

STATE OF WISCONSIN

**In the Matter of the Petition
of
POTOSI COUNCIL OF AUXILIARY
PERSONNEL (SWEA)**

**Case 25
No. 56178
INT/ARB-8440**

and

POTOSI SCHOOL DISTRICT

[Dec. No. 29384-A]

Appearances

On Behalf of the Union: Joyce Bos, Executive Director, South West Education Association.

On Behalf of the District: Eileen A. Brownlee, Attorney, Kramer & Brownlee.

I. BACKGROUND

On February 20, 1998, the Union filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Potosi School District in their negotiations for a collective bargaining agreement to succeed their agreement which expired June 30, 1997. It further requested the Commission to initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. Subsequently, a member of the Commission's staff, conducted an investigation in the matter and submitted the report of the results thereof to the Commission. The Commission declared an impasse and ordered the parties, on May 28, 1998, to select an arbitrator to resolve the bargaining impasse by selecting one of the parties' final offers pursuant to the controlling statute.

The undersigned was selected by the parties and appointed by the WERC. He was notified of his selection on June 24, 1998. A hearing was scheduled and held on November 10, 1998. Post Hearing Briefs and Reply Briefs were filed,

the last of which was received December 30, 1998.

II. FINAL OFFER AND ISSUES

The major issue before the arbitrator is the amount the existing salary schedule should be increased. The Union's final offer proposes the following salary schedules for 1997-98 and 1998-99:

1997-98

<u>Class</u>		<u>Start to</u> <u>60 days</u>	<u>61 days +</u>	<u>7 years</u>	<u>14 years</u>
Custodians	1	\$8.78	\$9.43	\$9.73	\$10.03
Head Cook	2	\$8.33	\$8.98	\$9.28	\$9.58
Cook/Baker	3	\$8.18	\$8.78	\$9.03	\$9.33
Secretary	4	\$8.48	\$9.13	\$9.43	\$9.73
Clerical Aide	5	\$8.18	\$8.83	\$9.13	\$9.43
Teacher Aide	6	\$8.18	\$8.53	\$8.93	\$9.33

1998-99

<u>Class</u>		<u>Start to</u> <u>60 days</u>	<u>61 days +</u>	<u>7 years</u>	<u>14 years</u>
Custodians	1	\$9.06	\$9.71	\$10.01	\$10.31
Head Cook	2	\$8.61	\$9.26	\$9.56	\$9.86
Cook/Baker	3	\$8.46	\$9.06	\$9.31	\$9.61
Secretary	4	\$8.76	\$9.41	\$9.71	\$10.01
Clerical Aide	5	\$8.46	\$9.11	\$9.41	\$9.71
Teacher Aide	6	\$8.46	\$8.81	\$9.21	\$9.61

The Union's final offer increased each cell of the salary schedule by \$0.28 cents in each year. This represents a 3.36% increase in the employer's wage bill in 1997-98 over 1996-97. The Union's 1998-99 proposal represents a 2.98% increase over the previous year.

The District proposes the following schedule for 1997-98 and 1998 respectively.

1997-98

<u>Class</u>		<u>Start to</u> <u>60 days</u>	<u>61 days +</u>	<u>7 years</u>	<u>14 years</u>
Custodians		\$8.65	\$9.30	\$9.60	\$9.90
Head Cook		\$8.20	\$8.85	\$9.15	\$9.45
Cook/Baker		\$8.05	\$8.65	\$8.90	\$9.20
Secretary		\$8.35	\$9.00	\$9.30	\$9.60

Clerical Aide	\$8.05	\$8.70	\$9.00	\$9.30
Teacher Aide	\$8.05	\$8.40	\$8.80	\$9.20
1998-99				

<u>Class</u>	<u>Start to 60 days</u>	<u>61 days +</u>	<u>7 years</u>	<u>14 years</u>
Custodians	\$8.80	\$9.45	\$9.75	\$10.05
Head Cook	\$8.35	\$9.00	\$9.30	\$9.60
Cook/Baker	\$8.20	\$8.80	\$9.05	\$9.35
Secretary	\$8.50	\$9.15	\$9.45	\$9.75
Clerical Aide	\$8.20	\$8.85	\$9.15	\$9.45
Teacher Aide	\$8.20	\$8.55	\$8.95	\$9.35

This represents a \$0.15 cents per hour increase in each cell of the salary schedule each year. This represents a 1.93% increase in the employer's wage bill in 1997-98 over 1996-97. The Board's proposed increase in 1998-99 represents a 1.62% increase over the wage rate in the first year of the contract.

