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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

Cambria-Friesland Education

To Initiate Mediation-Arbitration
Between Said Petitioner and

Cambria-Friesland School District

Case III
No. 25038 Med/Arb-499
Decision No. 17549-A

Appearances:

Mr. James M. Yoder, Executive Director, South Central United Educators, appearing on behalf of the Cmabria-Friesland Education Association.

Wisconsin Association of School Boards, by Mr. Kenneth Cole, Director of Employee Relations Services appearing on behalf of the Cambria-Friesland School District.

Arbitration Award:

On January 23, 1980, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4) (cm) 6b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Cambria-Friesland Education Association, referred to hereinafter as the Association, and the Cambria-Friesland School District hereinafter referred to as the Employer. Pursuant to the statutory responsibilities the undersigned conducted a mediation meeting between the Employer and the Association on February 28, 1980. The mediation effort proved unsuccessful and on March 4, 1980 the undersigned provided written notice to the parties that pursuant to Section 111.70 (4) (cm) 6c. the parties had until March 14, 1980 to advise the opposing party, the Mediator-Arbitrator, and the Wisconsin Employment Relations Commission, that they desired to withdraw their certified final offers. Neither party chose to withdraw their final offer and pursuant to notice that the arbitration proceedings were to commence, a hearing was conducted on April 24, 1980, at Cambria, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. No transcript of the proceedings was made. Briefs were filed by the parties and simultaneously exchanged through the arbitrator on June 15, 1980.

The Issues:

As stipulated by the parties on February 29, 1980 the following issues were jointly accepted:

1. Health Insurance: The provision remains unchanged except that the dollar amounts shall be $33.00/mo. for single coverage and $85.00/mo for family coverage.

2. Leave Policies Existing Agreement Provision: The provision dealing with maternity leave shall read as follows: "Maternity leave shall be governed by the Board's discretion guided by statutes and court decisions in effect at the time of application.

3. Mileage Allowance: The dollar amounts shall be changed to .16/mi and $5.00/meal.

4. Lunch Period: Existing agreement provision.

5. Teaching Load: Existing agreement provision.

6. Dues Check Off: Existing agreement provision.

7. Longevity Pay: Existing Agreement provision.

8. Extra-Curricular Salary Schedule: Existing agreement provision with the exception of the following positions:

All-School Play	3.5%
Announcers	$10.00/game
Chaperone	$5.00/hour
Girls' Head Basketball	9%
Girls' Assistant Basketball	7%

9. At such time as an agreement is reached, the terms of the agreement shall apply from August 26, 1979 through August 26, 1980. All salary adjustments and benefit modifications shall be made retroactive to August 26, 1979.

   The existing Terms of Agreement provision shall remain unchanged in paragraphs A and C except for modifications in dates.

10. Discipline Clause: The existing agreement provision.

Five issues remained unresolved and these were certified in the final offers of the parties by the WERC as follows:

Employer Final Offer:

1. Salary Schedule 1979-1980 (Article VI)

   The base salary is to be $9,950 with the schedule adjusted accordingly.

2. Grievance Procedure (Article IV)

   1. Purpose - The purpose of this procedure is to provide an orderly method for resolving differences arising during the term of this Agreement. A determined effort shall be made to settle any such difference through the use of the grievance procedure, and there shall be no suspension of work or interference with the operation during the term of the Agreement.

   2. Definition - For the purpose of this Agreement a grievance is defined and limited to a complaint regarding the interpretation, application or enforcement of a specific provision of this Agreement by an individual teacher or a group of teachers.

   3. Grievances shall be processed in accordance with the following procedure:

STEP 1

   a. An earnest effort shall first be made to settle the matter informally between the teacher and his immediate supervisor.

   b. If the matter is not resolved, the grievance shall be presented in writing by the teacher to the immediate supervisor within five school days after the facts upon which the grievance is based first occur. The immediate supervisor shall give his written answer within five school days of the time the grievance was presented to him in writing.

STEP 2

   If not settled in Step 1, the grievance may within five school days be appealed to the administrator. The administrator shall give a written answer no later than ten school days after receipt of the appeal.

STEP 3

   If not settled in Step 2 the grievance may within ten school days be appealed to the Personnel Committee of the School Board. The Personnel Committee shall give a written answer within thirty school days after receipt of the appeal.

STEP 4

If the Personnel Committee does not respond as in Step 3, the grievance shall be immediately settled in favor of the party or parties submitting the grievance.

4. The parties agree to follow each of the foregoing steps in the processing of a grievance. If the employer fails to give a written answer within the time limits set out for Steps 2-3, the employee may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped; unless the prescribed time limit is extended, in writing, by the mutual agreement of the parties.

5. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s), of the Agreement alleged to have been violated, and the relief sought.

6. The employee's representative association, at the teacher's request, may assist in processing the grievance at any step provided that an aggrieved teacher may present a grievance alone and have it determined; or may be represented at any stage of the grievance by another person or representative of his/her choice.

7. Binding Arbitration

If a solution is not reached in Step 4 such grievance may be submitted to final arbitration by either party. The procedure is commenced by either party filing with the other party a notice of intention to submit the grievance to an arbitrator. It is mutually agreed between the parties that if a notice of intention to arbitrate in not filed within ten (10) work days after completion of Step 4, the matter is deemed resolved. The parties meet within ten (10) working days of receipt of this notice to attempt to select an arbitrator by mutual agreement. The expense of the arbitrator shall be divided equally by both parties. If the parties are unable to agree on an arbitrator at this meeting, the arbitrator shall be selected by the following procedure:

The Board and Association will within five (5) days of said request notify the Wisconsin Employment Relations Commission of their desire for the Commission to submit a list of five (5) names for consideration. Within five (5) days of receipt of the names, the parties shall then alternately strike a name from the list, and the fifth and remaining name shall be the arbitrator. The loser of a coin toss will strike first.

The arbitrator shall issue no opinions that will modify or amend any terms of this agreement. The decision of the arbitrator shall be final and binding upon both parties.

At any step of the above procedure the aggrieved parties shall be allowed representation by the ASSOCIATION or other parties of his own choice. It is further agreed between the parties that any time limits set forth above may be waived by mutual consent of the parties in writing.

If a grievance extends beyond the school year then the term "working days" shall mean Monday through Friday (5 days).

3. Teacher Benefit Policies (Withholding Increment and Non-Renewal of Teacher Contracts) (Article V)

9. Withholding Increment and Non-Renewal of Teachers Contracts

Subject only to the following specific additional provisions, Section 118.22 of the Wisconsin Statutes shall govern the renewal and non-renewal of teacher contracts.

If the School Board votes to consider a teacher for non-renewal or to consider withholding an increment or salary advance from a teacher, then written notice of the Board's decision shall be given to the teacher together with a written list of the reasons therefore within the time provided by Section 118.22, Wisconsin Statutes, such notice shall also advise the teacher of his right to a conference thereon with the School Board at a specified time and place if notified in writing by the teacher within five days after receipt of the notice that he will appear at the conference. The teacher may be represented at the conference which shall be conducted in private.

4. Teacher Benefit Policies (Layoffs) - (Article V)

20. Layoffs

If necessary to decrease the number of teachers for any reason, the School Board may lay off the necessary number of teachers. Teacher layoffs will be by departments in grades sixth (6) thru twelve (12), grade level in grades kindergarten thru five (5), and the special areas by certification with the most qualified teachers being retained in all cases. In the event two teachers are deemed equally qualified, the teacher with the greatest length of departmental service will be retained. No teachers may be prevented from securing other employment during the period he/she is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies. The recall rights last only 12 months from date of layoff. Extra curricular assignments will be considered on an equal basis in respect to teacher performance and length of service in determining who will be laid off.

5. Teacher Benefit Policies (Maintenance of Standards) - (Article V)

This section is to be dropped from the new master agreement.

Association Final Offer:

1. Salary Schedule (Article VI)

The base salary to be $10,000 with the schedule adjusted accordingly.

2. Grievance Procedure (Article IV)

1. Purpose - The purpose of this procedure is to provide an orderly method for resolving differences arising during the term of this Agreement. A determined effort shall be made to settle any such difference through the use of the grievance procedure, and there shall be no suspension of work or interference with the operation during the term of the Agreement.

2. Definition - For the purpose of this Agreement a grievance is defined and limited to a complaint regarding the interpretation, application or enforcement of a specific provision of this Agreement by an individual teacher or a group of teachers.

3. Grievances shall be processed in accordance with the following procedure:

STEP 1

a. An earnest effort shall first be made to settle the matter informally between the teacher and his immediate supervisor.

b. If the matter is not resolved, the grievance shall be presented in writing by the teacher to the immediate supervisor within five school days after the facts upon which the grievance is based first occur. The immediate supervisor shall give his written answer within five days of the time the grievance was presented to him in writing.

STEP 2

If not settled in Step 1, the grievance may within five school days be appealed to the administrator. The administrator shall give a written answer no later than ten school days after receipt of the appeal.

