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Arbitration of
SCHOOL DISTRICT OF WAUSAUKEE

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

and

ARBITRATOR'S DECISION AND AWARD

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, Local 1752D

WERC Case VI, No. 22816 MED/ARB - 96 Milo G. Flaten, Arbitrator
Decision No. 16379-A

GENERAL

This interest arbitration is being conducted pursuant to Sec. 111.70(4)(cm) of the Municipal Employment Relations Act.

On May 22, 1978, the Wisconsin Employment Relations Commission issued an order requiring that mediation-arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between the School District of Wausaukee, (hereafter, "Board") and the Wisconsin Council of Municipal and County Employees, Local 1752D, (hereafter, "Union"). Up to that point the parties had met a number of times commencing in January, 1977. They had twice participated in mediation and were still deadlocked with over a dozen issues left unresolved.

Having been supplied with the names of prospective Arbitrators, the parties on June 15, 1978, selected Attorney Milo G. Flaten of Madison, Wisconsin as the mediator-arbitrator.

After consultation, a mutually satisfactory time and place was selected for the mediation-arbitration session and August 23, 1978, at the Wausaukee High School was selected.

Pursuant to Wisconsin Statutes, Sec. 111.70(4)(cm) 6.b., six citizens within the jurisdiction served by the municipal employees petitioned the Commission requesting a public hearing with the parties. Copies of the Notice to the Public were sent to the municipal employees and the Union involved. The municipal employees and the Union were informed that they could post copies of the notices to the public or otherwise notify the public in the manner that it customarily informed the public of public meetings. However, at the appointed date and hour, no one appeared for the public hearing and the mediator-arbitrator declared it closed.

Appearing for the Union was James W. Miller of Green Bay, Staff Representative of the Wisconsin Council of County and Municipal Employees and for the Board was Attorney Donald J. Hanaway of Condon and Hanaway, Ltd., Green Bay, Wisconsin.

Mediation efforts lasted until 3:30 p.m. with no progress attained at either resolving the dispute or narrowing the issues. Thereupon the parties commenced the arbitration hearing. Witnesses appeared and testified on both sides and 32 exhibits were entered into the record. The proceedings were not transcribed by a court reporter. Instead, the parties relied on the Arbitrator's notes.

Both sides submitted post-hearing briefs on the agreed-to dates.

ISSUE

Although the ultimate issue in matters under the Municipal Employment Relations Act will always be, "which final offer shall the arbitrator select without further

modification", the parties left many intermediate issues to be decided first. These made up the portions of each sides' final offer. There were 10 issues left unresolved.*

FACTS

The School District of Wausaukee operates grades K through 12 and is located in northwestern Marinette County, Wisconsin. It is principally located in the Village of Wausaukee but includes adjacent rural townships. The school district has a student population of approximately 770 students.

There are 30 members of the bargaining unit involved in this case consisting of custodians, cooks, a bookkeeper, secretaries, a school nurse, teacher's aides, a transportation supervisor and bus drivers. Of the total members of the bargaining unit, 12 are part-time bus drivers and 7 are part-time cooks, each working a portion of a school day. Five members of the bargaining unit are full-time, 12 month employees; namely, three custodians, the bookkeeper and the high school secretary. The teacher's aides, transportation supervisor, bus drivers, school nurse, superintendent's secretary all work on a school year basis (in 1976-77 the school year calendar ran from August 19, 1976, through the end of May, 1977.)

The Union first became certified in the early fall of 1977 and the Contract under consideration herein is the first collective bargaining agreement between the parties.

When bargaining on the Contract began, 5 1/2 months had already elapsed on the Contract period.

FINAL OFFERS OF THE PARTIES

1. Duration of the Contract. In its final offer the Union offered a one-year agreement commencing July 1, 1977, whereas the Board offered a two-year agreement commencing that same date.

2. Contribution to the Wisconsin Retirement Fund. In its final offer the Union requested that the Employer shall pay on behalf of each participating employee the full Employer and employee cost to the Wisconsin Retirement Fund. (The Employer's contribution is 5% and the employee's contribution is 5% making the Union's request a total of 10% for all employees.)

The Board's final offer was to pay on behalf of each employee the full Employer contribution of 5%.

