

IN THE MATTER OF ARBITRATION BETWEEN

Independent School District #77,

And Employer,

**INTEREST ARBITRATION
DECISION AND AWARD**

Mankato Teachers Association,

BMS CASE NO. 10-PN-0265

Union.

ARBITRATOR:

Stephen A. Bard

DATE OF HEARING:

February 19, 2010

PLACE OF HEARING:

Mankato Intergovernmental Bldg.

DATE OF CLOSE OF RECORD:

February 19, 2010

DATE OF DECISION AND AWARD:

March 3, 2010

APPEARANCES:

For the Employer:

Ms. Gloria Blaine Olsen
Kennedy & Graven
470 U.S. Plaza
200 South Sixth Street
Minneapolis, MN. 55402

For the Union:

Mr. Lee F. Johansen and
Ms. Andrea Cecconi
Education Minnesota
41 Sherburne Ave.
St. Paul, MN. 55103

INTRODUCTION

This interest arbitration came on for hearing before neutral Arbitrator, Stephen A. Bard, on February 19, 2010, at 9:30 a.m. in the Intergovernmental Building in Mankato, Minnesota. The Employer was present with its witnesses and was represented by Ms. Gloria Blaine Olsen. The Union was present with its witnesses and was represented by Mr. Lee F. Johansen and Ms. Andrea Cecconi of Education Minnesota. The parties filed their final positions with the Commissioner of Mediation Services on January 14, 2010. The matter was submitted as “final offer-total package” arbitration in accordance with Minn. Stat. §179A,16, Subd. 7a. The parties agreed that the deadline for the Arbitrator to submit his Award in order to avoid a significant penalty under Minn. Stat. §123B.05 was March 11, 2010.

ISSUES

Five issues were certified at impasse by BMS. These concerned the following provisions of the collective bargaining agreement (“CBA”):

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|----------|---|
| Issue #1 | Salary Schedule Steps for 2009-2010 and 2010-2011 school years(Article VIII). |
| Issue #2 | Health Reimbursement Account Contributions (Article XVIII) |
| Issue #3 | Health Insurance Contributions (Article X) |
| Issue #4 | ECFE and ABE Teachers Hourly Wage (Article XXIV) |
| Issue #5 | Refund of Negotiated Insurance Payment above the Cost of Premium (Article X) |

FINAL OFFER OF THE PARTIES:

A side by side comparison of the final position of each party is summarized as follows:

<u>ISSUE</u>	<u>UNION POSITION</u>	<u>DISTRICT POSITION</u>
#1--Salary Schedule Step & lane payment	Year 1--No schedule improvement Steps & lanes paid	Year 1--No schedule improvement No steps and lanes paid
	Year 2- No schedule improvement Steps & lanes paid	Year 2-No schedule improvement Steps & lanes paid
#2--HRA contributions	Year 1--Increase in District contribution of \$76 (6%)	No increase in District contribution in either year
	Year 2-- Increase in District contribution of \$80 (6%)	
#3--District contribution toward health insurance	Single plan Year 1	Single plan Year 1
	\$52.15 increase (9.2%)	\$34.07 increase (6.4%)
	Year 2	Year 2
	\$35.55 increase (6%)	\$34.07 increase (5.9%)
	Family plan Year 1	Family plan Year 1
	\$141.65 increase(13.4%)	\$64.30 increase (6.1%)
	Year 2	Year 2
	\$35.55 increase (2.9%)	\$67.09 increase (6%)
#4-ECFE & ABE Wages	Years 1 and 2	Years 1 and 2
2% increase in each year	No increase in wages	
#5--Refund of Health Insurance Premiums	Year 1--continue refund Year 2--Suspend refund	Year 1--remove refund from the contract completely

SUMMARY OF ISSUES

ISSUE 1--SALARY SCHEDULE STEPS

Both parties agree that there shall be no improvement to the wage schedule during the current biennium. The Union requests that step and lanes be paid in both years and the District proposes no step or lane payments in the first year and payment of steps and lanes in the 2010-2011 school year. At the hearing the parties stipulated that the inclusion in the Union's final offer submission to BMS included the addition of a new "M15" lane by mistake and that the Arbitrator should eliminate that new lane from the Union's final offer in deciding this case.

Both parties agree that the communities which comprise the "Big Nine" Conference are the traditional and appropriate external comparison group. These are the communities of Mankato, Faribault, Owatonna, Rochester, Winona, Austin, and Albert Lea. The Union also introduced data from a second comparison group from school districts with enrollments closest to Mankato (5 above and 5 below). The District strongly objected to these data on the grounds, *inter alia*, that the demographics and tax base of these communities made them non-comparable. The Arbitrator agrees with the District on this point and has limited his analysis to the data from the Big Nine.

A comparison of the salary schedules only for the most recent school years shows Mankato's salary to be slightly above the average of the other communities in the Big Nine depending on which lanes are compared.

The District contends that the total additional cost of the Union's proposal over its proposal on the issue of step advancement is \$390,205.00 the first year and \$18,897.00 the second year for a total of \$409,102.00. The Union stresses the significant diminishment of total earnings over a hypothetical 30 year career by suspending step increases for one year.