STEP 3

If not settled in Step 2, the grievance may within ten school days be appealed to the Personnel Committee of the School Board. The Personnel Committee shall give a written answer within thirty school days after receipt of the appeal.

STEP 4

If the Personnel Committee does not respond as in Step 3, the grievance shall be immediately settled in favor of the party or parties submitting the grievance.

4. The parties agree to follow each of the foregoing steps in the processing of a grievance. If the employer fails to give a written answer within the time limits set out for Steps 2-3, the employe may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped, unless the prescribed time limit is extended, in writing, by the mutual agreement of the parties.

5. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s) of the Agreement alleged to have been violated and the relief sought.

6. The employe's representative association, at the teacher's request, may assist in processing the grievance at any step provided that an aggrieved teacher may present a grievance alone and have it determined; or may be represented at any stage of the grievance by another person or representative of his/her choice.

7. Binding Arbitration

If a solution is not reached in Step 4 such grievance may be submitted to final arbitration by either party. The procedure is commenced by either party filing with the other party a notice of intention to submit the grievance to an arbitrator. It is mutually agreed between the parties that if a notice of intention to arbitrate is not filed within ten (10) work days after completion of Step 4, the matter is deemed resolved. The parties meet within ten (10) working days of receipt of this notice to attempt to select an arbitrator by mutual agreement. If the parties are unable to agree on an arbitrator at this meeting, then the arbitrator shall be selected by the following procedure:

The Wisconsin Employment Relations Commission shall be asked to appoint a member from the Commission or its staff to arbitrate the dispute.

The arbitrator shall issue no opinions that will modify or amend any terms of this agreement. The decision of the arbitrator shall be final and binding upon both parties.

Each party shall be responsible for the expenses of its representatives and witnesses in this hearing. The fees and expenses of the arbitrator shall be shared equally by the parties.

At any step of the above procedure the aggrieved parties shall be allowed representation by the Association or other parties of his own choice. It is further agreed between the parties that any time limits set forth above may be waived by mutual consent of the parties in writing.

If a grievance extends beyond the school year then the term "working days" shall mean Monday through Friday. (5 days)

3. Nonrenewal of Teacher Contracts - (Article V - 9)

Add to the last paragraph:

"No teacher shall be nonrenewed, disciplined, or have their increment withheld without just cause. This provision shall not apply to teachers in their first two years of employment with the school district."

4. Layoffs - (Article V - 21)

"if necessary to decrease the number of teachers for any reason, the school board may lay off the necessary number of teachers. Teacher layoffs will be by area of certification with the teachers having greatest seniority within their area being retained; provided, however, that the teachers remaining are capable and qualified as demonstrated by their past ability and performance to perform the necessary services remaining. No teachers may be prevented from securing other employment during the period he is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. Teachers shall be eligible for recall for 15 months from the date of layoff. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies.

Statutory Criteria:

The discussion set forth below will evaluate each of the final offers of the parties, taking into consideration the following statutory criteria found at Section 111.70 (4) (cm) 7 Wisconsin Statutes:

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 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 prices 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 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.

Discussion:

1. 1979-80 Salary Schedule

The arbitrator finds the differences in the Employer and Association positions with regard to salary offers minimal and insignificant and therefore will not give controlling weight to this issue. Only $50.00 separates the parties (Employer B.A. minimum offer of $9,950 versus Association offer of $10,000). By applying 111.70

(cm) 7. criteria we find both offers reasonable. Comparisons with similar employees and communities (criterion "d") reveal neither position would alter established relationships in any significant manner. Further, criterion "e" --cost-of-living changes-- as a bench mark indicates both offers are substantially less than general increases in consumer prices over the relevant period.

Under the circumstances, the arbitrator finds little to suggest that either salary offer is more appropriate than the other. Since this issue is not to be determinative in the final analysis, the arbitrator sees no need to indicate a preference for either party's salary offer.

2. Binding Arbitration of Grievances

During the course of negotiations over the 1979-1980 collective bargaining contract the parties agreed to add to the grievance machinery procedure by which unsettled grievances would be submitted to binding arbitration by an impartial third party. In negotiation, however, impasse occurred over the form which binding arbitration was to assume. Thus, the Employer's final offer stipulated selection of the arbitrator from a list provided by the Wisconsin Employment Relations Commission (WERC) with the parties sharing equally in the costs of said arbitrator. On the other hand, the Association proposed in its offer that the WERC would be asked "to appoint a member from the Commission or its staff to arbitrate the dispute."

