

STATE OF WISCONSIN

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BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Petition of

HOLMEN EDUCATION SUPPORT PERSONNEL

To Initiate Arbitration
Between Said Petitioner and

Case No. 23
No. 46523 INT/ARB-6209
Decision No. 27395

HOLMEN SCHOOL DISTRICT

APPEARANCES:

On Behalf of the District: Richard J. Ricci, Attorney - Weld, Riley, Prens and Ricci, S.C.

On Behalf of the Union: Thomas C. Bina, Executive Director - Coulee Region United Educators

I. BACKGROUND

On March 26, 1991, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired July 1, 1992. Thereafter the Parties met on five occasions in efforts to reach an accord on a new collective bargaining agreement. On November 6, 1991, the Union filed the instant petition requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On January 27, 1992, an agent of the Wisconsin Employment Relations Commission conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by August 3, 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 September 15, 1992, the Commission ordered the Parties to select an arbitrator to resolve their dispute. The undersigned was selected and on September 28, 1992, his appointment was ordered by the Commission. A hearing was held on December 14, 1992. Post-hearing briefs and reply briefs were submitted, the last of which were exchanged February 16, 1993.

II. ISSUES

There are a variety of issues before the Arbitrator. They are outlined below:

A. Wages

There are two wage classifications set forth in the Agreement: clerical and paraprofessionals. The Parties are in agreement on the wage rates in each classification for 1991-92. The 1990-91 top rate for clericals was \$9.17 per hour. The Parties have agreed to raise this rate to \$9.52 per hour. This represents an increase of thirty-five cents (\$.35) per hour or 3.8%. The 1990-91 hourly rate for paraprofessionals was \$7.18. The Parties have agreed to raise it to \$7.53, an increase of 35 cents or 4.87%.

For 1992-93 the Union proposes that the top clerical rate be \$9.87 (35 cents or 3.7%). The District proposes \$9.82 (30 cents or 3.1%). For paraprofessionals the Union proposes a rate of \$7.88 (35 cents or 4.4%). The District proposes (30 cents or 4.0%). Both Parties propose a 20 cent per hour premium in each year for special category paraprofessionals.

B. Sick Leave Payout

The Union proposes the following:

An employee who has at least sixteen (16) years of continuous service in the District and who is at least fifty-five (55) years of age, shall receive 0.1% of his/her last salary contract rate for each accumulated leave day, not to exceed 100 days. This money would be left for extended insurance coverage at the formula, or could be exchanged for cash at 50% rate.

The District makes no proposal on sick leave payout, thus maintaining the status quo. The current contract contains no provision for a sick leave payout.

C. Article XIV - Benefits

1. Health and Dental Insurance

Section A (Health Insurance) and Section B (Dental Insurance) currently read as follows:

ARTICLE XIV - BENEFITS

A. Health Insurance

1. The District shall pay 80 percent of the cost of the single or family health insurance premium for full time employees.
2. The District shall pay the following amounts for health insurance premiums for part time employees:
 - a. The District shall pay 80 percent of the cost of the single or family premium for employees working 1,950 or more hours per year.
 - b. The District shall pay 70 percent of the district contribution toward the family premium (or 56 percent of the premium) or the full district contribution toward the single premium (80 percent of the premium) for employees working between 1,350 and 1,949 hours per year.
 - c. The District shall pay the full district contribution toward the single premium (80 percent of the premium) for employees working between 750 and 1,349 hours per year.
 - d. The District shall make no health insurance contribution for employees working less than 750 hours per year.

B. Dental Insurance

After one year of employment, employees who work a minimum of 1,520 hours per year may have the District pay 80% toward the single or family dental insurance premium.

The District proposes to maintain this language.

The Union's final offer reads as follows:

A. Health/Dental Insurance

The District shall pay the following amounts of health insurance premiums:

1. The District will pay 80% of the cost of a single or family health insurance premium for employees working 1950 or more hours per year.
2. The District will pay 56% of the family premium or 80% of the single premium for employees working between 1350 and 1949 hours per year.
3. The District will pay 80% of the single premium for employees working between 750 and 1349 hours per year.
4. The District shall make no health insurance contributions for employees working fewer than 750 hours per year.

