RECEIVED AUG 1 2 1992 WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of MONTICELLO SCHOOL DISTRICT To Initiate Arbitration Between Said Petitioner and MONTICELLO EDUCATION ASSOCIATION	Case 12 No. 46359 INT/ARB-6167 Decision No. 27177-A

Appearances:
Mr. Robert W. Butler, Staff Counsel, Wisconsin Association of School Boards, Inc., for the District.
Ms. Ellen LaLuzerne, UniServ Director, Capital Area UniServ-South, for the Association.

On March 31, 1992, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator ". . .to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act, . . .by selecting either the total final offer of the . . .District. . .or the Association."

A hearing was held on May 21, 1992, at Monticello, Wisconsin. No transcript of the proceeding was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed with the receipt by the arbitrator of the parties' post-hearing reply briefs on July 20, 1992.

At the hearing the parties allowed one another to make modifications in their final offers. The issues which remain in dispute are the salary schedule for 1991-92 and 1992-93, and insurance provisions for retirees.

With respect to retirement, the Association proposes the addition of the following language to the Agreement:

> Both the employee and her/his spouse may participate in the health insurance protection at their own expense for a maximum of ten (10) years or until both become eligible for Medicare or other federal insurance programs or until such time as the employee or his/her spouse is actively employed in any employment which results in eligibility for health insurance coverage.

The District does not propose language on this subject.

With respect to the salary schedule, the District proposes for 1991-92: a 6.9% salary increase, with a BA Base of $20,025 the amount between lanes to be $275 to BA-24, and $375 thereafter to MA-12. The total cost increase of the District's offer for 1991-92 is $1,660,778, a 6.8% increase.

For 1991-92 the Association proposes an 8.4% salary increase, with a BA Base of $20,025, the amount between lanes to be $300 to BA-24 and $400 thereafter to MA-12. The total cost increase under the Association's offer for 1991-92 is $1,675,418, an 8.4% increase.

For 1992-93 the District proposes a 6.7% salary increase, with a BA Base of $21,180. The total cost increase under the District's offer for 1992-93 is $1,778,875, a 7.1% increase.

For 1992-93 the Association proposes a 6.7% salary increase, with a BA Base of $21,400. The total cost increase under the Association's offer for 1992-93 is $1,805,405, a 7.1% increase.

Comparables

The parties are not in dispute with respect to which school districts are to be used as primary comparables. They agree that comparisons should be made to the other districts in the Stateline League Conference: Albany, Argyle, Barneveld, Belleville, Black Hawk, Juda, New Glarus and Pecatonica.

In its brief, the Association argues that it is necessary to consider other districts as secondary comparables, because within the Conference only four of nine districts have settled for 1991-92 and only two districts have settled for 1992-93. It urges use of data from the surrounding athletic conferences, and it presents data showing average settlements for each conference, but does not present data for the individual districts.

The District argues in reply that any use of other districts should be limited to those in the Monticello geographic area which are similar in economic and size characteristics to the District. It argues that the Association has not presented data to allow one to make such determinations.

The arbitrator agrees with the District that it is not satisfactory to use area athletic conferences without making judgments about which, if any, school districts within those conferences are comparable to the District, or to the districts of the Conference. Thus use of averages from those conferences is not appropriate. For this reason the arbitrator will confine his decision-making to comparisons with the Stateline League Conference.

The arbitrator is required to give weight to the factors enumerated in the statute. In the present proceeding there is no dispute about several of the factors: (a) lawful authority of the

District; (b) stipulations of the parties; that portion of (c) which deals with the "financial ability" of the District to meet the costs of any proposed settlement; and (i) changes in circumstances during the pendency of the arbitration proceedings.

The arbitrator is required to consider the portion of factor (c) pertaining to ". . .the interests and welfare of the public."

The District presents lengthy arguments and much data and analysis to support its arguments that the interests and welfare of the public favor its final offer more than the Association's final offer. The focus of these arguments is the poor farm economy, since 16% of the county labor force in Green County is in agricultural jobs, and the serious problems existing in the state and national economies which affect the taxpayers of the District.

The Association does not dispute the District's figures. It argues correctly, however, that the District has not shown that the impact on it of these serious economic problems is any greater than it is on the other districts in the Conference. The Association does not put forth arguments to show why the interests and welfare of the public favor its final offer, but instead confines its arguments to rebutting the District's claims about the superiority of the District's offer in consideration of the interests and welfare of the public.