3. Hospital, Dental and Life Insurance. In its final offer the Union proposed that the Employer provide hospital insurance, life insurance and dental insurance for all employees for one year effective July 1, 1978.

The Board in its final offer proposed to pay 90% of the health insurance premium for all employees but cooks, bakers and bus drivers the first year and to pay 90% of the premium for all employees the second year but bus drivers who would get 40% of their premiums paid the second year. The Board made no counterproposal concerning dental insurance coverage and that final offer is therefore deemed denied.

The Board's final offer concerning life insurance was to pay 100% of the premium for all employees except bus drivers the second year commencing July 1, 1978.

4. Fair Share. The Union last offer contains a fair share provision wherein all employees in the bargaining unit would be required to make a contribution to the Union equivalent to the amount of Union dues.

The Employer's last offer contains no mention of fair share.

* The parties differed on the number of issues.

5. Holidays and Holiday Pay. The Union's final offer proposes that all employees receive pay for eight holidays including 1/2 day on Good Friday afternoon and Christmas Eve. Additionally, the Union's final offer requests pay for employees in the bargaining Unit at the rate of time and one-half the regular rate of pay for all hours worked in addition to the holiday pay.

The Board in its final offer proposes to pay employees for seven holidays only when their work schedules require them to be employed during such time.

6. Vacations. The Union's final offer provides vacations for all employees on the following schedule:

1. Employees who have worked less than one year but over six months, one week vacation.
2. Employees who have worked between one year and two years, two weeks vacation.
3. Employees who have worked over two years, two weeks vacation plus one day of vacation for each additional year of service.
4. Employees who have worked over 18 years, five weeks vacation.

Additionally, the Union's final offer requests that employees who retire or terminate shall be granted all earned but unused vacation. Under this proposal each month of employment would entitle an employee to 1 1/2 of his vacation pay in accordance with the above vacation entitlement rate.

The Board in its final offer proposed that every employee who had worked for the district over 12 months receive annual paid vacations as follows:

- a. After one year, 1 week.
- b. After three years, 2 weeks.
- c. After eighteen years, 3 weeks.

7. Guaranteed Work Days. The Union's last offer provides a guarantee of 180 days of work for all part-time employees (cooks and bus drivers).

In its final offer, the Board refused to guarantee 180 work days for its part-time employees.

8. Hours for Bus Cleaning. In its last offer, the Union proposed that bus drivers be paid for an additional three hours per week for bus cleaning.

The Board refused the request.

9. Longevity. In its final offer, the Union proposed that the Board pay longevity pay to bargaining unit employees at the rate of 2% of the employee's monthly salary times the number of years service. However, the Union's proposal provides that in order to be eligible for such longevity pay, each employee must have completed three years of service with the school district. The Union's final offer requests that such longevity payment be made to the employees once each year on the first pay day in December.

The Board in its final offer makes no provision for any longevity.

10. Wages. In its final offer the Union proposes the following hourly pay increases for employees in the bargaining unit for the first half year of the contract commencing July 1, 1977:

<u>Position</u>	<u>Hourly Increase</u>
Head Custodian	\$.68
Custodian	.63
Head Cook Coordinator	.55
Baker	.50
Head Cook (outlying schools)	.55
Cooks	.45
Bookkeeper	1.50
Superintendent's Secretary	.50
High School Secretary	.75
Nurse	.50
Teacher Aide	.38
Bus Drivers	.02 per mile
Bus Superintendent	50.00 per month increase

The Union's final offer also requests a fifty cent increase for bus drivers for each extracurricular activity haul they make for the half year commencing July 1, 1977.

In its final offer for the second half of the year commencing July 1, 1978, the Union proposed the following hourly wage increases for each employee:

<u>Position</u>	<u>Hourly Increase</u>
Head Custodian	\$.67
Custodian	.62
Head Cook Coordinator	.55
Baker	.55
Head Cook (outlying schools)	.60
Cooks	.45
Bookkeeper	1.00
Superintendent's Secretary	.50
High School Secretary	.50
Nurse	.50
Teacher Aide	.37
Bus Driver	.01 per mile
Bus Superintendent	50.00 per month increase

Additionally, the Union's final offer for the second half year requests that bus drivers receive a twenty-five cent per hour increase for extracurricular activity, \$5 per day additional for trips under 50 miles, \$10 trips over 50 miles and \$10 per day for all-day trips.

