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STATE OF WISCONSIN
MEDIATION/ARBITRATION AWARD

AUG 1 1979

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Mediation/Arbitration
between

NORTHWEST UNITED EDUCATORS

and

SCHOOL DISTRICT OF BRUCE

Re: Case VII,
No. 23509
MED/ARB-220
Decision No. 16678-A

Appearances

For Northwest United Educators, Alan D. Manson, Executive Director, 16 West John Street, Rice Lake, Wisconsin 54868.

For School District of Bruce, Laurence S. Rodenstein, Membership Consultant, Wisconsin Association of School Boards, Inc., 320 Graham Avenue, Eau Claire, Wisconsin 54701.

Background

The Union represents a collective bargaining unit of teachers, guidance counsellors and librarians employed by the District in its K-12 school system. At the time of this proceeding the parties had a two year agreement that expired on June 30, 1979 with a reopener on the single issue of the co-curricular salary schedule for the 1978-79 school year. Bargaining on the reopener started in April, 1978. Following mediation in August the Union filed a petition in September to initiate mediation/arbitration. The parties exchanged final offers in October and November and the Wisconsin Employment Relations Commission ordered mediation/arbitration on December 1. The undersigned was notified of his appointment as mediator/arbitrator on December 12. Prior to his first meeting with the parties the mediator/arbitrator was informed that if mediation was not successful, the parties had agreed that an arbitration should be commenced forthwith. The mediation session was held at 10:00 a.m. on February 26, 1979 in the Bruce Town Hall. It soon became apparent that no settlement would be reached by mediation, so the parties then executed the stipulation attached hereto as Annex A, which made one change in the Union's final offer and waived any further notice of hearing for the arbitration portion of the proceeding. At 11:00 a.m. the arbitration hearing commenced. There was no formal record made other than the arbitrator's notes. The parties introduced testimony from witnesses and in the form of documents. The hearing terminated at about 5:15 p.m.

There were certain factual matters that the parties agreed to discuss with one another before filing briefs. Because of a misunderstanding the arbitrator did not have both briefs until after June 1, 1979. They were exchanged on June 4. On June 7 the Union directed a letter to the arbitrator to serve as a reply brief. Although the District had not expected to file any

reply brief of its own, when Mr. Rodenstein received the Union's reply brief, he asked the arbitrator to allow him to reply. The reply was received from the District on June 22. On June 25 the arbitrator received a letter from the Union indicating that there would be no further communication concerning the matter. The arbitrator considers that the record was closed as of that date.

Position of the Union

Although the current two year agreement was negotiated with little difficulty, the issue of co-curricular activities was left for the reopener because the parties were in disagreement on the subject in 1977. The Union had proposed a point system in the 1976-77 bargaining as a basis for establishing and modifying co-curricular rates of payment, but the District had not agreed to it. In these negotiations, instead of a point system the Union made a survey of the number of hours that individual teachers estimated that they had spent on the various co-curricular activities and used this as a basis for establishing what the Union considers to be a two tier system of rates, although the rates do not have that appearance when expressed in terms of annual amounts. (Annex B shows the Union's final offer.) On the basis of the hours reported by teachers in response to the survey, the Union posits groups of major and minor co-curricular duties with rates for the major duties in the vicinity of \$4.00 per hour and rates for the minor duties in the vicinity of \$2.50 per hour. Head coaches are in the first tier and Assistant Coaches in the second tier, with various other co-curricular jobs distributed roughly into one or the other tier according to the Union's judgment concerning their importance and difficulty. For instance, although Cheerleaders and Band duties are paid substantially less than Head Coaches on an annual basis, their rates when calculated on an hourly basis are relatively comparable. Implicit in all this is the Union's use of point systems that have been adopted in Rice Lake and Hayward as the basis for making judgments about the placement of various co-curricular jobs into one or the other tier. Although the Union indicated that it would have preferred to base its proposals on a comparison of Bruce co-curricular duties with those in other schools in the Lakeland Athletic Conference, it was unable to obtain any job descriptions for the Bruce co-curricular assignments and was therefore unable to make meaningful comparisons. The Union did, however, make comparisons for Drivers Education. The hourly rates for these duties at four other systems in the athletic conference were as follows: Turtle Lake, \$6.00; Siren, \$7.10; Shell Lake, \$7.12; and Prairie Farm, \$7.15 per hour. The Union proposal of \$6.60 per hour for Bruce is lower than three of the four shown.