D. Retirement Programs (Article XIV)

1. Annuity Contribution

The present contract language (Article XIV - Benefits, Section D) reads as follows:

D. RETIREMENT ANNUITY CONTRIBUTION

After one year of employment, employees who work a minimum of 1,520 hours per year may have the District withhold (sic) up to \$.50 per hour or 6 percent from their base pay (whichever is greater) and deposit it in a Tax Sheltered Annuity (TSA) of the employee's choice. The District will match this contribution and deposit it to the same TSA.

Both Parties, in their respective final offers, propose to increase the contribution to 6.2%. In addition, the Union, in its proposal, eliminates the one-year waiting period.

2. Option Plan and Part-time Employees

Presently Sections C and E of Article XIV read as follows:

C. THE OPTION PLAN

The District shall continue to make the option plan available to employees at the levels specified in the District's 1987-89 non-teaching employees' work agreement as follows: The Board of Education will pay an amount equivalent to the single insurance premium to a Tax Sheltered Annuity for those 12 month employees in lieu of family/single health insurance. This amount could also be split between the dental plan and the TSA. Note: Part-time secretaries employed as of 10/9/85 will continue to receive the health insurance/option plan benefit as per a 1984-84 work agreement.

E. PART-TIME EMPLOYEE RETIREMENT ANNUITY CONTRIBUTION

1. The Board and Association recognize that certain members of the bargaining unit do not receive health insurance benefits or any type of retirement plan. The parties agree that those employees should receive a retirement plan described in this section.
2. Only those part-time employees who are not eligible for the Option plan under section C. of this Article and Retirement Contributions under section D. of this Article and who do not take health insurance shall be eligible for benefits under this section. Employees must work a minimum of 720 hours per year to be eligible for this benefit.
3. The district shall contribute \$.13 per hour toward an Individual Retirement Account at the Bank of Holmen.

The Board proposes to maintain the status quo.

The Union's final offer reads as follows:

2. The Option Plan. The District shall continue to make the Option Plan available to employees as follows:

a. The Board of Education will pay an amount equivalent to the single insurance premium to a tax-sheltered annuity for those 12-month employees in lieu of family/single health insurance. A percentage of the employee's choosing could also be used toward the dental plan. Note: Part-time clericals employed as of 10/9/85 will continue to receive the Health Insurance/Option Plan benefit as per the 1984-85 agreement.

b. The District will contribute 13 cents per hour for the 1991-93 school years toward a tax-sheltered annuity or an IRA for those part-time employees who are not eligible for, or choose not to take, insurance, either health or dental or the Option Plan outlined above.

3. Local Retirement Plan. Employees who work 600 or more hours per year will have an amount equal to 2% of their annual wage pay into a tax-sheltered annuity (TSA) or an individual retirement account (IRA) by the employer. During the 1992-93 contract year, the employer contribution will increase to 3%.

Employees may participate in the Local Retirement Plan, the Annuity Plan, the Option Plan, or a combination of all three. The employer contribution will not exceed 12.1% for any employee. It is the intent of the Union to achieve for its members the maximum District contribution which equals the required deposit for the Wisconsin Retirement Fund.

Thus, the two changes under the Union proposal are (1) that the 720-hour qualifying threshold for the 13 cents per hour contribution for those not eligible for the Option Plan or Retirement Annuity is eliminated and (2) the addition of a 2% and then 3% Local Retirement Plan for employees working more than 600 hours.

C. Life Insurance

The Union proposes the following:

C. Life Insurance

The Board of Education will pay one hundred percent (100%) of the cost of the Life Insurance Plan for all members of the bargaining unit.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. Comparables

1. Association

The Association contends that the athletic conference schools ought to be used as comparables. They are Onalaska, La Crosse, Sparta, and Tomah. The Association also rejects the District's use of larger schools on a statewide basis and rejects the use of non-unionized schools Gale-Ettrick-Trempealeau and Melrose-Mindoro and non-unionized internal units. Last, they contend West Salem is not comparable because of its significantly smaller size.

2. District

The District believes the Arbitrator should employ as the comparable group, the athletic conference schools, and the districts of Galesville-Ettrick-Trempealeau (G-E-T), Melrose-Mindoro, and West Salem due to their contiguity or geographic proximity to Holmen. Due to their proximity to these districts, it is argued these Districts represent the labor market. They maintain that inclusion of the contiguous districts provides the balance needed when making comparisons to the large metropolitan School District of La Crosse. Indeed, Holmen fits in the middle of the comparable group when taking into consideration traditional comparable criteria. In fact, the influence of La Crosse in such comparisons has been diminished by other arbitrators.

