BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

FLORENCE EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF FLORENCE COUNTY

Case 18
No. 58286
MA-10907

Appearances:

Ms. Carol J. Nelson, Executive Director, Northern Tier UniServ-East, appearing on behalf of the Association.

Davis & Kuelthau, S.C., by **Attorney Robert W. Burns,** appearing on behalf of the District.

ARBITRATION AWARD

Florence Education Association, hereinafter referred to as the Association, and the School District of Florence County, hereinafter referred to as the District, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Association made a request, with the concurrence of the District, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the collective bargaining agreement. The undersigned was so designated. Hearing was held in Florence, Wisconsin on February 23, 2000. The hearing was transcribed and the parties filed briefs and reply briefs, the last of which were exchanged on May 23, 2000.

BACKGROUND

The parties' 1997-1999 collective bargaining agreement contained four salary schedules, two for 1997-98 and two for 1998-99. One schedule each year stated 2.1% Minimum QEO and the other stated 3.8% Total Package. The District paid employes the amounts in the 3.8% Total Package schedule each year for 1997-98 and 1998-1999. These schedules provided for the same percentage increase for all teachers with the step increase frozen.

At the commencement of the 1999-2000 school year, the District used the 1998-99 2.1% Minimum QEO schedule and granted step increases and lane changes as appropriate. The Association filed a grievance alleging that the District was required to pay teachers the 1998-99 3.8% total package amounts until a new contract was reached. The grievance was not resolved and was appealed to the instant arbitration.

ISSUE

The parties were unable to agree on a statement of the issue. The Association stated the issue as follows:

> Did the District violate the Collective Bargaining Agreement as well as the Evergreen Clause, specifically, when they did not maintain the status quo by paying the teaching staff off the pay schedule in existence for the 1998-99 school year until the successor Agreement has been reached? If so, what is the appropriate remedy?

The District states the issue as:

> Did the District violate the Collective Bargaining Agreement in its application of the salary schedule for 1999-2000? If so, what is the appropriate remedy?

The undersigned frames the issue as follows:

> Did the District violate the collective bargaining agreement, specifically Article XXVI, when it ceased paying teachers the same rate of pay as in the 1998-99 school year until a successor agreement had been reached? If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE XX

COMPENSATION

A. Appendix A containing the salary schedule is hereby made a part of this agreement.

. . .

ARTICLE XXVI

TERM OF AGREEMENT

This agreement shall be in effect July 1, 1997 and shall remain in effect for two (2) years, or until negotiations on a new contract are concluded.

SALARY SCHEDULES

[The 2.1% Minimum QEO Salary Schedule for 1998-99 provides as follows:

	B + O	. . . . .	M + 30
Step 1	$23,668		$30,529
. . .			. . .
Step 13	$37,583		$47,565

The 3.8% Total Package Salary Schedule for 1998-99 provides as follows:

	B + O	. . . . .	M + 30
Step 1	$24,124		$31.117
. . .			. . .
Step 13	$38,307		$48,480

Association's Position

The Association contends that the contract language is clear, concise and explicit. It argues that Article XXVI, the Evergreen Clause, requires the agreement remain in effect until a new agreement is reached. It observes that the District has a history of honoring this provision and increments and lane changes have always been given. It notes that the parties reached a mutual agreement for 1997-98, 1998-99, which placed four Salary Schedules in the contract for the two year period. It states that one was the minimum 2.1% and the second was a 3.8% total package. The agreement, according to the Association, was that if dollars were available, the 3.8% schedule would be used for payments, and the money was available, so the 3.8% scheduled used for 1998-99 should remain in place until a new agreement is reached. The Association points out that the District granted increments and lane changes for 1999-2000

but they were not based off the actual pay teachers received the previous year. The Association insists that the notes from the informal discussions between the representatives referenced as Exs. 4 & 5 are irrelevant. It argues that it is difficult to understand that the District would believe that an experienced Negotiating Team would bargain a raise one year knowing that the raise would be taken away the next. It concludes that the District violated Article XXVI, by failing to pay off the schedule in existence for the 1998-99 school year until a successor agreement is concluded.

