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EDWARD B. KRINSKY, ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
HAMILTON SCHOOL DISTRICT	:	
	:	
To Initiate Arbitration	:	Case 27
Between Said Petitioner and	:	No. 49266
	:	INT/ARB-6889
	:	
HAMILTON SCHOOL DISTRICT EMPLOYEES	:	Decision No. 27924-A
UNION, LOCAL 3086, AFSCME, AFL-CIO	:	
	:	
	:	

Appearances:

Quarles & Brady, Attorneys at Law, by Mr. David B. Kern
and Ms. Tia Tartaglione, for the District.
Wisconsin Council 40, AFSCME, AFL-CIO, by Mr. Sam Froiland,
Staff Representative, for the Union.

On February 22, 1994, 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 said impasse . . ." by selecting the total final offer of the District or of the Union.

A hearing was held at the District's office in Sussex, Wisconsin, on May 10, 1994. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with receipt by the arbitrator of the parties' reply briefs on July 8, 1994.

There are three issues in dispute: wages, health insurance contribution, and the establishment of a "Cleaner" classification. The final offers are for a 1993-94 and 1994-95 Agreement, for the bargaining unit of custodial and maintenance employees.

With respect to wages, the District proposes a 2.5% increase on July 1, 1993, and a 2.5% increase on July 1, 1994. The Union proposes increases of 4.0% on those dates.

With respect to health insurance contribution, both parties have offered to change the prior arrangements. Under the prior Agreement there was a 3% employee contribution, capped at \$4.50 per month. The District proposes to maintain that arrangement for 1993-94, but for 1994-95 it proposes to remove the dollar cap, thus leaving the contribution at 3%. The Union's final offer is to maintain the dollar cap, but increase it to \$10 effective July 1, 1993, and \$15 effective July 1, 1994.

Lastly, the District proposes to create a Cleaner classification, effective in 1994-95 ". . . with job duties the same as a 'Regular Custodian' except for the elimination of any maintenance responsibilities, at the following wage rate:

Probation	I	II	III	IV
\$ 7.50	\$ 8.00	\$ 8.33	\$ 8.66	\$ 9.00"

The statute directs the arbitrator to give weight to certain factors in making his decision. There is no dispute with respect to several of these: (a) lawful authority of the Employer; (b) stipulations of the parties; (i) changes in circumstances during the pendency of the arbitration. The arbitrator will discuss the other factors further, below.

The parties are not in agreement about which districts should be viewed as comparable to Hamilton in this case. They do agree on the use of three districts as primary comparables: Arrowhead, Menomonee Falls and Pewaukee. The District proposes two other primary comparables: Cedarburg and Germantown. The arbitrator agrees, based upon the statistics presented by the District, that these are appropriate comparables. It should be noted also that the Union included Germantown in its list of secondary comparables.

The Union views two other districts as primary comparables: Elmbrook and Muskego-Norway. The arbitrator would agree that Muskego-Norway is appropriate. Elmbrook is less appropriate because it is much larger than the District or the other comparables, even though it is in close geographic proximity. The arbitrator recognizes that Elmbrook was included in Arbitrator Imes' 1987 Award involving the teachers and the District. Since in the current proceeding neither party has suggested using the Imes' comparables, the arbitrator will select the comparables based upon his analysis of what the parties have presented here.

The parties agree also on three other districts as secondary comparables: Kettle-Moraine, Oconomowoc and Slinger. The Employer views Mequon-Thiensville and New Berlin as appropriate secondary comparables, and the arbitrator agrees based both upon their geographic proximity to the District and the statistics presented by the District about their size and characteristics. The Union views as appropriate secondary comparables: Greendale, Greenfield, Wauwatosa, West Allis and Whitnall, all located in Milwaukee County, and Hartford and Waukesha.

The District argues that the Milwaukee County districts should not be used as comparables because of their proximity to the City of Milwaukee and its economic influence. The arbitrator

is sympathetic to the District's argument, although with the growth and development which has occurred and is continuing in Waukesha County, it is not clear that there are still meaningful economic differences between the closer-in suburbs to Milwaukee and some of those in Waukesha County. However, for purposes of this proceeding, the arbitrator will not include the Milwaukee County communities.

