

JUL 20 1993
 WISCONSIN EMPLOYMENT
 RELATIONS COMMISSION

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of Interest Arbitration	:	
Between	:	
WHITEFISH BAY SCHOOL DISTRICT	:	Case 29
	:	No. 48120
and	:	INT/ARB-6619
	:	Decision No. 27513-A
WHITEFISH BAY EDUCATION ASSOCIATION	:	
	:	

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Mark F. Vetter, for the District.
Mr. Patrick A. Connolly, Executive Director, North Shore United Educators, for the Association.

On January 27, 1993, 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 . . ." to resolve the impasse between the above-captioned parties, ". . . by selecting either the total final offer of the . . . District or the total final offer of (the) . . . Association."

Thereafter, on February 5, 1993, the Commission notified the undersigned that it had received a timely petition from citizens of the District and ordered that a public hearing be held ". . . for the purposes noted in Section 111.70(4)(cm)6.b. of the . . . Act." Pursuant to that order, the undersigned held a public hearing on March 23, 1993, at 10:00 a.m. at the Whitefish Bay Village Hall. Approximately ten citizens either spoke or submitted written statements which were read aloud. Many other individuals attended. The public hearing ended at 11:30 a.m.

At 1:00 p.m. on March 23rd the arbitration hearing was held at the Whitefish Bay Village Hall. No transcript of the proceeding was made. Both parties had the opportunity to present evidence, testimony and arguments. Thereafter both parties submitted written briefs. The record was completed with the receipt by the arbitrator of the parties' reply briefs on May 17, 1993.

The parties are in disagreement over terms and conditions of an Agreement for 1992-93 and 1993-94. There are three issues which remain in dispute: salary increase; employee contribution to health insurance premiums; pay days.

With respect to salary, the District proposes to give an across-the-board increase (in addition to increments) of 3.641% for 1992-93 and 3.555% for 1993-94. The Association's final offer is for increases of 3.745% for 1992-93 and 3.555% for 1993-94. These adjustments, in both final offers, apply to the salary minima and maxima, and to extra-curricular schedule .

With respect to health insurance, the District proposes to pay 96% of the premium for full-time personnel, and a pro-rata share of 96% for part-time personnel who work half-time or more during the first year of the Agreement. During the second year, the District proposes that the percentage be 92%. The Association proposes that the District pay a base amount of \$505.86 per month for family premium and \$195.10 per month for single premium, with those amounts prorated for part-time personnel who work half time or more. Commencing September 1, 1992, the Association proposes that the District pay 90% of the monthly premium which exceeds the base figures of \$505.86 and \$195.10.

With respect to pay days, the District proposes no change in the status quo, which is that teachers are paid on the fifteenth of the month starting in September. The Association's final offer is that teachers be paid on the first and fifteenth of each month.

The statute directs the arbitrator to give weight to the factors enumerated there. In the present case there is no dispute with respect to several of them: (a) the lawful authority of the employer; (b) stipulations of the parties; that part of (c) dealing with ". . . the financial ability of the (employer) to meet the costs of any proposed settlement"; and (i) "changes in . . . circumstances during the pendency of the arbitration proceedings." The other factors will be considered below.

Comparability

The statute, at factor (d) directs the arbitrator to give weight to "comparison of wages, hours and conditions of employment . . . with (those) of other employes performing similar services."

This is the first interest arbitration between these parties. Thus, there is no arbitration award in which comparable school districts have been defined. Both parties cite a 1986 Award of Arbitrator Yaffe in Glendale-River Hills, in which both parties there agreed that Nicolet Union High School, Maple Dale-Indian Hill and Fox Point-Bayside were comparable to Glendale. Also in that proceeding, the Glendale District urged Yaffe to use Shorewood and Whitefish Bay districts as comparables. Yaffe determined that there was no persuasive justification not to include them, because the parties had included them in negotiations, they were geographically proximate to Glendale, and the districts ". . . engaged in some sharing of programs and services."

