WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE MEDIATOR-ARBITRATOR

* *

In the Matter of the Arbitration Between *

BROWN DEER EDUCATION ASSOCIATION *

and *

SCHOOL DISTRICT OF BROWN DEER *

* *

Case XV
No. 26131
Decision No. 18064-A
MED/ARB 704

OPINION AND AWARD

APPEARANCES:

For the Association: Patrick A. Connolly,
Executive Director,
North Shore United Educators,
Milwaukee.

For the Employer: Steven B. Rynecki, Esq., Milwaukee

BACKGROUND

On May 5, 1980, the Brown Deer Education Association (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate mediation-arbitration pursuant to Section 111.70(4)(cm)(6) of the Municipal Employment Relations Act (MERA) to resolve a collective bargaining impasse between the Association and the School District of Brown Deer (referred to as the Employer or School Board). The Association is the exclusive bargaining representative of a unit of classroom teachers, counselors, media specialists and specialist teachers. The parties' existing collective bargaining agreement expired on August 22, 1980.

On September 12, 1980, the WERC found that the parties had substantially complied with the procedures set forth in Section 111.70(4)(cm) required prior to the initiation of mediation-arbitration and that an impasse existed within the meaning of Section 111.70(4)(cm)(6). On October 1, 1980, after the parties notified the WERC that they had selected the undersigned, the WERC appointed the undersigned to serve as mediator-arbitrator to resolve the impasse pursuant to Section 111.70(4)(cm)(b-g).

A citizen's petition pursuant to Section 111.70(4)(cm)(6)(b) was filed and a public hearing was held in Brown Deer, Wisconsin, on November 6, 1980 at 6 P.M. at which time the parties explained their positions and all citizens who wished to speak were given an opportunity to be heard. Thereafter, on the same evening following the public hearing, the mediator-arbitrator met privately with the parties to mediate the dispute. Since the parties were unable to resolve their differences in mediation, by agreement an arbitration meeting (hearing) took place in Brown Deer, Wisconsin, on November 17, 1980, beginning at 6 P.M. at which time the parties were given a full and fair opportunity to present evidence and arguments. Both parties subsequently filed briefs and reply briefs.

ISSUES AND DISPUTE

While the parties were able to reach agreement on a number of items, the parties were unable to resolve the following two issues:

1) 1980-81 salary schedule; and
2) dental insurance.

The Association's final offer on salary is annexed hereto as Annex A. The

School Board's final offer on salary is annexed hereto as Annex B. The parties' final offers on dental insurance are annexed hereto as Annex C.

The undersigned is required under MERA to choose either the entire final offer of the Association or the entire final offer of the School Board since the parties did not adopt different voluntary impasse procedures.

STATUTORY CRITERIA

In resolving this dispute, the mediator-arbitrator is directed by Section 111.70(4)(cm)(7) to consider and give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interest 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 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.

POSITIONS OF THE PARTIES

In support of its "catch-up" offer, the Association argues that the critical and appropriate comparables in this proceeding are the seventeen suburban Milwaukee County school districts. It contends that this approach conforms to existing arbitral authority, specifically Arbitrator Robert J. Mueller's decision in School District of Mukwonago (10/78) and Arbitrator Joseph B. Kerkman's decision in Ozaukee County Law Enforcement Employees, AFL-CIO and Ozaukee County (6/79). The Association believes that the School Board's heavy reliance upon the Braveland Athletic Conference is ill founded because that Conference includes a number of "suburban/rural" communities which are dissimilar to Brown Deer and the Board's approach generally ignores the substantial influence of the Milwaukee metropolitan area upon the Brown Deer School District.

The Association notes that the Employer has the financial ability to meet the cost of the Association's final offer particularly because Brown Deer is in the middle of the seventeen suburban Milwaukee school districts' rankings as to levy rates, valuation per member, budgeted costs per pupil, income per taxpayer, etc. Put differently, there is no excuse, in the eyes of the Association, for Brown Deer teachers to continue to receive the lowest pay in Milwaukee County.

The Association explains that it developed its salary offer by first constructing a 1979-80 schedule of average salaries per step from its comparable suburban Milwaukee County school districts and then increasing each step by 3% and adding a MA + 30 column. It notes that implementation of its final offer will still leave Brown Deer with the lowest salary schedule of the appropriate comparables while implementation of the Employer's final offer will place the School District's teachers even further behind comparable districts in average salary per teacher. Although there are very few 1980-81 voluntary settlements among the group of Association comparables, the Association points out that its final offer pays salaries which are substantially less than recent settlements in the Milwaukee suburban school districts of Wauwatosa and West Allis and further notes that even the Board's comparable of the Grafton School District settled for a 1980-81 package that provided 12.09% in benefits for teachers, far in excess of the Employer's final offer in Brown Deer.

