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STATE OF WISCONSIN
BEFORE THE MEDIATOR/ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the
Mediation/Arbitration Between

THE FREDERIC SCHOOL DISTRICT

and

NORTHWEST UNITED EDUCATORS

Case VII

No. 25122 Med/Arb 511

Decision No. 17486-A

APPEARANCES:

Robert E. West, Executive Director, Northwest United Educators,
appearing on behalf of the Northwest United Educators.

Mulcahy & Sherry, S.C., Attorneys and Counselors at Law, by
Stephen L. Weld, appearing on behalf of the Frederic School District.

ARBITRATION HEARING BACKGROUND:

On December 18, 1979, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as mediator/arbitrator, pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act in the matter of impasse between the Frederic School District, hereinafter referred to as the District, and the Northwest United Educators, referred to herein as the NUE. Pursuant to the statutory requirement, mediation proceeding were conducted between the parties on February 6, 1980. Mediation failed to resolve the impasse and at the close of the session on February 6, 1980, the parties agreed to waive the arbitration hearing before the mediator/arbitrator. Thereafter, the parties exchanged, through the arbitrator, exhibits, briefs and reply briefs which constitute the basis for the award herein.

THE ISSUES:

The issues remaining at impasse between the parties are insurance language and salary schedule.

The final offers of the parties appear as follows:

The District:

1. Health insurance. The school district will pay \$85.00 for family coverage and \$32.50 for single coverage.
2. Life insurance. The school district will pay 50% of a premium based on the same plan as now in effect.
3. Evaluation. Five school days time will be allowed between principal observation and discussion of same with teacher.

4. Extracurricular. The following will be increased by 1%:

Band	Head wrestling coach
Forensics	Head track coach
Athletic Director	Baseball
Head basketball coach	Volleyball
Head football coach	

The following will be increased by 2%:

Gymnastics

The following will be increased by 5%:

Junior high gymnastics

5. Insurance language. See enclosure #1.

6. Salary schedule. See enclosure #2.

Enclosure #1

It is expressly agreed by and between the parties that as employees of the Frederic School District, said employees may be eligible for certain benefits, including but not limited to, group health insurance, group life insurance, disability income protection insurance, tax shelter annuities and other plans.

It is expressly agreed by and between the parties that the Frederic School District aids in the administration of these benefits as a voluntary service to its employees; and that any representations made by the District, its agents or employees, are without force and effect as against any of these insurance carriers or other organizations and are expressly deemed to be opinion on behalf of the person making said representations.

Enclosure #2

	<u>BA</u>	<u>BA + 8</u>	<u>BA + 16</u>	<u>BA + 24</u>	<u>MA</u>
0	10,200	10,400	10,600	10,800	11,000
1	10,570	10,770	10,970	11,170	11,470
2	10,940	11,140	11,340	11,540	11,940
3	11,310	11,510	11,710	11,910	12,410
4	11,680	11,880	12,080	12,280	12,880
5	12,050	12,250	12,450	12,650	13,350
6	12,420	12,620	12,820	13,020	13,820
7	12,790	12,990	13,190	13,390	14,290
8	13,160	13,360	13,560	13,760	14,760
9	13,530	13,730	13,930	14,130	15,230
10	13,900	14,100	14,300	14,500	15,700
11	14,270	14,470	14,670	14,870	16,170
12	14,640	14,840	15,040	15,240	16,640
13	15,010	15,210	15,410	15,610	17,110

The NUT:

1. NUE agrees to the Board of Education proposed salary schedule submitted on October 3, 1979 and reaffirmed as the District final offer with the following exceptions:
 - A. BA Increments - \$385.
 - B. MA Increments - \$475.
 - C. Differential between lanes - \$225.
 - D. Add MA+8 at \$225.
2. NUE agrees to Board of Education co-curricular proposal.
3. No agreement on Board of Education insurance waiver of responsibility clause.
4. NUE agrees to Board of Education life insurance proposal.
5. NUE agrees to Board of Education evaluation proposal.