Issue #2-- Health Reimbursement Account Contributions (Article XVIII)

This is a contract benefit for teachers hired after July 1, 2007. It provides for the District to set aside annually for eligible teachers the initial sum of \$1,341 which increases in 2010-2011 to \$1,421.00. The interest accrues during a teacher's service for the District but remains an asset of the District until it is vested. It becomes vested when a teacher reaches age 55 and has at least 10 years of continuing service to the District. The vested teacher does not have access to his/her HRA until separation of the teacher from employment with the District.

The District opposes any increase in its contribution to this fund as part of its affordability argument. The Union emphasizes that these contributions are not really current expenses since these funds remain the property of the District for many years and in many cases may never be paid out to teachers who never become vested. Also, since this benefit accrues only to hires after July 1, 2007, it is mostly a benefit to the younger teachers who will not be entitled to distribution of these funds for many years.

Issue #3--District Contribution toward Health Insurance

The District offered comparability data with the other Big Nine communities which had settled. These data showed that for the school year 2009-2010, the Mankato District would rank third in the Big 9 for single coverage and second for family coverage under its proposal and first for single coverage and second for family coverage under the Union proposal. The District continues to stress that in both pay and health insurance contribution it ranks above average while in revenues and ability to pay it is below average.

The Union does not dispute the District's data on this issue but instead stresses the pattern that has been established over the years. This pattern shows that in the first year of each biennium since the 2000-2001 school year, the District has contributed 100% of the premiums for single coverage and 75%

of the premium for dependent coverage. The Union's present proposal would continue this pattern for both kinds of coverage while the District's position would reduce its contribution in the first year to 97% for single coverage and 70% for dependent coverage. Similar reductions would occur in the second year.

Issue #4--ECFE and ABE Hourly Wage

ECFE (Early Childhood and Family Education) and ABE (Adult Basic Education) teachers are typically part time teachers and in this District have not historically been paid on the pay schedule for full time teachers with steps and lanes. Instead, this group of teachers, although they are all degreed and licensed professionals, have been paid a flat hourly wage with increases negotiated each biennium. The floor for this position is \$18.50 per hour. In general, the increases have paralleled the percentage increases negotiated for the basic wage schedule. The Union points out that even when there is a freeze on wages in the salary schedule, full time teachers get actual raises in pay because of step and lane advancement while this group of teachers can only get a raise through a bargained hourly wage increase.

Issue##5--Employee Contribution Refund

The relevant contract language pertaining to this issue is found in Article X, Section 3, Subd. 3 which states in regard to employees' contributions to health insurance premiums:

“...The cost of the premiums not contributed by the School District shall be born by the Employee and paid by payroll deduction. In the event the cost of the premiums is less than the amount per month listed in Subd. 1 or subd.2, the balance shall be refunded....’

The District proposes removal of the provision altogether on cost grounds. The Union says that in regard to year 1 it should not be changed because removing it is unfair to people who made their coverage decisions at least partially in reliance of the benefit and suspended in year two because the present financial crisis is not necessarily permanent.

SUMMARY OF ARGUMENTS

Both parties presented data on the individual issues as they would in conventional issue arbitration. These data consisted of external and internal comparables as well as the cost of each issue to the District. However, since this is final offer-total package arbitration, the individual issues necessarily were somewhat subordinate to the cost of the total package to the District. The District argued forcefully that there are three criteria in this interest arbitration: Internal comparisons, external comparisons, and affordability. It presented data that teachers' compensation compares well with other employees of this District and that the total compensation package of Mankato teachers was above the average for the "Big Nine" while its revenues were considerably below the average. Finally, the District relied heavily on the affordability argument. It presented voluminous evidence regarding cost accounting, budgets, fund balances, state aid to local governments, school funding in general, unallotment, levy limits, the "borrowing" by the State of Minnesota from school districts and municipalities, cash flow issues, etc. The essence of these arguments is that the State and this District are experiencing a unique and severe financial downturn and revenue crisis with no end in sight.

According to the District's accounting, the total two year package proposed by the Union would cost the District \$1,585,687 more than the District's proposal would cost. Of this, \$893,019 would be experienced in year one and \$692,668 in year two. The District introduced evidence that its fund balance was already down to 23 days which is 7 days less than its targeted amount and significantly below amounts recommended by state agencies. In addition, according to the District, the budget problems had already forced it to make cost reductions for the 2009-2010 school year which included an across the board elimination of 60 positions of which 21 were teachers. The District argued that if the Union's position were to be awarded by the Arbitrator, additional draconian cuts in personnel and programs would be unavoidable.

The Union countered many of the District's arguments point by point, and issue by issue. However, the thrust of the Union's argument was that the accounting model being used by the District to cost the final positions of the parties was flawed, and that if a proper method of cost accounting was used, that there was no material difference in the cost of the two proposals. This contention, if accurate, cuts to the heart of the District's affordability argument. Accordingly, in the opinion of the Arbitrator, it is the central issue needing resolution to make an appropriate decision in this case.

