STATE OF WISCONSIN
BEFORE THE ARBITRATOR

****

In the Matter of Arbitration
Between

HOLMEN SCHOOL DISTRICT

Case 27
No. 49948 INT/ARB-7040
(Voluntary Impasse Procedure)

and

HOLMEN CUSTODIAL/MAINTENANCE ASSOCIATION

****

APPEARANCES:

On Behalf of the Employer: Richard J. Ricci, Attorney - Weld, Riley, Prenn & Ricci, S.C.

On Behalf of the Association: Deborah K. Byers, Executive Director - Coulee Region United Educators

I. BACKGROUND AND ISSUES

There are two separate issues, to be decided independently, before the Arbitrator. The first issue relates to various differences in language proposals for the 1992-93 initial contract between the Parties. The second independent issue is the amount of the wage increase in the first year (1993-94) of an otherwise agreed to contract for the period 1993-96. The Parties agreed to a voluntary impasse procedure which provided for them to address these issues in a single hearing and single brief and to have the Arbitrator address them in a single award but independent of each other. The Arbitrator is to apply the criteria of Wis. Stats. 111.70(4)(cm)(7) in "either-or" fashion to the 1992-93 language issues issuing a decision on these matters. Separately the criteria will be applied in similar "either-or" fashion to the wage issue for 1993.

The following describes the issues in more detail:

A. 1992-93 LANGUAGE ISSUES

1. Subcontracting (Article II, B. Management Rights, Paragraph 13)

   DISTRICT OFFER:

   To subcontract out for goods and services, provided that no bargaining unit employee, employed as of April 19, 1995, is placed on layoff or reduced in the number of hours worked as of April 19, 1995, because of such action.

   UNION OFFER:

   To temporarily contract out for goods and services, provided that no bargaining unit employee is placed on layoff or reduced in hours because of such action.

2. SUBSTITUTE PAY (Article VII, E. Staff Reduction, Paragraph E)

   DISTRICT OFFER:

   Substitutes: All reasonable efforts shall be made to engage substitutes for employees on sick leave or any other leave. A substitute list shall be developed by administration and the Association to include those who are laid off, retired, or have had previous experience in the system. Preference will be given to any employee who is on layoff. All substitutes will be paid at the substitute rate for the appropriate classification unless an employee is substituting for another and his/her own rate of pay is higher.

   UNION OFFER:

   Substitutes: All reasonable efforts shall be made to engage substitutes for employees on sick leave or any other leave. Any bargaining unit member who substitutes for another employee shall be paid at the substitute rate of pay unless his/her own rate of pay is higher, in which case he/she will receive his/her own rate of pay. If an employee substitutes in a position in a classification with a higher rate of pay for ten (1) consecutive workdays, he/she shall be paid at the lowest step in that classification (provided it is higher than the employee's regular rate of pay) retroactive to the first day of substituting.

3. WEEKEND/HOLIDAY PAY (Article - Compensation, Paragraph E)

DISTRICT OFFER:

Weekend/Holiday Pay: Employees will be paid a minimum of one hour at time and one-half (1½) if the employee is called to work on the weekend. This shall not apply, however, in the following instances: The District may, when occasionally necessary, schedule an employee to work on a Saturday in lieu of the previous Monday, in which case the employee will be paid the regular rate for the Saturday work. The occasional Saturday work will be rotated among all employees within the respective classifications. Employees asked to work on a holiday will be paid for the number of hours worked at their regular rate plus the regular holiday pay.

UNION OFFER:

Weekend/Holiday Pay: Employees will be paid a minimum of one (1) hour at time and one-half if the employee is called to work on the weekend. Employees asked to work on a holiday will be paid a minimum of one (1) hour at time and one-half plus the regular holiday pay.

