Final Offer Arbitration

of

WAUNAKEE COMMUNITY SCHOOL DISTRICT
BOARD OF EDUCATION

and

WAUNAKEE COMMUNITY SCHOOL CUSTODIANS
AFSCME, LOCAL 60, DISTRICT COUNCIL 40

re **Arbitration Award**

WERC Case 18 No. 59996
INT/ARB – 9258

Dec. No. 30305-A

INTRODUCTION

The arbitration hearing in the above identified dispute of the Waunakee Community School District, Board of Education, hereinafter called the Employer or the District, and the Waunakee Community School Custodians, AFSCME Local 60, District Council 40, hereinafter called the Union, was held on June 4, 2002 in Waunakee, Wisconsin by the undersigned arbitrator selected by the parties from a panel furnished by the WERC. Appearing for the District was Leslie A. Fiskey, Attorney of Axley Brynelson, LLP; appearing for the Union was Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40 AFSCME.

The parties agreed to proceed under a voluntary impasse resolution procedure pursuant to sec. 111.70(4)(cm)5 of the MERA and agreed that the arbitrator would decide the issues giving weight to the factors in secs. 111.70(4)(cm)7,7g and 7r Stats, and must resolve the impasse by adopting the final offer of either the District or the Union on all disputed issues. Post-hearing briefs were dated July 25, 2002; rebuttal briefs were dated August 16, 2002.

FINAL OFFERS

District: The District proposes that each cell in the 2001-2002 salary schedule be increased by $.24 an hour effective 7/1/01 and that each cell in the 2002-2003 salary schedule be increased by an additional $.10 an hour effective 7/1/02.

Union: The Union proposes that each cell in the 2001-2002 salary schedule be increased by $.36 an hour effective 7/1/01 and that each cell in the 2002-2003 salary schedule be increased by an additional 3% effective 7/1/02.

In addition, the Union proposes that the rate of pay for custodial and maintenance employees who perform required building checks on weekends be paid one hour's pay at double time rather than at time and one-half.

BACKGROUND

The parties have had a continual disagreement about costing methodology. The District favors the total cost approach used in teacher bargaining where the legislation provides that employers making a qualified economic offer are exempt from salary arbitration. The Union favors direct comparison of wages and benefits with comparable groups, noting that non-professional educational employees such as the group involved in this arbitration are not subject to the same constraint. However, despite their differences they managed to reach agreement on the previous contracts following the arbitration award of Arbitrator Zeidler applicable to the '93-'94 and'94-'95 period.

The current dispute might also have been settled short of arbitration except for the fact that the district health insurance premiums have increased substantially. District single and family health insurance premiums increased by 20.1% and 20.2% respectively in 2001-2002 and by 29.9% and 32.7% respectively in 2002-2003. Increases of this magnitude in health insurance premiums were taken into account by the District in formulating its wage proposal. under its total cost approach.

Comparables: In support of their respective positions, the parties cited the total

costs, wages, wage increases, and health insurance costs of the employers they deemed comparable. In his 1995 award (INT/ARB 7035, WERC Dec. No. 28132-A) Arbitrator Zeidler chose seven comparables from those considered by the parties. These were Lodi, McFarland, Middleton, Monona Grove, Oregon, Stoughton and Verona. In the present arbitration, the Union proposes that DeForest be added to the list of primary comparables noting that it would have been included by Arbitrator Zeidler except that it was not unionized at that time. The District agrees that DeForest should be added to the list of primary comparables.

The Union proposes also as secondary comparables, Fort Atkinson, Monroe and Sun Prairie. Arbitrator Zeidler rejected Fort Atkinson and Monroe as comparables on the grounds of distance from Waunakee. The District rejects all three of these proposed secondary comparables --- two on grounds of distance as noted by Arbitrator Zeidler and Sun Prairie because it is much larger than Waunakee with a student FTE of 4753 and a property value of $1,812,552,343 compared to Waunakee's 2,836 FTEs and $999,858,071.

Wage Comparisons. The Union cites the 2001 wage increases of municipal units that it identifies as "local labor market comparable units." These include Dane County, MATC and Madison school districts. The Union also cites the wages and increases of Village of Waunakee laborers, claiming that they should be influential. Arbitrator Zeidler cited the Village of Waunakee wages as an internal comparison. (p. 21 of award).