District's Position

The District contends that the Union's interpretation of the agreement allows the teachers to receive more than what was bargained. It submits that the 3.8% total package costing included one-time only dollars so the base point for a successor agreement is the 2.1% schedule. It submits that the negotiating documents clearly state that any increase above the 2.1% schedule was a one time event, citing Ex. 5, the Sept. 15, 1997 proposal. It also refers to Ex. 4, dated December 8, 1997 which references one time only dollars which would not be added to the QEO and the "Special Note" indicating the method of funding is non-precedential. It insists that John Fuse's testimony that the additional salary was not a one time payment is difficult to believe given that his signature and initials are on the proposals and his testimony conflicts with the clear writing of the proposals discussed by the parties. It further notes that Mr. Paulson initialed the final version. It claims that the testimony establishes that it was the clear intent of the parties that the dollars were meant to be a one time bonus. It references the testimony of Superintendent Gerard, Principal Kriegl and School Board Members Jochen and Miller that these were one time payments that would not be the basis for future years and any future payments would be off the 2.1% schedule. The District maintains that is why there are four schedules in the contract and all must be given effect in that the 3.8% illustrated new funds were allocated on the schedule and the 2.1% were for future costings. It submits that meaning should be given to both rather than ignoring one.

The District argues that a bonus is a bonus and not a stepping stone to future increases. It observes that Fuse received a $750 bonus in 1995 and that payment was not repeated in the following year. It states that it has been consistent as the rationale for offering a bonus is to avoid carrying over the cost into subsequent years of a contract.

The District claims the Union was unable to refute the District's testimony. It maintains that nothing is being taken away from the teachers as the one-time dollars were not theirs in the subsequent year. It insists that the Union failed to offer any evidence that the 3.8% schedule holding the bonus amounts was to be continued in future years. In conclusion, the District submits that the teachers received a "one-time bonus" and this bonus was not incorporated into the schedule and to grant the Association relief would give a windfall that was never bargained or intended by the parties. It seeks denial of the grievance.

Association's Reply

The Association disputes the District's assertion that the settlement was a one-time bonus. It refers to the testimony of its Chief Negotiator, John Fuse, who did not recall that the additional dollars were one time dollars. It also refers to the Association President John Paulsen's testimony that a seasoned, experienced negotiating team would not intentionally bargain a contract that would give members a raise one year that would be taken away the next. The Association claims that the informal discussions that took place between Superintendent Gerard and Principal Kriegl for the District and Fuse and Paulsen for the Association were exactly that, informal. The Association relying of the testimony of Fuse and Paulson indicate that nothing written or spoken indicates that the money used in the settlement was a bonus. It does not deny that in the documents, Exhibits #4 and #5, "one-time only" is clearly indicated and the money would be taken out of the Fund 10 balance ("one-time only"). It maintains that this was not a "bonus" because a "bonus" as defined by the District in its brief is a one-time payment, and the Salary Schedule clearly indicates the money is spread throughout the Salary Schedule. It states that experienced negotiators would request a lump sum payment if it were a bonus but the money was spread throughout the schedule and it was not a "one-time payment" titled a bonus.

The Association contends that the real issue is that the District violated the parties' agreement including the Purpose, Article XX, Compensation and Article XXVI, Term of Agreement which contains the Evergreen Clause. It submits the District violated the agreement when it did not honor the Evergreen Clause to maintain the status quo by paying the teaching staff off the 1998-99 pay schedule until the successor agreement was reached. It asks that the grievance be sustained with interest.

District's Reply

The District contends that the so called Evergreen Clause does not resolve the issue. The District argues that the general language of this clause does not supercede the specific agreement of the parties to have a one-time payment and just because something happened once does not mean the parties are obligated by the Evergreen Clause to repeat what has been agreed to the contrary. It labels the Association's argument oxymoronic as the dollars cannot be both "one-time" and part of the status quo. It asserts that the Association's reliance on RICHLAND CENTER, DEC. NO. 27856-C (GRECO, 1/95) AFF'D BY OPERATION OF LAW, DEC. NO. 27856-D (WERC, 2/95) is misplaced as the facts are entirely different from the case at hand. It maintains that the formulation of salary schedules was done pursuant to a specific agreement and there are four salary schedules attached to the contract. It claims that the 3.8% schedules were to illustrate how "one-time" bonus dollars were to be allocated to teachers and those dollars were not to be carried over to future salary schedules. The District argues that the 2.1% schedules were attached to represent the actual status quo going forward after the

bonus payment period. It states that the District's representatives had legitimate concerns with applying one-time dollars to future contracts and testified the cost of the bonus would not be carried over into subsequent contracts. It states that is why teachers were paid off the 3.8% schedules but the 2.1% schedules were to be used to generate future salary schedules, otherwise the 2.1% schedules would be rendered meaningless.