It is the arbitrator's view that the interests and welfare factor is relevant to this case, but not controlling. Given the serious economic problems articulated by the District, it is reasonable to conclude that the interests and welfare of the public favor the District's offer, as the lower of two reasonable offers. However, since there is no showing of a disparate impact on this District, the arbitrator puts greater weight on those factors in which one can judge the reasonableness of the final offers in relationship to what is happening in the other Conference districts.

The arbitrator is required to consider factor (d), comparisons with "other employees performing similar services." As mentioned earlier, these comparisons are with teachers in the other districts in the Stateline Athletic Conference.

The parties had a voluntary Agreement which covered 1988-89, 1989-90 and 1990-91. The Association argues and demonstrates that, during the period of the Agreement, the teachers in Monticello lost ground in relationship to the comparable districts in terms of their rankings at the various salary benchmarks. The Association argues that its offer should be implemented in this proceeding in part because it does more than the District's final offer does to catch up to the other districts, and make up for the slippage during the period of the Agreement.

The arbitrator is not persuaded that catch up pay is required in this case to overcome relative deterioration which resulted from voluntary collective bargaining. The parties have not given reasons for their lower-than-average salary bargain. Also, the arbitrator does not know what tradeoffs, if any, were

agreed to in non-salary areas which might have been factors in the salary bargain. Even if the arbitrator were persuaded that he should try to restore Monticello to the position it was in in 1987-88, the last year of the parties' prior Agreement, he could not do so with confidence, because the parties have not presented data about the 1987-88 salary schedule in the District and the other Conference districts, except for benchmark rankings.

Since he is not persuaded that there is a compelling need for catch up in this case, the arbitrator's focus is on how the parties' final offers for 1991-92 and 1992-93 compare to the position that Monticello was in in 1990-91, the last year of the parties' most-recent Agreement, and how the proposed salary increases compare to those given elsewhere in the Conference. The focus of this analysis is on 1991-92 because the parties are in agreement on the percentage increase for 1992-93. Moreover, it is not meaningful to make comparisons with the other districts for 1992-93 since only two of the eight other Conference districts have reached settlements for 1992-93.

If rankings at the benchmarks are considered, there is virtually nothing to choose from for 1991-92. At all but one benchmark the rankings will be the same under either party's final offers as they were in 1990-91. At the schedule-max benchmark, the Association's final offer results in a ranking of next to last, while the District's rank is last.

The District has presented data for 1991-92 for four settled districts (Albany, Barneveld, Black Hawk and Juda). The arbitrator has calculated the median percentage increases given by these districts, compared to 1990-91, and has compared them to the increases proposed by the parties in the current dispute, at each benchmark. In every case, as shown below, the District's proposed percentage increase is much closer to the median percentage increase than is the Association's proposed percentage increase.

	4-district median percentage increase	District	Assn.
BA-base	5.1	4.6	5.7
BA-6 *	4.8	4.6	5.7
BA-max	4.8	4.6	5.7
MA-base	5.2	5.5	7.2
MA-9 *	5.5	5.5	7.2
MA-max	5.5	5.5	7.2
Sched-max	5.2	6.0	7.9

* data on Black Hawk not available for this benchmark. Thus, median figure is for the three remaining districts.

A similar analysis of dollar-differences from the 4-district medians show that the District's final offer results in benchmark increases which are closer to the Conference medians than does the Association's final offer.

	1991-92 4-district median increase	District	Association
BA-base	$ 970	$ 887	$1087
BA-6 *	1116	1100	1348
BA-max	1274	1206	1478
MA-base	1119	1137	1487
MA-9 *	1635	1546	2022
MA-max	1785	1728	2260
Sched-max	1735	1956	2564

* data on Black Hawk not available for this benchmark. Thus, median figure is for the three remaining districts.

The Association presents a similar kind of analysis, except that instead of using only the 4-settled districts, it assumes for one set of figures that the teacher side wins all of the pending arbitration cases, and for another set of figures it assumes that the district side wins all of those cases. It argues from those figures that under either assumption, its offer for 1991-92 is closer to the Conference average dollar increase, and percentage increase as well, than is the District's final offer.