B. Wages

1. The Association

First, the Association analyzes the relative rankings under the offers. They note that even its offer merely maintains most of the past rankings, and in fact, in some cases, drops the ranking in comparison with the comparable schools. However, they believe it favors their offer that the reduction in rankings under the Association offer is not as great as that of the Board.

In terms of actual dollars and cents, they note that the aides' wage rate was 44 cents per hour (5.81%) less in Holmen than the average rate in 1990-91. They also note that under the offers this improves in 1991-92 to 35 cents below the average, and in 1992-93, Board and Association offers still keep Holmen 31 or 36 cents respectively below the average pay rate for comparable schools. For clerical, the 1990-91 rate in Holmen was 23 cents or 2.63% above the average hourly pay rate. Under both proposals for 1991-92, Holmen drops to 19 cents or 1.91% below the average wage rate, and the erosion continues in 1992-93 where the Board proposes a wage rate which would place secretaries at 31 cents or 3.04% below the comparable average while the Association holds the reduction to only 26 cents or 2.54% below the average hourly rate. They argue that the proposals on wages alone show an Association offer more reasonable than that of the Board.

2. The District

It is the position of the District that its wage offer compares favorably to the wages received in comparable school districts. The District believes that

wages are of secondary importance in this dispute and does not believe the 5 cents per hour difference in the Parties' offers for 1992-93 is likely to demonstrate greater reasonableness for either offer. To the extent it is relevant, they contend the critical comparison is the maximum rates since the great majority of unit members were already at the maximum rate. For clericals, they note that in base year 1990-91 the District's maximum rate of \$9.17 for secretaries was exceeded by only La Crosse and the Clerk I position in Tomah. In 1991-92 the Parties' agreed-upon maximum rate of \$9.52 is again exceeded by La Crosse, Tomah, and Onalaska. However, Onalaska received a 30% (over three years) increase for internal catch-up purposes. However, its 1992-93 rank stayed the same. Even with the undue influence of La Crosse and the extraordinary increases in Onalaska, the clerical rate still compares favorably to the comparable average. They note the maximum wage of \$9.17 for District secretaries in 1990-91 exceeded all the averages and continues to do so under the Parties' offer for 1991-92. Only in 1992-93 does the Mississippi Valley Conference average exceed the District's offer of \$9.82--by 4 cents--which is largely due to Onalaska's increased wage rates in both 1991-92 and 1992-93.

Regarding aides, they note the 1992-93 rate under their offer of \$7.83 is close to the conference schools of Sparta and Onalaska and exceeds the contiguous schools. Moreover, they draw attention to the fact that there has been improvement overall, and the fact its rate for special aides exceeds the comparables.

C. Sick Leave Payout

1. The Association

The Association relies on the fact that all of the Mississippi Valley schools except Onalaska have some sort of payout for unused sick leave. The payouts range from a maximum of \$2,128 to a low of \$787. Additionally, they note that the style of the proposal drafted by the Association is similar to that already in existence in Holmen in the custodial policies, the cleaning crew policies, and the teacher agreement.

2. The District

The District contends that the Union has not met its burden of proof in changing the status quo with respect to the addition of sick leave payout language. Additionally, they believe that the proposal is ambiguous in that it doesn't make clear when the payout is to be made or the amount to be paid.

They believe this to be a fatal flaw. It appears to them that it could be paid at anytime, which is not supported by the comparables. The comparables only payout upon the termination of employment. In addition, neither Onalaska nor any of the three contiguous districts have a sick leave payout provision. Internally only the teachers have such a benefit.

D. Article XIV Benefits, Health and Dental Insurance

1. The Union

The Union suggests that the changes in the benefit insurance language is needed to make the language more understandable.

2. The District

The District argues that, under the construction of the Union's final offer, their proposed "benefits" language eliminates the District's contribution for dental insurance. The 1989-91 contract had separate subdivisions for health insurance (Section A) and dental insurance (Section B). The Union's final offer combined the titles, so the new Section A reads "Health/Dental Insurance." However, the District notes that in relabeling Paragraph A "Health/Dental Insurance," however, the new language makes absolutely no provision in Paragraph A for the District's contribution for dental insurance. The very first sentence reads: "The District shall pay the following amounts of health insurance premiums." There is no reference to Employer dental insurance contribution. The District maintains it is too late under the law for the Union to modify their final offer.