With respect to Waukesha, the District notes that Arbitrator Imes did not use Waukesha as a comparable because of its large size. The arbitrator does not have a sound basis for disagreeing with that conclusion. With respect to Hartford, the limited economic data presented by the Union indicate that Hartford is a suitable comparable for this proceeding, and it is as close geographically as some of the agreed-upon comparables.

It is the case also, that there is not enough useful data for 1993-94 and 1994-95 to limit the analysis to the primary comparables. Therefore, for the purpose of this proceeding, the arbitrator will consider and give equal weight to the following list of primary and secondary districts: Arrowhead, Menomonee Falls, Pewaukee, Muskego-Norway, Cedarburg, Germantown, Kettle-Moraine, Oconomowoc, Slinger, Mequon-Thiensville, New Berlin and Hartford.

One of the statutory factors is "(c) the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." In this proceeding the District has not made a claim of inability to pay. However, it has made statements which are appropriate to consider within this statutory factor.

At pages 16 - 17 of its brief, the District states:

As part of Senate Bill 44, School Districts are limited by law in their ability to raise revenue by a mandated formula. The formula indicates that for 1993-94 the levy increase is limited to 3.2%. While the District's 4.98% offer is above the 3.2% limit, the Union's offer of 6.13% far exceeds this limit and is both unreasonable and unaffordable in light of this revenue cap. (See District Ex. 10, Senate Bill Section 121.91).

Mr. Dittrich testified that under this cap, the District can spend approximately \$1.1 million more than it spent in 1993-94. He explained that because of a pupil enrollment increase of approximately 100 students, most of the money has already been allocated: \$434,000 of the \$1.1 million is attributable to the QEO given to the teachers for 1994-95, and just under

\$500,000 is attributable to the 9.5 additional teachers needed to cover the additional student enrollment. Mr. Dittrich stated that this only leaves approximately \$200,000 for other expenditures, including expenditures on this bargaining unit.

Mr. Dittrich further explained how the revenue cap has imposed significant limitations on the budget. For example, the capital budget (equipment, maintenance of equipment, etc) was reduced from approximately \$300,000/\$400,000 to \$34,000. In addition, Mr. Dittrich anticipates that because of this revenue cap, the District may have to lay-off employees for 1994-95.

Based on the foregoing, it is apparent the District simply cannot afford the Union's wage demands. If the District was forced to pay the wage increase demanded by the Union, the money would have to be taken, disproportionately, from other equally important school operations. . . .

This argument is repeated in its reply brief. The District's package cost for 1994-95 is \$39,168, while the Union's is \$55,786, and thus what is at issue here for 1994-95 is the difference, approximately \$16,000.

As previously noted, this is not truly an inability to pay issue. Rather, it is an equity argument to the effect that the bargaining unit should not share disproportionately in available, but scarce, resources.

The arbitrator is not in a position to evaluate this argument. He does not know whether the economic claims of the bargaining unit merit greater, lesser, or the same amount of consideration as competing uses of funds. The District's argument, quoted above, simply asserting that there should be proportionate sharing of funds is not persuasive, and will not be determinative in this case. Rather, the arbitrator will look to the analysis of the other factors, as is customary in these proceedings, and will make his decision accordingly. He is not persuaded that either the interests and welfare of the public or the financial ability of the District to pay dictate a result in favor of one offer or the other.

Statutory factor (d) directs the arbitrator to consider wages, hours and conditions of employment in comparison with "other employees performing similar services." Factor (e) directs the arbitrator to consider such comparisons with ". . . other employees generally in public employment in the same community and in comparable communities." The comparisons which

the parties have made, discussed below, are with custodial and maintenance employees of other school districts, and with other employee groups employed by the District.