The Union showed that the difference in annual cost between the two final offers is a little over \$3,000 per year for the 1978-79 school year and that this amount is about one-half of one per cent of the District's annual payroll of about \$600,000. In terms of overall salary increase for the school year, the Union points out that the members of the unit received a 5 per cent average wage increase, exclusive of the co-curricular supplements, for the 1978-79 school year. The Union introduced figures showing that the Consumer Price Index increased by 7.7 per cent from July, 1977 to July, 1978, which means that even if the Union's final offer is adopted, the wage increase for 1978-79 would be substantially less than the increase in the cost-of-living, thus diminishing real wages. The Union also stated that it is significant that in the period from July 1, 1978 to the date of the hearing the Consumer Price

Index had increased at a rate of more than 10 per cent.

Although the Union did not wish to base its case on comparables, it argues in response to a District assertion that the best comparison is with the larger districts in the Lakeland Conference (Cameron, Clear Lake, Flambeau, Shell Lake, and Turtle Lake) that adoption of the Union's final offer would put Bruce in third place among this group in the annual amount paid for co-curricular activities. The Union presented the following table in its reply brief:

	<u>1978-79 Aggregate</u>	<u>Percentage of NUE Offer</u>
Bruce - NUE	\$16,325	100.0
Cameron	11,305	69.2
Clear Lake	15,102	92.5
Flambeau	20,095	123.1
Shell Lake	11,310	69.3
Turtle Lake	16,885	103.4

Thus, if the assumptions upon which the Union based its estimates for Flambeau and Turtle Lake are accurate, Bruce would be third among these six districts in these expenditures for 1978-79.

Although the Union does not base its case on comparables, it did present evidence concerning two other nearby districts to illustrate two points. Data for Flambeau were introduced for the reason that Flambeau is a district roughly similar, although slightly larger than Bruce, and about the same distance east of Ladysmith as Bruce is on the west. Although Flambeau had ranked first in the Lakeland Conference in 1977-78 in total co-curricular compensation, it had nevertheless granted a substantial increase for 1978-79 (the Union cited the figure as "approximately 35 per cent" although it was calculated by the District as 28.4 per cent.) Presumably this evidence was introduced to emphasize the need for Bruce to stay in line with increases in that nearby district. The other district cited by the Union was Winter, where the 1978-79 settlement called for approximately 10 per cent overall but with nothing ear-marked for co-curricular activities. The latter figure was cited to illustrate that other settlements are substantially higher in terms of co-curricular activities only or on the basis of overall compensation.

The Union also introduced testimony through its witnesses purporting to show that school activities are the most important single entertainment activity in the community and that Bruce and perhaps other communities in the Lakeland Conference differ greatly from a community like Rice Lake or Ladysmith "which support colleges or universities, as well as numerous civic organizations which sponsor cultural and recreational activities."

The Union introduced a substantial amount of testimony concerning the fiscal status of the District. These data all related to comparisons among CESA #4 school districts (and Lake Holcombe, New Auburn and Winter) and school districts in the Lakeland Athletic Conference. Sources were the State Department of Public Instruction, the Wisconsin Legislative Council Staff, and the Wisconsin Education Association Council Research Division. These data generally purported to show that the District was able to afford the cost of the Union's final offer and that in terms of cost per pupil and the level of the levy rate the District was the lowest among the CESA #4 districts, although in terms of property valuation per

student the Bruce District was also relatively low.

Another point made by the Union which may be important in these considerations was that assignment to co-curricular activities was voluntary only to the extent that the spots were filled. Unfilled spots are usually filled with newly appointed teachers. The Union argues that when co-curricular assignments are not filled on a voluntary basis, it is a signal that the rates are too low.