Both parties in the present case also cite a February, 1993 Award of Arbitrator Stern in Maple Dale-Indian Hill. Stern cited the agreement of both parties there that the primary comparables are Nicolet UHS, Fox Point-Bayside and Glendale-River Hills. Those are the districts which Stern used for his decision. He noted, however, that the Association wanted him to use Mequon-Thiensville, Whitefish Bay, Shorewood and Brown Deer as secondary comparables. Stern noted there that these districts were contiguous to Nicolet and "have similar economic characteristics."

In the present dispute, the District urges the use of the comparables which were used by Yaffe in 1986: Fox Point-Bayside; Glendale-River Hills; Maple Dale-Indian Hill, Nicolet UHS and Shorewood. The Association also views these districts as comparable, but it uses also the additional districts of the North Shore Athletic Conference to which Whitefish Bay belongs: Mequon-Thiensville, Germantown, Cedarburg, Grafton, and Saukville-Port Washington. The Association also urges that Brown Deer be included, since it is in close geographic proximity to Whitefish Bay.

In its presentation about the health insurance issue, the District uses additional comparables in the Milwaukee area as secondary comparables. The District's secondary comparables include, but are not limited to all of the districts which are used by the Association.

The parties agree on a large enough number of districts as either primary or secondary comparables to make comparisons meaningful. The arbitrator will use Fox Point-Bayside, Glendale-River Hills, Maple Dale-Indian Hill, Nicolet UHS, Shorewood, Mequon-Thiensville, Germantown, Cedarburg, Grafton, and Saukville-Port Washington. These are the Yaffe and Stern primary

comparables, and the districts of the North Shore Athletic Conference. While other districts could be used also based upon geographical proximity, these districts will suffice.

Salary Issue

The parties are in agreement that the salary issue is not the major issue in this case. This is evident from the fact that the across-the-board increases proposed are identical for 1993-94 (3.555%) and they differ for 1992-93 by .104%.

The evidence shows, as the Association emphasizes, that in relationship to the maximum salaries paid to teachers with MA degrees in several of the comparable districts, the teachers of the District lag far behind. There is no evidence that this is a new development, however, and even if the Association's final offer were selected, the effect on those differentials would be minimal. The parties' proposals with respect to salary for the average teacher differ from one another by just \$38 per teacher for 1992-93 and \$41 for 1993-94.

Much of the Association's argument about salary deals with the widening disparity between teachers' salaries in the District in comparison to other districts at various MA benchmarks. The District counters these arguments showing that at BA-min, BA-max and MA-min, the comparisons strongly favor the District's offer. The District notes also that the disparities at the maxima of the MA schedules are caused, in part, by the effects of the parties' unique salary structure which differs from those commonly in effect in comparable districts.

Neither party to this dispute has proposed a change in the salary structure. They agree on the percentage increase for increments, and their salary proposals are almost identical. The District argues that if the Association wants to reduce the disparities in the MA schedules, it needs to change the structure in ways which will give proportionately more money to teachers at the MA level, but the Association has made no such proposal.

Because of the structural difference in schedules between Whitefish Bay and the comparable districts, the arbitrator does not view benchmark comparisons as particularly useful in this case. Rather, he believes that a more significant analysis in this case is consideration of changes in average teacher salary and in their overall compensation.

Average Salary Increase Per Returning Teaching

	1991-92 to 1992-93		1992-93 to 1993-94	
	\$	%	\$	%
Fox Point-Bayside	2400	6.46	2500	6.32
Glendale-River Hills	2564	6.38	2824	6.6
Maple Dale-Indian Hill	2450	6.11	2550	6.0
Nicolet Union High School	2451	5.9	2552	5.8
Shorewood		NS		NS
Mequon-Thiensville	2502	6.2		NS
Germantown	2250	5.93		NS
Cedarburg	2216	5.19	2286	5.75
Grafton	2375	5.9		NS
Saukville-Port Washington	2304	6.0		NS
Whitefish Bay				
District Offer	2367	6.26	2456	6.11
Association Offer	2405	6.36	2459	6.11
Median of Settled Districts for 1992-93	2400	6.0		
District Offer				
Above (Below) Median	(33)	.26		
Association Offer				
Above (Below) Median	5	.36		

The Association's offer is very slightly closer to the median increase of the comparables for 1992-93.