E. Retirement Programs (Article XIV)

1. The Association

Regarding the annuity, the Union notes that this is a benefit that only a few employees receive because only a few clericals work more than 1,520 hours. Moreover, it is a matching annuity. The proposal in this regard is merely to drop the waiting period. They argue that no other comparable retirement plan has a waiting period. Thus, this change is supported by every comparable of the Association.

The Union also proposes to eliminate the 720-hour qualifier for those employees who do not qualify for health insurance or the Option Plan. They

argue this change is a reasonable attempt to provide some minimum benefit for those employees who work the fewest hours at the lowest pay rates.

In terms of the local retirement plan, the Union contends it is supported by a comparison to comparable districts. They calculate retirement payments based on a dollar or cents per hour value and then compare them for the two different classifications. They note that in 1990-91 Holmen's employer-made retirement contributions were 85 to 95% below average. Even under their offer they will be 63 to 75% below average. This supports their offer, it is argued.

2. The District

The District notes that it agrees to increase the annuity contribution to 6.2% and proposes some investment flexibility. These are warranted. However, the significant changes proposed by the Association are not, in their opinion.

First of all, it will cost \$30,000 for the two years of the contract. There is also no compelling need. Additionally, a review of the external comparables reveals that the four conference schools belong to the Wisconsin Retirement System, as well as two of the contiguous districts (G-E-T and Melrose-Mindoro). West Salem, like Holmen, makes a contribution to a tax sheltered annuity.

The Association also eliminates the one-year waiting period for the matching annuity and eliminates the 720-hour minimum for the 13 cents per hour contribution for part-time employees. The latter proposal is not supported by the comparables. In all cases with possibly one exception, employees must work a minimum of 600 hours to be eligible for Employer contributions. In addition, the organized groups within the District do not support elimination of a minimum number of hours worked. The same is true internally. Teachers must work 600 hours to qualify and food service 750. The Union has stated that its intent is to achieve the maximum WRS contribution of 12.1%. However, WRS has a 600-hour minimum. The District also argues that the Union's final offer which provides for several different kinds of contributions is an administrative nightmare. Some employees would exceed the 12.1% cap, and the question is when or how to decrease the Employer contribution. The Union has also not offered a quid pro quo.

The District also contends that the Association has introduced significant ambiguity into the 13-cents-per-hour retirement contribution. Under the current

language, four conditions must be met to be eligible. An employee, to qualify, must (1) not be eligible for the Option Plan, (2) not be eligible for a matching annuity, (3) not be eligible or elect not to take health insurance, and work 720 hours. Under the construction of the Union's proposal, which uses the word "either" as a conjunctive, literally means that if any alternative is met, part-time employees are entitled to the annuity contribution. This is a major change from the status quo.

F. Life Insurance

1. The Association

The Association relies on the fact that three of the four conference schools contribute toward life insurance premiums. Two pay 100% and one pay 20%.

2. The District

It is the position of the District that the Union has not established any need to add life insurance, much less fully paid life insurance. Support among the comparables is mixed. Among the external comparables, only La Crosse and Onalaska pay 100% of the cost of life insurance. In Tomah, G-E-T, and Melrose-Mindoro, the District contributes the 20% required by WRS. Sparta and West Salem provide no life insurance coverage. Among the internal comparables, only the teachers receive life insurance. Neither the food service personnel nor any of the District's unrepresented support staff receive life insurance. Moreover, the Union has offered no quid pro quo for this new benefit.

IV. OPINION AND DISCUSSION

There are essentially five issues before the Arbitrator. They are wages, sick leave payout, the local retirement plan, life insurance, and the qualifying criteria for the 13 cent annuity contribution. Without doubt, the most important of all these issues is the Union's proposal for a 2% (first year) and 3% (second year) retirement contribution to a local plan for employees working more than 600 hours.

For example, the impact of the wage issue pales in comparison. The Parties are only a nickel per hour apart over two years. The rankings won't change significantly under either offer, and Holmen wage rates will continue to,

generally speaking, compare favorably with several comparables. They earn more than some and less than other schools. In some cases, where they are less, they are within reasonable range. For instance, secretaries in Onalaska and Tomah earn more (23 cents and 40 cents more per hour), but these differences are not substantial (2.5% and 4.0% respectively). The impact of the nickel per hour difference in the offers is quite limited. The total cost differential is only about \$3,800. The cost differential in the retirement proposal is approximately \$31,000. This constitutes the bulk of \$38,000 difference in the cost difference of the offers. In other words, without the retirement issue, the Parties would be only about \$7,000 apart for two years, truly a rather insignificant amount considering the total budget for salaries and benefits is between \$750,000 and \$800,000.