DISCUSSION

It would not be possible or useful to present in the body of this decision a detailed analysis of all the financial data which the parties put in evidence. Suffice it to say that the Arbitrator has carefully considered all of this material in detail before reaching his decision. Similarly, a detailed discussion and analysis of each issue, as is customarily done in conventional interest arbitration, would also not be helpful or efficacious since in the end, in the present economic environment, the affordability of the two total packages will necessarily be determinative. Accordingly, the Arbitrator has focused primarily on the Union's attack on the District's costing methodology.

Rather than attempt to paraphrase the Union's argument, the following is its position as expressed in its written materials:

“There are two generally accepted methods of costing contract proposals and settlements. One method used ,,to show the ‘total package’ value of contract settlements in comparable districts is the “cast-forward” method. This method uses the teaching staff employed during the 2008-2009 base year and advances each employee one step on the salary schedule each year.

Because staffing for 2009-10 is well established at this time, it is more useful to consider a “structurally-balanced” costing model when discussing the actual cost of each party's position. The structural balance method was at one time required of all districts, as it more accurately reflects the true costs of contract settlements. Structurally-balanced costing uses the ACTUAL staff working or projected to be working in the district for each year of the contract. It is NOT

assumed that teachers employed during the base year (2008-09 in this case) continue to work in the district. Data in subsequent years reflect the increase or decrease in FTE working in the

district.

In the case of Mankato, there has already been a 4% decrease in FTE teachers, or approximately 20.53 FTE, between the 2008-09 and 2009-10 school years. A further reduction of 20 FTE is possible for 2010-11. ...Using the structurally balanced costing method, it is clear that the Union position is affordable to the school district.

Under the cast-forward method, the District position results in a total cost of \$39,791,964 in the 2009-10 contract year and \$41,327,195 in 2010-11. Based on the position submitted to arbitration, it is clear that the district is willing to pay up to these amounts for its own position.

Looking at the cost of the Union proposal using a structurally- balanced method of costing that reflects actual staff, the Union position results in a total cost of \$39,495,348 in 2009-10 and \$40,771,764 in the second year. This is less than the District proposal under the more conservative methodology. . . .”

There is no factual dispute that in calculating the cost of its proposal for the current biennium the District used the number of FTE teachers that were employed in the 2008-09 school year (553.18). There is also no dispute that because of the budgetary problems it was experiencing the District made significant personnel cuts and that the number of FTEs actually employed in the 2009-10 school year has been reduced to 532.652. Assuming the same number will be employed in the 2010-11 school year, the comparison between the two positions using the different costing methods is as follows:

DISTRICT “CAST-FORWARD” METHOD
(Assumes 2008-09 staffing level of 553.18 FTEs)

	<u>TOTAL</u> <u>2009-10 COSTS</u>	<u>TOTAL</u> <u>2010-11 COSTS</u>	<u>TOTAL</u> <u>TWO YEAR COST</u>
<u>DISTRICT</u>	\$39,649,030	\$40,630,234	\$80,279,264
<u>UNION</u>	\$40,542,049	\$41,322,902	\$81,864,951
<u>DIFFERENCE</u>	\$893,019	\$692,668	\$1,585,687

UNION “STRUCTURAL BALANCE” METHOD

(Assumes actual staffing level of 532.652 FTEs)

	<u>TOTAL 2009-10 COSTS</u>	<u>TOTAL 2010-11 COSTS</u>	<u>TOTAL TWO YEAR COST</u>
<u>DISTRICT</u>	\$38,671,699	\$40,192,639	\$78,864,338
<u>UNION</u>	\$39,495,348	\$40,771,764	\$80,267,712
<u>DIFFERENCE</u>	\$823,649	\$579, 125	\$1,402.774

The difference in the “differences” between the two methods is \$182,913. However, even under the Union’s method, its proposal will cost \$1,402,774 more than the District’s final offer. The difference between the results produced by the two accounting methods is, accordingly, not determinative of the issues before the Arbitrator.

For the record, the Arbitrator notes that he believes the structurally balanced method is a more accurate way of projecting actual costs than a method using numbers of teachers that are no longer employed. Also, there is much merit in the Union’s arguments on some of the individual issues. However, this is not conventional arbitration, and the Arbitrator does not have the authority to decide and award each individual issue on its merits. The Arbitrator is convinced by the District of the overwhelming financial problems it is facing on both the revenue and expense sides and of the very real probability that the additional cost of an award of the Union’s position would almost certainly result in further severe cuts to this bargaining unit’s work force. It is with enormous reluctance that the Arbitrator reaches a decision to reduce bargained for contract

benefits even further for a bargaining unit that has agreed to a two year wage freeze.

Nevertheless, the reality of the financial times we live in compel the result. The Arbitrator is persuaded that the District simply cannot afford the Union's proposal.

DECISION AND AWARD

For the above stated reasons, the final offer of the School District is adopted.

Respectfully Submitted,

Dated: March 3, 2010

Stephen A. Bard
Arbitrator