

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Saint Paul Principals Association

-and-

BMS Case No. 10-PN-1074

ISD 625, Saint Paul, MN

ARBITRATOR:

Christine D. Ver Ploeg

DATE & PLACE OF HEARING:

January 19, 2011
Saint Paul Public Schools
Saint Paul, Minnesota

DATE OF AWARD:

February 1, 2011

ADVOCATES:

For the Principals

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For the Employer

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INTRODUCTION

This interest arbitration has been conducted pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 – 179A.30. The Saint Paul Principals Association (hereinafter "Association") is the exclusive representative of Principals of the Saint Paul Public Schools, ISD 625 (hereinafter "District"). The Association and the District have engaged in contract negotiations and have reached agreement on all but one item. Members of this bargaining unit have now exercised their right to proceed to interest arbitration pursuant to Minnesota Public Employment Labor Relations Act, §179A.16. The parties agree that this matter is now properly before this arbitrator and that this award is final offer. §179A.16, subd. 7.

ISSUE

The Minnesota Bureau of Mediation has certified the following issue for interest arbitration:

403B – Amount of Additional Employer Contribution, if any, Art. 8.5

The parties and this arbitrator met for a hearing on this matter on January 19, 2001, following which the record was closed.

AWARD OVERVIEW

The Union's proposed expansion of employee eligibility for the Employer match to a Principals' 403(b) plan is denied. This award is based upon a determination that (1) this bargaining unit should adhere to the agreement the parties reached during their 1995 negotiations, (2) neither internal nor external comparables support this expansion and (3) current budget realities preclude expansion of this benefit.

ANALYSIS

Generally

The two primary bases for decision in any interest arbitration are:

(1) Determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table or, in the case of essential employees, to settle a strike.

Although this determination is speculative, arbitrators understand that to award wages and benefits different than the parties would, or could, otherwise have negotiated risks undermining the collective bargaining process and provoking yet more interest arbitration.

(2) Seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

These comparisons in turn entail a two-fold analysis. First, arbitrators consider an employer's ability to pay. This issue is self evident: it serves no purpose to issue an award that an employer cannot fund and thus could never agree to in collective bargaining. Moreover, Minnesota's Public Employment Relations Act directs arbitrators in interest arbitrations to consider "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. Sec 179A.16, subd. 7.

Notwithstanding the above, a simple assertion of financial crisis does not alone warrant freezing wages and other benefits. It is not unusual for employers to claim financial exigency, and when they do so arbitrators closely scrutinize that claim.

If an employer's claims of inability to pay do not withstand scrutiny, and the evidence demonstrates that at least some financial improvement is possible, arbitrators next consider the comparability data. This step requires the arbitrator to evaluate the parties' proposals in two contexts: (1) considering the wages, benefits, and other cost items this employer gives to its other

employee groups (internal comparables); and (2) considering what comparable employers provide to similar employees (external data).

In recent years arbitrators have typically given greater weight to internal comparables on the theory that internal equity more clearly reflects what the parties most likely would have negotiated at the bargaining table, and also because external comparisons often present apples to oranges challenges. That has been true in this case, where it has been difficult to identify external comparisons.

The preceding analysis has been applied in making the following award on the issue in this case.

Issue: 403B – Amount of Additional Employer Contribution, if any, Art. 8.5

District Position. No change (Other than a housecleaning change to eliminate obsolete language in Article 8, Sec., Subd. 5)

Union position. After the first paragraph insert the following language:

Beginning with the 2010-11 work year, all principals whether hired before or after January 1, 1996, are eligible to participate in the Employer matched Minnesota Deferred Compensation Plan or District approved 403(b) plan. The District will match up to \$1,000 per year of consecutive active service. This match is applicable to contributions to the District approved 403(b) plan. This match shall be in addition to any other match provided for in the agreement. Part-time employees working half time or more will be eligible for up to one-half (50 percent) of the available District match.

The parties' current Agreement distinguishes between principals hired before on January 1, 1996, and those hired after that date. Only principals hired after January 1, 1996, are eligible to participate in an Employer-matched "Minnesota Deferred Compensation Plan or District approved 403(b) plan." (For shorthand purposes henceforth referred to as "403(b) plan.") In their current negotiations for their 2009-2011 Agreement the parties have agreed to increase the Employer's

match from \$ 1,000 to \$1,500. The Association now seeks to extend that benefit to *all* principals, not just those hired after January 1, 1996.

