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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of MERRILL AREA EDUCATION ASSOCIATION To Initiate Mediation/Arbitration between said Petitioner and MERRILL AREA PUBLIC SCHOOL DISTRICT	Case No. XIII No. 26056 MED/ARB-679 Decision No. 17955-A

Appearances:

Ms. Mary Virginia Quarles, UniServ Director, Central Wisconsin UniServ Council-West, appearing on behalf of the Association.

Mr. William G. Bracken, Consultant, Wisconsin Association of School Boards, appearing on behalf of the Employer.

ARBITRATION AWARD:

On July 31, 1980. the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Merrill Area Education Association, referred to herein as the Association, and Merrill Area Public School District, referred to herein as the Employer. Pursuant to the statutory responsibilities and upon receipt of a timely filed petition filed by a sufficient number of citizens within the jurisdiction served by the Employer, the undersigned, on October 15, 1980, conducted public hearing at Merrill, Wisconsin, during which the Association and the Employer explained their final offers and presented supporting arguments for their respective positions to the public, and members of the public were afforded an opportunity to be heard. At the conclusion of public hearing on October 15, 1980, the undersigned conducted a mediation meeting between the Association and the Employer, which failed to resolve the matters which were in dispute between the parties. On October 31, 1980, the Association and the Employer executed waiver of the statutory provisions of 111.70 (4)(cm) 6.c. with respect to the requirement that the mediator-arbitrator provide written notice of intent to arbitrate and with respect to the requirement that the parties be afforded the opportunity to withdraw their final offers. Pursuant to prior notice evidence was taken in arbitration hearing over the matters remaining in dispute between the parties on October 31, 1980, at Merrill, 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, however, briefs were filed in the matter which were exchanged by the Arbitrator on December 8, 1980.

THE ISSUES:

The impasse in these proceedings occurred pursuant to a 1980-81 contract reopener of a Collective Bargaining Agreement which became effective August 15, 1979, and remains in full force and effect through August 14, 1981. The reopener language found at Section 40.2 provides: "Salary schedule only (Base-Vertical--Horizontal-Longevity) Negotiations on the contract reopener shall begin on or about February 1, 1980. The proposals submitted by both parties shall contain the rationale and the cost of the proposal." The dispute is limited to a salary schedule dispute, and the final offers as certified by the Wisconsin Employment Relations Commission set forth below reflect the parties' final positions.

ASSOCIATION FINAL OFFER:

BA BASE - $11,550.00

HORIZONTAL INCREMENT - $315.00

VERTICAL INCREMENTS - 4% - steps 0-2
4.5% - steps 3-14

LONGEVITY - $289.00

TOP SALARY STEP (MA + 36, includes longevity) - $23,081.00

EMPLOYER FINAL OFFER:

BA BASE - $11,550.00

HORIZONTAL INCREMENT - $255.00

VERTICAL INCREMENTS - 4% - steps 0-4
4.5% - steps 5-14

LONGEVITY - $300.00

TOP BASE SALARY (MA + 36, includes longevity) - $22,186.00

DISCUSSION:

The sole issue disputed by the parties pursuant to the wage reopener is the salary schedule for the school year 1980-81. The decision in the instant matter will be determined by the application of the statutory criteria found at Wisconsin Statutes 111.70 (4)(cm) 7. The parties directed their evidence and argument to only certain of the criteria and, therefore, the undersigned will concern himself primarily with the criteria to which the parties directed their evidence and argument. The Association primarily relies on the criteria found at 111.70 (4)(cm) 7, d and e, the comparables and cost of living. The Employer also directs evidence and argument to criteria d and e, and additionally relies on criteria b, c, f, g and h, which are, the stipulations of the parties, overall compensation, changes in foregoing circumstances, and other factors normally or traditionally taken into consideration.

The undersigned has reviewed the evidence and argument presented by each of the parties, and after careful consideration has concluded that the outcome of this dispute will be determined primarily by evaluating the final offers of the parties against the criteria set forth at d, e and h. Therefore, the undersigned will first serially discuss the final offers as they pertain to each of the foregoing criteria.