The arbitrator has some difficulty with using an analysis which presumes the outcomes of three other pending arbitration cases, since voluntary settlements may still occur in any of them. Even using the Association's assumptions, what must be considered is how the outcome of the Association's and the District's final offer compare to the average (the arbitrator prefers to use median) in relationship to what was the case in 1990-91. Using this approach, the arbitrator finds that the analysis which assumes that the districts win all of the pending awards results in the District's final offer having a relationship to the Conference median which better reflects the relationship to the Conference median in 1990-91 than is the case using the Association's final offer and assuming that teachers win all of the pending awards. The District's offer also generally shows some improvement in relationship to the median in 1991-92 compared to 1990-91. The data on which these conclusions are based are shown below. The Association's offer would be preferred only if one made the assumption that the current circumstances warrant an added catch up factor, an assumption not shared by the arbitrator.

	Median 1990-91	Median 1991-92, if teachers win arbitrations		Median 1991-92, if districts win arbitrations	
		$$	%	$$	%
BA-Min					
Conference	19,750	20,575	+4.2	20,625	+4.4
Monticello	19,138	20,225	+5.7	20,025	+4.6
Monticello in relation to Conference	(-612)	(-350)	(+1.5)	(-600)	(-0.2)
MA-7	27,767	29,143	+5.0	28,957	+4.3
	26,545	28,448	+7.2	28,000	+5.5
	(-1,225)	(-695)	(+2.2)	(-957)	(+1.2)
MA-Max	32,427	34,393	+6.1	34,108	+5.2
	32,022	34,282	+7.1	33,750	+5.4
	(-405)	(-111)	(+1.0)	(-358)	(+0.2)
Sched-Max	33,661	35,964	+6.8	35,775	+6.3
	32,934	35,498	+7.8	34,890	+5.9
	(-727)	(-466)	(+1.0)	(-885)	(-0.4)

The Association presented this data only for those benchmarks shown in the table.

For purposes of calculating the conference median, the arbitrator assumed that New Glarus was in the top half of the Conference, as it has been in recent years. The arbitrator did not include Monticello in the calculations of the Conference medians.

The District also presents data showing the average salary increase, both in dollars and in percentages, given in the 4-districts which have settled. The arbitrator has presented these below, in terms of the median increase. These figures also favor the District's position.

	1991-92 4-district median dollar increase per teacher	1991-92 4-district percentage increase per teacher
	$1968	7.2%
District final offer	1919	6.8%
Association final offer	2358	8.4%

The arbitrator agrees with the Association's argument that reference to average salary increases is less meaningful in the present case than in others, because there is no adjustment of the figures to reflect the average length of experience of the teachers in the various districts, and Monticello's teachers have longer years of service than is true in the other districts. This results in higher increases shown for Monticello relative to the other districts than would be the case if there were an adjustment made for experience.

The Association makes two other arguments with respect to salary increase to which the arbitrator has given no weight. One argument is that the difference between lanes on the Monticello schedule is in dollar terms, whereas in most other Conference districts it is in percentage terms.

The issue of dollars vs. percent lane differences is not one that the parties have addressed in their arguments except to the extent that the Association argues that the District's smaller salary offer has an even greater adverse impact on teachers because of the way the lanes are structured. In their final offers the parties have both offered dollar lane differences, not percentages, and both have increased the dollar differences between lanes. The existing lane differences were $250 and $300. The District has offered $275 and $375; the Association has offered $300 and $400.

The data show that in 1990-91 the dollar differences in Monticello's lanes were the lowest in the Conference. That position will not change significantly under either final offer. The Association's offer is preferred slightly, with respect to lanes, but this is not as important as other aspects of the proposed salary schedules.

The other argument made by the Association is that there is need for implementation of its final offer because the Conference salaries are low in relationship to the salaries of neighboring conferences. That may be factual, but as discussed in relationship to which districts are considered comparable to Monticello in this proceeding, the Association has not persuaded the arbitrator that the other conferences are suitable comparables, given the absence of economic data about the districts which are in those conferences.

In conclusion, it is the arbitrator's opinion with respect to factor (d) that the District's final offer is supported more than the Association's final offer.

The arbitrator is required to consider factor (e), comparisons with "other employees generally in public employment in the same community and in comparable communities."

The Association presented no data pertaining to this factor. The District presented data on collective bargaining settlements nationally, in state and local government. These data are not broken down in any manner which shows data for Monticello, Wisconsin, or other communities comparable to Monticello, and thus do not pertain to the statutory criterion.