4. PAID HOLIDAYS

The difference here relates to the number of paid holidays to be provided for part-time, 12-month employees. The Parties agreed to the number and identification of the holidays for full-time, 12-month employees, as well as the holiday provisions for less-than-12-month employees. Full-time, 12-month employees under either proposal get 11 paid holidays. Less-than-12-month employees under ?? get a minimum of five with up to two additional days depending on the circumstances. The differences relate to employees who may work 12 months but less than full time (part time, in other words). The District's proposal would place them in the same category as all less-than-12-month employes, thus entitling them to 5-7 holidays. The Union's proposal provides all 12-month employees whether part time or full time would get 11 paid holidays.

5. Evaluation Procedures (Article X)

DISTRICT OFFER:

No proposal.

UNION OFFER:

Same language as included in Clerical/Paraprofessional's contract.

5. Work Schedules For Custodians/Maintenance (Article XIII, Paragraph A)

DISTRICT OFFER:

No proposal.

UNION OFFER:

Full-time, 12-month custodial and assistant maintenance personnel will work Monday through Friday and will work an eight-and-one-half (8½-hour) day which includes a one-half unpaid lunch break, except for those days designated as holidays. Custodians may leave the building during the one-half hour unpaid lunch break. At the discretion of the District, night custodians may work eight (8) hours with one-half (½) hour paid lunch or eight and one-half (8½) hours with one-half (½) hour unpaid lunch. The custodian may not leave the building during the one-half-hour paid break.

B. 1993 WAGE ISSUE

The only issue to be resolved in this contract is the wage increase for 1993-94. The Association is proposing an across-the-board increase of 20 cents per hour for all classifications and on all steps. The District is proposing a 1.58% rate increase on all steps and in all classifications. This would result in 20 cents per hour for the Mechanic, 16 cents per hour for all Head Custodians and the Assistant Maintenance person, 15 cents per hour for the third step of the Custodian Classification, and 12 cents per hour for the Cleaning Crew.

C. ANCILLARY ISSUE OF COMPARABLES

The District utilizes the same comparable group as selected by the Arbitrator in a 1993 arbitration involving the District's Clerical/Paraprofessional bargaining group. It was concluded that the Mississippi Valley Conference members of Onalaska, Sparta and Tomah, as well as the contiguous districts of Galesville-Ettrick-Trempealeau (G-E-T) and West Salem comprised an appropriate group of primary comparables, with La Crosse and Melrose-Mendoro (because of their size) being considered secondary external comparables.

The Association's proposed primary comparable group includes the schools in the Mississippi Valley Athletic Conference, namely, La Crosse, Onalaska, Sparta, and Tomah, and the contiguous West Salem School District. The Association's secondary list of comparables is constructed by striking an arc using the distance from Holmen to Tomah as its radius and including all schools with unionized custodial/maintenance units. These schools include Bangor, Black River Falls, Cochrane-Fountain City, De Soto, and Westby.

II. CONTENTIONS OF THE PARTIES (SUMMARY)

A. The Comparables

1. **The Employer** contends it appropriate to rely on the external comparables established in a previous arbitration with the other bargaining unit. This is because the previously established comparables were based on arbitral precedent for establishing the athletic conference as an appropriate barometer of comparability as well as the fact that the contiguous districts represent the local labor market due to their contiguity or geographic proximity to Holmen. They submit local labor market should be the principal factor in establishing comparables for Custodial/Maintenance units. They accuse the Union of comparable shopping in the selection of their comparable group.

2. **The Association**, first, rejects any reliance on non-union comparables because issues in dispute in this contract include those that non-unionized districts do not acknowledge for their employees. They contend, too, that La Crosse should be included because of its participation in the athletic conference and is proximity to Holmen. There is also a significant economic relationship too. As for the secondary comparables, they are appropriate because they are similar to the enrollments for Melrose-Mendoro and West Salem. Moreover, they contend that if the Arbitrator finds Tomah to be an appropriate comparable to Holmen, then it only makes sense that unionized school districts that are closer to Holmen than Tomah would also be included in the list of comparables.

B. Subcontracting Language (1992-93)

1. **The Employer** contends its language is preferred because it not only provides protection from layoff and/or reduction in hours, but also has the advantage of not being muddled by the ambiguous term "temporarily." The addition of this word, in their estimation, is an unnecessary restriction given the protection guaranteed the employees. It is significant, too, that the Union has presented no evidence that subcontracting has been a problem or that the District's proposal language constitutes a threat to the bargaining unit or any unit member's position or hours. Regarding comparables, they note (1) that the internal comparables are split and (2) that there is no pattern among the external comparables with respect to subcontracting language.

