

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Petition of  
GATEWAY FEDERATION OF TEACHERS  
LOCAL 1924, WFT, AFT, AFL-CIO

To Initiate Mediation-Arbitration  
Between Said Petitioner and

GATEWAY VOCATIONAL, TECHNICAL AND  
ADULT EDUCATION DISTRICT  
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Case XII  
No. 23200  
MED/ARB-147  
Decision No. 16554-A

Appearances:

Mr. Steve Kowalsky, Representative, Wisconsin Federation of Teachers,  
AFL-CIO, appearing on behalf of the Union.

Mulcahy & Wherry, S. C., Attorneys and Counselors at Law, by Mr. Mark L.  
Olson, appearing on behalf of the Employer.

ARBITRATION AWARD:

On September 19, 1978, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4) (cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Gateway Federation of Teachers Local 1924, WFT, AFT, AFL-CIO, referred to herein as the Union, and Gateway Vocational, Technical and Adult Education District, referred to herein as the Employer. Pursuant to the statutory responsibilities, the undersigned conducted mediation meetings between the Employer and the Union on November 2, 1978, and December 11, 1978. Mediation efforts failed to produce settlement, and pursuant to prior notice to the parties, in which the undersigned on November 14, 1978, notified the parties in writing of his intent to take evidence in arbitration in this matter on December 11, 1978, and in the same notice provided an opportunity to the parties to withdraw their final offers if they elected to do so by November 30, 1978; and neither party having withdrawn its final offer; evidentiary hearing in the arbitration phase of these proceedings was conducted on December 11, 1978, and December 18, 1978, in Kenosha, Wisconsin. At hearing the parties were given full opportunity to present oral and written evidence and to make relevant argument. No transcript of the proceedings was made, however, briefs were filed in the matter, which were exchanged by the Arbitrator on January 29, 1979.

THE ISSUES:

There are three issues in dispute between the parties: 1) Flexible Work Day; 2) Payment for Competency Based Education Module Development; 3) Salaries. The final offers of the parties with respect to the three issues as contained in their final offers as certified to the Wisconsin Employment Relations Commission are as follows:

1. WORK WEEK AND WORK DAY

EMPLOYER OFFER

SECTION 8 - WORK WEEK AND WORK DAY (current contract)

- A. Teachers shall be required to be available for thirty-five (35) hours per week. A teacher's scheduled day will be attendance at

school seven and one-half (7 1/2) continuous hours per day including lunch; teacher shall post a minimum of five (5) periods per week for student conferences. These periods shall be varied whenever possible in such a manner as to afford as many students as possible the opportunity for a conference during any given week. Teachers finding it necessary to leave the building for professional activities during the work day shall clear through their immediate supervisor, if available. If the immediate supervisor is not available, the teacher shall notify the secretary of the complex to which they are assigned of their destination and purpose for leaving.

#### UNION OFFER

##### SECTION 8 - WORK WEEK AND WORK DAY

- A. Teachers shall be required to be available for thirty-five (35) hours per week. A teacher's scheduled day will be attendance at school seven and one-half (7 1/2) continuous hours per day including lunch; teacher shall post a minimum of five (5) periods per week for student conference. These periods shall be varied whenever possible in such a manner as to afford as many students as possible the opportunity for a conference during any given week. At the request of the instructor, the beginning and ending times of the 7 1/2 hour work day may be varied within the assigned schedules. Such requests shall be granted or denied on a reasonable basis. Teachers finding it necessary to leave the building for professional activities during the work day shall clear through their immediate supervisor, if available. If the immediate supervisor is not available, the teacher shall notify the secretary of the complex to which they are assigned of their destination and purpose for leaving.

#### 2. COMPETENCY BASED EDUCATION MODULE DEVELOPMENT

##### EMPLOYER OFFER

##### CURRICULUM MATERIAL DEVELOPMENT

1. Curriculum materials developed by instructors shall be the property of the Board.
2. The Board will copyright such material; however, such material shall bear the name(s) of the instructor(s) who developed the material.
3. Curriculum materials refined for commercial publication (Prentice-Hall, etc.) will be the property of the Board. Profits from the publication of the curriculum materials shall be returned to the Board. Twenty-five (25%) per cent of the profits will be returned to the instructor(s) who developed the curriculum materials.