The District also offers an amendment to Article XVI (Retirement). The proposed language reads as follows:

The district will pay the employer's share of the retirement contribution to the Wisconsin Retirement System. Additionally, the district will pay the employee's full required contribution to the Wisconsin Retirement System.

The current language reads as follows:

The district will pay the employer's share of the retirement contribution to the Wisconsin Retirement System. Additionally, the district will pay the employee's required contribution as follows:

1. Effective January 1, 1993, out of the required 6.2%, the district will pay 2% and the employee will pay 4.2%.
2. For the 1993-94 contract year, the district will pay an additional 2% of the employee's 6.2% contribution for a total of 4% and the employee will pay 2.2%.
3. For the 1994-95 contract year, the district will pay an additional 2.2% of the employee's 6.2% contribution for a total of 6.2%.

The parties also differ in the ancillary issue of which school districts should be used for purposes of comparisons under criteria 'd' of the statute.

III ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

First, addressing the issue of which districts should be considered comparable, the Union submits that districts with similar employees within a 40-mile radius should be utilized. There are seventeen districts fitting this criteria. They note a similar conclusion was made by Arbitrator Johnson in the only other arbitration between the Potosi Council of Auxiliary Personnel and the Potosi School Board. They also stress that only unionized districts should be utilized for comparison purposes and in this regard, reject the District's utilization of River Ridge, Bloomington, or West Grant. They also note, with respect to comparables that the comparables used in the only other Potosi support staff arbitration were: Boscobel – 30 miles; DeSoto – 55 miles; Richland Center – 46 miles; Riverdale – 37 miles; and Seneca – 40 miles.

On the issues, the Union analyzed the final offers in the context of the statutory criteria. First, with respect to “The Interest and Welfare of the Public,” they note that the District has made no significant claim that the Union's final offer, in this matter, is in conflict with the interest and welfare of the public or exceeds the ability of the unit of government to meet the costs. Moreover, neither the Board's final offer or the Association's final offer, in salary, substantially change the historical ranking of Potosi CAP as compared to the comparables used in this arbitration.

The second criteria analyzed is comparisons to other employees. Among the various comparisons the arbitrator can make, the most important is, in the opinion of the Union, the comparison of wages of the District's employees in comparison with the wages of other employees doing similar work for comparable employers. Comparisons in this regard show that the Union's offer to not significantly change the ranking of Potosi.

The Union's wage offer is more reasonable because the evidence demonstrates quite dramatically that the Council of Auxiliary Personnel of Potosi are working with more students in a larger space than all of the comparables with the exception that Boscobel has more students to staff and Benton has more square feet to staff than Potosi. Because of the larger space, the custodians and janitors are also working in a larger space. The Association believes Potosi should not drop in their historical ranking and deserve the \$.28 per hour raise because, not only are they working harder because of the student ratio to staff,

the cleaning and maintenance of the building in square footage is greater than the comparables.

Regarding the retirement issue, they note the District has proposed to change the status quo language of the District-paid employee/employer contribution from a stated percent to the word “full.” This proposal comes in the context of the Wisconsin Retirement System having reduced the contribution multiplier since 1994. By January of 1999, the WRS rate will only be 11.5%. The current contract requires the District to pay both the 6.2% employee and 6.2% employer contribution. In response, the Association believes they are limiting themselves of the retirement benefit when they agree to replace the language using a set percentage number and changing the language to reflect the word “full.” The District has planned and budgeted to pay the full retirement benefit by paying the full employee and full employer percentage of the WRS contribution. When the percentage has gone down, the District saves the difference between the more expensive percentage and the now less expensive percentage. By placing that savings on the salary schedule, the District would not be spending any more money than they had budgeted. Moreover, the Association does not believe there has been a quid pro quo offered to encourage them to accept the Board’s final offer.