The District observes that the Association's interpretation of the salary schedule conflicts with the documentation and testimony of the witnesses. Contrary to the Association's contention that the negotiating proposals are irrelevant, the District submits that evidence of pre-contract negotiations are valuable to establish the intent of the parties with respect to the language of the contract. It points out that the parties discussed providing teachers with the dollar difference between a 2.1% minimum and a 3.8% total package. It notes that the District proposed to access money from certain sources including the District's fund balance which was accepted. It refers to Exs. 4 and 5 which specifically indicate the dollars were one-time only dollars. It states that a party has a responsibility to be reasonably alert to what it is accepting in negotiations and the Association's lack of interpretation or understanding of Exs. 4 and 5 cannot be deemed a legitimate basis to gain by way of this grievance what it did not get in negotiations. It insists that the District never agreed to a traditional 3.8% permanent settlement as documented by the Union's own bargainer consenting in writing to the terms stated in Exs. 4 and 5. It argues that these exhibits must be considered in the outcome of this dispute otherwise the inclusion of the 2.1% schedules would be rendered meaningless and the Association should not be permitted to pervert the bargain.

The District concludes that record establishes that the parties arrived at salary schedules that provided on one time bonus in the form of increased compensation over the term of the contract and the 2.1% schedules were included so that future increase would be applied to those schedules. It states that acceptance of the Association's position would seriously chill the parties' ability to reach creative settlements and it requests that the grievance be denied in all respects.

DISCUSSION

Article XX, Section A of the parties' collective bargaining agreement provides as follows:

> Appendix A containing the salary schedule is hereby made a part of this agreement.

A review of Appendix A indicates two salary schedules for each year of the contract. There is a 3.8% Total Package schedule for 1997-98 and another for 1998-99. There is also a 2.1% Minimum QEO salary schedule for 1997-98 and another for 1998-99. The question is why did

the parties include two schedules, the 2.1% and the 3.8% for each year. It is undisputed that the teachers were paid off the 3.8% Total Package schedules in 1997-98 and 1998-99. Why are the 2.1% schedules in the contract? It is generally accepted that parties do not include words or provisions in a negotiated agreement which are intended to have no effect. In other words, all words or provisions used in an agreement should be given effect. There is no language in the collective bargaining agreement which specifies the meaning of the two salary schedules for each year. In order to find the intent of the parties, it is necessary to look to past practice and/or negotiating history. There is no evidence of past practice except that past contractual provisions have provided for one-time bonus payments but these were a function of the contractual language and not a general past practice.

Turning to negotiating history, and in particular Ex. 4, which is signed by both Gerald Gerard, the District Administrator and Jerry Paulson, the Association president, and both initialed the prior pages, it states "Proposal to FEA" and it states that $20,000 from the existing fund balance would be divided over the two years of the contract. Additionally, after examples are given, it states:

These dollars are not to be added to the QEO but are one-time only dollars."

In the general statements, it further states that money above 3.1% is not to be added to the minimum QEO and/or salary schedule. The negotiating history indicates that the District would use one-time dollars to fund the 3.8% schedules, thus these 3.8% schedules were one time only schedules for payment in the 1997-98 and 1998-99 years and the 2.1% schedules were the permanent schedules which were used to report to the State and the Board for the pay. (Tr-15). It follows that while the 3.8 schedules were one-time-only, the 2.1% schedules were permanent and continuing.

It must be concluded that the reason there are four pay schedules is that the 3.8% are one time schedules paid during the contract term which then evaporate and the 2.1% schedules remain and are used for the status quo and the basis of costing any future contracts. This interpretation gives effect to all provisions of the contract, i.e., both wage schedules, otherwise the 2.1% schedules would be mere surplusage and have no effect or meaning. As noted above, an interpretation that gives effect to all provisions is preferred to one that renders a provision inoperative or meaningless. Therefore, the 3.8% schedules applied during the term of the contract off of which teachers were paid with one-time-only dollars. Once the contract expired the salary schedules reverted to the 2.1% schedules and these schedules became the basis for future contracts.

Based on the above and foregoing, the record as a whole and the arguments of counsel, the undersigned makes the following

AWARD

The District did not violate the collective bargaining agreement, specifically Article XXVI, when it ceased paying teachers the same rate of pay as in the 1998-99 school year until a successor agreement had been reached because the 3.8% schedules evaporated with the expiration of the contract and the salary schedule reverted to the 2.1% schedule, and therefore, the grievance is denied in all respects.

Dated at Madison, Wisconsin this 8th day of June, 2000.

Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator

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