

Arbitration *
of *
COOPERATIVE EDUCATIONAL SERVICE *
AGENCY NO. 4 *
and *
NORTHWEST UNITED EDUCATORS *
re *
Terms of 1977-1979 Agreement; *
WERC Case XI, No. 22610, *
MED/ARB-38 *
* * * * *

ARBITRATION AWARD
Arbitrator: James L. Stern
Decision No. 16367-A

INTRODUCTION AND BACKGROUND

On February 3, 1978, Northwest United Educators, hereinafter identified as NUE, filed a petition for mediation-arbitration pursuant to Section 111.70(4)(cm)6 in order to resolve its dispute with Cooperative Educational Service Agency No. 4, hereinafter referred to as CESA 4. The parties had opened negotiations on April 18, 1977 and met on four occasions prior to the filing of the petition. On March 28, 1978 an investigation was conducted by a Wisconsin Employment Commission (WERC) staff member who on May 2, 1978 certified the impasse to the WERC along with the final offers of the parties.

The WERC, finding that an impasse existed, issued an order for mediation-arbitration on May 15, 1978 and furnished the parties with a panel of names from which to select a mediator-arbitrator. The parties selected the undersigned as their mediator-arbitrator and the WERC so appointed him in an order dated May 30, 1978. No petition for a public hearing was filed with the WERC and the parties agreed to hold a mediation session on July 19, 1978 and, if it proved necessary, to hold an arbitration meeting on July 20, 1978. The employer was asked to post public notices to that effect.

Representing the NUE at the mediation session was Alan D. Manson, Executive Director, NUE. Also participating in the mediation session were various members of the bargaining unit including the NUE unit director. Appearing for CESA 4 was William McDougall, CESA 4 Administrator. Also participating in the mediation session were advisors from the Wisconsin Association of School Boards and the Chairman and several CESA 4 Board members.

During the lengthy mediating session, the parties resolved all but two of the remaining issues. Furthermore, it was agreed that the disposition of one of these two issues, Fair Share, would be determined by the disposition made by Arbitrator Frank Zeidler on the issue of Fair Share for the professional unit of CESA 4. Whatever decision Zeidler reached in the dispute involving the professional staff unit would apply also to the Associate Staff of the CESA 4 unit involved in the dispute before this arbitrator.

The stipulation showing the items agreed to in mediation is shown on the following pages. Other items resolved prior to mediation and stipulated to are set forth in NUE Exhibit No. 1 (but not restated in this award). The amended final offers on the sole remaining item in dispute are set forth on the second page of this stipulation. The remaining issue was the additional lump sum to be paid to teacher aides for the 1977-1978 school year and the salary schedule for teacher aides that was to prevail in 1978-1979, salary schedules for all other classifications in the unit having been agreed upon in mediation.

The parties further agreed in mediation to waive the requirement for an arbitration meeting and to proceed directly to the furnishing of written briefs in support of their positions on the remaining issue. Written briefs were exchanged through the arbitrator on September 5, 1978. Rebuttal briefs were exchanged through the arbitrator on September 15, 1978.

Stipulations Agreed to Between the CESA #4 Board of Control and N.U.E. Regarding
Items to be Included in the 1977-79 Contract with CESA #4 Associate Staff
and Items to be Submitted to Arbitration

Agreement reached during Mediation/Arbitration meeting with James Stern on July 19, 1978 at the N.U.E. office in Rice Lake:

I. ITEMS AGREED TO:

1. The issue of fair share shall be determined to be the same as that established by Arbitrator Frank Ziedler for the CESA #4 Profession Staff contract which is now in arbitration.

2. Salary schedule for custodian will be as follows:

<u>Yrs. Experience in Agency</u>	<u>1977-78</u>	<u>1978-79</u>
0	3.00	3.15
1	3.15	3.30
2	3.30	3.45
3	3.45	3.60
4	3.60	3.75

Foss and Beecroft are on Step 3 for 1977-78.