Wages

The wage comparison analysis must be limited to 1993-94, since only one district (Oconomowoc), has an agreement in place for 1994-95, and that is not a sufficient basis for drawing any conclusions. It should be noted that the wage increase there for 1994-95 is for \$.55 increase, which, depending upon the classification, amounts to a percentage increase of 3.7 to 4.2. One other district (Germantown) is at the final offer stage for 1994-95. The Union is offering 4.0%. The Employer's offer is \$.28 which, depending upon the classification, amounts to a percentage increase of 1.7 to 2.4.

The following data are available for 1993-94, showing percentage wage increases:

Arrowhead	Board Offer: 3%* Union Offer: 4%
Cedarburg	5.5%
Germantown	Board Offer (\$.37) which is 2.4 to 3.3% Union Offer 4%
Hartford	4.7%
Menomonee Falls	4%
Kettle-Moraine	4.04% according to District figures 3.1 to 4.75%, depending on classification, according to Union figures
Mequon-Thiensville	4.5%
New Berlin	3%
Oconomowoc	\$.60, which is 4.2 to 4.8%
Slinger	4.6% according to District figures 4.0 to 4.35%, depending on classification, according to Union figures

* The Arrowhead District's final offer is presented in the Union's exhibits, and indicates 3.0%. The District exhibits show a figure of 2.0%

This table shows clearly that viewed in percentage terms, there is support for the Union's 4.0% final offer more than the District's 2.5% final offer for 1993-94.

In terms of hourly wages, the arbitrator has put together the following table showing the maximum rates paid to the highest classifications of custodian and maintenance employees whose classifications are not entitled Head, Lead, or Foreman.

	1992-93	1993-94
<u>Custodian</u>		
Arrowhead	12.52	12.96
Cedarburg	11.80	12.30
Hartford	11.32	11.86
Menomonee Falls *	14.43	15.01
Kettle Moraine **	12.50	12.90
Mequon-Thiensville ***	-----	-----
New Berlin ****	17.49	18.01
Oconomowoc	11.85	12.45
Slinger	10.40	10.84
Hamilton	13.88	District: 14.23 Union: 14.44

* In the District's Appendix A, Custodian B was used. The above table uses Custodian A, since there is no indication that Custodian A is managerial.

** District's Appendix A had the data for 1992-93 and 1993-94 transposed.

*** Data are not shown for Mequon-Thiensville, because in reviewing the source data presented by the District it is not obvious how the figures for 1992-93 and 1993-94 are related, since there is no similarity in the classification titles shown there.

**** In the District's Appendix A, Custodian IV was used. There is no indication in the documents that Custodians I/II/III are managerial. The above table uses Custodian I.

For 1992-93 the median of the eight comparison districts is \$12.17, and Hamilton is above it by \$1.71. Hamilton ranks 3 of 8.

For these same districts in 1993-94, the median is \$12.68. The District's offer is \$1.55 above the median; the Union's offer of \$1.76 above the median. The rank of the District under either final offer is 3 of 8.

	1992-93	1993-94
<u>Maintenance</u>		
Arrowhead	15.69	16.24
Cedarburg	12.70	16.00
Hartford	12.98	13.59
Menomonee Falls	15.33	15.94
Kettle Moraine *	13.65	14.30
Mequon-Thiensville **	-----	-----
New Berlin	19.77	20.36
Oconomowoc	13.10	13.70
Slinger	12.66	13.21
Hamilton	15.05	District: 15.43 Union: 15.65

* District's Appendix A had the data for 1992-93 and 1993-94 transposed.

** See footnote (***) in preceding table.

For 1992-93 the median of the eight comparison districts is \$13.38 and Hamilton is above it by \$1.67.

For these districts in 1993-94, the median is \$15.12. The District's offer is above the median by \$.31. The Union's offer is above the median by \$.53. The District's rank in 1992-93 was 3 of 8. In 1993-94 the District's rank is 5 of 8 under either final offer.

These figures for custodians and maintenance employees support the reasonableness of both final offers. Both offers produce the same rank and produce wage rates above the median of

the comparables. The Union's offer for 1993-94 maintains the relationship which existed with the median in 1992-93 better than does the District's offer, however.

The District cites internal comparisons as justification for its wage offer. It notes that its offer to the bargaining unit is higher than what is paid, in percentage terms, to either teachers or administrators.