Given the cost impact of the Union's local retirement proposal, it is appropriate to focus attention, at least initially, on this issue. It must be said that the support in comparables for the general proposition that employees who work more than 600 hours should be entitled to retirement benefits is overwhelming.¹ All but one District is in the WRS. Sparta and Tomah pay 100% of the contribution. Onalaska pays 6.2% (1992-94). G-E-T pays 6%. Only West Salem in the primary comparables doesn't participate in the WRS or pays less than 6%. In the secondary group La Crosse and Melrose both pay 100%. Given this pattern, it is indefensible, as a general matter, to say that bargaining unit employees should not have a meaningful retirement plan similar to that enjoyed by the comparables.

The District does provide a 6.2% matching contribution for those working over 1,520 hours. However, only about 11 of the 57 bargaining unit members are eligible with ten participating. Approximately 25 employees receive the 13 cents per hour annuity contribution, and approximately 22 receive nothing. Four employees work less than 600 hours and, thus, are ineligible on that basis. Moreover, the 13 cents per hour amounts to about 1.6% for an aide and 1.3% for a clerical. In plain words, this doesn't cut it. The overwhelming support in the comparables demonstrates the need for a

¹The Arbitrator has included the following schools in the primary comparable group: Onalaska, Sparta, Tomah, G-E-T, and West Salem. Because of size difference, La Crosse and Melrose are considered secondary comparables. The non-Union status of G-E-T and Melrose is not enough to discount their comparability. It would be if their wages and benefits weren't generally consistent with other area unionized schools. The fact they are suggests they are part of the labor market, which a comparable group should essentially reflect. It is also noted that comparable determinations for teachers are clearly distinguished due to the fact that their professional qualification creates a different kind of labor market.

meaningful retirement contribution for employees working over 600 hours, which is the vast majority of the unit.

However, the case does not end here. The remaining question is whether the Association's proposal, taken as a whole, reasonably addresses the need for a retirement plan. The Arbitrator must conclude, albeit reluctantly, that the Association's final offer does not reasonably address the need. The problem with their offer isn't one of substance, but of form. Given these problems, the Parties would be better off with the present retirement system for the time being and coming back in the next round of bargaining and addressing the retirement issue in a more conventional way rather than be saddled with the Union's unconventional and technically flawed final offer.

It would be reasonable for the Union to have proposed a retirement program that is consistent with the comparables, to wit, WRS. Yet they propose a third facet to an already complex system and did it in a manner which is fraught with ambiguity and, at a minimum, fraught with administrative headaches. As for the technical flaws plans, the construction of their language on health and dental insurance might be ignored as an oversight. However, their reconstruction of the qualifying language for the 13 cents per hour contribution is more problematic. Although it should be noted that these technical problems are of only secondary consideration.

The other problem with their local retirement plan offer, and one not so insignificant, was the fact it was burdened by the other proposals on life insurance, sick leave payout, and changing the minimum hours necessary to qualify for the 13 cents per hour annuity contribution. These were a difficult burden to sustain given the fact that such a big ticket item like retirement was on the table and given the state of evidence.

For instance, the external comparables were split on life insurance with no internal support among nonprofessional units. The external comparables were mixed on sick leave payout, and there was no internal or external comparable support for reducing any retirement benefits below 600 hours. Additionally, there was no quid pro quo. Not offering a concession or compromise when comparable support is universal is one thing, (as with the retirement issue) but not offering one where the comparables are mixed is another matter. The support for these ancillary issues was not universal by any means. The stacking-on of these additional issues on top of the local retirement plan simply left the Arbitrator believing it was all too much to swallow at one time with no quid pro quo. Even if the retirement proposal stood alone, in

conventional form, some sort of concession, such as phasing it in or accepting less than the full 12.1% might be appropriate initially.

In view of the foregoing, the Arbitrator finds the District's offer more reasonable and consistent with the statutory criteria.

AWARD

The final offer of the District is selected.



Gil Vernon, Arbitrator

Dated this 16th day of April 1993.