2. **The Association** first argues that the District's position is not supported by the external comparables. Generally, it is asserted other districts

have more restrictive language. Moreover, the evidence shows past assurances against subcontracting have not been accurate. The Association believes its proposal is more reasonable because it meets the needs of the District (to contract at peak times) and the needs of the employees. Last, they contend the Employer's proposal circumvents the "just-cause" standard.

C. Substitute Pay (1992-93)

1. The Employer recognizes that the Union's proposed language does not require the District to use existing bargaining unit members to substitute for other employees. However, the requirement to make pay adjustments retroactive after ten days would be a "nightmare." This is compounded by the domino effect substitutions have. Moreover, they note the District's final offer provides language which is supported by the District's Clerical/Paraprofessional unit, both in terms of relying on a substitute list made up of laid off, reduced hour, and retired employees, as well as paying at the substitute rate or the employee's own rate of pay, whichever is higher.

2. The Association contends its proposal is supported by the comparables externally. Internally support is split. Their proposal is more reasonable because all they are asking for is a fair wage for bargaining unit members who are asked to carry the burden for an absent colleague for an extended period of time.

D. Weekend Pay (1992-93)

1. The Employer draws attention to the fact that this issue involves both the amount of compensation for work performed on the weekend and the District's right to schedule work on Saturdays. The Parties agreed that an employee will be paid a minimum of one hour at time and one-half if the employee is called to work on the weekend - either Saturday or Sunday. However, the Union's proposed language regarding "Work Schedules" for custodians and maintenance personnel would preclude the District from scheduling other than a Monday through Friday work week. Thus, under the Union offer, all work performed on Saturday and Sunday would require pay at the overtime rate. The flexibility to schedule work on Saturday in lieu of Mondays is needed to address the need for Saturday without having to pay overtime. This would be rotated among employees and allow the District to better serve the public. They note, too, that some of the comparables contemplate occasional Saturday work as part of the regular work week.

2. **The Association** claims its proposal is supported by the external comparables. Moreover, they submit the Employer's proposal is a departure from the status quo. For 20 years the District has always paid overtime for Saturday work. They contend, too, that the proposal suffers from ambiguity as the term "occasional" isn't defined. Nor is it clear who would do the Monday work.

D. **Holiday Pay (1992-93)**

1. **The Employer** finds no justification for the Union proposal which results in an employee earning two and one-half times their regular rate. Only one of the comparables is consistent with the Union proposal.

2. **The Association** claims, contrary to the Board's assertion, that both La Crosse and Onalaska pay their custodians time and one-half plus holiday pay for work on holidays. Several of the secondary comparables also support the Association proposal. Their proposal is also more reasonable because it will deter the Employer from scheduling holiday work.

E. **Number of Holidays (1992-93)**

1. **The Employer** notes at the outset that the internal comparables provide little support to either Party's final offer since there is no provision in either the food services or clerical/paraprofessional contracts for paid holidays for part-time, 12-month employees. Regarding the external comparables, there is support for part-time employees receiving fewer holidays than full-time, 12-month employees. Both in Tomah and West Salem, part-time employees receive fewer holidays--only five days in Tomah and one day in West Salem, compared to ten days and nine days, respectively, for full-time employees.

2. **The Association** claims that the external comparables clearly support the Association's position as 12-month, part-time employees receive the same number of holidays as full-time, 12-month employees in La Crosse, Onalaska, and West Salem. All secondary comparables also support the equity between full-time and part-time, 12-month employees. All five districts give 12-month, full-time employees the same number of holidays as they give 12-month, part-time employees. They assert the internal comparables support their proposal too. The District's proposal is inequitable and unreasonable because it means a part-time employee doesn't have the same pay protection a full-time employee has. The primary purpose of holiday pay provisions is to

guard the employee against the possible loss of earnings if he/she does not work on a holiday which falls within the normal work week.