For its final offer the Board proposes for the first year a straight thirty cent per hour wage increase for all employees except the bookkeeper and the school nurse who would receive fifty cent per hour increases. Additionally, the Board proposed in its final offer for the first year that the Bus Supervisor would receive a \$50 per month increase and bus drivers would receive one cent per mile increase in their mileage allowance plus fifty centers per hour for extracurricular bus trips.

The Board's final offer for wages in the second year of the Contract commencing July 1, 1978, provides the following hourly wage increases:

<u>Position</u>	<u>Hourly Increases</u>
Head Custodian	\$.35
Custodian	.33
Head Cook	.28
Baker	.27
Cooks	.26
Bookkeeper	.32
Superintendent's Secretary	.32
High School Secretary	.26
Nurse	.44
Teacher Aides	.28

<u>Position</u>	<u>Hourly Increases</u>
Bus Drivers	\$.01 per mile
Bus Supervisor	50.00 per month increase

POSITIONS OF THE PARTIES AND DISCUSSION

Though the parties differed on the number of issues, they were actually in agreement on the substance of the issues. For instance, in the area of insurance, the Union listed health insurance, dental insurance and life insurance as three separate issues, whereas the Board lumped together hospitalization and life insurance into one issue. Further, the Board's brief attempted to connect issues with the statutory criteria found in Sec. 111.70(4)(cm) while the Union did not. For this reason this decision and award is a compromise of sorts between the manner in which the parties had listed the issues.

1. DURATION OF THE CONTRACT

The Union contends that inasmuch as initial negotiations did not even begin until five months into the contract year, many of the benefits such as insurance and Wisconsin Retirement Fund contributions cannot be paid because the protection period has already expired. Further, the Union argues, the Wisconsin Retirement Fund coverage cannot begin until after the State Board accepts the application. The earliest such acceptance could be made would be January 1, 1979. Thus, the Union argues, the Board is ridiculous in offering to pay for benefits which have already gone by and can never be used. The same thing would hold true of the insurance offers made by the Board, argues the Union.

Next, the Union contends, beginning contracts should only be in force for but one year in order to correct mistakes made by either party during that initial year of the agreement.

To this, the Board argues that because of the late commencement of contract negotiations, it should have been apparent to all concerned at the bargaining table that the first year of the contract was about to expire and that a determination therefore could not be made until during the second year.

The Union next contended that realistically speaking, even a two-year contract would actually be in effect less than one year which is the length of their final offer.

To this, the Board contends that it could have proposed that the contract be retroactive only to January 1, 1978, rather than July 1, 1977, because contract negotiations actually did not commence until January 1, 1978. However, the Board points out, it has proposed a retroactive contract dating back to the beginning of the contract year as a good faith act of fairness to the Union.

Finally, the Board contends, a one-year contract would have expired three months ago and would have required the parties to commence negotiations again this fall for the 1978-79 contract. The new negotiations probably would have resulted in an eventual resolution of the dispute sometime in the spring of 1979. Such continued and protracted negotiation, argues the Board, does not make for labor peace nor stability between the parties.

DISCUSSION ON CONTRACT DURATION

While it is true that the Board is in an awkward position at this late date by demanding a two-year contract, it is equally true that less than one year would be left on even the Board's proposed two-year contract.

If the one-year proposal of the Union went into effect, it obviously would mean that the parties would have to turn right around and again start negotiations for the current contract year. Past attitudes of the parties indicate to the Arbitrator that the resumed negotiations would be extended and prolonged. It is doubtful to this observer

that anyone on either side of this dispute would have much appetite for protracted bargaining at this time.

While the Union is correct that funds would be wasted in the payment of insurance and retirement benefits that could never be provided, the fact remains that less than one year is left to be worked by members of the bargaining unit regardless of which final offer is selected.

The Board is certainly unreasonable in demanding retirement and insurance benefits that cannot be paid. However, I agree with the Board that an immediate resumption of bargaining would be in neither side's best interest.