#### UNION OFFER

##### ARTICLE V, Section 17 - CBE DEVELOPMENT

- A. CBE module development shall be outside the regular teaching day unless teachers are given released time commensurate with the time required for the project. When released time is not given, Article VIII, Section 5, Paragraph A shall apply.
- B. CBE modules created as a part of the teacher's assignment shall be the property of the Board.
- C. The Board may copyright such material; however, such items shall bear the name(s) of the teacher(s) who developed the modules.

- D. All profits from the production and/or sale of such modules shall be returned to the Board. Fifty percent (50%) of the profits shall be returned to the teacher(s) who developed the modules.

3. SALARY

EMPLOYER OFFER:

APPENDIX E

1. An increase of \$500 on each step for the 78-79 salary schedule.
2. Increment of \$443 for all people not on last step.
3. A payment of \$443 for all people on the last step as of June 30, 1978.

APPENDIX D

1. An increase of \$500 on each step for the 1978-79 salary schedule.

APPENDIX F

1. An increase of \$.30/hour on each step effective the first day of school -- August, 1978.

UNION OFFER:

- 7% increase for all salary schedules.

DISCUSSION:

Each of the three disputed issues will be discussed separately in this Award, and a determination will be made on each of the issues before considering which final offer in its entirety is to be incorporated into the Collective Bargaining Agreement. In determining each issue as well as in determining which final offer in its entirety is to be selected for inclusion in the parties' Collective Bargaining Agreement, the undersigned will evaluate the offers, based on the criteria set forth in Wisconsin Statutes 111.70 (4)(cm) 7. The criteria are:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in comparable communities and in private employment in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

- h. 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.

#### FLEXIBLE WORK DAY ISSUE

The Union has proposed to modify the existing language of the Agreement found at Article V, Section 8 by adding a provision: "At the request of the instructor, the beginning and ending times of the 7 1/2 hour work day may be varied within the assigned schedules. Such requests shall be granted or denied on a reasonable basis." The language of the predecessor Agreement which will be incorporated into this successor agreement, provides that the work day may begin as early as 7:00 a.m. and end as late as 7:00 p.m. Currently the language provides for flexibility with regard to starting times as determined by the Employer, based on the needs of the students. The Union proposal here would establish the possibility of "flex-time", based on the request of the teacher. The Union argues in its brief that to allow instructors some input in their work day with administrative approval is not unreasonable. The Union further contends that the flex-time schedule would not necessitate the changing of any schedules of students. At hearing one witness, Norbert Link, testified that the purpose of the provision was to make it possible to arrive or leave early or later to attend to personal business, or to miss traffic congestion. Additionally, the Union entered into evidence articles from periodicals which represented that increased productivity resulted from companies in the private sector adopting flex-time schedules.

In evaluating this issue, while the undersigned does not disagree with the arguments advanced by the Union, there simply is not sufficient evidence in the record to support a finding for the Union proposal in this matter. The undersigned, therefore, finds in favor of the Employer on this issue.

#### CBE DEVELOPMENT ISSUE

Disputed on this issue is whether any profits that might materialize from the publication of the curriculum materials should result in 25% or 50% of the profits being returned to the instructor who developed the materials. Also disputed is whether the time spent in competency based education module development should be performed by the teachers without additional compensation as proposed by the Employer; or whether said development work should be done on release time or in the alternative, as paid time at the hourly rate provided for in Article VIII, Section 5, paragraph A of the Agreement, as proposed by the Union. The controlling question raised in this issue is the question of whether release time or payment should be made for the work involved. It is undisputed in the record that developing curriculum materials has traditionally been done by teachers of this Employer without additional compensation. At hearing, Kenneth Mills, Director of Instruction for the Employer, testified that the CBE development work is a form of curriculum development which now replaces the former several methods of curriculum development which had been in existence previously, and that the CRE development is a substitute for the prior methods of curriculum development, and not a responsibility which is added to the prior methods of curriculum development. Additionally, Mills testified that it is not the expectation of the District that all of the CBE work will be performed in the current school year, but rather that the original plans for completion anticipated that the work would be entirely completed by 1980. Mills further testified that some of the work has already been completed in its entirety in certain departments, but that now the revised plan calls for most programs to be completed in the 1980-81 school year. Based on the foregoing evidence it is the opinion of the undersigned that the Union proposal in this matter would result in additional paid time internal to the work day which heretofore has been time paid for under the salary schedules and not compensated for by the payment of an additional hourly rate or time released from teaching duties. In view of the testimony of Mills, which establishes bargaining history that places meaning on the terms of the Agreement with respect to work load,

the undersigned concludes that the Union request for release time, or in the alternative, payment for all work performed on CBE development, is unreasonable. While the evidence lacks the specificity necessary for the undersigned to form a precise judgment as to how much, if any, additional work will be required of the teachers by reason of the comparison to CBE curriculum development; in view of the record which establishes that the work to be performed will be spread over 1978-79, 1979-80 and 1980-81 school years, the undersigned concludes that the additional work, if any, will be so diluted so as not to have serious impact for additional time demands on the teachers internal to the work day.