3. Salary schedule for Interpreter-Tutor shall be as follows:

<u>Yrs. Experience in Agency</u>	<u>1977-78</u>	<u>1978-79</u>
0	4.00	4.25
1	4.25	4.50
2	4.50	4.75

Lauri Thorssen is at Step 0 for 1977-78.

4. Secretary and Bookkeeper salary schedule shall be as follows:

<u>Yrs. Experience in Agency</u>	<u>1977-78</u>			<u>1978-79</u>		
	<u>I</u>	<u>II</u>	<u>III</u>	<u>I</u>	<u>II</u>	<u>III</u>
0	2.80	3.25	3.75	2.95	3.45	3.95
1	2.95	3.40	3.95	3.10	3.60	4.15
2	3.10	3.55	4.15	3.25	3.75	4.35
3	3.25	3.70	4.35	3.40	3.90	4.55
4	3.40	3.85	4.55	3.55	4.05	4.75
5	--	4.00	4.75	--	4.20	4.95

Classifications for 1977-78 are:

Overby - III - 3
 Rasmussen - II - 1 and III - 1 (from date of assuming new position)
 Schiebel - II - 2
 Weise - II - 1
 Jorgenson - I - 0
 Slagstad - III - 5

5. Lump sum additional wages for settlement of 1977-78 salary for teacher aides will be paid as follows:

Sharon Wescott -- \$350

Jeffrey Peterson - \$ 50

II. Items to be submitted to James Stern for arbitration with final offer of each party:

1. Lump sum additional wages to be paid to teacher aides as settlement for 1977-78 salary:

<u>Board Final Offer</u>		<u>Union Final Offer</u>	
E. Rogstad	- \$350	Rogstad	- \$700
M. Wick	- 350	Wick	- 700
J. Hathaway	- 475	Hathaway	- 950
K. Yamada	- 350	Yamada	- 700
M. Liljenberg	- 350	Liljenberg	- 1150
J. Volk	- 350	Volk	- 1200

2. Teacher aide salary schedule for 1978-79 shall be as follows:

<u>Board Final Offer</u>		<u>Union Final Offer</u>	
<u>Years Experience</u> <u>in Agency</u>	<u>1978-79</u>	<u>Years Experience</u> <u>in Agency</u>	<u>1978-79</u>
0	3.20	0	4.00
1	3.35	1	4.20
2	3.50	2	4.41
3	3.65		
4	3.80		
5	3.95		

Wm McLaughlin 7-20-78
For: CESA #4 Board of Control

Alan D. Masell 7-21-78
For: Northwest United Educators

DISCUSSION

The basic difference between the parties centers about the question--What is the prevailing rate of pay in the CESA 4 area for teacher aides who assist in the care of handicapped children? Related to this basic point is whether the teacher aide who assists in the care of handicapped children should get greater compensation than the teacher aide who is not involved with handicapped children. A secondary question raised by the parties is the size of the increase proposed by CESA 4 and NUE. NUE stresses that the total dollar difference is relatively small. CESA 4 argues that its proposal provides for a very generous increase in wages and fringes and that the NUE proposal is excessive.

The arbitrator believes that his decision should be determined by his findings relating to the first question rather than to the second. Increases may be large either because a proposed wage is excessive or because the base from which it is calculated is too low. Furthermore, the arbitrator agrees with the CESA 4 argument that it should pay about the same wage for teacher aides who serve handicapped children as school districts within CESA 4 who can decide to run their own programs or delegate this function to CESA 4. For this reason the arbitrator will confine this discussion to the issue of comparable wages and make his decision on that ground. The arbitrator wishes to note, however, that he has examined and considered fully the other arguments and evidence submitted by the parties.

CESA 4 argues that the prevailing rate with which it must compete was \$3.01 per hour in '77-'78. It supports this figure with a table in CESA 4 Exhibit #2 showing a listing of 15 rates for special education teacher aide salaries in 1977-78. These rates vary from \$2.70 per hour to \$3.41 per hour. NUE challenges this exhibit on the grounds that the particular districts are not identified nor is it clear whether each rate is for an individual aide or for all aides in a district. Furthermore, NUE claims that the services provided by these aides may not be comparable to those provided by the aides in CESA 4. This argument rests on the proposition that a district may send the more severely handicapped children to the CESA 4 program and leave less handicapped children in the care of aides in the other districts.

