BEFORE THE ARBITRATOR

In the Matter of the Arbitration of an Impasse Between	:	Case 28 No. 64090
FREDERIC SCHOOL DISTRICT	:	INT/ARB-10289 Decision No. 31361-A
and	:	
NORTHWEST UNITED EDUCATORS-ASSOCIATE STAFF	:	

Appearances:

Tim A. Schultz, Executive Director, for the Labor Organization.

Weld, Riley, Prenn & Ricci, Attorneys at Law, by Thomas A. Rusboldt, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Dec. No. 31361-A, 7/13/05) the undersigned Arbitrator to issue a final and binding Award pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act resolving an impasse between those parties by selecting either the total final offer of the Municipal Employer or the total final offer of the Labor Organization.

A hearing was held in Frederic, Wisconsin, on September 21, 2005. No transcript was made. Final briefs were exchanged on December 2, 2005.

The collective bargaining unit covered in this proceeding consists of all regular full-time and regular part-time non-certified employees of the School District, excluding the Financial Secretary, the Assistant Financial Secretary, all supervisory, managerial, confidential, casual and substitute employees, and all other employees. There are approximately 28 employees in this bargaining unit. The parties are seeking an agreement for the 2003-2004 and 2004-2005 school years.

THE FINAL OFFERS

The Association's final offer would increase all wage rates for the 2003-2004 year by 3%.

The District's offer would increase those rates by 1%.

The parties have agreed that those rates will increase for the 2004-2005 year by 3%.

The parties' 2001-2003 collective bargaining agreement, at Article VII, E, provided:

> Each employee receives a day of sick leave credit for each month worked with total accumulation not to exceed 100 days. NOTE: The day of sick leave credit is defined as the workday specified for that position.

The Association's final offer would add:

> An employee who severs employment with the District with at least 10 years of experience in the District shall be reimbursed for all unused, accumulated sick leave at the rate of $20 per day.

The District's final offer would maintain the terms of the previous agreement.

The Association's final offer would award the shift differential rate specified in the agreement's appended salary schedule from 25 cents per hour to 30 cents per hour.

The District's final offer would maintain the 25 cents per hour rate.

DISCUSSION

The parties disagree as to which school districts the Employer should be compared in judging their offers. The Employer contends that all twenty-two members of its athletic conference constitute an appropriate universe for comparison. The Association, on the other hand, urges that a more selective pool is appropriate. It favors comparison to districts in contiguous counties, districts whose comparable employees are represented, and districts whose represented employees have 2003-2005 contracts. Thus, the Association contends for a universe for comparison that includes nine districts.

The Arbitrator, recognizing that other arbitrators have concluded otherwise, continues to believe that the appropriate universe of comparison is that which more closely approximates the labor market in which the employer and employees exist; and that labor markets may include both represented and unrepresented employees. On that basis, the Arbitrator agrees with the Employer that the conference provides the more appropriate universe for comparisons.

The Employer emphasizes the "Factor given greatest weight" by the Municipal Employment Relations Act (Sec. 111.70(4)(cm)(7)) which provides as follows:

> 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.

On this basis the Employer contends that its offer should be selected because the Association's offer, while, "it may not appear to be a great deal of money (something over $10,000 per year) in the context of the District's budget (over $5,500,000 per year) . . . is a very significant portion of the statutorily allowable revenue increases." Thus, the District argues, if the Association's offer is accepted, too little is left to support increases for teachers and "all of the other increased costs associated with educating the District's students."

In the Arbitrator's judgment, there are at least two worrisome questions raised by this argument. First, if, as very well may be the case, the District is inadequately funded to accomplish its mission, at least absent a successful referendum, will the employees in this bargaining unit suffer disproportionately under the District's offer? Second, if the District's offer is adopted, will the other costs anticipated by the Employer be covered inadequately anyway?

The District's argument really only suggests that it may be better positioned if its offer is selected. It does not promise, nor can it promise, based on the additional $10,000 plus per year, that the other costs and programs to which it refers will be sufficiently supported.

If, in fact, the employees in the instant bargaining unit are materially under compensated by comparison to their counterparts in the District's athletic conference, it would not seem justifiable to deny them some correction of that shortfall, especially if doing so would not really matter in terms of the District's broader financial distress.

This turns the analysis to other statutory "factors." The "factor given greater weight" is "economic conditions in the jurisdiction . . .." However, this criterion is not referred to in the District's contentions. Rather, it emphasizes, as does the Association, comparison to the wages, hours and working conditions of counterpart employees of the other districts.

This Arbitrator continues to believe that in judging the comparability of final offers on wages, it is wage rates that should be examined, not the more abstract matters of percentage increases and employer rankings. It is the amount paid to employees that most affects them and their employers. In that respect, as the Employer observes, the District's offer places it "somewhere in the middle, but clearly not among the lowest." Thus, on the principal issue of the parties' offers, wages, the difference between the offers is relatively minor and the impact on comparability of selecting either offer seems unimpressive.

Looking to the remaining elements of the parties' offers, the most substantial is the matter of reimbursement for accumulated unused sick leave. As the Association emphasizes, this is a

benefit that a number of the districts in the athletic conference provide. The Employer replies that to gain such an improvement the Association should provide a *quid pro quo*. A number of authorities are cited in support of this contention.

The Association attempts to assert that there has been no genuine good faith bargaining preceding this arbitration. The Arbitrator find that the nature of the differences in the parties' offers is consistent with that allegation. However, as the District has urged, this is not an appropriate proceeding for such a determination and the record herein does not include such evidence as would be required for such a conclusion.

The final "factor" provided by the Municipal Employment Relations Act reads as follows:

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

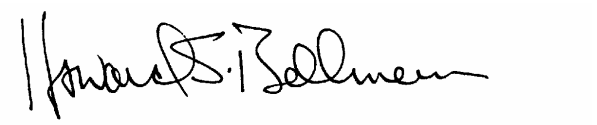
One factor "normally or traditionally" considered is the intrinsic value of voluntary settlement as it contributes to labor relations, to the work environment and productivity, as well as its avoidance of the transaction costs associated with failing to settle. The Arbitrator would apply this factor, but may not suggest the terms of a voluntary settlement that no doubt would not have been the terms of either of the parties' final offers.

It is the Arbitrator's judgment that an objective, conventional consideration of the outstanding differences between these parties as well as the benefits of settlement per se would have driven them to terms requiring greater expenditure by the employer, or greater benefit to the employees; and that given the statutory obligation to select one party's entire offer, the final offer of the Association should be selected.

AWARD

On the basis of the foregoing, and the record as a whole, it is the decision and Award of the undersigned Arbitrator that the final offer of Northwest United Educators-Associate Staff should be, and hereby is, selected.

Signed at Madison, Wisconsin, this 29th day of December, 2005.



Howard S. Bellman
Arbitrator