CRITERIA d - THE COMPARABLES

Both parties direct evidence and argument to criteria d, the comparables. However, the parties are not in agreement as to what constitutes the comparables in this dispute. The Association relies upon the Wisconsin Valley Athletic Conference in their submissions for comparability purposes. The Employer offers a broader representation of comparables in his evidence by submitting evidence which includes all of the schools of the Wisconsin Valley Athletic Conference, and additionally, the Employer includes four contiguous school districts of Athens, Medford, Tomahawk and Marathon. Thus, both parties submit evidence and argument with respect to seven other school districts that they both consider to be comparable, i.e., Antigo, D.C. Everest, Marshfield, Rhinelander, Stevens Point, Wausau, Wisconsin Rapids, leaving the four aforementioned districts disputed as to their comparability.

A review of the evidence satisfies the undersigned that for the purposes of applying the comparables, the primary comparables should be limited to the

athletic conference. The Association argues that bargaining history in prior rounds of bargaining established that the parties themselves recognize the comparables to be the athletic conference. The Employer, in direct contradiction to the Association position, argues that the bargaining history does not show that the parties have relied on the athletic conference as the comparables in prior rounds of bargaining. The evidence submitted at hearing with respect to the bargaining history is less than persuasive in establishing that the parties themselves, in prior rounds of bargaining, have recognized the athletic conference as the sole comparables. There is testimony in the record to the effect that certain conference schools have been discussed at the bargaining table and comparisons to those schools have been made, however, there is also testimony in the record which establishes that the Employer and the Association never agreed on a list of comparable schools in prior rounds of bargaining, and further testimony establishing that the Board never furnished information in bargaining which would lead to the conclusion that the Employer himself limited his comparisons to that of the athletic conference. While the evidence fails to satisfy the undersigned that the bargaining history supports the Association contention that the comparables should be limited to the athletic conference; the record also fails to establish that the comparables should not be limited to the athletic conference. Consequently, bargaining history cannot be held to here establish the Association's or the Employer's comparability group.

The Employer contends that Medford, Athens, Marathon and Tomahawk should be comparable, because they are geographically contiguous, and because they are more rural in character, as is the school district of Merrill. The undersigned is persuaded that the four disputed districts should be included in the comparables for the reasons urged by the Employer, but as a secondary tier of comparables. While the record establishes that Medford, Athens, Marathon and Tomahawk are contiguous to Merrill: and that they are in the same labor market area; and that they have the same rural flavor as Merrill; the record also shows that the comparative size of the four contiguous districts is considerably smaller than Merrill, and consequently, will be looked to only as a secondary group of comparables if it becomes necessary to do so.

Having made the determination as to what comparisons should be made for comparability purposes, the undersigned will examine various points of the salary schedule to determine how the final offers of the parties affect the comparative rankings and sums of money paid to employees at the points of comparison. Obviously no attention need be given to the BA base salary, since the parties have both agreed that the amount paid at the BA base should be $11,550.00. At the BA maximum, the Employer offer would establish a maximum of $17,558.00, and the Association offer establishes a maximum of $17,674.00. Historically, the Employer ranked third in the athletic conference in 1978-79 at the BA maximum, and fourth in the athletic conference in 1979-80 at the BA maximum. Neither party's offer for 1980-81 changes the relative ranking within the conference at the BA maximum compared to the year 1979-80. The undersigned, therefore, concludes that the evidence is inconclusive when making the comparisons at that point of the salary schedule.

With respect to the MA column, the Employer offers $12,570.00 at the minimum, and $19,676.00 at the maximum, compared to the Association offer of $12,810.00 at the minimum and $20,170.00 at the maximum. Historically, the Employer has ranked sixth at that comparison point of the salary schedule among the primary comparables, and will continue to be ranked sixth regardless of which offer is adopted. When considering the MA maximum the Employer ranked as follows historically: 1978-79 - seventh; 1979-80 - eighth. The ranking will remain eighth regardless of which final offer is accepted. Again, the comparisons at the MA steps are inconclusive when considering the primary comparables.