Position of the District

The District's final offer is attached hereto, marked Annex C.

Although the District did not argue that it would be unable to pay the cost of a possible choice of the Union's final offer, it pointed out that within the Lakeland Athletic Conference the Bruce District in 1977-78 was thirteenth among fifteen in equalized property valuation per student at a figure of \$53,868 as compared with \$118,758 for Birchwood, the first, and \$49,993 for Cameron, the fifteenth. In terms of net taxable income per taxpayer in the District, the Bruce District is tenth (\$5,072) in the Lakeland Conference, with \$7,478 for Clear Lake, the first, and \$4,417 for Winter, the fifteenth. The Bruce District was eighth in 1977-78 in net taxable income per student with \$8,362 in comparison with Clear Lake, first with \$12,176 and Birchwood, fifteenth with \$6,643. In all these comparisons the District is closer to the bottom both in rank and absolute numbers than it is to the top.

The District would compare its conditions with regard to co-curricular activities with those in the Lakeland Conference and especially with the five other larger districts in terms of numbers of students and teachers, which the District has chosen to call the Large Lakeland. In those comparisons the District appears to agree that its rates are low in most categories for the 1977-78 school year but that the increases in the District's final offer are substantial and adequate. Although there appeared to be not enough data available to make comparisons with all the districts in the Lakeland Conference for 1978-79, the District would rise from fifth to fourth in the Large Lakeland if the District's final offer is adopted. In contrast, the District argued that the adoption of the Union's final offer would cause the District to rise to first among the six districts in the Large Lakeland. In its reply brief the Union pointed out what it asserted to be errors in the District figures and that the District's rank would be third among the six if the Union's final offer were adopted. The following table appeared in the District's reply brief and appears to bear figures that both sides agree are accurate. The dollar figures represent total annual payments for co-curricular activities.

	<u>1977-78</u>	<u>1978-79</u>	<u>Percentage Increases</u>
Bruce - Board	\$10,548	\$12,775	21.1%
Bruce - NUE	10,548	16,325	54.8%
Cameron	9,776	11,305	15.6%
Clear Lake	14,398	15,102	4.9%
Flambeau	15,645	20,095	28.4%
Shell Lake	10,794	11,310	4.8%
Turtle Lake	13,880	16,885	21.6%

The District emphasizes that its own proposal providing a 21 per cent increase compares favorably with other percentage increases in this group and that the Union's proposal in terms of percentage is "3.5 times greater than Cameron; 11 times greater than Clear Lake; 1.92 times greater than Flambeau; 11 times greater than Shell Lake; and 2.6 times greater than Turtle Lake." The District position is that although the Union emphasizes the relatively small amount of dollars involved if its offer is accepted and the relatively low percentage overall increase in compensation, the Union proposal calls for a percentage increase in co-curricular activities so large as to constitute an unreasonable proposal in terms of the statutory criteria. The District's position on the comparables, therefore, is that its final offer will improve the position of the District in the Lakeland Conference and in the Large Lakeland, that its increases are substantial and adequate, and that in percentage terms (21.1 per cent) the increases are as large as the members of the bargaining unit could reasonably expect to get in one year.

The District is very critical of the survey conducted by the Union in its effort to determine the number of hours worked by various individuals in their co-curricular activities so that the Union could base its proposal upon hours worked. The District points out that there was no testing of the survey for validity or reliability and that different respondents would be likely to recollect quite different figures for the same or similar activity. In the opinion of the District a survey of the kind conducted by the Union is very likely to be self-serving. At one point the District called it "an egregious exercise designed to self-validate bargaining goals."

The District had also made a study of hours spent in various co-curricular activities and introduced a chart showing those estimates. It had been made by the Superintendent in collaboration with the Athletic Director and did not contain data for non-athletic co-curricular activities except for the class play. In almost all cases the total hours estimated were lower than the figures obtained by the Union from its survey, but the Superintendent conceded in cross-examination that there were additional hours put in by teachers on some of the activities that could not be known or estimated by those who did the study.