Since only five of the comparable districts have settled for 1993-94, the arbitrator has calculated the median increases for just these districts for both years (1991-92 to 1992-93, and 1992-93 to 1993-94).

The Association's final offer is slightly closer to the median increase of the comparables in both years:

Average Salary Per Returning Teacher

	<u>1991-92 to</u> <u>1992-93</u>		<u>1992-93 to</u> <u>1993-94</u>	
	\$	%	\$	%
Median of 5 Comparable Districts Settled for Both Years:	2450	6.11	2550	6.0
District Offer Above/Below Median	(83)	.15	(94)	.11
Association Offer Above/Below Median	(45)	.25	(91)	.11

Health Insurance

The parties agree that health insurance is the major issue in this case. Both final offers propose that the employees share in the cost of health insurance premiums. Until now the District has paid the full premium. What is at issue is the extent of the cost-sharing.

Teachers in the comparable districts make contributions to health insurance premiums as follows, calculated in percentage and dollar terms. Only the family plan premiums are shown:

Monthly Cost to Employees for Family Plan

	<u>1991-92</u>		<u>1992-93</u>		<u>1993-94</u>	
	%	\$	%	\$	%	\$
Fox Point-Bayside	10	53.41	10	59.91	10	67.21
Glendale-River Hills	3	12.50	5	28.68	7	44.80
Maple Dale-Indian Hill	0	0	5	29.37	10	66.87
Nicolet UHS	10.6	60.00	10.6	66.34	10.6	73.34
Shorewood	0	0	NS	NS	NS	NS
Mequon-Thiensville	0	0	0	0	NS	NS

(table continued on Page 7)

Monthly Cost to Employees for Family Plan (continued)

	1991-92		1992-93		1993-94	
	%	\$	%	\$	%	\$
Germantown	0	0	0	0	0	0
Cedarburg	5	23.13	5	26.86	5	32.23
Grafton	5	23.79	5	27.44	NS	NS
Saukville-Port Washington	6.7	33.00	5	27.55	NS	NS
Median of 10 comparables in 1991-92	4.0	17.82				
Dist./Assn. Above (Below) Median	(4.0)	(17.82)				

	%	\$
Median of 9 settled comparables in 1992-93	5.0	27.55
District Offer	4.0	22.66
Association Offer *	1.0	6.07
District Offer Above (Below) Median	(1.0)	(4.89)
Association Offer Above (Below) Median	(4.0)	(21.48)

* The Association's final offer for 1992-93 and 1993-94 is in terms of a percentage of the premium increase. It is undisputed that in terms of a percentage of the total premium, the Association's offer approximates 1% in 1992-93 and 2% in 1993-94.

	%	\$
Median of 5 Settled Comparables in 1993-94	10.0	66.87
District Offer	8.0	50.76
Association Offer	2.0	12.87
District Offer Above (Below) Median	(2.0)	(16.11)
Association Offer Above (Below) Median	(8.0)	(54.00)

If just the 5 comparables are considered which have settled for both 1992-93 and 1993-94, the median figures are:

	1992-93		1993-94	
	5%	\$29.37	10%	\$66.87
District Offer Above (Below) Median	(1%)	(6.72)	(2%)	(16.11)
Association Offer Above (Below) Median	(3%)	(23.26)	(8%)	(54.00)

It is clear from the above figures that the District's final offer is much closer to the comparables with respect to the median level of employee contribution to health insurance in both percentage and dollar terms.

The Association does not dispute the figures that show the reasonableness of the District's offer in relationship to the comparables when only employee health insurance contributions in percentages or dollars are considered. It argues, however, that the reasonableness of the final offers should take into account the impact on employees of the increased health insurance contributions. It argues that many of the districts which have higher employee health insurance contributions pay relatively much higher salaries than is the case in the District, and thus the impact on employees of the health insurance contribution is not as great in those districts as it would be in Whitefish Bay if the District's final offer were to be implemented.