When considering the schedule maximum the Employer offers $21,886.00 and the Association proposes $22,792.00. Historically, the salaries at the schedule maximum ranked fourth among the primary comparables for the year 1978-79, and fifth among the primary comparables for the year 1979-80. The Employer offer in this dispute would rank this District third at the schedule maximum, as would the Association offer when considering only rankings among the primary comparables

where settlements have been achieved. Therefore, with respect to maximum at the salary maximum, irrespective of which offer is selected, the primary comparables are unpersuasive.

While the rankings among the primary comparables are unpersuasive, since neither offer leads to a clear cut preference for either the Employer or the Association offers, consideration of the evidence with respect to the differential between the offers of the parties in the instant dispute, and the top and average salaries paid among the comparable districts, remains to be considered. The evidence shows that when comparing the BA lane maximum, the instant District in 1978-79 was $815.00 below top salary, in 1979-80, $932.00 below top salary, and that for 1980-81, the disputed year, the Employer offer would result in the BA maximum being at $1,042.00 below top salary, while the Association offer would be at $926.00 below maximum salary. In comparison to average salary in 1979-80 at BA maximum, the Employer was $48.00 below the average salary, and in 1979-80 was $51.00 below the average salary. In 1980-81 the Employer's offer would place them at $169.00 below the average of settled contracts, while the Association offer would place them at $53.00 below the average of settled contracts. Thus, with respect to the BA maximum and average salaries paid among comparables, the Association offer more closely parallels the prior historic relationships than does that of the Employer.

With respect to the MA schedules at the top and average, 1978-79 establishes that the instant District was $1,308.00 below the top salary and $537.00 below the average salary. In 1979-80 this District was $1,205.00 below the top salary and $535.00 below the average. In 1980-81 the Employer's offer would result in this District being $1,923.00 below top salary and $1,022.00 below average salary among settled agreements. The Association's offer would establish a differential of $1,429.00 below top salary and $528.00 below average salary among settled Contracts. Again, the Association offer more closely parallels the historic relationships between top and average.

With respect to the schedule maximums in 1978-79 this District was $1,045.00 below top salary and $165.00 above the average salary. In 1979-80 this District was $949.00 below the top salary and $61.00 above the average salary among the comparables. In 1980-81 this District ranks $689.00 below the top salary and $255.00 above the average, among settled contracts.[1] The Association ranks $83.00 below the top and $861.00 above the average among settled contracts. Thus, when considering the schedule maximum the Board offer improves the schedule maximum in relationship to the top salary and the average salary paid at that point as does the Association offer. Obviously the improvement in the relationship at the salary maximums among the primary comparables is greater than that of the Employer. Consequently, since there is no evidence to support the greater improvement in that relationship proposed by the Association, the Employer's offer is superior at that point in the schedule.

In considering the comparison points above, the Association offer more nearly parallels the historical relationship among comparables when considering comparisons to the top of the respective points of comparison, as well as the average salaries paid in the BA lane and the MA lane. The Employer offer is preferred in the comparisons at the schedule maximum. It, therefore, is concluded that the Association has made a marginally superior case for its schedule than has the Employer, however, the differences are not so substantial that the comparables should determine the outcome of this dispute, and the undersigned, therefore, turns to other criteria for that determination.

CRITERIA e - COST OF LIVING

Both parties to the dispute have provided considerable documentary evidence

1/ The foregoing data is taken from Association Exhibit #37, and the exhibit erroneously shows the Board offer being $255.00 below the average of settled contracts. The Arbitrator has verified the calculation and is satisfied that the Board offer is actually $255.00 above the average of the settled contracts and has, therefore, corrected the data.