F. Evaluation Procedures (1992-93)

1. **The Employer** recognizes that both the food services' and clerical/paraprofessional's contracts have almost identical language. However, the language is problematic. They also note there is simply no support among the external comparables for the extensive language included in the Union's final offer.

2. **The Association** notes that of the 13 external comparables the Association has been using throughout its brief, all but three of the districts have some kind of language relating to evaluation and/or personnel files in their collective bargaining agreements. Internally the evaluation procedures found in the HESP contract and the HAFSE contract are almost exact replicas of that proposed by the Association. They also contend that the District's sole objection to their proposal is a smoke screen. Their proposal is reasonable and merely requires job descriptions, expectations for the year to be discussed with the employee, observations to be conducted openly and by their supervisor and shared with the employee. In contrast, the lack of a proposal by the District is unreasonable because there would be no requirement for the Employer to notify the employee as to what is being placed in the personnel file. Several negative evaluations could be placed in an employee's file with no chance to rebut the information or to correct stated deficiencies.

F. Work Schedules (1992-93)

1. **The Employer** maintains there is no need to contractualize the hours worked by 12-month, full-time employees or the existing practice with respect to lunch hours. This purpose of the Union proposal seems to relate to the Saturday overtime issue. Again they demand flexibility. Regarding the internal comparables with respect to lunch break, that language reveals that the clerical/ paraprofessional contract also contains no language specifying a lunch break. Externally, only West Salem guarantees a Monday-Friday work week throughout the year. La Crosse guarantees a Monday-Friday work week during the summer months only, obviously when there is less Saturday use of school facilities. There is also a fatal flaw in their proposal in that it conflicts with language elsewhere in the agreement which provides hours will be determined by the District and language which says employees will be paid for all hours worked. The Union proposal says employees will work an 8½-hour day.

2. **The Association** believes its proposal is necessary because lunch breaks are not addressed anywhere else in the agreement. For this reason alone, they contend, the Association's proposal should be selected. With respect to work schedules, the HAFSEA, HESP, Holmen teachers, Onalaska, Sparta, West Salem, Bangor, De Soto, and Westby have language in the contract for a Monday-Friday schedule. In regard to Saturdays and Sundays, they have always been overtime days. Thus, the Associations' work schedule proposal would continue the status quo that has existed in this District for many years. The lack of a Board proposal causes the Association to fear that the District could change an employee's schedule with little or no notice.

G. The 1993-94 Pay Increase

1. **The Employer** first argues that the Board's proposed increase in wage rates for 1993-94 is more reasonable than the Union's proposed cents-per-hour increase. This is because almost half the bargaining unit received 20 cents per hour night shift differential the previous year. The cleaning crew also received an increase in benefits. Thus, they believe it is more equitable to give a percentage increase so employees who did not receive the 20-cent increase would receive more money.

The District also believes their proposal is more reasonable because it is consistent with the three-year settlements reached with the internal support staff units. Indeed, at $1.58 the three-year total package increase of 14.60 percent is considerably higher than the three-year package of 13.83 percent for the food services unit and a bit less than the 14.74 percent increase for the clerical/ paraprofessionals unit. In contrast, the Union's final offer of 20 cents per hour in 1993-94 results in a total package cost which exceeds the settlements with the other two units and exceeds the 15 percent maximum established by the Board.

Externally, they believe it appropriate to compare maximum wage rates and wage increases only. In doing so, the evidence shows that four other schools pay less. In addition, Holmen custodians are achieving the maximum wage rate more quickly than most of the comparables. The same is true for head custodians. Overall, it is significant, too, that the Union has presented no evidence of any turnover among the custodial staff to justify a need for the Union's final offer with respect to wages. Their offer also exceeds the cost of living.

