BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of an Impasse Between

RANDALL CONSOLIDATED SCHOOL JOINT DISTRICT NO. 1, TOWN OF *RANDALL AND VILLAGE OF TWIN* LAKES, KENOSHA COUNTY

and

RANDALL EDUCATION SUPPORT PERSONNEL

Decision No. 28358-A

Appearances:

David R. Friedman, Attorney at Law, for the Municipal Employer.

Dennis G. Eisenberg, Executive Director, Southern Lakes United Educators, WEAC UniServ Council #26, for the labor organization.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Case 17, No. 49830, INT/ARB-7019, Dec. No. 28358-A, 5/09/95) the undersigned Arbitrator to issue a final and binding Award, pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act, resolving an impasse between said parties by selecting either the total final offer of the Municipal Employer or the total final offer of the labor organization, sometimes referred to herein as the Union.

A hearing was held in the Village of Bassett, Wisconsin, on September 19 and October 30, 1995. No transcript was made. Briefing was completed on January 24, 1996.

The collective bargaining unit covered in this proceeding consists of all regular full-time and regular part-time non-professional employees employed by the Municipal Employer. There are approximately 15 employees in this unit.

The parties are seeking a collective bargaining agreement for the 1993-1994 and 1994-1995 school years.

THE FINAL OFFERS:

The Union's final offer would:

1) Revise the Job Security provisions of the parties' collective bargaining agreement by substituting the phase "just cause" for "good reason," and by adding "disciplined" to the measures subject to the "just cause" standard.

2) Provide salary schedules in lieu of the listing of classifications and wage rates format formerly specified in the parties' agreement. These schedules—one for each of the school years in issue—would be in the usual form of a matrix with axes indicating years of service (six) and classifications (six). The classifications specified are: Teacher Assistant, Custodian I and II, Secretary I and II, and Cook. Moreover, this offer also specifies the placement of certain unit members; how newly hired employees should be placed in this matrix or receive a probationary rate; and deletes references in the preceding agreement to bus drivers.

3) Provide certain dues deduction procedures and fair share requirements for which extensive language is specified.

4) Provide long-term disability insurance at specified benefit levels and with specified administrative features.

The Municipal Employer's final offer would:

Maintain the format that appeared in the parties' preceding collective bargaining agreement's compensation article and increase the rates for the classifications of Custodians, Cooks, Teacher Assistants, and Secretary by specified amounts.

DISCUSSION:

The Municipal Employer concludes, and the Arbitrator agrees, that the disparities between the parties' salary proposals, with the possible exception of their differences over the structuring of the salary provisions, are not significant or a primary issue in this matter. The costs that accrue to the Municipal Employer under both parties' offers are nearly the same, as is well displayed by the Municipal Employer's brief.

On the other hand, the Municipal Employer views the salary structure issue as a major factor and urges that there are "other ways" of addressing the differences between the earnings of new employees and those with greater years of service. Characterizing the Union's proposed salary structure as a "dramatic and drastic change," the Municipal Employer contends that the evidence does not sufficiently demonstrate a commensurate problem which would justify such a radical departure from the status quo; and that there has

been no quid pro quo offered by the Union. Moreover, the Municipal Employer argues that a primary basis for the Union's proposed structure is to gain a marked increase for a particular employee which also is not proper grounding for such a revision.

The Arbitrator finds that inasmuch as neither the cost or comparability of the Union proposal is a material factor; and the arguments against the structure are, at least to a major extent, based upon the relevant but somewhat abstract conventions of "how the game is played;" it is appropriate to look mainly to the other matters in contention in determining which entire offer should be adopted.

The Municipal Employer objects to the changes proposed by the Union to their job security terms, which would add "just cause" and "discipline," on the grounds that "there is no evidence that there has been any problem" and that it appears that "the union wants this language merely because everybody else has it." It also asserts that no quid pro quo has been offered by the Union.

It is this Arbitrator's view that the concept of "just cause" and its application to disciplinary measures is of such widespread conventionality, and so well founded upon elementary and uncontroversial concepts of justice, that at this point in the evolution of employment relations in Wisconsin they do not require either the demonstration of a problem or a quid pro quo. The Arbitrator would ask how the Employer would justify denying this ordinary protection to its employees? Finding no substantive basis for this denial, it seems compelling to agree with the Union.

In the matter of the Union's fair share proposal, the Municipal Employer argues that it should not be adopted because to do so retroactively raises a number of serious implementation difficulties. Mainly on this basis the Municipal Employer urges that "this position is so onerous as to negate RESP's entire final offer."

The concerns specified in this regard by the Municipal Employer are significant and troubling, but the Arbitrator is more persuaded by the Union's analysis which emphasizes that the failure to reach a timely agreement and thus avoid the application of retroactivity may be attributable to the Municipal Employer. In such a case, if the Municipal Employer's contention is accepted, it would be rewarded for this failure by the acceptance of its final offer. Whatever other ramifications may be found, that result would surely be inconsistent with public policy.

The Union's dues deduction offer does not require annual deduction authorizations by the employees as has been the case. In large measure this is viewed by the Union as a convenience to all concerned. The Employer urges that this is in many ways a trivial matter, but also would have the unjustified effect of shifting the responsibility of being certain of authorization to the Employer. In addition, the Employer reads the terms proposed by the Union to be self-contradictory because they seem to provide for both continual authorization and for the submission of authorizations by a specified time in the school year. Finally, the

Municipal Employer objects to being placed by these terms in the "messiness" of attempting to correct for deductions found to be inappropriate. The Union replies that its proposal is consistent with terms agreed upon by comparable employers and that it is not self-contradictory because the submission date applies only to new employees.

The Municipal Employer's response to the Union's proposal of long-term disability insurance is that while "the financial cost is not significant . . . once again the RESP's asking for more." It emphasizes that no concessions were made "as an inducement for long term disability." The Union urges that such insurance has well known utility and is more than common among comparable employers.

In the judgment of the undersigned, neither the dues deduction issue or the disability insurance issue should strongly influence the selection of the final offer in this case. In both matters both parties' contentions are meritorious, but these seem to be fairly minor matters in practical terms.

The foregoing analysis may be summarized as a number of reasonable disagreements over matters of minor to moderate practical impact, except for the issues of job security and fair share in which cases the Municipal Employer has attempted to forestall rather conventional terms on grounds that the undersigned has found to be without merit.

AWARD

On the basis of the foregoing, the record as a whole, and the "factors" specified by the Municipal Employment Relations Act for such selections, the undersigned Arbitrator selects and adopts the total final offer of the Labor Organization.

Signed at Madison, Wisconsin, this 22nd day of March, 1996.

Howard S. Bellman
Arbitrator