To understand the implications of the Association's proposal it is necessary to understand why the parties agreed to create two groups of principals in the first place. Prior to the parties' 1995-1997 Agreement the District provided to *all* eligible employees who retired *full* "payment of premium for a Medicare Supplement health coverage policy selected by the District." (1993-1995 Agreement, Article 7.4.)

By the time of the 1995 negotiations it had become painfully apparent that the costs of health care were skyrocketing, and the District concluded it could no longer agree to such an open ended and expensive benefit. Thus the District sought a way to control retiree health costs.

Ultimately the parties agreed to maintain the very generous health coverage benefit for retiring principals who had been hired before January 1, 1996, but not to provide it to those hired after that date. Instead, principals hired after January 1, 1996, were given a less costly benefit: an Employer match for a 403(b) plan, to a certain negotiated maximum. That maximum has now been increased from \$1,000 to \$1,500. The more senior principals, who continue to retain their retirement health coverage benefit, now also seek that benefit.

DECISION

The Association's proposed expansion of the 403(b) benefit is denied for the following reasons:

A. Rationale for splitting the principals' group

First, granting this benefit to more senior principals would defeat the very reason the parties agreed to it in the first place. In the mid 90's the District sought to control runaway health care costs for bargaining unit members who retired. The only way it was able to achieve that goal

was to agree to continue it for more senior principals while denying it to less senior principals. Since the time of that agreement the retirement health coverage benefit has become even more precious. It is doubtful that any senior principal would be willing to relinquish it.

In exchange for denying this quite valuable benefit to principals hired after January 1, 1996, the District agreed to match those employees' contributions to a 403(b) plan to a maximum amount, subject to negotiation. This is a less valuable benefit than the retirement health coverage benefit, but it is something. Now the senior principals seek that benefit too, while at the same time maintaining the health benefit that only they enjoy.

This was not the deal the parties negotiated, and the principals now offer no *quid pro quo* to the District to obtain it. Instead the Association has offered the following arguments as to why it nevertheless should be awarded.

B. Internal Comparables

The Association argues that the principals are best compared to the Superintendent, whose contract does provide for an even more generous 403(b) match.

Parties present evidence of "internal comparability"--evidence of the terms and conditions of employment an employer provides its other employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably by comparison. As noted above, an interest arbitrator must try to determine what agreements the parties would have struck for themselves if they had been able to do so. In making that determination evidence of the wages and benefits negotiated by the District's other employee groups is very relevant.

In this case the evidence resoundingly supports the District. Only the Superintendent also receives this benefit, and members of the Superintendentcy are quite distinguishable from these senior principals. First, unlike the principals' wages, Superintendentcy wages have remained flat since 2008-2009. Second, this group does not have tenure, and they are harder to attract and

retain; the average tenure of a Superintendent in Minnesota is slightly over three years. This contrasts with Saint Paul principals who tend to stay in the job, especially if they were hired prior to January 1, 1996.

In short, evidence of internal comparables does not support the Association's proposal.

C. External comparables

It is very difficult to compare the Saint Paul principals' wages and benefits with those in comparable districts. Such evidence that does exist does not persuasively demonstrate that the Association's proposal should be adopted

D. Ability to Pay

The Association argues that its proposal would cost approximately \$ 120,000, and that this amount is *de minimis* when compared to both the principals' overall wage and benefit package, and with the District's overall budget of \$450 M. This is true; the District *can* afford to fund this proposal for these employees. However, whether it should be ordered to do so is another question.

Minnesota's Public Employment Relations Act directs arbitrators in interest arbitrations to consider "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. Sec 179A.16, subd. 7. In this case the District--like virtually all Minnesota employers, public and private--faces extraordinary economic stresses and is being forced to undertake painful steps to maintain mandated services and stay within its budget.

The District persuasively argues that \$ 120,000 is not *de minimis*, it represents 1.5 FTE classroom teachers. More importantly, if the 403(b) were awarded to these senior principals it would be extremely difficult to hold back the tide in the face of all of the other bargaining units

who would demand the same for their own members. That *would* represent a significant expense at a time when the District faces extraordinary financial challenges.

In this respect, it is also important to note that despite today's economic challenges—which are so self evident they need not be detailed-- the District *has* agreed to a two year total package increase of 4.25% wage increase for these bargaining unit members. In these times of cutbacks, wage freezes and wage reductions, this is impressive.

SUMMARY OF AWARD

Article 8.5, Principal Benefits, shall remain unchanged.

February 1, 2011

A handwritten signature in black ink, reading "Christine Ver Ploeg". The signature is written in a cursive, flowing style.

Christine D. Ver Ploeg