STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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In the Matter of the Petition of

FOND DU LAC SCHOOL DISTRICT

Case 43
No. 48098 INT/ARB-6612
Decision No. 27443-A

To Initiate Arbitration
Between Said Petitioner and

FOND DU LAC EDUCATION ASSOCIATION

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I. APPEARANCES

On Behalf of the District: Mark F. Vetter, Attorney - Davis and Kuelthau, S. C.

On Behalf of the Association: Armin Blaufuss, UniServ Director, Winnebagoland UniServ

II. BACKGROUND

On June 3, 1992, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on July 31, 1992. Thereafter, the Parties met on ten occasions in efforts to reach an accord on a new collective bargaining agreement. On September 24, 1992, the District and the Association filed a stipulation requesting that the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.70 (4)(cm)6 of the Municipal Employment Relations Act. On October 5 and October 22, 1992, a member of

the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations and by October 22, 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 and thereupon the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

On October 27, 1992, the Commission ordered the Parties to select an Arbitrator to resolve their dispute. The undersigned was selected from a list provided by the Commission. They ordered the Arbitrator's appointment on November 17, 1992. A hearing was scheduled and held on March 17, 1993. Post hearing briefs and reply briefs were filed, the last of which was received May 7, 1993.

II. ISSUE

The Parties resolved all issues arising from their negotiations for a new collective bargaining agreement except one. The remaining issue related to whether the Employer should continue to pay all of the health insurance premium, as provided in the predecessor contract or whether employees under the new contract should pay part of the cost. The Association proposed to maintain the status quo language which states:

> The Board will pay an amount equal to 100% of the premiums for family and single coverage for surgical, medical, hospital, major medical insurance, including prescriptions available under the WEAIT Insurance Corporation group health plan 690-106.0.

The District's final offer provides the following:

1. Article IX, Para. E. Insurance, subpara. 1

   A. Amend the current language to provide for 5% employee contribution on family plan and 3% employee contribution on single plan.

B. As soon as practical following the Arbitrator's award, the District shall implement a Section 125 Plan covering co-pay and premium contributions.

III. ARGUMENTS OF THE PARTIES (Summary)

A. The District

As background, the Board notes it has considered health insurance a primary objective in negotiations. This is so (1) because since August 1989 they have experienced an 83.09% and 77.32% increase respectively in the single and family premiums and (2) because its 1991-92 monthly health insurance premiums ranked highest among the comparables for both single and family plan coverage. Moreover, the rates proposed for 1992-93 by the insurance carrier, absent any plan restructuring, were $180.04 for single coverage and $462.88 for family coverage. Those rates would have kept the District near the top for 1992-93. Only Sheboygan's rates would have been slightly higher.

In support of their proposal the District first argues that it is overwhelmingly supported by the private sector comparables. They received information from 9 employers in the area, all with over 250 employees, and believe these comparisons deserve primary weight. Of these employers only one company paid 100% of the premium for single coverage and none of the companies paid 100% of the family premium in 1993. In addition, only one employer had premium rates higher than the District, yet all expect an employee contribution for family coverage and eight out of nine expect an employee contribution for single coverage. The employee contributions range from 30% to 3.35% and as a result the private sector employees contribute considerably more toward their health insurance premiums than the $5.16/month single and $22.20/month family contribution required by the Board's final offer. Additionally, an analysis of plan structure indicates that all of the private sector plans are less favorable than the District's, resulting in more out-of-pocket expenses for the private sector employees.

Next, the District argues that health insurance data from the School District comparables supports the Board's final offer. In this respect, they make the following points (1) Fond du Lac ranks third in premium for 1992-93

exceeded only by Sheboygan and only slightly by Kimberly. (2) They are also well above the average the District's single plan rate is $171.91 compared to the average of $159.88 and the District's family plan rate is $444.57 compared to the average of $409.70. (3) Fond du Lac went from one of the lowest to the highest rates between 1989 to 1992-93. (4) The trend among the comparables is toward employee contributions. (5) There is a trend toward employee contribution generally in the education. (6) Even with an employee contribution, Fond du Lac would still rank third among comparables in the amount it pays toward health insurance premiums.