The District asserted at the hearing and also in its brief that the differential of \$50 per year between the boys and girls basketball coaches was discriminatory and probably illegal. The Union responded on this issue by citing the lower number of hours spent on this activity by the girls basketball coach as reported not only in its own survey but in the Superintendent's study, as well as the fact that there are fewer weeks and fewer games in the schedule for girls than for boys basketball. In response to this the District argued that the schedule for girls basketball was one week longer than the schedule for wrestling, yet the payment was \$50 lower per year.

The District is also critical of the Union for professing not to base its case on comparables and then proceed to compare conditions in the Bruce District with Flambeau. The District points out that the duties of some of the classifications among the co-curricular activities at Flambeau are different from those in this case and that in any event the 1978-79 proposals by the Union here are almost twice as high in terms of percentages as the increases at Flambeau. If comparables of any kind are to be used, the District argues, they should include the districts in the athletic conference and especially the Large Lakeland school districts.

In response to the Union's claim that the adoption of its offer would add only one-half of one per cent and make a total of less than six per cent increase in total compensation for 1978-79, the District points out that although that figure is less than the percentage increase in the Consumer Price Index either in 1977-78 or 1978-79, this proceeding goes only to the one issue of co-curricular activities, that the Union agreed to the general increase previously, and that the District's offer constitutes an increase in co-curricular rates of over 21 per cent, which is substantially higher than the increase that has taken place in the cost-of-living by any measure. By this comparison as well as by others the 55 per cent increase proposal of the Union cannot be justified and is unreasonably large.

Opinion

A comparison of the two final offers with the 1977-78 rates follows:

<u>Classification</u>	<u>1977-78 Rate</u>	<u>District Proposal</u>	<u>Union Proposal</u>	<u>Differenc</u>
Head Football	\$830	\$900	\$1,000	\$100
Head Wrestling	830	900	1,100	200
Head Boys Basketball	830	900	1,100	200
Head Girls Basketball	830	900	1,050	150
Assistant Football	415	550	700	150
Assistant Wrestling	415	550	750	200
Assistant Boys Basketball	415	550	750	200
Assistant Girls Basketball	415	550	725	175
Head Baseball	347	475	600	125
Head Boys Track	347	475	700	225
Head Girls Track	347	475	700	225
Head Volleyball	523	625	700	75
Assistant Baseball	277	375	425	50
Assistant Boys Track	277	375	450	75
Assistant Volleyball	275	350	450	100
Junior High Basketball	277	350	400	50
Junior High Wrestling	none	300	300	0
Grade Basketball	237	275	275	0
Forensics (3)	277	300	400	100
Annual	277	300	375	75
Play (2)	195	250	350	100
Paper	195	250	250	0
Cheerleaders	138	200	500	300
Band (Various Appearances)	554	575	750	175
F.H.A.	138	200	200	0
F.F.A.	138	250	375	125
Drivers Education	5.54/hr.	6.00/hr.	6.60/hr.	.60/h
Official "B" Game	8.33/ event	8.50/ event	10.00/ event	1.50/ ev
Summer Employment	758/mo.	820/mo.	264/wk.	323/mo

The issue will be treated with reference to the factors in the statute which a mediator/arbitrator is required to consider.

I am not competent to rule on the legality or illegality of the Union's proposal. In the previous negotiations the Union had agreed to equity of salary treatment for boys and girls basketball heads. Apparently disparate treatment was proposed this time as a result of the hours survey and a belief that the shorter season warranted disparity in salary. Had the Union known that the District would raise the issue of illegality, it may be that it would have proposed parity of treatment. In my opinion, however, the Union's explanation of the reason for this rather slight disparity between the heads of boys and girls basketball is reasonable. And since wrestling is a completely different sport, there is no obvious reason why the girls basketball head should be paid the same amount as the wrestling coach.

b. Stipulations by the parties. The Union made one change in its final proposal when it lowered the amount for the advisor to the school paper to the same level as that proposed by the District. The District agreed to the change.