> A laborer employed by the Village of Waunakee experiences a .64 per hour increase in 2001 and a .66 per hour increase in 2002 (15.83 -2000; 16.47-2001; 17.13-2002)
>
> The local labor market units should be influential in this process because their application demonstrates the significant disparity in wage rates among unit of similar economic capacities. Of special interest are the wage levels and wage increases for the Village of Waunakee, Waunakee's twin municipal employee unit. Laborers employed by the village enjoy 4% wage increases in 2001, 2002 and 2003. By 2003, the maximum wage

> rates for Laborers will exceed the maximum rate for school district custodians by over $3.88 per hour under the District offer or by $3.46 under the Union's offer. This anomalous circumstance can not be explained away easily. The same union represents both municipal units. The same economic circumstances exist. Both municipal units operate under a revenue cap. The units operate in the same political milieu. The only salient explanation available is that there has been an artificial deflation of support staff wage increases as a side effect of the QEO law and the reliance on cast forward or total package methodology. . . .(Union Brief, pp. 11-12)

Under the Zeidler award, the custodians base salary and salary after five years ranked 6th of the eight comparables including Waunakee that he included in his analysis of 1993-1994 wages. It ranked 7th at the top, i.e. after 15 years. (See Table VI of the Zeidler award). District Exhibit 3 shows the Waunakee custodian[1] rankings for the same comparables for July 2000, reflecting the salaries for the period prior to the one subject to this arbitration and the rankings after the application of the first year increases under both the Union and District offers. In July 2000, the Waunakee custodians salary continued in the sixth ranking at the base, 1st, 2nd, 3rd, 4th, 5th, 7th and 11th year levels and in the seventh ranking at the 15th, 21st and 24th year levels.

In July 2001, after application of the wage increases called for by the District's final offer and the Union's final offer the rankings were unchanged under either offer. Waunakee custodians would continue to rank sixth at the 1st, 2nd, 3rd, 4th, 5th, 7th and 11th year levels and ranked seventh at the 15th, 21st and 24th year levels under both offers. (District Exhibit 6)

Although the rankings would not change there is still a substantial difference in the wage offers of the District and the Union. As the District points out

> The impact of the step increases is also apparent when they are taken into consideration when comparing the parties' offers on "cents per hour" basis. Under the District's offer a $.24 per cell increase in the first year of

[1]The arbitrator confined his analysis to custodians who make up 18 of the 25 individuals listed in the Unit on page 1 of the District's costing data in District Exhibit 9.

> the contract translates into an average hourly increase of $.46 per hour when step increases are factored in, and likewise, a $.10 per cell increase is really an average hourly increase of $.22. Using the same methodology, the Union's offer of $.36 per cell in the first year really means an average hourly increase of $.58 and its offer of 3% per cell in the second year means an average hourly increase of $.51 per hour. As these numbers demonstrate, the steps within the existing salary schedule reflect significant wage increases, the cost of which cannot be ignored in determining the relative reasonableness of the parties' offers. (District Brief, pp 10-11).

The District and the Union made the conventional wage comparisons. The Zeidler award contains a table (Table VI) showing the 1993-1994 hourly wages of Waunakee custodians with five years service under his award and the wages of the comparables. The Waunakee wage, under his award became $ 9.30 compared to an average of $10.86, 86% of the average --- a figure that Zeidler said warranted catch-up but not to the extent that the Union proposed. District Exhibits 3 and 6 show the same wage comparisons (in annual terms that the arbitrator converted to hourly wages by dividing by 2080) for July 2000, the wages just prior to this arbitration and the wages in July 2001 after the proposed first year increase of the District and the Union. In July 2000 the Waunakee wage was 89% of the average ($12.84 compared to $13.74). In July 2001 the Waunakee wage would be 89% under the District proposal and 90% under the Union proposal ($12.58 and $12.71 compared to the average of $14.09).

Unfortunately, little comparable wage data are available for the second year of the contract. Only two of the eight primary comparables have settled. Oregon settled for a 2.5% increase raising the maximum custodial rate by $.35 while Lodi settled for a $.35 decrease in the custodial rates. The Village of Waunakee raised laborer rates by 4%

Health Insurance: The District and the Union emphasize different aspects of the increasing cost of health insurance. As the arbitrator pointed out on page 2 of this opinion, the District cites the substantial cost increases in '01-'02 and '02-'03. The Union cites instead the cost levels of the District compared to the health insurance costs of the

comparables. Union Exhibit 11 shows the single and family rates for the two year period for the comparables cited previously, plus DeForest and less Monona Grove. Where the employer offered multiple plans (McFarland and Middleton) the arbitrator calculated an average cost and then used that figure in calculating the average cost of the health insurance for the seven comparables. Table 1 below shows the comparisons.