The arbitrator notes that the salary increases of teachers and administrators were capped by recent changes in state law. These changes do not affect the wage increases which the bargaining unit may receive. The arbitrator believes that since these changes affect all school districts, the most reasonable basis for evaluating the proposed wage increases is to make comparisons with what similar employees are receiving in comparable school districts.

Health Insurance

There is very little data presented by the parties for 1994-95 comparisons. For 1993-94, using the same comparison districts as in the wage analysis, the following are the data for employee contribution to health insurance.

Cedarburg	5%
Germantown	0%
Hartford	\$15 family \$ 5 single
Menomonee Falls	6% = \$33.94 family \$13.06 single
Muskego-Norway	0%
Pewaukee	\$15 family \$ 5 single
Kettle Moraine	0%
Mequon-Thiensville	0%
New Berlin	8%
Oconomowoc	5% *
Slinger	0%

* The Union exhibits use a figure of 0%. The 1992-93 figure was 0%. Neither party documented the 1993-94 figure.

These data do not lend particular support to either party's final offer, in the arbitrator's opinion. There are more districts that use percentage arrangements than dollar ones, but there is no pattern among those which use a percentage figure concerning what is the percentage figure.

Both parties call attention to the internal arrangements for payment of health insurance contribution. Teachers pay 3%. Administrators pay 5%, as of 1993-94. For Aides, who are now in the process of bargaining their first Agreement, the District contributes \$100 per month, which means that participating employees pay more than 50% of the single premium, and more than 80% of the family premium. Cooks make no contribution for health insurance. Secretaries contribute \$1.84 for single coverage and \$5.50 for family coverage. What is clear is that there is no pattern of internal arrangements.

Both parties have proposed to change the current arrangements, although the Union's change is one of increasing the dollars, rather than changing from dollars to percent, as the District proposes. The 1994-95 premiums have not yet been established (or at least are not in the record). If the 1993-94 premiums were used with the proposed new arrangements, the premiums paid by the employees would be as follows:

		Single	Family
1993-94	District	4.50	4.50
	Union	8.16	10.00
1994-95	District	8.16	18.79
	Union	8.16	15.00

The District argues in its brief in support of its health insurance proposal that, ". . . it is impossible for employers to meet these demands [rising health insurance costs] without additional employee contributions. Already nearly half of the comparable districts have recognized the need to increase employee contribution levels -- a trend which will undoubtedly continue in the future."

Both parties' final offers are reasonable with respect to health insurance. In the arbitrator's opinion, the District has not adequately justified its movement away from a dollar cap arrangement. It has not shown why, with reasonable dollar caps, the existing structure is not adequate. The Union's final offer maintains such arrangement, but increases the dollar caps to recognize the trend towards higher employee contributions.

Cleaner Classification

Information presented about comparable districts reveals that none of them have a "Cleaner" classification. According to the District, two other districts have comparable positions: Cedarburg has a Custodian I, and Slinger has a Custodial I (Building) and a Custodial II (Laundry), but the arbitrator has no way of knowing whether the duties and responsibilities of these positions are the same, or similar, to the proposed Cleaner position. Even if they are the same or similar, they are only two of the eight external comparables, and the others do not have the classification.

The District has not demonstrated a need for the new classification. It has argued that the proposed change is "reasonable and necessary," and will ". . . relieve the custodial employees of light cleaning tasks without cutting their wages, but it will enable the District to pay a lower wage to new employees for less complicated cleaning tasks . . ."

The District has not demonstrated that any problems exist with the current assignment of light cleaning tasks to custodial employees. It also has not provided any economic or other analysis to show why there is a need for this change. If it is purely a matter of cost savings, the District has not shown how much money it anticipates will be saved, or how or when the staffing pattern will be changed. For these reasons, the arbitrator is not persuaded that this change is justified at this time.

The Union argues also that the Cleaner position should not be implemented because the District did not bargain about it. The Union points out that in the face-to-face bargaining in March to May, 1993, and during the first mediation session with a WERC staff person in July, 1993, the District made no mention of introducing a Cleaner position, and did not do so until it submitted its final offer in August, 1993.

