling in this case. As goes the Arbitrator's preference for the offers on this score, so goes the case. This is because even if there was a preference for the Employer's offer on the salary matters, it is so marginal that it would not outweigh the importance of the insurance issue. The Employer's offer may be slightly more reasonable because the Association's proposal to change the credit reimbursement structure isn't necessarily justified and because the District's offer is competitive. However, the resultant monetary impact of the salary offer on the District and employees is, relatively speaking, minuscule. It amounts to \$16 per teacher over the two-year contract period. This amounts to roughly 66 cents per month per teacher. Truly if the insurance issue weren't on the table, this matter would have been settled a long time ago.

The first thing that must be addressed regarding the insurance issue is the argument of the Association concerning the nature of the insurance program (self-insured) and their lack of control and influence. The Arbitrator views this as essentially irrelevant. It matters not whether it is the Board that indirectly controls indirectly the fund and it matters not that the Union might have to seek redress concerning its operation through prohibited practice complaints or law suits. It also is irrelevant that they, at one point in mediation, made certain compromise proposals.

The proposed insurance plan put forth by the Employer must be judged based on the merits of its benefits and not necessarily its administration. The only conceivable way administration might be relevant would be if it could be shown that the administration actually resulted in a diminution of stated benefits. This insurance program must be judged just like any other insurance program regardless of whether it is self-funded or operated by an insurance company.

On the merits of the Employer's proposal, both Parties discuss the necessity nor non-necessity of a quid pro quo. Essentially the Association says that the changes sought by the Employer are too great and costly to expect that they should be bargained away for nothing in exchange. On the other hand, the

District makes an argument with which, in principal, the Arbitrator must agree. They contend that when the comparables fully support the position of the Party seeking the change, the need for a quid pro quo is minimized, if not eliminated.

The main problem with the District's argument is not the validity of the principle, but the pure and simple fact that the comparables do not fully support the idea of an 80/20 co-pay plan in general, and in particular, the comparables do not support a plan as comprehensive as the one proposed by the District. For instance, they stress that over one-half of the Wisconsin Valley Athletic Conference schools have some kind of 80/20 co-pay plan. This sounds persuasive until one realizes that the schools of the Valley Conference do not comprise the comparable group as a whole. It also sounds persuasive until a close examination of the various plans themselves reveal that the Employer's proposed plan could require substantively greater payouts by the employee in Rhinelander. These conclusions are explained subsequently.

There are 16 comparables, and there is no particular reason demonstrated in this record why any particular subset of those comparables ought to be given primary status or greater weight. In fact, previous attempts to do so by the District have been rejected by Arbitrator Fleschli in a decision between the Parties. He dismissed the idea certain schools should be given primary weight and indicated all sixteen schools should be considered in the primary group. It is, however, noted that this particular set of comparables is unique in that it is made up of several K-8 feeder districts, and their high schools. However, how much weight each feeder school should have isn't really made a point of contention in this case.

Looking at the comparable group as a whole, only five of the sixteen schools have an 80/20 co-pay plan. This is hardly a pattern let alone a compelling pattern. Moreover, there are two noteworthy distinctions between those 80/20 co-pay plans and the one proposed by the Employer.

Generally speaking, the Employer's proposal would cut deeper into an employee's pocket than any of the other co-pay plans where they exist. First of all, it is noted that none of the other 80/20 plans subject basic benefits to the 20% co-pay.¹ Only two subject physician benefits to the 20% co-pay feature.

¹Health insurance benefits can be broken down into three broad categories: basic benefits, physician services, and major medical.

The only common thread among all plans is the fact that major medical benefits are subject to the 20%.

In contrast, the District here would require all three basic health care components to the 80/20 deduction. This means, first of all, employees in Rhinelander are more likely to have out-of-pocket expenses and more likely to reach their maximum, a maximum which is significantly more than all but one of the 80/20 plans. This weighs heavily against the Employer's proposal.

A family's maximum exposure under the District plan is \$1,500. Including front-end deductibles, the maximum exposure in the other districts is as follows:

D. C. Everest	\$900
Merrill	\$1,100
Stevens Point	\$1,100
Wisconsin Rapids	\$1,250
Arbor Vitae	\$1,000*
Wausau	Unlimited

*To go into effect 93/94. Maximum = 20% of \$5,000. It is not clear what the deductible will be under this plan. Currently it is \$300.

The fact that a minority of comparables have an 80/20 plan and the fact that the District plan goes beyond the norm for 80/20 plans convinces the Arbitrator that, under the circumstances at the present time, a quid pro quo is necessary. Essentially, interest arbitration, as an alternative to self-help (strike or lockout), seeks to mimic the probable results of free collective bargaining. It is not reasonable to think, where the minority of the comparables have 80/20 plans and that only one plan cuts deeper into an employee's income, that Parties normally would voluntarily agree to such a radical change without a quid pro quo. Quid pro quos or "give and take" are hallmarks of collective bargaining when one party is seeking to make a major change in the status quo. Indeed, the teachers in the Arbor Vitae District who agreed to a 80/20 plan effective 1993-94 received salary settlements in 1991-92 and 1992-93 which significantly exceeded the average. The same is true for Tomahawk for 1991-92. Their salary offer exceeded the average substantially in the same year that they reduced the Board's health insurance contribution to 95% from 100%. It is likely that these higher wage increases are related to the insurance cost controls. In this case, the Board's offer exceeds the average for 1991-92 but by a relatively insignificant margin. It is just at the average for 1992-93.

The District did offer the Section 125 plan. However, while this is beneficial, this isn't much of a quid pro quo and, from a practical standpoint, does little. A Section 125 plan can save an employee about \$400 under optimal circumstances. However, an employee would have to set aside \$1,500 at the beginning of the year, and any money not spent is not recouped by the employee. Certainly if an employee knows they are going to have \$1,500 worth of exposure at the beginning of the year, the Section 125 savings would bring this down to about \$1,100. However, it is true, as the Association argued, that health care needs by their nature are hard to predict. Many, if not most people, would not know what their present needs and expenses are to be. So Section 125 is primarily a gamble. The odds are incalculable. However, the maximum payoff on the \$1,500 bet is \$400, not good even in Las Vegas.

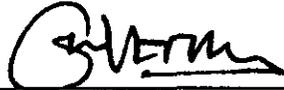
The Arbitrator is not unsympathetic to the fact that insurance costs are of great concern in this District. They are throughout the entire country. Indeed, there are some benefits in this plan which exceed other plans and may lead to above-average cost. While these costs are above average, they are within the range of other districts. Nonetheless, it would seem reasonable that if the District isn't willing to offer a sufficient quid pro quo for an 80/20 plan and wishes to bring its premium costs more in line with the average, it might propose tinkering with the plan benefits or premium sharing which isn't uncommon. These approaches are more justified by the comparables. Until a clear pattern of 80/20 plans is present and/or until the District is willing to engage in give and take, it seems more reasonable to attack the insurance problem in more traditional ways to bring the cost in line with comparable districts.

The Arbitrator also recognizes that the private sector expects employees to do much more than even the District's plan asks of the teachers. However, this comparison is not as valuable as comparisons to other teachers. The labor market in the private sector has little in common with the labor market for teachers. When employers are competing for employees in a unique and distinct labor pool, it isn't unusual to see commonality and consistency in fringe benefits.

In summary, the insurance issue is clearly the controlling issue. In this regard, there is a cure to bring the Employer insurance costs closer to average. However, the Employer uses major surgery where, at least at this point in time, only first aid is called for.

AWARD

The final offer of the Association is selected.



Gil Vernon, Arbitrator

Dated this 21st day of September 1992.