The District's next major argument is that their offer is supported by comparisons to other public sector employers. For instance, the City of Fond du Lac, although not requiring an employee premium contribution, provides a substantially inferior plan for its employees. Regarding county employees, they have historically contributed toward their health insurance premiums.

The District anticipates that the Association will argue that a quid pro quo is necessary for the change in health insurance. The District doesn't believe one is necessary however, if a quid pro quo is necessary they maintain that their offer contains a sufficient incentive for the health insurance premium co-pay. In terms of a quid pro quo being part of their offer they direct attention to the fact that (1) its salary offer of $2,292 (6.27%) for 1992-93 and $2,413 (6.21%) for 1993-94 is $124 above the average per teacher in wages and more than .5% higher in percentage increase. (2) Its salary offer ranks third among the comparables. (3) Its offer exceeds the CPI. (4) It increased its WRS contribution from 6.0% to 6.2%. (5) It agreed to add a MA-30 lane. (6) It modifies sick leave to provide one personal day for sick leave that will be granted to teachers after 10 years of service and that up to four days per year of sick leave may be utilized to care for sick children. Another quid pro quo is its offer of a Section 125 plan. The Section 125 plan provides the employees with the ability to have their monthly premium contributions and health insurance deductible removed from their paychecks on a pre-tax basis. Thus, the net effect of the monthly premium contributions and/or deductible costs on the employees' wages is greatly reduced.

B. The Association

It is the position of the Association that the Parties' history and recent negotiations support maintaining the District's payment of the health insurance premium. They set forth several reasons why that practice--which dates as far back as 1970--should be continued.

First, they contend that the District proposes a major change, but does not offer a real quid pro quo. The Association notes that the District offers a Section 125 plan as a quid pro quo. However, the Association suggests that the Section 125 plan would not cover major medical deductibles or child care, optical and optometry services. With citation they argue the value of the Section 125 plan is negligible and it benefits the District. They express concerns as well about the future cost of the District's proposal. This is on top of a plan change which increases the teacher potential out-of-pocket cost from $100 single/$300 family prior to December 1, 1992 to $600 single/$1300 family after December 1, 1992. This doesn't include the increased drug cost. The District offer therefore would increase single exposure to $661.89 and family exposure to $1566.40.

The Association also maintains that the Parties have negotiated a quid pro quo for the changes in health insurance plan design. The Association maintains that the salary schedule, MA +30 lane, 6.2% WRS and sick leave changes are not quid pro quos for an employee contribution but are quid pro quos for the cost reducing plan changes they agreed to. In fact, the salary schedule and WRS aren't really quid pro quos since they merely mirrored the comparables.

The Association also believes that the fact they have responsibly addressed increasing health insurance cost in the past militates against the District's proposal. In this round of bargaining these changes included: (1) changing $100/$300 deductible from up-front to major medical, (2) increasing teacher out-of-pocket exposure from $100/$300 stop loss to $600/$1300 stop loss, (3) increasing prescription drug card deductible from 42.00 brandname and $0.00 generic/mail order to $5.00 brandname and $3.00 generic/mail order, (4) implementing WEA Provider Network, (5) increasing plan stop loss, and (6) implementing, based on cost savings to the District, a TSA option/maintenance of insurability (MOI) plan. These changes resulted in a reduction of the premium from $462.88 to $441.26.

Another reason the premium co-pay is not needed, in the opinion of the Association, is that the District has failed to engage in self-help which would reduce the health insurance bill. For instance, implementation of the TSA plan could save the District $80,000 or more.

It is also the position of the Association that comparability considerations favor maintaining District health insurance premium contributions at 100%. In this regard, they note that five of the other nine comparables continue to have family health insurance premiums paid in full by the school district. Seven continue to have the single premium paid in full. The Association believes that it is important to realize that the schools that don't pay the whole premium have historically had employee premium sharing. This has been true back to 1984.