The arbitrator does not favor either party's final offer based on this criterion.

The arbitrator is required to consider factor (f) comparisons with ". . .employees in private employment in the same community and in comparable communities."

The only data relating to this factor are those presented by the District for such things as average Wisconsin manufacturing rates, major collective bargaining settlements nationally, and earnings of average private sector wage earners nationally. There is no presentation of data for "private employment in Monticello and in comparable communities," as contemplated by factor (f).

The arbitrator does not favor either party's final offer based on this criterion.

The arbitrator is required to consider factor (g), cost-of-living. The parties have put into evidence various consumer price indices published by the Federal government. The most relevant time period for use in evaluating proposed increases for the 1991-92 school year is the change in the consumer price index between July, 1990 and July, 1991. The most relevant of the indices for Monticello is the one for Non-Metropolitan areas, which rose 4.0% during that period. This increase is well below both parties' final offers for salary, and for total compensation. The District's offer is the lower of the two final offers and thus is closer to the increase in the cost of living, and is favored by the arbitrator on this measure.

The arbitrator notes that the parties' previous Agreement covered the period 1988-89, 1989-90 and 1990-91. It is reasonable therefore to also look at the increase of the cost of living during that period. District exhibits show the changes in the Non-Metropolitan areas index on an annual basis (not July-July). The 1987 to 1988 index rose 2.8%; the 1988-89 index rose 3.6% and the 1989-90 index rose 4.0%. It appears, at least from a study of the "benchmark" increases given by the District in 1988-89, 1989-90 and 1990-91, that in every year the benchmark increases were in excess of the cost of living change from the preceding year. Thus, there is no need for the District to give an increase in 1991-92 which is greater than the cost of living change, based on what has happened over the period of the last Agreement.

Both parties presented historical data showing the relationship between salary increases in the District and increases in the cost of living. The District's data go back ten years; the Association, in rebuttal, goes back twenty years.

Over the years the parties have had many opportunities to bargain and take account each time of increases in the cost of living. The arbitrator is not persuaded that his analysis of the cost of living should go back beyond the period of the parties' most recent Agreement, the period that the parties logically would be considering in formulating their final offers for the present bargain.

The arbitrator is persuaded that in relationship to factor (g), cost of living, the District's final offer is preferred.

The arbitrator is required to consider factor (h), "overall compensation." The parties' data is incomplete with respect to this factor, but certain data are significant. District exhibits show that in 1990-91 compared to the five other Conference districts for which data are available, the District had the highest average salary and benefits. Thus, even if the remaining districts had higher average salary and benefits costs than the District's, the District would rank above the median for 1990-91. This suggests that Monticello's teachers are not at a relative disadvantage with respect to overall compensation in comparison to the rest of the Conference.

The District also presented data showing health insurance costs in the Conference. The data were available for nine of the ten districts. The District was one of only four districts in 1990-91 which paid the full cost of health insurance benefits. In terms of the cost to the District, the District's costs ranked fifth of nine for both single and family coverage. These figures show that relative to other districts in the Conference, the District's costs are not overly high, and thus a disproportionate amount of total compensation of teachers is not being put into health insurance.

The Association argues that the District's total compensation figures do not account for the fact that the length of service by the District's teachers is higher than the average length of service in the Conference. This results in the District's total compensation being higher because longer service teachers receive higher compensation.

In its exhibits, the Association has taken the salary and benefits, i.e. "total pay" and adjusted it for length of service. The arbitrator is not persuaded by this analysis because although salaries are higher with increased length of service, that is not true for all benefits. For example, costs of health, dental insurance, and perhaps other insurance items as well are not

related to salary size. The arbitrator is not sure that all of the data necessary for such a revised analysis are in the parties' exhibits, and he also is not certain of which categories and amounts would be included. Thus, while he does not reject the concept of looking at total compensation adjusted for length of service, he is not considering it in this case.

The Association argues also that in considering total compensation, ". . .the Board fails to recognize both parties have agreed to a reduction in health insurance, (and) to an increase in restrictions on hiring levels. . . ." The arbitrator is not certain that he understands the Association's argument, unless it is to demonstrate that in the agreements which it made, the Association recognized the need to help the District contain costs, and now should be given credit for that in the implementation of its final offer. It remains the case, however, that the Association has not shown, in terms of total compensation or in terms of the increase in that figure offered by the District, that it is at a disadvantage relative to other Conference districts.