Comparability criteria from 111.70 seem to be most applicable for this issue. Review of the submissions of the Employer and the Association indicates no clearcut reference points in either direction. For example the Athletic Conference to which the Employer belongs has three districts using WERC staff arbitrators, three districts using private arbitrators, and three districts with no arbitration of grievances at all.

Going beyond the Athletic Conference, those Districts which in the arbitrator's opinion are most relevant by size and location show a pattern which seems to support the Employer's position but only in a weak fashion. Thus those Districts using private grievance arbitrators are Westfield, Columbus, and Markesan and that using WERC staff is Hustisford.

The importance of using a WERC staff appointed arbitrator resides in the fact that the service is free. If a private arbitrator is employed, the person selected must be reimbursed for fees and expenses, usually on an equal basis between the parties. The Employer's main contention in support of its position of using a private arbitrator is that binding arbitration of any sort was only just granted during the negotiation of the 1979-1980 contract and it is expecting too much for the Association to receive free arbitration as well.

For its part, the Association makes the point that the Association is small with limited resources. By resorting to the WERC for arbitration services the Association would thereby not be denied access to arbitration through an inability to pay.

While there is indeed merit in the Association's arguments the arbitrator finds something to be said for the employer's position as well. Moreover, the pattern of comparables also gives no clearcut demonstration of widespread practice in using or not using private grievance arbitrators. Consequently if the instant case is to swing one way or another it must do so on one or more of the remaining issues.

3. Non-Renewal

The Association's final offer contained a clause which provides that "no teacher shall be nonrenewed, disciplined, or have their increment withheld without just cause". The clause would not apply to teachers in their first two years of employment with the District. The 1978-1979 contract had no language as it would apply such a condition to nonrenewal of contracts and the Employer argues none such is required now.

The Statutory criterion of comparability seems to have some applicability for this issue. Examination of both Association Exhibit 44 and those of the Employer marked 15 through 22 (reproduction of pertinent sections of contracts for Districts in the Athletic conference) show that only two districts have no language governing nonrenewal and a majority employ the term "just cause". The comparables clearly support the Association's position on this issue.

On the other hand, the Employer argues that there have been no negative experiences in terms of nonrenewal and that there is a successful evaluation procedure already in place to handle such questions. There was considerable discussion during the hearing, however, of alleged nonrenewals and the Association sought to document this through its exhibit 46. The Employer challenged the exhibit on various grounds including hearsay and the Arbitrator has chosen therefore to give significance to the exhibit only in a restricted sense. That is, whether the alleged nonrenewals occurred as claimed by the Association is less important than the fact that the District's teachers apparently believe they occurred. The Employer seems to have a credibility problem with regard to its motives and fairness.

It is the arbitrator's conviction that given the generalized use in the Athletic Conference of just cause for nonrenewal and the extent to which the issue is an obvious source of conflict within the Cambria-Friesland District the position of the Association is the more reasonable of the two. In this regard, just cause for nonrenewal is consistent with a practice already accepted by the Employer, that is, just cause for discharge. Further, if the Employer's contention concerning the lack of previous arbitrary nonrenewals and the existence of a successful evaluation system, there should be little need in the future to implement the clause.

4. Maintenance of Standards Clause

The collective bargaining agreement in force at the time of impasse contained a clause (Article V, Section 20) which stated:

"It is hereby agreed that the board of education will maintain facilities, furnishing equipment, supplies, classrooms and classroom sizes at not less than the highest minimum in effect in the district at the time this agreement is signed. Changes may be made by the board of education if the teacher or teachers affected by any change have been notified and consulted."

In its contention that the maintenance of standards clause should be dropped the Employer argues that the impact on the District of the clause is to freeze job conditions for teachers. A number of instances were cited in which the Employer apparently felt no action could be taken without the written acceptance by the particular teacher involved.

The undersigned holds to the philosophy that if a contract clause to which both parties have previously agreed is to be ordered dropped a showing of significant and grievous damage must be demonstrated by the petitioning party. Thus, in the instant case the Employer carries the burden of proving that retention of the offending clause creates substantial harm. Otherwise, it is the parties' own responsibility through negotiation and compromist to remove what was earlier mutually agreeable.

In examining this issue, two points stand out. First a reading of the clause in question suggests that prior approval from an affected teacher is not required before a change can be made. The pertinent language specifies only prior notification and consultation. That the Employer has interpreted the clause to mean mutual consent as well has apparently occurred by the practice of the District. It is significant to note that no grievances have been filed over the Standards clause. Thus, if there is a freeze on teacher job conditions it is a consequence of the way in which the Employer has chosen to read the clause.

Second, although a number of instances of restrictions on changes were cited by the Employer none would seem to fit the categories of significant and irreparable harm to the District. For example, one such instance cited was that a teacher required shelves be built in the room to which she had been assigned before she would move.