2. **The Association** believes its proposal of 20 cents per hour is more reasonable than the District's proposal of 1.58 percent. Noting that its offer of

20 cents per hour equates to an average increase of 2.12 percent, the Association notes that (1) HAFSEA employees each received a 25-cents-per-hour increase for the same year, (2) HESP employees received an increase from 6 cents to 8 cents for paraprofessionals and from 8 cents to 10 cents for the secretarial staff and that bus drivers in the Holmen District received 20 cents per hour for driving regular routes, and (3) that administrative employees received increases ranging from 3.02 percent to 8.63 percent.

The higher increase is needed to keep pace with other districts to whom they are losing more ground each year. They detail comparisons. The increases in the other districts also averages 21.5 cents per hour compared to the Board's average increase of 15 cents per hour. It is also mentioned that the CPI was 3.4 percent, notably closer to the Union's offer.

III. OPINION AND DISCUSSION

A. Comparables

The Employer relies on the comparable group established by this Arbitrator in a previous case between this District and the clerical unit. A primary group and secondary group was established which balanced the traditional athletic conference with a more local orientation. The non-union status of Melrose and GET were not problematic in that case because their wages and core benefits were within the range of wages and core benefits in other area unionized schools. Thus, they were deemed representative of the labor market in that case which involved basic wage and benefit issues. There can be no question that non-union employers can influence unionized employers and vice versa in many labor market situations.

In this case the Arbitrator recognizes that many of the issues go beyond the core issues of wages and benefits and involves some issues, such as subcontracting, that are indigenous to unionized schools. It is also recognized that generally in non-unionized schools, practices outside the core employment matters are not memorialized or institutionalized. Thus, there is good reason, as a general matter, not to rely on non-union schools as comparables for issues as they become more unique to the unionized schools. However, true as this may be, the answer isn't to throw the baby out with the bath water. While the relevancy of GET and Melrose may be diminished for some of the issues, they remain important for the wage issue. There simply is no reason to retreat on this issue of external comparables and reinvent the wheel. The answer instead

is to give greater weight to the unionized secondary comparables (La Crosse) and to the internal comparables where GET and Melrose aren't instructive.

B. The 1992-93 Language Issues

It is the judgment of the Arbitrator that overall and on-balance, the Association's proposal for 1992-93 is more reasonable. The external comparables tend to support the Association's proposal on the most important issue of subcontracting. While there is some hesitation caused by this arguably more restrictive proposal, it is made more palatable by the Association's representations in its brief concerning the District's affirmative ability to subcontract on an attrition basis. As a result, their proposal is not dramatically inconsistent with the food service contract and is entirely consistent with the support staff.

To the extent the preference is ever so slight for the Association's subcontracting proposal, the scales are tipped further in their favor by the fact that, overall, the bulk of the rest of the proposals are consistent with the internal comparables. The internal comparables are most significant here, especially the support staff unit which tends to be most similar in nature to the custodial/maintenance units. It seems workers in these units tend to be more often full time and/or 12-month, compared to food service employees. There is also a slight tendency to be more skilled than food service.

The internal comparables in this instance, in the Arbitrator's opinion, deserve substantial weight. Internal comparables are always important in multi-bargaining unit situations where employees of the same general skill level are bargained with by the same employer. The equitable considerations and the value of consistency (trying to treat everybody relatively the same within practical realities) is well documented. This is particularly true in a first-time contract. It has often been stated that for a first-time contract, employees cannot reasonably expect a "cadillac" contract. For instance, the Union might have the La Crosse contract as its goal, but collective bargaining gains are usually incremental. A better guide for what's fair and reasonable for a first-time contract, if such information exists, is what other bargaining units are entitled to. In such instances, it is appropriate to look first to the most local of considerations and then determine if reason or the external comparables strongly suggest to the contrary that the internal considerations would result in unpalatable disparities relative to the external group.

On an issue-by-issue basis, the Association's proposal for a Monday-Friday work week and an 8½-hour workday is consistent with the support staff contract for clerical employees. Additionally, the Employer proposal has the disadvantage of being contrary to the status quo. Historically employees have enjoyed a Monday-Friday work week with time and one-half for Saturday work week. The District followed this past practice at their own choosing. Thus, it cannot be too onerous.