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. There are really two matters involved. First, as to the interests and welfare of the public, I am impressed by the Union's argument that these co-curricular activities are central to the social and recreational concerns of the community. There was testimony that outside of church and boy scout activities (the latter had recently expired), these co-curricular activities had a central interest to the community. This applies, of course, particularly to athletic activities but also to music, forensics, and Future Farmer of America activity. In my opinion the community is interested in having these co-curricular activities coached and encouraged by these teachers with vigor and enthusiasm. To the degree that the duties have to be assigned because they are unappealing financially, the interests and welfare of the community suffer.

As to ability-to-pay, the amount involved in this proceeding is hardly outside the ability of the taxpayers to pay for. In any case the District's brief contains the following sentence: "The District has not contended that the issue of its ability to pay is significant in an arbitration whose exclusive issue is extracurricular salaries."

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with . . . other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities. . . . Although the District views comparability with other districts in the Lakeland Conference as more important than hours spent in the activity and the assignment of dollars by the Union according to its assessment of the relative importance of the activities, the District's comparisons do not provide very strong support for its position. The District introduced data for the 1977-78 school year which indicated that Bruce was relatively low in many categories. For instance Head Football was sixth of fourteen; Head Girls Basketball was third of twelve; Head Boys Basketball was seventh of fourteen; Head Wrestling was fifth of seven; Assistant Football was ninth of thirteen; Assistant Girls Basketball was sixth of eleven; Assistant Boys Basketball was ninth of thirteen; Assistant Wrestling was seventh of ten; Head Baseball was eleventh of twelve; Head Boys Track was eleventh of twelve; Head Girls Track was ninth of ten; Head Volleyball was ninth of fourteen; Junior High Basketball was ninth of eleven; Cheerleader Advisor ninth of eleven; and so on. The District used these comparisons to point out that its proposed

increases were substantial and designed to bring its rates up to where they would compare favorably with others in the Conference. The District also used the so-called Large Lakeland to show that its increases would bring it up from fifth to fourth among six districts. While the Union did not show general comparisons with the other districts in the Lakeland Conference, its comparisons with the Large Lakeland indicated that its own proposal would bring it up only to third among the six.

Since the issue here involved only co-curricular activities, there were no comparisons introduced for other employees generally in public employment or in private employment since these would not have been appropriate.

Although it is true, as the District points out, that the Union's proposals constitute a total increase in co-curricular payments of 55 per cent, which is higher than other settlements among the districts in the Large Lakeland, in view of all the circumstances described here, the adoption of the Union's final offer would not do an injustice to the District when the rates are compared in accordance with the description of this factor in the legislation.

e. The average consumer prices for goods and service, commonly known as the cost-of-living. While it is true, as the District argues, that a 21 per cent increase in co-curricular rates is much more than the increase in the cost-of-living during either 1977-78 or 1978-79, I do not find this to be a very convincing argument. The co-curricular activity payments are only a portion of the teachers' total incomes. The calculation by the Union that the increases amount to only about one half of one per cent of the total wage bill for the District appears to be accurate. Even though the increase in the co-curricular activities payments in total would equal 55 per cent for the 1978-79 school year, the total increase in compensation is very modest even if the Union's final offer is adopted. The total package including the co-curricular activities payments is substantially less than the increase in the Consumer Price Index for the period in question.

f. The overall compensation presently received by the municipal employes, etc. The Union argues that this factor is an important consideration in view of the earlier agreement on a modest salary settlement for 1978-79 and the parties' expressed intention to concentrate bargaining for the 1978-79 year reopener on co-curricular rates. The parties did not introduce sufficient data on overall compensation to form the basis for a judgment with reference to this criterion for dispute settlement. Therefore, it is not considered in this proceeding.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. The Union introduced certain data concerning another mediation/arbitration case at Turtle Lake that had been published after the hearing in this case. The Union emphasized that arbitrator's preference for the Union's co-curricular activities proposal, although he had adopted the employer's final offer. The figures resulting from that award were incorporated in the Union's Large Lakeland comparisons set forth above. The District appears to have accepted those figures.