On balance, the arbitrator does not find the Employer's position on this issue compelling. No demonstrable harm seems to have occurred but more importantly whatever problems which the Employer sees associated with the clause seem amenable to modification through a different reading of the words of the clause.

5. Layoff

The Association has proposed that the existing contract language covering layoffs be modified in the following manner: layoffs will be by length of service by areaof certification provided remaining teachers are capable and qualified. The later would be demonstrated by past ability and performance. The current agreement

specifies layoff by department with the most qualified teacher retained. Only where qualifications are equal would length of service be controlling.

The employer, in its final offer, proposed to broaden the areas by which layoff could occur--from department to grade levels K-5--but basically would leave unchanged the criterion of retention as "the most qualified teachers." Seniority would continue to be considered only when two teachers were equally qualified.

According to testimony at the hearing there have been few layoffs in recent years. Yet both parties are cognizant of the potential for layoffs inherent in the current economic climate together with declining enrollments. The Association's position is that the above cited conditions necessitate an orderly manner of layoffs which presumably seniority as the primary criterion for retention would provide.

On the other hand the Employer fears that the use of seniority when coupled with districts whose bounds are set only by areas of certification will result in widespread bumping and retention of the least qualified when reductions in force are required.

The concerns of both Employer and Association are well founded and therefore not to be dismissed lightly. The employees' need for equitable treatment through fair administrative policies must be counterbalanced by an administration's need to carry out its responsibilities to parents, students, and taxpayers in an efficient and reasonable manner.

Both parties cite Statutory criterion, (d), i.e. the so-called comparables, and therefore it is an appropriate place to begin our examination of this issue. The Employer has challenged the validity of most of the Association's exhibits dealing with the layoff issue (numbers 28, 29, 30 and 31). Under the circumstances, the arbitrator has found it instructive to examine directly the layoff clauses, which had been summarized in the Association's challenged exhibits. This was possible since both Employer and Association provided as exhibits the relevant contract clauses.

The Association argues that the Athletic conference Districts show a generalized useage of seniority as the first criterion for layoffs. While the Employer contests this, the arbitrator's own reading of the layoff clauses contained in the Districts of the conference gives evidence supporting the Association's conclusion. Thus excluding the Employer six of the remaining nine school districts use seniority as the first or sole criterion in layoffs. Two districts have mixed criteria in which seniority has secondary consideration and one district apparently has no contract language on the subject. Moreover, the application of seniority in three cases is by district and in the others by teaching assignment, grade level, or certification, among others. In nearly each case also the language stipulates that the remaining teachers be capable and qualified to perform the remaining services "as demonstrated by their past ability and performance . . . " This phraseology is almost identical to that contained in the Association's final offer on the layoff issue.

An examination also of the school districts in the conference using seniority for layoffs reveals no tendency to limit the practice to the largest districts. Green Lake, Princeton, and Randolph which are all nearly equal in size to the Employer use seniority as does Westfield, the very largest district nearly three times the size of Cambria-Friesland.

Beyond the comparables, however, one needs also to look at the contentions of the parties concerning the potential impact of the Association's layoff clause. For example the Employer raised the prospect of a musical chairs form of bumping if area of certification set the boundaries and of less qualified teachers remaining if seniority was the primary criterion for retention.

It seems to the arbitrator that adequate safeguards are present in the Association's layoff clause through the stipulation that "the teachers remaining are capable and qualified as demonstrated by their past ability and performance to perform the necessary services remaining." This would seem to exclude those teachers with no or little experience in an area who sought to qualify themselves merely by reference to a certification, major or minor.

In addition, the arbitrator also finds himself uncomfortable with the language in the Employer's layoff clause which requires that "the most qualified teachers be retained in all cases." Such language as "the most qualified" would seem to the undersigned to present numerous problems of interpretation and application which under challenge might be difficult to sustain.

Finally, the undersigned notes that in nearly all the districts in the conference employing seniority as the primary factor in retention the area of application is as broad or broader than that contained in the Association's final offer.

Conclusions:

After due consideration of each of the issues discussed above, the undersigned concludes, based on the statutory criteria, the evidence submitted at the hearing, and the arguments of the parties that the Association's offer in this matter is preferred and therefore makes the following:

AWARD

The final offer of the Association is to be incorporated into the Collective Bargaining Agreement for the period beginning August 26, 1979 through August 26, 1980.

Dated at Madison, Wisconsin, this 5th day of August 1980.

Richard U. Miller,
Mediator-Arbitrator