The trend has not been, the Association argues, toward premium sharing but in plan changes. Moreover, in each case of a plan change there has been a quid pro quo. Thus, they conclude there is not a pattern among the comparables compelling Fond du Lac teachers to pay a portion of the health insurance premium. The change is also not needed since Fond du Lac has experienced the next to the lowest premium increase since 1987-88. This has been a result of their historical cooperation in insurance plan changes.

The Association also believes its final offer should be selected because its salary and benefit package is most consistent with the comparable districts. In fact its total package offer is $348 less per teacher on average than the pattern. The District's total package is $591 less than the settlement pattern. They also view the agreed upon salary increase on the benchmarks and the increment cost to be consistent with the comparables.

IV. OPINION AND DISCUSSION

In its reply brief the Association evaluates the District's final offer relative to an analytical framework set forth by this Arbitrator in Elkhart Lake-Glenbeulah School District (Case 19 No. 43193 INT/ARB 5465-1990). The Association quoted from the decision as follows:

> "When an arbitrator is deciding whether a change in the status quo is justified, he/she is really weighing and balancing evidence on four considerations. They are (1) if, and the degree to which, there is a demonstrated need for the change, (2) if, and the degree to which, the proposal reasonably addresses the need, (3) if, and the degree to

which, there is support in the comparables, and (4) the nature of a quid pro quo, if offered."

It is helpful, however, to quote the paragraph which followed the above noted passage. The Decision continued:

> All four of these elements should be present to some degree and the degree to which any one of more of these considerations must be strongly evidenced depends on the facts and circumstances of each case. What is ultimately determined to be an acceptable mix of these considerations will vary from unique situation to unique situation. In bargaining, one case is rarely identical to the next. For example, if 11 out of 12 comparables have the sought-after language or benefit in similar form in their contracts, then the burden to demonstrate intrinsic need and quid pro quo are diminished. However, if the proposal goes somewhat beyond the comparables' language or benefit, a greater degree of other factors may be required. Additionally, and of course, the particular change must be weighed with other facets of the moving party's offer and the offers as a whole must be weighed against each other.

There are other helpful aspects of the Elkhart decision which will be explored subsequently. However, at this point, it is sufficient to summarize that decisions as to whether a proposal to change the status quo on insurance are individual case-by-case determinations taking into consideration the aforementioned factors. These decisions are judgment calls as to whether the particular "mix" of factors is appropriate. The Arbitrator must look at the proposal and all the evidence, put it in the arbitral mixing bowl to see if, relative to the statutory criteria, it measures up. In other words to see if the proposal is a half-baked idea or a souffle, whether it is slop or soup.

Applying these decisional factors the Arbitrator must first conclude that the District has demonstrated that there is a problem and that it needs to be addressed. To determine if there is a problem and a need for a change, it is appropriate to look at the insurance situation prior to the years covered by the contract. The contract proposals cover 1992-93 and 1993-94. In 1991-92, it is undisputable, that the District had the highest monthly family premium. The premium in Fond du Lac was $425.99. The average rate in the comparables was $364 and the median rate was $359. Fond du Lac was about 17% higher. These figures reflect the actual premium and do not account for employee contributions. Thus, the District's relative disadvantage is even greater compared to the cost paid by the other districts. When accounting for employee contribution the average cost to other districts in 1991-92 compared to Fond du Lac's cost for the family premium was approximately $350/month,

about 21% higher than the comparables. No other district paid more than $388 per month. Thus, coming off 1991-92 and going into bargaining for 1992-93, the District had a legitimate problem to address.

The second question is whether the District's proposal reasonably addresses the problem. The Parties, much to their credit, did address the health insurance cost issue by agreeing to plan changes. These changes resulted in a family premium of $444.00. The average family premium was $409. Thus, the Fond du Lac premium now is about 8% above average. However, in terms of actual cost to the other districts, the average employer contribution is $393 or 13% lower than Fond du Lac. Seven other districts have significantly lower cost. The question is whether the District's proposal to reduce their cost more by about $22 per month to $422 per month is reasonable. This would, for 1992-93, still leave them with above average employer cost but by a lesser margin.

