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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BEFORE THE ARBITRATOR

In the matter of the Petition of :

District 1 Technical Teachers Federation, Local 1714, AFT, AFL-CIO :

and :

Eau Claire Vocational, Technical and Adult District Number 1 :

Case LXVIII
No. 23735
MED/ARB/259
Decision No. 16824-A

Hearing Date — March 28, 1979

Appearances:

For the Employer — MR. STEVENS L. RILEY,

For the Union — MR. FRED SKARICH, Staff Representative, Wisconsin Federation of Teachers

Arbitrator — CHARLES L. REDEL

Date of Award — June 29, 1979

BACKGROUND

On February 15, 1979, the Wisconsin Employment Relation 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 District 1, Technical Teachers Federation, Local 1714, AFT, AFL-CIO referred to herein as the Union and Eau Claire Vocational, Technical and Adult Education District Number 1, referred to herein as the Employer.

A hearing was held in the City of Eau Claire, Wisconsin, on March 28, 1979. Both parties were present, were afforded full opportunity to present such testimony and evidence as they deemed pertinent and to make such arguments as each deemed relevant in the premises. Each party was given until April 27, 1978, to file written briefs on the merits of their respective positions and an additional ten days for reply briefs if considered necessary by the parties.

THE FINAL OFFERS

The issues upon which the parties reached an impass involved the following:

1. Wages payable from January 1, 1979 through December 31, 1979.

EMPLOYER OFFER

Increase each cell in the schedule by 9% and then subtract from each cell the sum of $415.00.

UNION OFFER

Increase each cell in the schedule by 15% and then subtract from each cell the sum of $1,267.00.

2. Working Conditions.

EMPLOYER OFFER

An attempt by the Employer to amend its final offer to include language on working conditions was rejected by the Union.

UNION OFFER

The Union offer proposes the following language be added to the contract:

ARTICLE 5 Working Conditions, Section K

1. Every effort will be made to schedule all teachers within the normal work day. The normal work day is defined as a span of no more than 7 hours and 50 minutes.

2. The parties recognize that assignments outside of the normal workday may be necessary. In that event, the following procedure will be followed:

a. Requests for these classes shall be granted in order of seniority among qualified teachers.

b. Such request shall not be granted if they result in an overload for one teacher and an underload for another teacher.

c. In the event that there are no requests, these classes shall be assigned in order of inverse seniority.

3. This section shall not apply to the farm training and production agriculture programs.

DISCUSSION

Each of the two 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 incorporate into the collective bargaining agreement. In determining each issue as well as determining which final offer in its entirety is to be selected for inclusion in the party's 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 costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e. The average consumer price for goods and services, commonly known as the cost of living.

f. The overall compensation presently received by the municipal employees, 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 procedings.

h. Such other facts, 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.

We need not be concerned with the lawful authority of the employer as no issue has been raised in this respect. There have been no relevant stipulations of the parties during the proceedings Thus, our consideration should focus on the following statutorily defined issues as paraphrased for brevity.

1. The employer's ability to pay.
2. Wages and benefits in comparable public and private employment.
3. Cost of living.
4. Changes in any of the foregoing circumstances
5. Any other relevant factors.

1. The Employer's ability to pay.

The employer introduced exhibits entitled Full Value Per Capita, by VTAE Districts, VTAE District Operational Property Tax Rates, full value per fulltime equivalent enrollments by VTAE Districts and fulltime equivalent enrollments, by VTAE Districts. The employer did not claim "inability to pay", but did indicate the burden presently being carried by the taxpayers of District 1. An analysis of the additional cost of the Union's proposal as shown by the employer's exhibits, indicates a difference in total salary and fringe benefit costs of approximately $30,000. The undersigned does not feel this difference in costs is significant enough to impose a substantial impact upon the interests and welfare of the public or the financial ability of the Union of government to adjust and meet such costs differential. The arbitrator's opinion is that the acceptance of one offer over the other would not adversely affect the interests and welfare of the public.

2. Wages and Benefits in Comparable Public and Private Employment.

The Employer's exhibit on the comparison of wage rates between District 1 and the VTAE System shows the following.

BA Base Salaries; District 1 ranks 3rd out of 15 Districts

BA Maximum Salaries; District 1 ranks 4th out of 15 Districts

MA Base Salaries, District 1 ranks 2nd out of 15 Districts

MA Maximum Salaries; District 1 ranks 4th out of 15 Districts.

The Union's exhibit on the comparison of wage rates shows the following ranking under the Board Proposal and the Union Proposal.

District One Ranking Among VTAE Schools at Selected Positions on the Salary Schedule

	(1977-78 School Year)	(1978-79 School Year)	
	Actual Rank	Board Proposal	Union Proposal
BA MINIMUM	3	3	3
BA MAXIMUM	5	4	4
MA MINIMUM	4	3	3
MA MAXIMUM	6	7	5
Highest Master's Lane	9	8	8

The difference that exists between these proposals according to the parties is created by comparing school year salaries, calendar year salaries and utilizing a different base. Whichever comparison are used, these exhibits indicate that District 1 ranks very favorable with the other fourteen districts.

The arbitrator, after reviewing the exhibits, arguments and contentions of the parties is of the opinion that the employer's offer is the most reasonable on the basis of comparables.

3. Cost of Living.

After noting the briefs and exhibits filed by both parties in regard to the cost of living, the issue of incremental increases must be addressed.

Salary levels that exist in a labor contract are the result of past collective bargaining by both parties. The salary rates that exist at each classification are the result of joint efforts of both parties and the arbitrator will not substitute his judgment for those of the parties.