2. DISCUSSION ON CONTRIBUTION TO WISCONSIN RETIREMENT FUND

The School District of Wausaukee at present does not cover any of the nonprofessional employees under the Wisconsin Retirement Fund and therefore has never made any contribution to the Fund. While it can be shown there are districts in the area which pay the full employer-employee contribution of 10%, it is doubtful that any of those comparable district began participation in the program in the first year by paying both the employee's and the employer's portion of the contribution.

It should be remembered that the Board in its final offer agreed to pay the employer's share of 5% for all employees except cooks. This proposal is actually greater than most of the 10 surrounding school districts used by the parties in their comparisons when a close look is given to those districts' actual plans. That is, although five of those school districts make no retirement contribution whatsoever for their employees and three pay the employer share only, (5%), the latter pay only for the full-time employees whereas the Wausaukee Board's final offer will pay 5% to the Wisconsin Retirement Fund for all employees, be they full-time or part-time, except cooks.

3. HOSPITAL INSURANCE

The Union takes the position that the Board is completely unrealistic and unreasonable in attempting to apply a two-year time frame onto a benefit when over half the time has elapsed. In another words, it feels that because the employer wants to pay for insurance protection for the year beginning July 1, 1977, and this period of protection has already expired, its position on the entire issue is unreasonable.

On the other hand, the Board argues that because the protection would not commence until January 1, 1979, any issue regarding the employer's contribution to hospitalization has actually been made moot and should be dropped out of the final offers.

The Board feels that its final offer to pay 90% of the hospitalization insurance premium for all employees including bus drivers (but paying 40% of the premium of the bus drivers), grants fringe benefit not enjoyed by part-time employees in other comparable school districts.

The Union feels that 100% of the premium should be paid by the employer regardless of the amount paid by surround or comparable districts.

DISCUSSION ON HOSPITAL INSURANCE

If the Municipal Employment Relations Act did not prohibit modification of final offers presented to an Arbitrator, a solution to this problem might easily be found. For instance, one effective way of compensating for the lack of protection during the elapsed period might be to gather the medical bills of the employees for that time period and reimburse the employee much in the same manner as an insurance company would. However, the Arbitrator is limited to solutions within the constraints of the existing Statute which prohibits modification of the final offers.

The Arbitrator agrees with the Union that if the parties once offered in writing to

provide insurance protection for the 12-month period, it must stand by its written agreement.

Despite the emphasis which the Union places on the unreasonableness of the Board's offer regarding expired time and the fact that the insurance premium would go for naught, this Arbitrator is inclined to feel that the amount and manner of payment is more important. The Board now pays 90% of the hospitalization premium regardless of the cost of that premium. Even if the cost of the premium accelerates one thousand percent, the Board is still obligated to pay 90% of it. It has been this observer's experience that municipal employers are extremely reluctant to get locked into such a situation nowadays and will give up bargaining advantages to be rid of it. Yet, the Union makes no effort to justify its request for full coverage other than to point out that the teachers of the district receive it.

4. DENTAL INSURANCE

The Union avers that the Wausaukee teachers are presently afforded dental insurance by the Board. By implication, at least, it argues that non-professional employees are entitled to as much as the teachers.

On the other hand, the Board relies principally on the argument that dental insurance is a new benefit only brought up for the first time in the Union's final offer. By implication, the Board argues that the parties therefore never had a chance to discuss the merits of this benefit amongst themselves in their many negotiation sessions. Therefore, the employer implies that it is now unfair to bring in a new demand in a final offer.

DISCUSSION ON DENTAL INSURANCE

While this Arbitrator will refrain from discussing the tactical merits of a party's actions in a labor dispute, it does seem unusual that a party to municipal interest arbitration would bring up a new demand for the very first time in its final offer.

While dental insurance benefits are appearing in employment contracts more than ever, they are not appearing often enough to be called common. This certainly would apply to the non-professional employees of the surrounding and comparable school district to the Wausaukee area.

5. LIFE INSURANCE

Both sides propose that the employer provide term life insurance for employees in the bargaining unit. The Board, however, proposes that this insurance coverage begin in the second year and would exclude bus drivers whereas the Union wants coverage for all employees.