The arbitrator is not persuaded by the table in the Board exhibit that the prevailing rate for teacher aides assisting in the care of handicapped children is \$3.01 or any figure near it. The arbitrator agrees with the NUE assertion that the table should have shown the number of individuals at each rate in each district and identified the district. Furthermore, no evidence was introduced by either the NUE or CESA 4 to resolve the question of whether the duties performed by aides in the other districts are approximately the same as the duties of the CESA 4 aides.

The arbitrator should also note that he was not persuaded by the NUE claim that the rate for the CESA 4 aides should be comparable to the Northern Colony rate which in 1977-1978 was \$4.933 to \$6.045. As CESA 4 points out, Northern Colony is a residential facility which provides care to individuals who presumably are more severely handicapped than the handicapped children attending school.

The failure of the parties to persuade the arbitrator that either of the above positions truly reflect the proper comparison led the arbitrator to turn to other comparisons which he found more compelling. It should be noted, however, that the arbitrator found it very difficult to determine the going wage from the evidence presented because of the wide variations in wages paid for the teacher aide position.

For example, CESA 4 Exhibit #2 shows that while four of the aides who worked for CESA 4 in '77-'78 were employed by Barron County in '76-'77, apparently performing the same duties, two were paid \$4.31 per hour, one was paid \$3.70 per hour and one was paid \$3.50 per hour. No explanation was provided by either party for this substantial variation in the rate for the teacher paid by one employer in the CESA No. 4 district. The arbitrator is inclined to believe that the rates are personal rates rather than rates for the job and may to some extent reflect experience and personal characteristics of the individuals concerned.

At the same time as Barron county was paying rates varying from \$3.50 to \$4.31 for teacher aides providing services to handicapped children, Polk County, another of the employers in the CESA No. 4 district, was paying its two aides \$3.18 per hour.

In 1977-1978 CESA 4 took over the administration of these two programs and a rate had to be determined for these six individuals and one other individual hired as a teacher aide. It could be argued that the rate should have been set slightly higher than the \$3.18 rate, in order to reflect a proper annual increase. Or, it could be argued that the rate should have been set slightly higher than the \$4.31 rate. Neither CESA 4 nor NUE proposed such a solution, in effect, preferring to continue the personal rate structure inherited by the parties. NUE would increase the '76-'77 rates by approximately 50¢ to 83¢ per hour while CESA 4 proposed to increase them by 24¢ to 36¢ (See NUE Exhibit No. 9). As was stated previously, however, the arbitrator believes his decision should be based on the prevailing rate rather than the size of the increase. Although no additional evidence was presented on the prevailing wage in '77-'78, the NUE provided un rebutted evidence on the 1978-1979 situation.

In 1978-1979, the Rice Lake School District took over the service provided in '76-'77 by Barron County and in '77-'78 by CESA 4 and had to establish the wage rate which it believed proper for a teacher aide assisting in the care of handicapped children. The four individuals who worked as teacher aides for Barron County in '76-'77 and for CESA 4 in '77-'78 were hired by Rice Lake along with a fifth teacher aide who worked for CESA 4 in '77-'78. Rice Lake is paying two of these five teacher aides \$4.55 per hour and paying the other three \$4.48. The starting wage for a teacher aide with no experience is \$4.25. (These figures are taken from Union Exhibit No. 13).

The arbitrator believes that the Rice Lake School district pay schedule for teacher aides who assist in the care of handicapped children provides the best measure of the worth in '77-'78 of the teacher aides and of what the CESA 4 '78-'79 schedule should be for the two aides who are still employed by CESA 4 and by other aides who may be hired into this position. The Rice Lake school is the biggest in the CESA No. 4 district. The rate for teacher aides was set by the Rice Lake School Board. No collective bargaining obligation prevented the Rice Lake Board from setting the rate at a point which it deemed proper because the unit into which the teacher aides were placed is not represented by a union.