Statutory factor (h) directs the arbitrator to consider "overall compensation." Part of that compensation is salary and health insurance, the two items at issue here, and thus it is legitimate to consider the Association's arguments in this regard. Unfortunately neither party has presented figures for the comparable districts which show the overall compensation per teacher. Thus, it is not possible for the arbitrator to compare the overall compensation of Whitefish Bay teachers to that received by teachers in the comparable districts.

The arbitrator has compiled the following figures which show average annual salary increase per teacher in 1992-93 minus the increased cost paid by employees in that year for health insurance premiums:

	(1) 1992-93 Average Annual Salary Increase	(2) 1992-93 Annual Increase in Employee Share of Family Health Insurance Premium	(1) Minus (2) Difference
Fox Point-Bayside	2400	78	2322
Glendale-River Hills	2564	194.20	2370
Maple Dale-Indian Hill	2450	352.40	2098
Nicolet UHS	2451	76.65	2374
Shorewood	NS	NS	NS
Mequon-Thiensville	2502	0	2502
Germantown	2250	0	2250
Cedarburg	2216	44.76	2171
Grafton	2375	43.80	2301
Saukville-Port Washington	2304	33.71	2270
Median of 9 Settled Comparables			2301
Whitefish Bay District	2367	271.96	2095
Association	2405	72.84	2332
(Below)/Above Median District			(206)
Association			31

This analysis shows that for 1992-93 the Association's final offer produces a figure (for average salary increase less increase in employee family health premium) which is close to the median, whereas the District's offer is more than \$200 below the median.

For 1993-94 this analysis can be done only for the five comparison districts which have salary settlements, and using health insurance rate estimates provided by the Association.

	(1) 1993-94 Average Annual Salary Increase	(2) Increase in Employee Share of Family Health Insurance Premium	(1) Minus (2) Difference
Fox Point-Bayside	2500	87.62	2412.38
Glendale-River Hills	2824	193.40	2630.60
Maple Dale-Indian Hill	2550	450.00	2100.00
Nicolet UHS	2552	83.51	2468.49
Cedarburg	2286	64.38	2221.62

The median figure is 2412.38. The figures for the parties to this dispute are:

District Offer: 2450 - 337.16 = 2112.84

Association Offer: 2452 - 81.58 = 2370.42

Both are below the median for the comparables, but the Association's offer (41.96) is much closer to it than the District's (299.54).

It is clear that there is a greater net negative effect on Whitefish Bay teachers, compared to the other districts, under the District's final offer. This effect would have been smaller if teachers had been making a contribution to health insurance premiums in past years, because the increase in their contribution would not need to be as large now. In the arbitrator's opinion, what is most important is whether the District's offer is reasonable in relationship to the comparables. The arbitrator does not view the impact of the District's proposal on the teachers as being of such a magnitude that the District's final offer should not be implemented for that reason. If the District's offer is reasonable in relationship to the comparables, it should be implemented, and the teachers will simply have to absorb the impact.

The District argues that the impact of its health insurance offer on employees is minimized by the fact that the District has implemented a Section 125 plan which will produce significant tax savings for the employees. The Association argues that such

plans are in effect in many of the comparable districts as well. Since the arbitrator cannot tell from the data presented which districts do or do not have Section 125 plans, he is not in a position to use the Section 125 plan for purposes of comparisons.

The Association argues that the employees' contributions to dental insurance premiums should also be included in the analysis. Dental insurance is not an issue in this case, and the contributions made to it by employees in Whitefish Bay and in other districts are relatively very small. Their inclusion would not significantly affect the analysis.

The District argues also that the figures relating to overall compensation do not reflect the fact that in the most recent agreement in Glendale, the teachers agreed to add 3.25 days of teaching time. One of the difficulties in making comparisons of overall compensation among districts is that there are many variables in conditions of employment. There is a risk that a comparison of just a few, selected items such as using just salary and health insurance will skew the results. As mentioned above, the arbitrator does not have the data with which to make meaningful comparisons of overall compensation, and thus he has noted the District's argument with respect to Glendale but has not factored it into this analysis of salary and health insurance.

Pay Dates

The evidence with respect to pay dates consists of an Association exhibit which shows pay date practices in other districts. For the comparables used by the arbitrator in this proceeding, one district has one pay date per month, eight have two pay dates per month, and one district gives teachers three options. Clearly, then, the comparables support the Association's final offer with respect to pay date practices.