STATUTORY CRITERIA:

Since no voluntary impasse procedure was agreed to between the parties regarding the above impasse, the undersigned, under the Municipal Employment Relations Act, is required to choose the entire final offer of one of the parties on all unresolved issues.

Section 111.70(4)(cm)7 requires the mediator/arbitrator to consider the following criteria in the decision process:

- 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 the same community and in comparable communities and in private employment in the same community and 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.

POSITIONS OF THE PARTIES:

As set forth in the final offers of the parties, two basic issues remain unresolved by the parties: inclusion of insurance language in the collective bargaining agreement and salary schedule. Initially, the parties agreed that the appropriate comparables would primarily be the Upper St. Croix Athletic Conference and districts contiguous to the Frederic School District. Submission of briefs indicated that the parties excluded for comparison purposes the Webster School District at varying times and differed in the delineation of contiguous districts by one district, Spooner. Additionally, the NUE proposed that certain school district data should appropriately be compared to statewide criteria.

Insurance Language: Adding insurance language to the collective bargaining agreement is solely a proposal of the District, needed, according to the District, to clarify the district's role regarding its administrative duties in providing insurance coverage. The NUE objects to the inclusion of the proposed language arguing that the language has the possibility of doing more than clarifying the status quo. Included in NUE's objections are its contentions that no similar contract language can be found in any contracts available to it, including athletic conference, contiguous school districts, CESA district, or State of Wisconsin school districts contracts; the proposed language is ambiguous enough to subject the contract provision to litigation or negate Article XV of the contract, and Article XV, Section B addresses the District's concern and therefore negates the need for any additional language in the contract. Further, the NUE argues that this language is so troublesome to the contract it should be the determining issue regarding reasonableness of the offers.

Salary Schedule:

In the wage dispute, the parties differ very little on the percentage increase in salary, but differ greatly in the concept of application of money. The differences between the parties lie in the value of the BA and MA increments and in the value of the horizontal increment as well as the addition of one lane beyond the MA level.

Both parties argue their wage offers are consistent with the area comparables. More specifically, the District argues that its offer maintains the district's ranking among its comparables, distributes the increase so that the last step where the largest percentage of teachers are located, receives the largest increase and is supported by the PCE index for July 1, 1978 to June 30, 1979, which is a more valid measurement of cost of living increases than the CPI. Further, the District contends that its offer more nearly approximates the comparisons of relative wages, and dollar amount or percentage increases in the area.

The NUE argues that the greatest differences between the District's proposal and its proposal lie in the wage area of the maximum level of the schedule and the maximum educational level of the

schedule. It is in these areas, the NUE contends, that wage changes are needed the most. In support of its contention, the NUE relies on statewide comparables which it argues show the need for catch up for the district, as well as the conference, in the area of minimums and maximums on the schedule. In support of its position regarding an additional MA lane, the NUE argues first, that no other district in the mutually accepted comparables had less than one additional MA lane, and secondly, that salary schedules should provide encouragement for teachers to return to school as a matter of public interest, which the addition of one more lane at the MA level would do. Finally, the NUE relies on the CPI as an indicator of what the loss of real purchasing power for the teachers has been rather than an argument for correlative support of the percentage increase of its final offer.

In addition to wage arguments based on comparables, the District contends that past bargaining history supports the reasonableness of its offer. Indicating that the parties had reached tentative agreement on the salary schedule at one point during a WERC mediation, the District argues that this is further proof its offer is and was reasonable. The NUE contends that mediation with the WERC staff must be considered the same as mediation by the mediator/arbitrator and therefore should not be a basis for determining the more reasonableness of a particular offer.

Finally, the NUE argued at varying times that the arbitrator is required by statute to consider overall compensation as a criteria of review. In conjunction with this argument, the NUE provided information on some but not all districts relative to overall compensation.