with respect to the cost of living criteria. The Association evidence is directed toward the percentage increases in the Consumer Price Index issued by the Bureau of Labor Statistics, as well as evidentiary submissions supporting the validity and reliability of the CPI. The Employer offers documentary evidence with respect to the CPI, but also offers evidence with respect to the Personal Consumption Expenditures Implicit Deflator, hereafter PCE. Additionally, the Employer offers evidentiary submissions challenging the validity of the CPI as a reliable tool to measure inflation and proposing that the PCE is a more reliable criteria to measure the rate of inflation. The Employer further cites prior interest arbitration awards, where in Clark County (Traffic and Sheriff's Department), WERC Dec. No. 17584-A (September 4, 1980), Arbitrator Flaten held that the CPI could no longer be considered as anything but a general reference point of economic well-being. Additionally, the Employer cites Buffalo County (Dept. of Social Services), WERC Dec. No. 17744-A (August 27, 1980), wherein Arbitrator Christenson concluded that because the statute does not specify the CPI as the standard for measuring average consumer prices, arbitrators are free to consider other relevant and reliable indicators of consumer prices or cost of living. Finally, the Employer cites Neosho School District, WERC Dec. No. 17305-A (May 14, 1980), where Arbitrator Weisberger held that although all bargaining unit members will be adversely affected by recent cost-of-living increases, few employees (public or private sector) can reasonably expect absolute protection against the inflation spiral. The best that most employees can currently expect is that they will not slip too far behind.

The undersigned has considered the evidence and the arguments of the parties, including the cited cases of the Employer, with respect to the cost of living criteria. It is clear to the undersigned that the arbitral pattern is to consider the PCE as well as the CPI in these matters; and further, that the cost of living criteria is not intended as a guarantee that there will be no slippage of real spendable income by reason of the effects of inflation. As the Association argues in its brief, even if their offer were accepted, the salary increase which they propose would not come to the 12.8% which the CPI increased from August, 1979 to August, 1980. Consequently, the undersigned concludes that the proper measure of the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and associations have settled for who experienced the same inflationary ravages as those experienced by the employees of the instant Employer. The voluntary settlements entered into in the opinion of the undersigned create a reasonable barometer as to the weight that cost of living increases should be given in determining the outcome of an interest arbitration. The employees as a party to interest arbitration are entitled to no greater or less protection against cost of living increases than are the employees who entered into voluntary settlements. Thus, the patterns of settlements among comparable employees experiencing the same cost of living increases should and will be the determining factor in resolving this dispute.

CRITERIA h - OTHER FACTORS NORMALLY CONSIDERED - PATTERNS OF SETTLEMENT

The values of the respective offers of the parties are disputed. The Association uses a different method of costing the value of the final offers than does the Employer. The Employer has submitted four alternate costing methods, while the Association submits one method. Method No. 1 of costing used by the Employer assumes the return of the 199.75 FTE's from 1979-80, and improves their position by one year of service for the year 1980-81. (Employer Exhibit #17, A, B and C) The Association submits costing on the same basis. (Association Exhibit #5) The undersigned makes no findings or conclusions with respect to which of the proposed costing methods submitted by the Employer is proper. Employer Costing Method #1 is selected for purposes of this discussion because it coincides with the method used by the Association in their Exhibit #5. Using the same methods, however, the parties establish different values for the offers. The Association calculates the Employer offer at 10% and their final offer at 12%. The Employer calculates the value of their final offer at 10.9% and the Association final offer at 13.1%. Comparisons of Association Exhibit #5 with Employer Exhibit #17-B establish that the discrepancies between the two exhibits are primarily found at two points, i.e., salaries and social security.

With respect to salary the Employer costs salaries at approximately $22,000.00 more than the Association costs reflect for both the Employer and the Association final offers for the year 1980-81. Similarily the Employer costs the value of social security at approximately $13,000.00 more than does the Association for both the Board and the Association final offers for the year 1980-81. There is a sum of approximately $35,000.00 difference in the salary and social security calculations of the parties which represents an .87% difference in the values of the offers. The difference in the calculations of the values as stated previously is slightly less than 1% when considering the Board's final offer, and slightly more than 1% when considering the Association offer, and it is obvious that the differences in costing of salary and social security account for almost all of that difference.