The District does not dispute the comparability data. Rather, it presented an exhibit showing that there is a cost of \$53.08 on average, per teacher per year of adding a second pay date as proposed by the Association. About 40% of that cost results from the estimated additional clerical time. The remainder is the District's estimate of the interest that it will forego by paying teachers more frequently.

Despite the additional costs which the District will incur by implementing more frequent pay dates, the arbitrator is persuaded that the Association's position on this issue should be supported. However, this is a minor item in comparison to the

health insurance item (see further discussion, below), and it is that issue which the arbitrator views as determinative of the outcome of this case.

The statute directs the arbitrator to consider that part of factor (c) pertaining to the "interest and welfare of the public."

The District argues that this criterion favors its final offer. The District cites figures presented by citizens at the public hearing showing demographic changes in the Village of Whitefish Bay from 1960 - 1990, specifically a declining population, an increase in the number of single person households and in residents over age 65.

The arbitrator does not share the District's view that these changes necessarily favor its offer over the Association's. There is no showing that these changes have been dramatic since the last Agreement was bargained by the parties. Presumably, these changes have occurred gradually over the thirty-year period and have been considered to some degree or other every time an Agreement has been bargained. Additionally, there is no showing that the changes have been different or more pronounced in Whitefish Bay than in comparable districts.

The District also presented tax data for Whitefish Bay, as well as Fox Point-Bayside, Glendale River-Hills, Maple Dale-Indian Hill, Nicolet UHS and Shorewood. The average income per tax return in Whitefish Bay in 1991 was \$56,566, which is higher than in two of the other districts. The median of the other districts is \$69,260, and thus Whitefish Bay is (12,694) below that figure. The District's data show that in 1990, the median of the other districts was \$71,548. Whitefish Bay's figure (\$55,019) was \$16,529 below the median. Whitefish Bay's position in relation to the median thus improved from 1990 to 1991.

The Association's exhibits indicate that in 1990, Whitefish Bay ranked 6 of 428 districts in the state in personal income. Of the 11 districts used in this proceeding, Whitefish Bay ranks fifth in personal income, fourth in equalized property value, sixth in equalized property value per student and sixth in mil rate.

It is the arbitrator's view that the financial health of the Whitefish Bay taxpayers by itself, and in comparison to other districts, is such that the "interests and welfare of the public" factor does not warrant special consideration in this case. It favors neither party's final offer more than the other, in the arbitrator's opinion.

The statute directs the arbitrator to consider cost of living, factor (g).

Neither party presented cost-of-living data. Both parties' offers exceed the increase in cost of living, regardless of which index is used. The District's final offer is slightly lower than the Association's over the two-year period in dispute. As the offer closer to the cost-of-living figure, the District's final offer is favored based on this factor.

The statute directs the arbitrator to consider comparisons with other public employees in the same community and in comparable communities, factor (e), and with private employment, factor (f). The parties did not make such salary or compensation comparisons, and thus these factors do not favor either party's final offer.

The District presented data concerning health insurance benefits in private employment as reflected in a 1991 survey by MRA, published in 1992, apparently in the Milwaukee area. Of 29 unionized companies with 1 - 300 employees which responded, 6 paid the full cost of family health insurance, and 10 others paid 80 - 99%. The remaining companies paid lesser percentages. Other District exhibits dealt with private sector health insurance trends, but not specific to the Whitefish Bay or Milwaukee areas.

These private sector data probably favor the District's offer more than the Association's, but the arbitrator cannot be certain of that given the format of the data, and the anonymity of the respondents, which produces uncertainty about the appropriateness of comparisons.

The statute directs the arbitrator to consider factor (j), "such other factors . . . which are normally . . . taken into account . . . in arbitration."

Both parties assert that the other's final offer should not be implemented because of the lack of a quid pro quo offered in return for changes in the status quo.

The District asserts that the Association has not offered a quid pro quo for its proposal to have employees paid bi-weekly instead of once a month. The District notes that the current arrangements have been in place for many years, since 1983. It views a quid pro quo as necessary because there is a significant cost impact, and no need shown for the change.