DISCUSSION:

As previously pointed out, the primary difference in the parties' acceptance of mutual comparables is whether or not Spooner is contiguous to the Frederic School District. Although dictionary definitions can be found to support either party's position, the undersigned applied the more common interpretation of "touching" or "adjoining" and, thus, rejects Spooner as a comparable district. Additionally, the undersigned eliminated the Webster School District from the comparables since occasionally the district's merit pay plan does not accurately reflect the comparables. Comparables, then, shall consist of Grantsburg, Luck, Osceola, St. Croix Falls, Somerset, Unity, Cumberland, Shell Lake, and Siren.

Before engaging in a discussion of the unresolved issues, the undersigned wished to point out that two arguments presented by the parties are summarily rejected. The undersigned considers WERC staff mediation the same as mediation efforts of the mediator/arbitrator. As such, any voluntary agreements reached contingent upon immediate settlement during mediation shall not be a part of either party's argument in arbitration unless mutually agreed to by the parties. To accept the information, otherwise, negates the effectiveness of mediation and is contrary to the intent of the Municipal Employment Relations Act.

Secondly, the undersigned rejects the NUE argument regarding overall compensation. While overall compensation is included in the 111.70 statutory criteria, the information submitted by the NUE covered less than half of the comparable districts. Thus, the information was not sufficient to allow the undersigned to properly evaluate the argument presented.

An analysis of the positions of the parties regarding the salary schedule reveals that there is relatively little difference between their final offers. The parties are \$15 apart on the value of

the BA increment, \$5 apart on the value of the MA increment, \$25 apart on the horizontal increment and differ on the number of lanes beyond the MA level amounting to a package difference of approximately 1%. Both parties argue that their offers are reasonable and consistent with the settlements in comparable districts.

The undersigned accepts the District's argument that its offer as to dollars in the individual lanes is reasonable because it provides a salary increase consistent with the comparables and makes an effort to maintain its ranking among other comparable districts. The table below, prepared by the undersigned from exhibits of the parties, substantiates the District's position.

	BA+0	BA Max.	MA+0	MA Max.
District Offer:	10,200	15,010	11,000	17,110
NUE Offer:	10,200	15,205	11,100	17,275
1978-79 Rank:	tied 4-5	8	tied 8-9	6
District Offer 1979-80 Rank:	tied 4-5-6	5	tied 7-8	6
NUE Offer 1979-80 Rank:	tied 4-5-6	tied 4-5	5	4

The above table also reflects that the NUE's offer does not substantially change the district's ranking either. Although the NUE's offer causes a slightly higher change in the rankings at the MA+0 and MA maximum levels, overall either offer places the district securely in the middle of the comparables.

An analysis of the comparables reflects that the NUE's offer of 9.4% or \$1,282/teacher is higher than most, if not all, of the comparable district settlements. This, the District argues means that its offer of 8.3% or \$1,137/teacher is more reasonable since it is well above the area average and therefore the one which should be selected. A closer review of the area settlements, however, reveals that 6 of 9 comparable schools settled at higher than 8.3% or \$1,137/teacher. There is a substantial difference between the area average and the median. The median settlement was 8.7% and \$1,200/teacher.¹

Overall, however, although the District's offer is comparatively low, it more nearly approximates the median and the majority of the comparable district settlements by a very narrow margin.

The primary difference in the salary schedule offers is a conceptual one and neither concept is objectionable. The District has argued that primary consideration should be given to the last step in each lane because 45% of the district's teachers are located there. Its offer, however, does not address that concept at the MA maximum level where over one-third of the 45% are situated. The NUE offer is more consistent with its proposal to provide incentives to encourage teacher educational advancement by adding an MA+8 lane in its offer as well as increasing the horizontal salary increments. This consistency, as well as the fact that a review of the comparables supports the NUE position in that no other district has less than one additional MA lane, persuades the undersigned that the NUE's proposal is more

¹It is noted that the NUE, in its reply brief, challenged the accuracy of the percentages arrived at by the district. The above result is essentially the same, however, no matter which data was used.

acceptable even though the District's offer monetarily is as reasonable as the NUE's.