It is in the District's favor too that they are not asking their teachers to contribute as much as other teachers who are required to make a contribution. Indeed, in some cases such as the Rhinelander case cited by the Association, the Employer not only asked for changes but went beyond the comparables. Here the District appropriately is more conservative and when changes are made in the status quo more gradual change is favored initially over more radical change.

The Association says it is not necessary to do more for a variety of reasons. First, they argue the District has not effected cost savings available to it. They also argue, relative to the third and fourth of the 'Elkhart Lake' factors that the majority of comparables don't have premium sharing and as a result a quid pro quo is necessary and has not been offered. Further, in this regard, they maintain other changes in the agreement were warranted in their own right or in exchange for other plan changes. The Section 125 plan in their view is not a quid pro quo.

First, regarding whether the District has or has not taken advantage of the TSA option, the Arbitrator is of the opinion that there is enough blame to go around for this failure to rest on both the shoulders of the District and the teachers. Regarding whether there is comparable support the Arbitrator notes that the Association only looks to comparables under Criteria "D" (similar employees) and totally ignores and discounts comparisons under Criteria "E"

(other public sector employees) and "F" (private sector employees). They also apply a rather rigid mathematical approach to the Criteria "D" comparable. They argue that a majority of comparable districts (5 of 9) don't have premium sharing which should be the end of story according to them. This is too narrow and simplistic.

The Arbitrator is obligated to consider, apply and give weight to all the criteria. The Arbitrator agrees that private sector wage levels and the wage levels of other public sector employees have very little relevance to the wage levels of teachers. What a snow plow truckdriver or machinist makes is not very instructive, particularly given the dynamic state of education, to the wage levels of teachers. However, when basic benefits are considered, particularly something as common and universal as health insurance that cuts across all occupational lines, the relevancy of other comparables (public and private) is heightened.

Holding aside the quid pro quo question for a moment, it is safe to say in this case that the Criteria "D" comparables hold a slight edge in favor of the Association's proposal of 100% employer paid insurance and that the Criteria "E" and "F" comparables clearly favor the employers proposal. The question becomes whether the Criteria "E" and "F" comparables tip the already leaning Criteria "D" comparables toward an employer contribution under these particular facts and circumstances. This is a most difficult question and one which has been most difficult to answer.

The question really is one of relevancy of the other public sector and private sector benefit data. They have some relevance and can't be entirely dismissed as the Association suggests. In answering the question of how much relevancy they should have, the Arbitrator asked himself this question: "If the shoe were on the other foot and it was the Association asking for a benefit that 5 out of 9 comparable districts didn't offer but that 4 out of 9 districts did, as did a clear if not absolute majority of other public and private sector employers, would he award it to the Association?" In other words would the other public sector and private sector data be enough to tip the scales in their favor even though only supported by 4 of 9 other districts.

Yes, it would. For instance, if only 4 out of 9 comparables had a just cause provision and there was a clear and prevailing pattern in the public and private sectors, it would be enough to persuade the Arbitrator that such a

common provision should be part of the contract. The same could be said if the issue were dental insurance, sick leave, jury duty, military leave or any other issue that had a high degree of commonality between schools and other private and public sector employers. One of the key facts here is that there is an almost universal pattern of other non-school employers requiring a premium contribution from their employees. In fact, premium sharing in the private sector is almost a given in collective bargaining. It is clearly the rule and not the exception. It is difficult to say that this nearly universal trend shouldn't have an influence in a close case--and indeed this is the closest and most difficult one-issue cases this Arbitrator has ever seen. As collective bargaining in education began in earnest in the 1970's, teachers, no doubt, pointed to the private sector for the idea they should have paid health insurance. Now that the private sector views health insurance as a shared burden this should influence the arbitrator as well.