Table 1 - Comparison of Health Insurance Premium Rates

School	Rates for 2000-2001		Rates for 2001-2002		Rates for 2002-2003	
	Single	Family	Single	Family	Single	Family
DeForest	$315	$694	$388	$855		
Lodi	305	673	364	803	$481	$1,082
McFarland	226	605	263	702		
Middleton	239	597	281	701		
Oregon	333	735	388	858		
Stoughton	314	699	358	797	447	996
Verona	318	701	376	830		
Average	$293	$672	$345	$792	$464	$1,039
Waunakee	263	577	316	693	411	920

In 2000-2001 the average costs of single and family coverage for the seven comparables for which data were supplied were $293 and $672 compared to $263 and $577 for Waunakee. In 2001-2002 the average costs were $345 and $792 compared to $316 and $693 for Waunakee. In 2002-2003 the average costs were $464 and $1,039 compared to $411 and $920 for Waunakee.[2] Union Exhibit 11 also lists the employer contribution to the cost of the health insurance. Waunakee pays 100% of the single premium and 90% of the family as do DeForest and Middleton. Oregon, McFarland and Verona pay 90% of the single and family premiums while Stoughton pays 100% of both premiums and Lodi pays 85%.

[2]Although the 2002-2003 average is based on only two comparables, it should be noted that these two comparables ranked fourth and fifth of the eight comparables. This suggests that their average is a reasonable proxy for the average of all the comparables.

STATUTORY FACTORS

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer**.** The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures, authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

. . . . . .

d. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees generally in the public employment in the same community and in comparable communities.

. . . . . .

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours or conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

DISCUSSION

Statutory Factors: The District argues that the dispute should be analyzed in terms of factor j., "such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration . . " The Union cites the greatest weight and greater weight factors as a reason for introducing data that "may assist the Arbitrator in appreciating Waunakee's favorable economic status" and illustrating the "stellar economic performance" of the District.

The arbitrator does not find that the greatest weight factor is controlling in this dispute. This factor was designed to make clear to arbitrators that in making their decisions they did not have the right to set aside limitations on school board spending imposed by State authorities. No such problem was encountered by this arbitrator in analyzing this dispute.

The greater weight factor is essentially an "inability to pay" provision designed to protect the relatively poor employer from being saddled with large economic packages negotiated by wealthy districts. WEAC strategy before passage of the greater weight amendment was to first negotiate contracts in districts where it could negotiate what it considered proper settlements, holding back others that might generate smaller packages. Then, when a wage and benefit pattern was established, it attempted to spread this pattern through arbitration**.** The arbitrator does not find that this factor is relevant in this dispute.

The arbitrator agrees with the District that the "other factors" criterion is relevant in this dispute. Specifically, he finds that the increased cost of health insurance is one of the two critical issues in this dispute. The other critical issue is whether step increases are generally included in wage and wage increase comparisons.

Health Insurance: The District relies on the substantial increases in its 2002-2002 and 2002-2003 premiums as justification for its position on wage increases. The Union argues that despite these increases, the District health insurance premiums are not out of

line with those of comparable districts. As Table 1 shows, the District rates are still below the average premiums of their comparables despite the substantial increases in 2001-2002 and 2002-2003. The arbitrator finds therefore that the higher health insurance premium levels do not provide grounds for a reduction in what otherwise would be an appropriate wage increase.

Costing Step Increases: Next the arbitrator turns to what is essentially the critical issue, that is whether or not the cost of movement from one step to the next is included in calculating the wage increase. The arbitrator recognizes that step increases for teachers are included in the cost calculation under the QEO. However, the statutory language providing for this approach applies only to professional educational employees. No such limitation on the right to arbitrate applies to other employees. The question then becomes, what is the usual procedure followed by arbitrators when comparing wages and wage increases of employees such as custodians and other municipal employees who are not professional educational employees.

This arbitrator finds that almost all arbitrators have excluded the cost of step increases when comparing wage levels and wage increases. Presumably the cost of step increases, like the cost of any other benefit, is calculated at the time such steps are agreed upon. The cost of movement along the steps in successive years is not considered a new additional cost. If the average seniority stays the same and the labor force is evenly distributed across the seniority steps, there is a constant cost each year, that is there is no yearly increase in the cost of the steps. And that initial cost presumably was calculated when the steps were first introduced.