The Union argues that the employer, "continues to treat employees differently on fringe benefits" while the Board points out that of the ten school districts involved in usual comparisons, seven provide no life insurance whatever, one provides life insurance for full-time employees only and one provides life insurance for employees working 50% of the year.

DISCUSSION ON LIFE INSURANCE

This Arbitrator got the impression during the hearing that term life insurance benefits were not a matter of extreme importance to either side. Nevertheless, it would appear that the Board's final offer would exceed anything of that nature provided in surrounding and comparable districts.

6. FAIR SHARE

The Union argues that its final offer on Fair Share is a common Union security

proposal which is standard in employment contracts. It also offers a Save Harmless Clause. (Impliedly, this latter offer is to take care of the constraints recently laid down by the fair share cases of Abood vs Detroit Board of Education, 431 US 209 and Browne, et al vs Milwaukee Board of School Districts, et al, 83 Wis. 2d 316.)

The Board, on the other hand, merely points out that none of the nine surrounding and comparable school districts nor the teachers of the Wausaukee School District have fair share agreement in their employment contracts.

DISCUSSION ON FAIR SHARE

As long as the Legislature has seen fit to authorize the concept of fair share through passage of Section 111.70 (1)(h) of the Statutes, this Arbitrator cannot argue with its ideology except where compelling facts and circumstances dictate to the contrary. In this case, however, no proof or argument was set forth by the parties to weight their position one way or the other.

7. HOLIDAYS AND HOLIDAY PAY

The parties are in agreement on the number of holidays except the Union proposes a single additional holiday. That additional holiday would consist of one-half days-off on Good Friday and Christmas Eve.

Additionally, the Union in its final offer wants all of its employees paid for all eight holidays regardless of whether the employee was scheduled to work during the period or not.

The Board feels that an employee is only entitled to holiday pay when that holiday occurs during his or her regular work schedules. It points out that while most of the ten comparable school districts grant the full eight holidays, the holidays granted are primarily to full-time employees. The Board alleges that it knows of no school district in the State of Wisconsin that provides holiday pay during the summer vacation months for part-time school district employees who don't work summers.

DISCUSSION ON HOLIDAYS

The request to pay employees for holidays when those holidays do not occur during the period when the employee is normally scheduled to work (such as during summer vacation) appears to this Arbitrator to be unreasonable.

8. VACATIONS

The Union points out that currently non-professional employees of the Wausaukee District who have worked for five years, receive three weeks vacation. It contends however, that the Board's final offer would now exclude three people from a benefit already granted. Further, the Union points out that the granting of more vacation to employees with longer service is a commonly accepted practice in most labor contracts. The Union contends the employer refuses to acknowledge and reward employees for long years of service.

To this the Board argues that while their offer does represent a decrease in vacation for some present employees, it only affects five out of the 30 employees involved in the bargaining unit. The Board contends that this should not be considered as an important factor when weighing all the added fringe benefits being offered by the district in their final offer.

DISCUSSION ON VACATIONS

The withdrawal of a benefit already given to an employee without the concomitant granting of another equally important benefit is virtually unheard of in labor circles. True, the Board wants to codify a definite vacation schedule which can be relied upon

in the future. Yet, the tidying up of the Wausaukee vacation schedule should not be done at the expense of employees who have long expected and relied on such benefits. As a solution, it probably would be better to "grandfather" the five employees involved into separate classification but, once again, neither side proposed that as part of its final offer. The vacation proposal of the Union, while generous, does not seem to be out of line with the vacations commonly granted to employees these days. This is especially true in the private sector.

9. GUARANTEED WORK DAYS

The Union argues that because teachers in the district have been granted a guarantee of 180 work-days, all employees should be given the same guarantee. It argues that the lowest paid employees should not be treated differently than the higher paid employees.

To this, the employer points out that none of the ten school districts offers that guaranteed benefit.

DISCUSSION ON GUARANTEED WORK DAYS

The rationale of the Arbitrator here is the same as it was on the subject of holidays, supra. That is, the requirement to pay bus drivers and cooks when school is not in session and therefore there are no students to be transported or fed, appears to this Arbitrator to be an unreasonable request.