The salary increases, whether in the form of across the board or increments to cells, are undeniably a form of increased compensation to employees. The arbitrator will not make a decision on whether or not these forms of compensation are adequate in terms of each individual employee but will rather leave that to the parties to bargain in their next agreement. These increments and salary levels have been established over a period of time and neither party should be surprised at their affect.

Based on the above, it is the arbitrator's decision that salary increments that are not based on changes in qualifications but are purely what may be called years of service increases, should be included in considering cost of living increases.

The unadjusted CPI for all urban consumers for all items increased from 186.1 in December, 1977, to 202.9 in December 1978. This represents an increase of 9.0%. The employer in its brief raises the issue of a publication, index report, inter-city cost of living indicators, American Chamber of Commerce Research Association (ACCRA) which reflects for 1977 to 1978 for the City of Eau Claire, all item index increases from 92.7 to 99.1, or a locally adjusted increase for the year of 1978 at 2.0%.

The Statute states the criteria to be used is "the average consumer prices per goods and services commonly known as the cost of living". The uniformly accepted index is the United States Department of Labor, Bureau of Labor Statistics Report. The arbitrator will base his decision on the Department of Labor Index, since both parties did not agree to a different index.

The employer's exhibit indicates an increase for salaries and fringe benefits of 8.18% for the employer offer and 9.16% for the union offer. These offers when compared with a 9% cost of living increase in 1978 indicates the union's offer of 9.16%, even though higher than it should be, is slightly more favorable.

3. Changes in any of the Foregoing Circumstances During the Pendency of Arbitration Proceedings.

The union raises this issue in their brief that since negotiations, the CPI during the 12 month period ending in April, 1979 has increased 10.4% for all urban consumers, and 10.7% for urban wage earners and clerical workers.

The arbitrator notes this escalation in the rate of increase of the cost of living for this 12 month period as favoring the union but feels this increase will certainly be utilized by the union in their next salary negotiations with the employer.

WORK DAY ISSUE

The significant statutory criteria to be examined in this issue primarily relates to comparability.

The union argues in their brief that 13 of the other 15 Wisconsin VTAE Districts have language restricting split shifts. A 14th district does not engage in collective bargaining. Further, that the union's final offer allows more flexibility for management than any of the 13 contracts covering this issue.

The employer's brief alleges the union is attempting to obtain through arbitration what it could not obtain at the bargaining table, however, the purpose of arbitration is to make decisions on issues which the parties were unable to reach agreement on.

The employer further alleges the quality of instruction would be difficult if it had to adopt the union's language. The existing language on teacher's assignments reads as follows: "Qualifications being equal, seniority shall prevail". The consecutive hours proposal of the union deals with assignments to be made outside of the normal work day. It is apparent to the arbitrator that if the language of the union were adopted in the contract, it would modify existing language on teaching assignments, however, this modification would only apply to those assignments made outside the working day. The question then is will quality of instruction for evening classes be affected by this change.

The difference as seen by the arbitrator is between qualified and quality. If faculty are qualified to teach certain subjects, it is incumbent that the administration insure that qualifications are maintained. It is, therefore, assumed by the arbitrator that qualified faculty will be assigned evening courses. The language in the union proposal so states that request for assignments shall be granted in order of seniority among qualified teachers.

Qualifications being equal, not quality being equal, allows faculty members to exercise seniority on assignments. The record does not contain any information or evidence on how qualifications are established or utilized by the employer in assignment of classes. It was the arbitrator's feelings throughout mediation and arbitration that neither party wanted to explore in depth the qualification issue for fear of exposing a formula which might be detrimental to both.

It is the arbitrator's opinion that until qualifications are more precisely defined by both parties, the effect of the union's proposal on the employer cannot be sufficiently documented. The undersigned agrees with the union that their proposal is more reasonable in view of the statutory criteria being considered.

After full and painful consideration of all the relevant statutory factors to the data and evidence supplied in this case, the undersigned is of the judgment that the union offer is by a small margin, the most reasonable based on the combined evaluation of the applicable factors. The Fmployer's offer is less than it reasonably should be and the union's offer is more than it reasonably should be. The hard choice arrived at by the undersigned is made on the basis of weighting the following considerations:

1. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement favor the Union offer. The arbitrator makes this opinion on the basis that the difference in cost of approximately $30,000 between the offers is not so significant to impose a substantial impact one way or the other upon the interest and welfare of the public or the financial ability of the unit of government to adjust and meet such cost differential.

2. The comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration procedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities favors the employer's final offer.

3. The arbitrator is by Statute compelled to consider the cost of living index. The final wage offer proposed by the union represents a 9.16% increase and the final wage offer by the employer represents approximately 8.18% increase in wages. Application of the cost of living index slightly favors the union offer even though higher than it should be.

4. The language proposed by the union concerning the consecutive hours, or workday issue when compared with other employees performing similar services favors the union's offer.

5. The changes in any of the foregoing circumstances during the pendancy of arbitration procedings and 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 slightly favors the union's offer.

The undersigned, in balancing out the above considerations and factors, is of the judgment that the evidence and record fairly establishes the union's offer as being the most reasonable.

In the final analysis, it therefore follows that the undersigned renders the following decision and,

AWARD

That the union's final offer be incorporated into and made a part of the collective bargaining agreement for the year 1978.

Dated at La Crosse, Wisconsin this 29th day of June, 1979.

Charles L. Redel

CHARLES L. REDEL
Arbitrator