The next criteria addressed by the Union is the cost of living. It is argued that the average consumer prices for goods and services should not be considered in reaching an Award in this case. Arbitrators tend to place little value on the Consumer Price Index, relying instead upon the voluntary settlement pattern among the comparables as a measurement of the cost-of-living. In this regard, it is submitted that there is no record that shows that the public in the Potosi School District is under greater inflationary pressure than are residents of other communities (comparable districts). Therefore, the cost-of-living criterion cannot be given weight over the comparable settlements. Even so, both offers exceed the Consumer Price Index.

2. The District

The District first argues that its comparable group (the unionized schools in the Six Rivers Athletic Conference) is reasonable and supported by the record. They note that in interest arbitration generally, athletic leagues have long been considered appropriate as comparable groups. Athletic conferences usually subsume factors normally considered to

establish comparability both within and outside of the athletic conference including geographic proximity, average daily pupil membership and bargaining unit staff, equalized value of taxable property and state aid of and to the districts proposed to be comparable. The District submits its comparable group is more reasonable because the Union, without explanation, has included along with the athlete conference schools, ten other schools merely on the basis of proximity. In contrast, all the District's comparables are not only in the athletic conference, but fit better than the Union's in the "50% variation" criterion.

Additionally, non-conference schools also have been included as comparables only when there is insufficient data available as a result of using conference schools as the sole comparables. However, all of the unionized conference schools had settled or arbitrated contracts at the time of this hearing for 1997-98 and all except one (Benton) had contracts for 1998-99. Moreover, the addition of the non-conference comparables proposed by the Union does not add to the available information. Darlington had not settled for either of the two years involved in this arbitration and Boscobel, Dodgeville and Mineral Point remain unsettled for the second year. Finally, it is noted that the Six Rivers Conference was only formed two years ago and since then, in recent arbitration decisions relating to support staff unions within what was at the time the Blackhawk Conference, arbitrators have declined to include most of the schools sought as comparables by the Union.

Turning to the issues contained in the final offers, the District takes the position that its wage offer is more reasonable. First, in support of this, they argue the District's proposal maintains its position in ranking compared to wages in comparable districts more closely than the Union's offer. In fact, with respect to secretaries, both offers actually enhance wages for the secretarial position *vis a vis* secretaries in comparable districts. Beyond this, there is no question that in every position at every level, the wages of support staff employees considerably exceed the average for the comparable group and that, in each job category, the wages rank no lower than a third of the entire comparable group. In most categories, Potosi ranks second behind Black Hawk. Despite the fact that both offers maintain Potosi's ranking by job category, it is the District's position that its offer more closely maintains its ranking than does the Union's offer. Historically, Potosi has paid wages that exceed the average between 1.5% and 10%. The District's offer more closely maintains, for each job category at the minimum and maximum levels, the percentage differential between the District and the comparable average than does the Union's offer. They provide a job by job analysis in this regard.

The District also contends that its offer is more consistent with comparable settlements. The base wage increase proposed by the Union of \$.56 per hour over two years is unsupported by the comparables. Except for Black Hawk, which negotiated a two-year base increase of \$.65 per employee, every other district in the comparable group negotiated a lower two-year increase. At Cassville, the two-year base increase totaled \$.45; at Highland, \$.34; at Pecatonica, \$.30; and at River Ridge, between \$.27 and \$.33. These base increases are far more closely aligned with the District's proposal of \$.30 over a two-year period. Moreover, they maintain no reasonable argument can be made for "catch up" wages in the instant arbitration.

Also in support of its position, the District contends its offer is more reasonable on a total percentage basis. For instance, in one instance in a comparable district where wages are higher, total compensation is lower due to the fact this other district does not offer dental insurance. Other examples of this relates health insurance. Some employees in neighboring districts contribute toward health insurance, but in Potosi it is fully paid. The Union's offer on a total package basis equals 10.11% and the Board's offer on a total package basis is 8.13%. This compares as follows to comparable districts: Black Hawk - 8.98%; Cassville - 7.87%; Highland - 8.25%; Pecatonica - 12.30%; and River Ridge 5.71%.

Regarding the retirement issue, the District contends its offer is more reasonable in this regard as well. This is necessary because of the fluctuations in the WRS contribution rates which are also based on calendar years, not contract years. Moreover, the District claims that paying the full amount rather than the prescribed percentage is consistent with the practice that commenced in the 1994-95 contract year. The Union's failure to propose any language perpetuates the ambiguity in the contract regarding the employer's contribution. In fact, the contract after 1994-95, the District asserts, provides for no payment by the District of any part of the employee's share of retirement.