At hearing the Union adduced evidence purporting to show that two other districts, Moraine Park Technical Institute and Fox Valley Institute, pay the teachers for the time spent in CBE development. The undersigned has reviewed the exhibits of the CBE development work done at Fox Valley Institute and Moraine Park Technical Institute, and is satisfied that the work for which the teachers are being paid in said districts is distinguishable from the work being required of the teachers at Gateway. A careful examination of the exhibits which set forth the development work at Moraine Park and Fox Valley satisfies the undersigned that the work for which those teachers are being paid additional compensation, can best be described as individualized unit modules, which are significantly more comprehensive in content and volume than the broad competency modules currently being developed at Gateway. The undersigned, therefore, determines that the payment for CBE work currently being made at Fox Valley and Moraine Park are not comparable. Since there is no other evidence adduced in this record showing that the curriculum work involved here is regularly paid for in comparable districts, the Union has failed to establish the propriety of their proposal based on comparables.

The Union contends that the cost of the development of the broad competency modules can be funded by special grants, outside the regular budget of the District. The testimony of Rolland Graf, Deputy Director for the Employer, establishes that such funding has been available for establishing the system and completing "pilot" programs, but that special funding is not available for the work now being performed. Graf further testified that the CBE proposal of the Union would cost the District \$73,298.00.

It follows from the foregoing discussion that the Employer offer with respect to CBE development, standing alone, would be incorporated into the Collective Bargaining Agreement.

#### SALARY ISSUE

The undersigned has reviewed all of the arguments and evidence submitted by the parties with respect to their salary offers, and concludes that the Union position on salaries should be adopted, based on the evidence measured against the statutory criteria. The undersigned concludes that the Union offer on salary is the more acceptable, based on the comparison of salaries and the comparison of overall compensation found at statutory criteria d and f. After evaluating all of the comparisons at the respective lanes in the minimums and maximums, compared to the same lanes at minimums and maximums in the other districts, the Union has made a compelling case to find for them on salaries, both when considering salaries alone, as well as when considering total compensation comparisons.

Considerable evidence was adduced by the parties with respect to cost of living, and with respect to the accuracy of the calculations of costs connected with the respective offers of the parties. The undersigned concludes that the comparisons favor the Union position, and further concludes that it is not necessary to make a determination in this matter as to whose cost calculations are accurate. The undersigned is satisfied that the Union demands are not so excessive when expressed as a percentage increase as to offset the need for catchup based on the comparables which clearly favor the Union position.

Based on the foregoing, then, it follows that the Union offer on salary, standing alone, would be incorporated into the Collective Bargaining Agreement.

CONCLUSIONS:

The undersigned would prefer in this matter to have the jurisdiction to establish the terms of the contract in the disputed areas either on an issue by issue basis, or on the basis of total flexibility to determine the content of the Agreement in the disputed areas. The Arbitrator is now confronted with the dilemma wherein he must determine whether a clear finding for the Employer on the CBE issue is more significant than the clear finding for the Union on the salary issue, or vice versa. (While the flex-time issue has been decided in favor of the Employer position, it is not the controlling issue in this case, and will be included or excluded, based on the outcome of the two issues deemed herein to be controlling.) Because the Employer offer provides a salary increase to all teachers of \$943.00 for the year 1978-79; and because the record establishes that the potential cost to the Employer for payment of CBE development would result in additional costs of at least \$72,000.00; and because the parties in their stipulations have provided for a wage reopener for the second year of this Agreement, which permits bargaining over salary schedules, travel expenses and time, and benefits, which will give the parties an early opportunity to address the catchup question involved in salary; the undersigned concludes that the Employer final offer should be incorporated into the Agreement, and makes the following:

AWARD

The final offer of the Employer is to be incorporated into the Collective Bargaining Agreement, along with the stipulations of the parties which reflect prior agreements, for the contract covering the years 1978-79 and 1979-80.

Dated at Fond du Lac, Wisconsin, this 6th day of March, 1979.

  
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Jos. B. Kerkman,  
Mediator-Arbitrator

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