Regarding the number of holidays for 12-month, part-time employees it is apparent that the practical impact of this difference in the Parties' proposals is limited. This is because (1) in 1992-93 there were no part-time, 12-month employees and (2) since then many cleaning crew employees have evolved into a full-time schedule of eight hours per day for 260 days per year. Thus, those crew employees are now entitled to 11 paid holidays under both Parties' final offers by virtue of their full-time, 12-month status. Moreover, to the extent that anybody is affected on the holiday issue, there is an equitable consideration in the disparate treatment of full-time versus part-time issue. If a 12-month, full-time employee is paid holiday pay for work missed due to a holiday, there is no particular reason a 12-month, part-time employee shouldn't be entitled to the same pay protection.

It is noted, too, that the Association's evaluation proposal is also consistent internally with the support staff unit. This simply, based on consistency, is a favorable factor. There are important due process considerations contained therein that are not unimportant given the fact the support staff unit is entitled to them.

The remaining issues are substitute pay and the rate for holiday work. The impact of these issues are negligible. The difference in the substitute pay issue are largely administrative. While not totally unimportant, this is not enough to disarm the preference for the Association's proposal on the other issues. Regarding holiday pay, it is noted that the evidence suggests that historically employees have not been required to work on holidays. Thus, while time and a half in addition to the holiday pay may be at the extreme externally, this potential is insufficient to sink the Association's proposal.

C. <u>The 1993-94 Wage Increase</u>

One of the stipulations of the Parties is a tentative agreement for all three years, 1993-94, 1994-95, and 1995-96. Atypically this tentative agreement includes agreement on wages for the last two years, but not the first year.

Usually the situation is reversed where an agreement can be reached in the early stages of a multi-year agreement but not the last year. When looking at the tentative agreement of these Parties and the three-year agreements of the food service unit and the support staff agreement, two aspects stand out. They are the fact there was a general wage freeze in year three of the contract and the fact the Employer agreed to pick up the entire employee share of WRS or roughly another 4.2 percent. The Employer pick-up was phased in starting with a 2 percent contribution in 1995-96. The nexus is obvious. Over the course of the three years of the contract, employees in other units, including this one, "bought" the WRS contribution. The question becomes how much should the instant employees in the first year of the contract have paid in terms of a quid pro quo for WRS.

The wage freeze and Employer WRS pick-up in this and the other units is significant. First, it establishes a trend and consequently internal equity considerations. Second, it makes comparisons to external units and any related wage disparity difficult. The fact the Union voluntarily agreed to a wage freeze as a quid pro quo for the WRS pick-up, makes it difficult to be responsive to a "keep-up" or "catch-up" argument. This highly diminishes the relevancy in this instance of the external wage relationships.

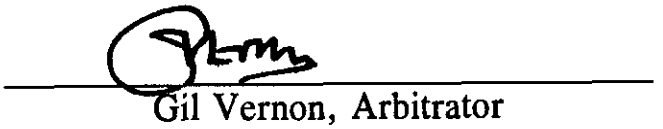
The internal settlements with the support staff and the food service units are also slightly more consistent with the Employer's offer than the Union's offer. The Union's offer is a bit on the high side. The Union's 20-cents-per-hour increase converts to a 2.12 percent increase. The Employer's 1.58 percent averages to be 16 cents per hour. Thus, the Employer offer is greater than the clerical unit on a one-year basis, but less than the food service unit. The same is true for the Union offer of 20 cents or 2.12 percent. It is greater than the 1 percent for clerical employees but less than the 25 cents per hour for food service. However, on a three-year total package basis the Union's proposal is higher than the clerical unit by .4 percent and 1.31 percent higher than food service. The Board proposal comes inbetween the two other settlements only slightly less (-.14 percent) than the clerical settlement.

Just as the internal comparables carried the day on the language issues, they are decisive on the independent wage issue. The slight preference for the Employer offer over the term of the contract relative to the other bargaining units makes it more reasonable.

AWARD

1. The Union's offer is selected for inclusion in the 1992-93 contract.

2. The Employer's offer is selected as part of the 1993-94 contract.



Gil Vernon, Arbitrator

Dated this 25th day of April 1996.