The Union also noted that increases of the Consumer Price Index during the 1978-79 school year have been substantially higher than they were during the 1977-78 school year. Although it is admittedly hard for an arbitrator to ignore such developments, this case ought to be decided with reference to the earlier figures. It does not seem necessary to take notice of the later

cost-of-living figures in arriving at my conclusions in this case.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration. . . . Although they do not have the force of law, the President's wage guidelines should be acknowledged. In my opinion these final offers should be considered in terms of their overall compensation effect, not in terms of the percentage increases in the amounts paid for co-curricular activities. In those terms the final offers of both parties are well within the limits intended by the guidelines.

Having considered all materials and arguments offered to me by the parties to this dispute in terms of the factors to which I am obligated to give weight, as specified in the statute, I make the following award.

AWARD

The final offer of the Union is adopted as the settlement in this proceeding.

Dated: July 31, 1979
at Madison, Wisconsin

Signed: David B. Johnson
David B. Johnson
Mediator/Arbitrator
appointed by the Wisconsin
Employment Relations
Commission

ANNEX A

Case VII

NO. 23509 MED/AR13-220

In the Matter of the Petition of

Northwest United Educators

and

School District of Bruce

RECEIVED

AUG 1 1979

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

The parties stipulate that mediation has been unsuccessful in resolving this dispute, although it is agreed that Northwest United Educators may change its final offer for "Paper" from \$350 to \$250. It is agreed that notice of hearing may be waived and that the parties would like to move directly to a hearing in this case.

Signed: MAN O. MANI
For Northwest United Educators

Signed Laurence J. Rodenstein
For School District of Bruce

Dated: February 26, 1979
at Bruce, Wisconsin

ANNEX B

November 6, 1978



NORTHWEST UNITED EDUCATORS

16 West John St. • Rice Lake, Wisconsin 54888
Phone 715-234-7049

Mr. Eugene Johnson, Supt.
Bruce School District
Bruce, WI 54819

Re: School District of Bruce
Case VII, No. 23509, Med/Arb-220

Dear Mr. Johnson:

This letter constitutes the final offer of NUE for the items in negotiations for 1978-79.

Head Football	\$1,000
Head Wrestling	1,100
Head Boys Basketball	1,100
Head Girls Basketball	1,050
Assistant Football	700
Assistant Wrestling	750
Assistant Boys Basketball	750
Assistant Girls Basketball	725
Head Baseball	600
Head Boys Track	700
Head Girls Track	700
Head Volleyball	700
Assistant Baseball	425
Assistant Boys Track	450
Assistant Volleyball	450
Jr. High Basketball	400
Jr. High Wrestling	300
Grade Basketball	275
Forensics (3)	400
Annual	375
Play (2)	350
Paper	350 250
Cheerleaders	500
Band	750
FHA	200
FFA	375
Drivers Ed.	\$6.60/hr.
Official "B" Game	\$10.00/event
Summer Employment	\$264/wk.

ANNEX C
BRUCE PUBLIC SCHOOLS

Office of the Superintendent
BRUCE, WISCONSIN 54819

~~4/8~~

November 14, 1978

Final Offer of the Board of Education
of the School District of Bruce

Board's Final Offer
11-14-78

Head Football	900.00	
Head Wrestling	900.00	
Head Boys Basketball	900.00	
Head Girls Basketball	900.00	
Ass't Football	550.00	
Ass't Wrestling	550.00	
Ass't. Boys Basketball	550.00	
Ass't. Girls Basketball	550.00	
Head Baseball	475.00	
Head Boys Track	475.00	
Head Girls Track	475.00	
Head Volleyball	625.00	
Ass't. Baseball	375.00	
Ass't. Track	375.00	
Ass't. Volleyball	350.00	
Jr. High Basketball	350.00	
Jr. High Wrestling	300.00	
Grade Basketball	275.00	
Forensics (3)	300.00	
Annual	300.00	
Play (2)	250.00	
Paper	250.00	
Cheerleaders	200.00	
Band (Various Appearances)	575.00	
F.H.A	200.00	
P.F.A	250.00	
Driver's Ed.	6.00/hr.	
Official "B" Game	10.00 /event	8.50
Summer Employment	820./month	