While the District has argued that the proposed insurance language is of relatively less importance, the undersigned believes that this is the determinative issue. Before unprecedented language is awarded, the undersigned believes it must be evaluated in terms of its impact upon the fundamental relationship between the parties and upon the collective bargaining agreement. Among the considerations must be the clarity of the language, the affect upon existing benefits, and the demonstrated need for inclusion of such language.

The NUE has argued that the District's language and its intent is sufficiently vague as to be "fraught with the potential for litigation." Analysis by the undersigned finds merit in that argument. Initially, the final offer itself leads to confusion. The proposal in the final offer reads as follows:

"5. Insurance language. See enclosure #1.

"It is expressly agreed by and between the parties that as employees of the Frederic School District, said employees may be eligible for certain benefits, including but not limited to, group health insurance, group life insurance, disability income protection insurance, tax sheltered annuities and other plans.

"It is expressly agreed by and between the parties that the Frederic School District aids in the administration of these benefits as a voluntary service to its employees; and that any representations made by the District, its agents or employees, are without force and effect as against any of these insurance carriers or other organizations and are expressly deemed to be opinion on behalf of the person making said representations."

While it may be assumed that the District's intent is to place this language in Article XV, entitled Insurance, based upon such representations in the District's brief, it is not clear where in that Article it would be placed and its location has the possibility of affecting the existing benefits.

The District argues this language simply relays the WEA Insurance Trust's position that "it has never been and never will be the policy of the WEA Insurance Trust to allow school district employees to act as agents for the trust." While this may have been the intent of the District the language is sufficiently vague as to cause confusion in interpretation. Additionally, if the intent was as argued by the District, the undersigned sees relatively difference between the proposed language and language already existing in Article XV, Section B.²

It also appears that the proposed language is ambiguous enough that conflict could arise over whether or not benefits are provided. The District argues that the insertion of the word "may" in its proposal is merely an effort to conform with "may" in Article XV, Section B. Again, that may be the intent of the District, however, no clear understanding regarding this issue has been reached and the possibility of confusion and litigation regarding benefits does exist

²Article XV, Section B. "Any eligible teacher desiring to be covered by health insurance carried by the Board shall so elect in writing and the election shall be filed with the Board. An employee may elect single coverage or family coverage. No election of coverage shall be revoked except upon the notice and terms provided by the insurer and all rules, regulations and requirements of the insurer shall be a part hereof by reference.

which makes the language less than desirable.


While the possibility of litigation may be worth risking if there is a compelling need for language, the District has not sufficiently convinced the undersigned of the need for the language. The District argues that it needs the language because of an incident that occurred earlier in the year to clarify its administrative position and to hold it harmless from misrepresentations of its employees. Involvement in one dispute over insurance coverage with a non-bargaining unit employee as the result of a District employee's misrepresentation is not sufficient reason to justify the incorporation of ambiguous language in the collective bargaining agreement with the NUE. Further, it is not clear whether the language would hold the district harmless since the language is ambiguous and clearly subject to interpretation. Finally, it appears that the problem of District employees dispensing information they are not authorized to dispense could be handled more easily by instruction to the District staff rather than confinement to the application of a contract. Thus, the undersigned concludes that the language should not be incorporated into the collective bargaining agreement.

Having reviewed the evidence and argument and after applying the statutory criteria, and having concluded that the NUE's offer is more acceptable on the issue of salary and insurance language, the undersigned makes the following

AWARD

The final offer of the NUE, along with the stipulations of the parties which reflect prior agreements in bargaining, as well as those provisions of the predecessor collective bargaining agreement which remained unchanged during the course of bargaining, are to be incorporated into the collective bargaining agreement as required by statute.

Dated this 17th day of May, 1980 at La Crosse, Wisconsin.



Sharon K. Imes
Mediator/Arbitrator