There remains too in the District's recipe for change the factor of a quid pro quo. The District claims that there are lots of quid pro quos in the stipulations. The Union says that they were in exchange for its plan changes. Thus, it is agreed that the other changes in the contract were valuable enough to be quid pro quos. The disagreement is whether they were enough to be quid pro quos for both the plan changes and premium sharing. In the opinion of the Arbitrator, it is difficult to say that the other changes in the contract were only quid pro quos for the plan changes. It is the judgment of the Arbitrator that there is some value to these changes (more so than the Association acknowledges but less than the District argues).

Another factor involved in whether and how much of a quid pro quo there should be is the impact of the proposal. In terms of dollars, what is at stake at least the first year is $22/month or a little over $5 per week. This amount is lessened by the Section 125 plan which provides the opportunity to pay with pre-tax dollars. If the premium had to be paid in after tax dollars it would cost the teacher more than the five dollars per week. The Section 125, while an important feature of the offer in this case, isn't really a quid pro quo. It simply lessens the impact slightly. There have been cases (Rhinelander) where the Section 125 wasn't a significant factor because it related only to major medical deductibles which are difficult to predict for set aside proposals.

The Association argued that the impact of the proposal is significant because of the potential future impact of premium increases on the teachers. Its

only $22/month this year but what about next year?--goes the argument. This is not an insignificant argument but there is a flipside to it. If the costs are going up why should the District be solely responsible? Health insurance premiums are so high that a substantial equity consideration has arisen. As stated in 1990 Elkhart Lake Decision:

> In this case, the Arbitrator finds that there is substantial intrinsic appeal to the idea that employees--given the extremely high and accelerating cost of health insurance--should, to some degree, share in the cost. This is not because it helps lower the cost of health insurance. There is no conclusive proof of this. It is because, as the District argues, health insurance costs are such a major problem that it deserves to be mutually addressed. It raises consciousness as to this problem and directly gives employees a state in addressing it. It shouldn't be lost that employees have always had a stake indirectly in the cost of benefits. The rising cost of benefits in general always impacts on the amount of the pie which can be sliced into direct wage payments. However, with health insurance fully paid, it is too easy to ignore it, to accept it as a given, and to take it for granted.
>
> With a direct stake in the cost of health insurance and with consciousness heightened about the problem, it may inspire the Parties to be more aggressive about even more cost reducing features in their health insurance. As "partners" it may inspire other action to address what clearly is or will be the most difficult problem facing labor and management in the 90s. In fact, it will likely be, depending on the degree of success labor and management have in addressing the problem, one of the great challenges of the nation as a whole. In fact, political solutions might have to be explored. In any event, any action taken by the Parties mutually to reduce health insurance costs is in the public interest. Mutual action is more likely with teachers directly participating in costs.

The District did point to a higher than average salary settlement as a quid pro quo. In evaluating this it is noted there is always some variation in settlements. For instance, while four settlements are closely grouped between $2026 and $2080 per year, others are as low as $1776 and as high as $2777. The remaining three settlements were $2438, $2198 and $2150. In calculating the average it seems appropriate to throw out Green Bay and Sheboygan as being too far beyond the range. Without them the average settlement was $2144 or nearly $150 less than the District's offer. This is a quid pro quo but not a dramatic one given the natural variation in settlements. However, it is noteworthy and lessens the initial impact of the annual $264 increase in cost to the employee of making their contribution, especially in conjunction with the Section 125 plan.

All in all, the Arbitrator doesn't believe, given the near majority support in the comparables and virtually universal support in the Criteria "E" and "F" comparables, that a "blockbuster" quid pro quo was necessary under these unique facts. To the extent one was required a somewhat higher than normal salary increase, the Section 125 plan and the moderate value of other changes in the contract were enough of a "sweetener" that it satisfied the Arbitrator that the Parties should have agreed to the Employer's proposal. In summary, the Employer's proposal is most consistent with all the statutory criteria.

AWARD

The Employer final offer is accepted.

Gil Vernon, Arbitrator

Dated this 29th day of June, 1993.