As mentioned above, all comparable districts except Fox Point-Bayside pay their employees twice a month. Under these

circumstances, the arbitrator does not believe that the Association should be required to demonstrate a need for something that is already in place virtually everywhere else, and especially where the item is not a major cost item.

The arbitrator has no basis for questioning the additional clerical costs which the District asserts are associated with an extra pay day each month. However, the arbitrator shares the Association's skepticism about District arguments that it should receive credit for foregoing "lost interest" if the Association's proposal is implemented. If it is common for districts to pay their employees twice a month, the District has been receiving a windfall each year by being able to retain and invest the money each month. The interest is not something which the employees should have to demonstrate is theirs, since it is arguably their money as much as it is the District's money.

In conclusion, the arbitrator does not support the District's argument that the Association was required to offer a quid pro quo and failed to do so for its pay date proposal.

The Association argues that the District's offer to require a significant employee health insurance contribution requires that it offer a quid pro quo to the Association. The District disagrees, citing the sharp rise in health insurance premiums in recent years as evidence of a need for it to do something to limit the District's costs. The Association does not question the size of total premium increases, but it argues that the dollars paid by the District, in relationship to what comparable districts pay, has not changed significantly.

The arbitrator does not support the Association's quid pro quo argument. Cost sharing is now common in the comparable districts. Both parties' offers propose a change in the status quo, since both offers propose that for the first time there should be an employee contribution to the health insurance premium. What is at issue is the size of the contribution. The District has to justify the size of the proposed contribution, but under the circumstances of this case it does not have to provide incentive for requiring a change in cost sharing. Moreover, by agreeing to a Section 125 plan, the District has substantially reduced the impact on the teachers of the proposed change, since approximately a quarter of the teachers' premium increases will be realized in tax savings.

In conclusion, the arbitrator will have to make a decision based upon his evaluation of the final offers, but it is his opinion that neither final offer should be preferred because of the "other factors" criterion, and specifically the presence or absence of a quid pro quo.

Conclusion

As mentioned at the outset of this Award, the central issue in this case is the amount of health insurance premium to be paid by employees. The District's final offer produces percentage contributions and dollar contributions which are much closer to the median figures of the settled comparable districts than is the case with the Association's final offer. The Association has shown that if the net increase is considered (average salary increase less increase in employee health insurance contribution), the figures favor the Association. As mentioned above, the arbitrator is not persuaded that the net increase figures should be determinative. It is the case that there will be a substantial payment by teachers to health insurance, which results in a smaller net increase than other districts' teachers are experiencing. This results from the fact that up until now the employees in Whitefish Bay have not contributed anything, while teachers in the comparable districts have been contributing. The adjustment called for under the District's offer results in the smaller net increase, but this adjustment is necessary to bring the District's health insurance arrangements in line with the comparables.

The Association argues that the health insurance arrangements should not be brought up to the level of the comparables, to the disadvantage of the Whitefish Bay teachers, if salaries are not also brought up to the level of the comparables. If there is a need for correction in salaries, it is noteworthy that the final offers do not reflect that, as evidenced by the parties' similar salary offers and the fact that neither side has offered to change the salary structure. As mentioned above, certain benchmark data clearly favor each party's arguments about the District's relative salary position in relationship to the comparables. Since there was no data presented for each district showing average salary and average total compensation, the arbitrator is not in a position to judge whether and to what degree there is a gap between the overall salaries and compensation of District teachers in relationship to the comparables.

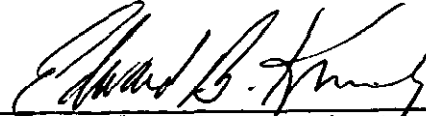
Both final offers in this dispute are reasonable ones. The salary issue favors neither final offer. On the health insurance issue, the District's final offer is favored, and on the pay dates issue, the Association's final offer is favored. The statute requires the arbitrator to select one of the final offers in its entirety. On balance the arbitrator favors the District's final offer.

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 7th day of July, 1993.



Edward B. Krinsky
Arbitrator