Last, the District contends that the cost of living factor favors their offer. The consumer price index for urban wage earners and clerical workers from September 1997 to September 1998 showed an increase of 1.2% and, for all urban consumers, an increase of 1.5%. In comparison, the wage proposals of the District which, for salary only, provide a 1.93% increase for the first year and a 1.62% increase the second year are squarely in line with the indices as are the total package proposals of 4.61% and 3.52%. The Union's offer is out-of-line with the consumer price index and other indices.

IV OPINION AND DISCUSSION

It is appropriate to address at the outset, the issue of which other school districts are to be considered comparable for purposes of the application of criteria 'd' (comparisons to employees providing similar services). This is the only comparison criteria argued by either. Comparisons are not made to public employees generally (criteria 'e') or to private employees (criteria 'f'). Practically speaking, this ancillary issue is a question of first impression. The only arbitration case between the parties is quite old and predated the present athletic conference. It also relied on a very small pool of five schools. Moreover, two of these schools are quite distant and do not appear on the comparable list of either party. So this group cannot be used.

The Union's group is rather arbitrary and includes schools with unionized support staff within 40 miles. They indiscriminately include all schools in this geographic area without regard to size or financial data. Six of these seventeen schools are simply too big, being more than twice the size of Potosi (on the basis of projected 1997-98 student populations). These schools are Boscobel (1,043), Darlington (934), Dodgeville (1,274), Platteville (1,750), Iowa-Grant (1,021), and Prairie du Chien (1,263). Potosi member population for the same period was 446. Thus, the comparable group proposed by the Union is unacceptable.

The District's comparable group consists of districts in the Six River Athletic Conference. This, however is somewhat arbitrary as well since it is a new athletic conference and there is no evidence of bargaining history suggesting the parties have historically utilized these districts. Moreover, caution should be exercised about blindly adhering to the "athletic conference" precedent. This principle was established when athletic conferences were more stable and less subject to change. Nonetheless, with the exception of Riverdale which will be discussed subsequently, all of the District's comparables (Black Hawk, Pecatonica, Benton, Highland, and Cassville) appear on the Union's list. Thus, it is difficult to say the schools in the District's comparison group are not comparable. The real question is whether the District's comparable list is a large enough grouping. This question will be addressed subsequent to discussing Riverdale.

Both parties agree the appropriate comparisons are to be made to other districts with unionized support staffs. The real debate is whether Riverdale is unionized. The Arbitrator agrees that a local union does not have to be affiliated with a national union to be considered comparable. What is important is whether is whether there is meaningful collective bargaining. It seems

reasonable that the test of this is whether a bargaining unit has been certified by the WERC and, thus, whether the bargaining is controlled by Wis. Stats. 111.70 including the right to final and binding interest arbitration. This information is not in this record. Moreover, the Arbitrator has some concerns about its size - 996 students. Thus, for purposes of this arbitration and without setting a precedent one way or another, Riverdale will not be treated comparable for purposes of this case.

Returning to the question of whether the District's comparable group is large enough to be instructive. The Arbitrator concludes it is appropriate to expand this group to include Cuba City, Mineral Point, Seneca, and Southwestern. These schools are clearly within the geographic size and financial parameters of the schools in the athletic conference and, thus, their inclusion should be meaningful and instructive.

Accordingly, the schools to be considered comparable will be: Benton, Black Hawk, Cassville, Cuba City, Highland, Mineral Point, Pecatonica, Seneca, and Southwestern.

The principal issue is the amount by which the salary structure should be increased in the two years of the contract. The Union and the District offer salary schedules that increase each 'cell' of the 1996-97 schedule of the previous agreement for the 1997-98 school year by \$.28 cents and \$.15 cents respectively. These same increases are proposed in the second year of the contract.

In judging which of the proposed increases are reasonable, it is appropriate to focus for comparison purposes on the amount of the wage increase in comparable districts. The Arbitrator recognizes that the District focused its arguments, in part, on wage levels in comparable districts. However, it is more instructive in normal circumstances to look at the amount of the wage increase. Employees deserve annual wage increases similar to those enjoyed by employees doing similar work in other districts unless there is some reason that the typical increase shouldn't prevail. For instance, if the District was having financial difficulties, the argument that it pays higher than average salaries would be more persuasive. It could be argued that there was a need for the lower wage increase and that its impact on a short-term basis was lessened by higher than average wage levels. Wage levels are also more important than the amount of wage increases in catch-up situations. The amount of the wage increase is also more useful than wage levels because there are endless variations in wage schedules, positions, duties, and responsibilities. It is much easier to simply look at how much wage rates were increased for other support staffs than to try to equate positions on the basis of wage levels.