The social security differential is readily apparent because the Employer in his costing took into account the increased social security costs of January 1, 1981, from 6.13% to 6.65%, which the Association did not. Thus, the roll up value of the Employer's offer is understated in the Association offer, and the Arbitrator will rely on the Employer costing with respect to social security.

The salary differential can be attributed primarily to two areas. First, the record establishes that the Association failed to project summer school and extended contract costs when establishing the worth of the Employer and their own final offer. The record further establishes that the salaries paid for 1979-80 included summer school and extended contracts in that total figure, and the record further establishes that the total salary figure for the year 1979-80 is the same number used by both parties. It is axiomatic that if extended contracts and summer school salaries are included in the base here for determining salaries paid in that year, they must also be included in the calculations for determining the cost of the offers which are in dispute. Since the Association failed to do so, the undersigned concludes that the Employer's calculation is the proper method in so far as extended contracts and summer school calculations are concerned, resulting in an understatement by the Association of the values of the offers.

The second area of difference in establishing the worth of the offers deals with horizontal movement on the salary schedule. The Employer includes horizontal movement on the schedule. The Association does not. The undersigned is unable to distinguish horizontal movement from vertical movement on the salary schedule for costing purposes. Since both parties recognize that vertical movement on the salary schedule should be calculated for costing purposes, the undersigned concludes that it is also proper to cost the horizontal movement where those costs are known. The undersigned, therefore, concludes that the Employer's costing is the more reliable and resolves the differential in the value of the salary costing in favor of the Employer.

Having resolved the differences in costing methods, the undersigned concludes that using the Association method of costing, which is identical to Employer's Method #1, the values of the offers here expressed as a percentage are 10.9% for the Employer and 13.1% for the Association. A review of the primary comparables establishes from Employer Exhibit #20 that the following percentage settlements have been entered into:

Antigo	10.9%
Rhinelander	11.1%
Wausau	9.9%
Wisconsin Rapids	10.5%
Stevens Point	10.8%

The testimony in the record establishes that the costing calculations to establish the foregoing percentages of settlement are the same methods used in costing Method #1 of the Employer and the method used by the Association. The undersigned concludes, therefore, that the comparisons are reliable, and further concludes that the Employer offer here of 10.9% clearly falls within the patterns of settlement established among the comparables, which range from 9.9% to 11.1%. It is equally obvious that the Association offer of 13.1% exceeds the patterns of settlements by a significant margin. Clearly, then, the patterns of settlement among comparative districts, favor the selection of the Employer offer.

SUMMARY AND CONCLUSIONS:

In evaluating the final offers of the parties, the undersigned has concluded that comparison of comparable wages narrowly favors the Association position in this dispute. The consideration of the cost of living criteria has been determined to be governed by the patterns of settlement among settled comparable districts and unions who have experienced the same inflationary environment as the parties here have experienced. The undersigned has further determined that the patterns of settlement clearly establish a preference for the Employer offer. The undersigned now determines that because the Employer's offer falls within the high range of the patterns of settlement among comparable employers and associations, whereas the Association's final offer exceeds that pattern by a considerable amount; the patterns of settlement which are so clearly in the Employer's favor outweigh the narrow preference for the Association's final offer when considering comparable wages. The Employer has relied on other statutory criteria which the undersigned has considered, however, in view of the foregoing findings and conclusions it is not necessary to address the evidence or argument directed toward the other criteria upon which the Employer has relied.

After consideration of all of the evidence, the argument of the parties, and pursuant to the statutory criteria and the discussion set forth above, the undersigned makes the following:

AWARD

The final offer of the Employer, along with stipulations of the parties, is to be incorporated into the Collective Bargaining Agreement between the parties, which became effective August 15, 1979, and remains in full force and effect through August 14, 1981, pursuant to the wage reopener provisions of the Agreement found at Section 40.2.

Dated at Fond du Lac, Wisconsin, this 30th day of January, 1981.

Jos. B. Kerkman,
Mediator-Arbitrator

JBK:rr