In its rebuttal brief, the Union cites six arbitrators (Arbitrators Dichter, Kessler, Malamud, Petrie, Rauch and Oestreicher) who have ruled that movement along a step

increase schedule usually is not included in calculating the cost of wage increases.[3] Some custodial units organized by WEAC have agreed to settlements in which the costing has followed the approach applied to teachers. However, except for the one instance cited by the District in its brief, the recent 12/20/01 decision of Arbitrator Tyson in a Sturgeon Bay School dispute is the only arbitral decision that supports the position of the District. This arbitrator concludes that the normal and traditional way of calculating wage increases is the one that is used by the Union rather than the one used by the District. Therefore in comparing the wage increases proposed by the District and the Union, he will compare wage increases without regard to costs of step increases.

Wage Comparisons: The arbitrator believes that the wage offer of the Union is preferable to that of the District. First of all, despite Arbitrator Zeidler's 1995 statement that "any needed further catch-up would be better achieved in successive agreements" (p18 & 21 of his award) this arbitrator found no evidence of catch-up. The Waunakee wage level continued to be about 89% of the average of the comparables. As noted previously in the background section of this award, selection of the Union offer only raises the Waunakee wage level to 90% of the 2001-2002 average of the comparables. Given that the District is relatively well off, this slight improvement in Waunakee wages seems appropriate under the Statute.

A second reason in support of the choice of the Union offer is the 4% increase granted to Waunakee municipal employees. It is ironic to note that in Arbitrator Zeidler's award he states that "In terms of internal comparisons the District offer [for '95-'96] at 4.0% increase appears consistent with Village increases." (p.18) In considering the proper increase in '01-'02 and '02-'03, the Village 4% increases in '01-'02 and '02-'03 clearly support the choice of the Union offer rather than the District offer.

---

[3] In conversations over the years with other arbitrators including such luminaries as Arvid Anderson and the late Joe Kerkman, this arbitrator has found that the general consensus is the one advocated by the Union.

One problem faced by the parties and the arbitrator is the lack of 2002-2003 settlements among the primary comparables. Is the 10 cents an hour increase offered by the District closer to what the comparables will settle on? Or is the 3% closer? Table 5 of the Union brief shows that the Oregon custodial maximum in 2002-2003 is increased by 35 cents per hour compared to the 40 cents per hour generated by the 3% Union offer. Clearly, the Union offer is closer to the Oregon offer than the 10 cents an hour proposed under the District offer.

However, as the District points out, the Lodi settlement for 2002-2003 (which is not mentioned by the Union) decreases the Lodi custodian maximum rate by 35 cents per hour. No explanation is provided for this decrease but the arbitrator assumes that it is caused by the use of the total cost approach including step increases also favored by the Waunakee District. Since the arbitrator has rejected the application of this approach to wage comparisons, he gives it little weight here. Furthermore, he notes that, in the preceding year, 2002-2002, according to Union Table 4 (Union Brief, p.9) the Lodi maximum custodial wage was raised by 70 cents per hour, an amount that exceeded the next highest raise among the comparables by 24 cents. Again, no explanation was provided for this high increase.

The arbitrator concludes that the 2002-2003 pattern is indeed murky. However, he believes that the Oregon settlement is more likely than the Lodi settlement to be representative of what the others will decide upon. Also, it should be kept in mind that in 2002-2003 the Village of Waunakee increased the wages of its employees, including laborers, by 4% --- a settlement that lends considerable weight to what otherwise is a choice based on insufficient data.

Building Checks**:** The arbitrator believes that second issue is a very minor matter compared to the major issue discussed above. So long as neither proposal on this second issue is sufficiently off base to poison the entire offer of the party, the finding on the

major issue determines the choice of final offers. It is interesting to note that the Union introduces no data in support of its demand saying only that it is a minor issue on which there was tentative agreement at one point in the negotiations.[4] The District examines the building-check payment arrangements of the primary comparables. It finds that four districts (Lodi, McFarland, Oregon and Verona) have no building-check provision in their collective bagaining agreements. Middleton pays double time. Monona Grove and Stoughton pay one hour at the regular rate. If this isssue were standing alone, the arbitrator would find that the Union had not shown sufficient evidence to warrant granting this demand. However, given that this an all-or-nothing situation, the weakness of the Union position on this minor issue is insuffcient to overturn the arbitrator finding in favor of the Union based on his analysis of the primary issue.

AWARD

For the reasons explained above, the arbitrator finds that the final offer of the Union is preferable to that of the District under the statutory criteria of Sec.. 111.70. Therefore the arbitrator hereby selects the Union offer and orders that it be implemented.

September 10, 2002

James L. Stern
Arbitrator

[4]It is almost as if the Union forgot about this issue when preparing its exhibits and writing its brief.