In comparing wage increases, both parties use a 'cents per cell' approach. It is particularly appropriate to use this comparative tool (1) because it appears this standardized method is used to make wage schedule adjustments in comparable districts, and (2) because flat dollar/cents increases compared to percentage increases, keep the wage levels in a higher-than-average district like Potosi from increasing the positive differentials. This is to the District's advantage. The following chart shows the amount the cells on the salary schedule increased in comparable districts:

<u>School</u>	<u>1997-98</u>	<u>1998-99</u>	<u>Two Year Total</u>
Benton	.10	N/A	
Black Hawk	.27	.31	
Cassville	.25	.20	
Cuba City	.15	.24	
Mineral Point	.20	N/A	
Pecatonica	Freeze	.28	
Seneca	.25	.25	
Southwestern	<u>.28</u>	<u>.29</u>	
Average	.22	.26	.48
District (Difference to Average)	.15 (-.07)	.15 (-.11)	.30 (-.18)
Union (Difference to Average)	.28 (+.06)	.28 (+.02)	.56 (+.08)

Several notes should be made about this data and the calculations. First of all, this information was calculated by the Arbitrator off the actual salary schedules in the record. This information was not taken from compilations offered by the parties because of several inaccuracies and/or misinformation. Second, the 1997-98 freeze in Pecatonica was not calculated into the average because it appears it was a quid pro quo for increasing the employer's share of insurance from 60% to 100%. Third, in Pecatonica for 1998-99, there was a variable increase across different positions. The average increase at the maximum was used.

This data shows a strong preference for the Union's offer. For 1997-98, six out of eight increases were in the \$0.25 to \$0.29 per range. Only two increases were in the neighborhood of the District's offer. The Union is also closer to the average even when the unusually low increase in Benton is considered. Without Benton factored in, the average increase is \$0.24; much closer to the Union's offer than the District's. For 1998-99, the Union's offer of \$0.28 is very close to the average increase of \$0.26. The District is quite a ways off the mark. The same is true for the two-year average.

There is no reason evidenced in this record why employees in Potosi should receive an increase that is roughly 38% less than the increase enjoyed on average by employees doing similar work.

Certainly, the Union's increase is greater than the average (by about 16%). However, this is less unreasonable than the District's offer. This is true even when considering the cost-of-living since the settle pattern reflects the appropriate weight to be given to this criteria.

The Arbitrator's preference for the Union's offer must be weighed against his preference for the District's offer on the retirement issue. The District is correct that adoption of the Union's offer will mean there is no specific language in the collective bargaining agreement concerning the employer's contribution to WRS. This is because the language in the predecessor contract was contract-term specific covering only the years of that contract. The District is also correct that it is more appropriate to express their obligation in a manner which reflects their actual contribution and not a higher amount. It is not necessary for the District to offer some dramatic quid pro quo for language which actually reflects the lower WRS contribution rates, particularly where the Union's offer fails to address the issue at all and where the change to a "full" contribution would potentially benefit the Union if the rates should ever rise again. In sum, the District's offer is more reasonable because it clarifies the retirement issue and minimizes the potential for costly litigation over issues that might arise from the Union's failure to address the issue in its final offer.

However, the Arbitrator's concerns over the failure of the Union to address the retirement issue are not great enough to overcome his preference for their offer on wages. The intent of the District in this nearly complete contract term is clear enough. They intend to pay an amount equal to the employer's and the employee's required WRS contribution. The intent of the Union is also clear enough based on their costing. They intend for the employer to continue to pay no more than the required amount. Any litigation to argue for more or less would more than likely be fruitless.

In summary, the Union's offer on wages is much closer to the hourly increase granted by other comparable districts to similar employees. This issue, on the unique facts of this case, must be given more weight than the technical defect in the Union's offer on retirement.

AWARD

The final offer of the Union is selected.

Gil Vernon, Arbitrator

This 12th day of March, 1999.