10. HOURS FOR BUS CLEANING

The Union feels that bus drivers should be paid for the time they spend in cleaning the buses at the end of the day.

The employer says that bus drivers are already being paid for this in the basic \$100 salary given to them.

DISCUSSION ON HOURS FOR BUS CLEANING

Employers should be expected to pay employees for hours actually worked. If additional hours are required to clean buses, the bus drivers should be paid for it.

11. LONGEVITY

The Union argues that the longevity it proposes in its final offer is nothing more than payment of extra money for extra service. It points out that Wausaukee teachers are paid longevity for years of service. Once again, contends the Union, non-professional employees are being discriminated against by the Board.

To this, the Board points out that longevity is an entirely new proposal inserted into the contract controversy only after arbitration proceedings were initiated. The Board re-argues such tactics are not completely fair and only clutter up the proceedings.

DISCUSSION ON LONGEVITY

As long as the teachers of the Wausaukee District are granted a form of longevity, this Arbitrator can see very few, if any, reasons why the non-professionals should not get it as well. The "one-shot" method of payment proposed by the Union appears to be a rather unique method of payment and could be considered by the employees to be a Christmas bonus.

12. WAGES

In its argument the Union seems content to point out inaccuracies in the Board's evidence rather than to affirmatively argue its case. For instance, at Exhibits 25 and

26, the Union points out the employer is demonstrating a comparison in the cost of living rate found in the Consumer-Price Index from July, 1977, to May, 1978, while the evidence in the record actually shows the last increase granted to the employees was in July, 1976, a year earlier. The cost of living, avers the Union, has actually increased around 15% in the Milwaukee area (the nearest community listed in the CPI) since the last pay raise whereas Board exhibits show that increase was only about 6% . In other words, the increase in the rate of cost of living was actually twice that which is indicated by the Board. Again, in its argument concerning wages, the Union points out that the Board has included retirement and insurance benefits in its tabulation of a wage package which should not be included because the protection time period has already expired. Therefore, points out the Union, computation of the cost of the entire wage package would be reduced accordingly.

In discussing the bookkeeper's salary, the Union once again is content to point out inaccuracies in the Board's exhibits without affirmatively setting forth why these inaccuracies hurt the picture the Board is trying to paint.

By recomputing the figures so as to adjust the Board's inaccuracies, the Union shows that the cost to the district for wages contained in its final offer plus bus cleaning really comes to \$28,856.54 rather than \$39,747.56 which the Board claims.

On the other hand, the Board argues that members of the bargaining unit will not lose their relative rank or position when compared to the area school districts if the Board's offer is selected, that comparables selected from Marinette County are unjustified and not truly comparable, and that the Union's wage proposal is unwarranted, inflationary and completely out of line with the settlement of the school district throughout the State of Wisconsin.

DISCUSSION ON WAGES

The Union appears to be correct in pointing out the inaccuracies in the Board's wage tabulations. That is, the Board's fringes computation figures do include the cost for retirement and insurance benefits which should not be involved at this late date. By using the date of the last pay raise, July, 1976, rather than July, 1977, it appears that the cost of living rate for employees has actually increased more than 15% rather than 6% as the Board alleges.

It is equally persuasive, however, that the Board's final offer contains wage and fringe increases which rise at an average in excess of 15%. Thus, using the Union's earlier stating date for computing the cost of living rate of increase, the Board's final offer seems remarkably close to keeping pace. In other words, as demonstrated in Exhibit 28, the wage package proposed in the Board's final offer shows a pay increase of 15.9% which is virtually the same as the Consumer-Price Index rate of increase for the period July, 1976, to May, 1978.

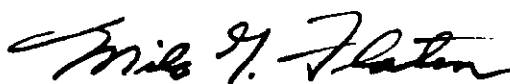
DECISION

Viewing this dispute from every angle and keeping in mind the criteria set forth in Sec. 111.70 (4)(cm) of the Statutes, it is apparent that the overall final offer of the Board is more reasonable than the final offer of the Union.

AWARD

Based on the foregoing facts and discussion, the Arbitrator hereby makes his award in favor of the School District of Wausaukee's final offer.

Dated this 9th day of October, 1978.



Milo G. Flaten, Arbitrator