The arbitrator concludes therefore that the best measure of the proper going rate for teacher aides who provide services for handicapped children is the scale adopted by Rice Lake. It should be noted also that Rice Lake wiped out the substantial differences in pay among these aides, thereby ending what may have been a system of personal rates and instituted instead what appears to be a more rational wage structure.

The proposed NUE '78-'79 schedule of \$4.00 to \$4.41 per hour is much closer to the Rice Lake schedule (starting at \$4.25 per hour) than the CESA 4 schedule running from \$3.20 to \$3.95. Therefore, the arbitrator believes that the '78-'79 NUE schedule proposal is preferable to the '78-'79 schedule proposed by CESA 4.

It is more difficult to construct a fair wage for '77-'78 against which to measure the NUE and CESA 4 proposals. One estimate of a fair wage in '77-'78 is derived by taking the '78-'79 Rice Lake figure and subtracting from it, the amount by which CESA 4 proposed to increase the wages of the two teacher aides in '78-'79 over their proposed '77-'78 wage. This amount is 21¢. When it is subtracted from the \$4.51 average paid in '78-'79 to the five Rice Lake aides, we arrive at the figure of \$4.30 as a fair wage in '77-'78. If the difference between the '77-'78 wage and the '78-'79 wage under the NUE proposal is subtracted from the '78-'79 Rice Lake wage, we arrive at a fair '77-'78 wage of \$4.15 (calculated by subtracting the difference between \$4.41 and \$4.04 from \$4.52). Averaging these two estimates generates an estimate of \$4.22 as a fair wage in '77-'78 for teacher aides who are being paid about \$4.52 in '78-'79.

The arbitrator then compared this estimate of \$4.22 with the '77-'78 wage which reflects the lump sum proposals of CESA 4 and NUE. The comparison is shown in the following table.

'77-'78 Wage Rate

<u>Name</u>	<u>CESA 4 Proposal</u>	<u>NUE Proposal</u>
Rogstad	\$4.58	\$4.85
Wick	4.58	4.85
Hathaway	4.06	4.43
Yamada	3.77	4.04
Liljenberg	3.44	4.04
Volk	<u>3.44</u>	<u>4.03</u>
Average	\$3.98	\$4.37

If the fair rate as derived above by the arbitrator is taken as the proper standard for the '77-'78 rate, it is clear that the CESA 4 average is a little low and the NUE average is a little high. The NUE \$4.37 average is slightly closer to the \$4.22 figure derived by the arbitrator and as such is slightly preferable to that of CESA 4. It appears to the arbitrator that, under the NUE proposal, the lump sum payments for Rogstad and Wick are excessive and that the lump sum payment for Hathaway is on the generous side. On the other hand, under the CESA 4 proposal, Hathaway's lump sum payment is slightly under what the arbitrator believes to be proper, Yamada's is considerably under and Volk and Liljenberg's are far too small.

Since the '78-'79 NUE wage schedule is clearly preferable to the CESA 4 schedule when compared to Rice Lake and since the lump sum payments proposed by NUE are marginally more equitable in relation to a synthetic '77-'78 Rice Lake wage than the lump sum payments proposed by CESA 4, the arbitrator will select the proposal of the NUE. Before doing so, however, he wishes to note one point. Throughout this analysis he has assumed that there are no great differences in ability among the aides and that all of them can perform their duties equally well. There is no evidence either supporting or refuting this assumption although the substantial difference in wages among the aides in '76-'77 may well reflect differences in ability rather than differences in employer pay policy. The arbitrator realizes that his assumption of equal ability may be wrong but in an analysis of wage structures in which there is no evidence on relative ability, it seemed necessary to make the assumption of equal ability and determine an appropriate rate for a classification covering all aides providing similar care for handicapped children.

AWARD

After careful consideration of the evidence and arguments of the parties and with full consideration of the statutory criteria, the arbitrator selects the final offer of the NUE and orders that the previous Agreement be amended by the inclusion in it of the matters stipulated to both prior to mediation and in mediation and by the NUE final offer.

11/17/78
November 17, 1978

James L. Stern /s/
James L. Stern
Arbitrator