The arbitrator notes that the WERC staff person held an additional mediation session in November, 1993. At that time the Cleaner position could have been fully discussed and bargained, had the parties wanted to do so. Thus, although the District's proposal was made fairly late in the bargaining process, there was an opportunity to bargain about it and the arbitrator does not view the District's conduct in this regard as reason to not implement its proposal.

Factor (g) requires the arbitrator to weigh the changes in the cost of living.

The District has presented data showing that in the period from July, 1992 to July, 1993, the cost-of-living increase nationally was 2.7%. In the Milwaukee area, the increase shown for the most recent six months period was 3.5%.

The parties' wage offers for 1993-94 are 2.5% and 4%, respectively. The cost-of-living increase figures lend greater support to the District's 2.5% offer than to the Union's 4% offer, and that would be the case all the more so after the total economic package, not just wages, was considered.

The figures for the period July, 1993 through December, 1993, indicate that the cost-of-living increase was 2.5% nationally, and 3.5% for Milwaukee for the most recent six months period. These figures, though not complete for the 1993-94 contract year, give greater support to the District's 2.5% offer for July, 1994, than to the Union's 4%.

Factor (f) directs the arbitrator to weigh comparisons with "employees in private employment in the same community and in comparable communities." The only use made by the parties of private sector data was the District's telephone survey of some local firms in order to set what it considered to be a fair wage scale for the proposed Cleaner position. For reasons discussed above, the arbitrator supports the Union's position on that issue. Thus, the arbitrator has not attached significance to the District's data on what private firms pay for cleaning services.

Factor (h) directs the arbitrator to weigh "the overall compensation presently received by the . . . employees . . ."

The District has presented costing figures for the final offers. For its offer, the District shows that the total package increase for 1993-94 is 4.98%, and for 1994-95 it is 3.67%. The Union's final offer, according to District costing, is an increase of 6.13% for 1993-94 and 5.17% for 1994-95.

There are no costing figures given for other internal employee groups, and none presented for comparable districts. Thus, the arbitrator does not have any basis for evaluating the reasonableness of the total packages, except as measured against the cost-of-living increase, discussed above.

The statute directs the arbitrator to weigh factor (j), "such other factors . . . normally or traditionally taken into consideration . . ."

The Union raised the matter of the District's conduct in proposing the Cleaner classification. The arbitrator has discussed that above and, for the reasons stated, does not share the Union's view of the matter and does not weigh the District's conduct against it.

The Union also has cited the District's failure to provide a quid pro quo for proposing a change in the method of health insurance contribution and proposing a Cleaner classification. The District maintains that it has provided a quid pro quo. Since, for reasons already stated above, the arbitrator views the Union's health insurance proposal more favorably than the District's, and also favors the Union's position on the Cleaner classification, there is no need for further analysis of the quid pro quo issue.

Conclusion


As previously noted, the arbitrator must select one final offer or the other in its entirety. In his view, there is a slight preference for the Union's wage offer for 1993-94, and there is inadequate basis for a preference for 1994-95. With respect to health insurance, the Union has not altered the existing method of payment and it has offered to increase the dollar caps. The District's health insurance proposal is reasonable, but it changes the structure which the parties have bargained. The District's offer is favored in relationship to the increase in the cost of living, but the arbitrator attaches greater significance to what comparable districts have bargained, since they are all subject to the same cost-of-living considerations. The comparable districts are also subject to the same restraints on teacher and administrative salaries and benefits which were mandated by State law. Thus, the bargains made in other districts for custodial and maintenance employees become particularly significant in determining the reasonableness of the final offers here. The District has argued that the Union's offer gives the bargaining unit more generous treatment than other employees of the District have gotten. It is not clear that such is the case for all groups of employees. Also, the lack of internal consistency of treatment persuades the arbitrator to give greater weight to external comparisons. Lastly, the arbitrator favors the Union's final offer with respect to the Cleaner classification.

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

AWARD

The Union's final offer is selected.

Dated at Madison, Wisconsin, this 27th day of July, 1994.



Edward B. Krinsky
Arbitrator