The details of the bargaining process which resulted in agreements to contain costs are not relevant to the determination of which final offer is preferred on the overall compensation factor. The fact that such agreements were made is not justification for support of the Association's higher final offer, in the absence of a showing that the parties agreed to certain total compensation outcomes specifically in exchange for agreements to contain costs.

The arbitrator has concluded that in relationship to the Conference, the figures on overall compensation tend to support the District's final offer more so than the Association's final offer.

The arbitrator is required to weigh factor (j), such other matters which are normally or traditionally taken into account in arbitration.

In its brief, the Association argues that the size of both parties' final offers is greatly reduced in terms of its impact because in fact the District has realized a large savings from staff changes from 1990-91 to 1991-92. The District objects to consideration of such savings, citing the fact that the "cast forward" method of calculation which the parties have used in bargaining is the accepted method of calculation, and is the method which "allows for accurate comparisons across districts with different staffing patterns."

It is the arbitrator's view that the cast forward method is the one that should be used, absent agreement by the parties to the contrary. It permits the making of accurate comparisons of salary schedules, and salary and benefit increases.

A second issue, raised by the Association, is its argument that the District has not offered a quid pro quo "for a reduction in benefits and caps on recognition for experience on the salary schedule." The items to which the Association refers are ones which the parties agreed to voluntarily. There is no showing that these agreements were made conditionally in return for certain other promised outcomes which have not been honored. There is also no showing that in making these agreements, the Association was promised that any of the disputed items which now comprise its final offer would be accepted by the District.

A party is not expected to offer a quid pro quo in its final offer for changes to which the other party has voluntarily agreed. A quid pro quo is offered by a party seeking changes contained in its final offer to which the other party has not agreed, to demonstrate the reasonableness of the proposed change to the other party and to the arbitrator.

Retirement Issue

The Association's final offer contains language, quoted above, pertaining to continued eligibility of early retirees for the District's health insurance plan. Regardless of the merits of the Association's proposal to provide District health insurance to retirees and their spouses at their own expense, the Association has presented no evidence that other Conference districts have put such a provision in their contracts. There is also no evidence that agreements in other municipal jurisdictions in the same geographical area have such provisions. Moreover, as the District argues, the Association has not demonstrated that there is a need for this provision.

The Association suggested at the hearing that such a benefit is required under recently-enacted Federal legislation (COBRA), although it did not support this assertion with evidence. Even if that is the case, there is no requirement that such a provision be included in a collective bargaining agreement.

The Association argues that its proposal will have minimal impact because it is already included in WEA Insurance policies. In its reply brief it referred to Association Exhibit #35 as support for that assertion, a booklet prepared by WEA Insurance Group. It is not clear to the arbitrator from that document that the Association's assertion is correct (although it might be), that the specific provision offered by the Association is now a part of the District's insurance policy. Even if the Association is correct, it would not necessarily be the case that such language would be included in the policy of another insurance carrier if the parties' eventually changed the insurance carrier. The Association argues that it would then be subject to negotiations, which is true, but why should the District be

required now to put something in the Agreement for which no need has been demonstrated, which is not in the language of the agreements in comparable districts, and which the District would then have to negotiate out if it did not want such language under a different insurance carrier.

The parties can voluntarily include this item in their Agreement if they so choose, but the evidence presented in this case does not persuade the arbitrator that he should compel its inclusion at this time. On this issue, the District's position is favored by the arbitrator.

Conclusion

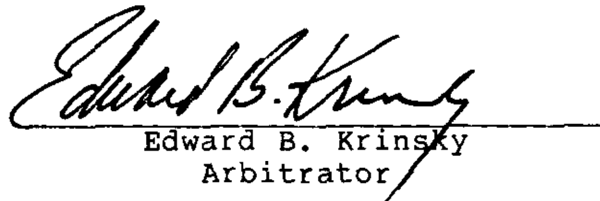
The arbitrator is required by statute to select one final offer or the other in its entirety. It is his conclusion that there is more reason in this case to support the District's final offer than the Association's.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The District's final offer is selected.

Dated at Madison, Wisconsin, this 11th day of August, 1992.



Edward B. Krinsky
Arbitrator