The Association challenges the structure of the Employer's salary proposal as defying logical explanation except that it is based upon a School Board policy decision to increase teacher salaries by 10.5% and further criticizes the Employer's comparative calculations based upon "average increments", percentage increases (in contrast to dollar wage increases), concentration on limited positions on two lanes only, and general, unverified state-wide data.

As to the dental insurance issue, the Association believes that its offer based upon comparable Milwaukee County school districts is more reasonable and notes difficulties in uneven participation and implementation with the School Board's partial premium payment offer and the desireability of the Association's minimum standards approach to benefits and coverage in contrast to the Employer's "substantially equivalent" approach.

The concluding Association argument relates to cost of living data which, the Association believes, clearly supports its offer. It calculates its salary offer as a 13.12% increase or a total package increase of 13.14% in contrast to the District's salary offer which it calculates as 10.34% or a total package increase of 10.38%. Since the July 1979 to July 1980 CPI increase for the United States was 13.2% (all urban consumers) and 13.04% (wage earners and clerical workers) with corresponding Milwaukee CPI figures of 12.98% and 13.73% respectively, and September 1980 Milwaukee CPI figures of 14.3% and 15.1% respectively, the Association concludes that its offer most closely approximates the specific and important cost of living statutory factor. While the School Board questioned the accuracy of the U.S. Labor Department's CPI data, the Association noted that the Employer offered no valid alternative and thus the Employer's objections, particularly its speculative "deflation rate" of 2% to standard CPI figures, should be disregarded.

For all the above reasons, but primarily because of appropriate comparables and cost of living data, the Association concludes that its final offer provides a reasonable and legitimate "catch-up" package which should be selected.

The Employer

The School Board also argues that statutory factors of comparability and cost of living support its final offer. For the Employer, however, the primary appropriate comparables are the constituent school districts of the Braveland Athletic Conference, not the seventeen suburban Milwaukee County school districts. The Employer believes that its approach is supported by numerous Wisconsin arbitral decisions and challenges the Association's arguments that the cited Mukwonago and Ozaukee County decisions support the Association's reliance on the suburban Milwaukee County school districts. It further objects to the Association's approach to salary and salary comparables as novel, without precedent, and one which it believes precludes meaningful future bargaining between the parties while affirmatively supporting its own use of the Braveland Athletic Conference as a well-established principle of school district administration which has traditionally been an important aspect of a wide variety of school planning. Moreover, the Employer asserts that in the present round of bargaining with the Association, it relied upon the Conference in negotiating 1980-81 co-curricular salary

increases of 10.5%. Finally, the School Board asserts that its offer is consistent with statewide settlements and arbitration awards, is consistent with 1980-81 salary increases granted other Brown Deer School District employees, permits the District to maintain a very favorable student-teacher ratio, provides larger than Association increases for a number of long term School District employees, and recognizes the desireability of an additional MA + 30 lane for teachers with that level of graduate credits,without subjecting Brown Deer taxpayers to unreasonably high tax pressures.

As for the cost of living factor, the School Board contends that its offer is consistent with a reasonable estimate of recent cost of living increases. The Employer objects to the use of the U.S Labor Department's CPI figures without modification. It challenges the 15.1% figure (September 1980 Milwaukee CPI) used in an Association exhibit because it believes that an annual U.S. average is more appropriate and that the relative purchasing power changes are inaccurately reflected by the Association's acceptances of this type of CPI data. Specifically, the Employer asserts that CPI figures are distorted by housing costs and mortgage interest rates and fail to take into account significant changes in American living standards or lifestyle (such as decreased energy use or technological changes which produce items with longer life). Thus, starting with a 12.6% figure (based upon the U.S. City averages released in January 1980), and assuming a reasonable "deflation rate" (or adjustment) of 2%, the District concludes that the appropriate cost of living inflation figure is 10.6%. That adjusted figure is consistent with the Employer's salary offer and is substantially above the "underlying inflation rate" used by the Council on Wage and Price Stability (CWPS). Finally, the School District notes that the cost of living factor adversely affects employers and taxpayers as well as employees.

As for the dental insurance, the School Board supports its proposal as based upon comparability. It points to evidence that one-half of the Braveland Athletic Conference school districts provide no contribution to employee dental insurance. It further argues for its dental insurance offer as incorporating an appropriate "phase-in" feature, i.e. from no premium contribution to one-half.

Based upon all the above arguments, the School Board requests the arbitrator to adopt its final offer pursuant to her consideration of the statutory factors listed in Section 111.70(4)(cm)(7) of MERA.

DISCUSSION

While there are only two issues that the parties have been unable to resolve in negotiations for a successor to their 1979-80 collective bargaining agreement, the 1980-81 salary schedule and dental insurance, this is not a simple interest arbitration case. Remaining differences between the parties range all the way from their cost estimates for implementation of the parties' final offers to what school districts constitute appropriate comparables and debate over the validity of the Bureau of Labor Statistics' CPI data as an accurate measure of national or local cost of living increases. The Association calculates that there is $75,000 separating the parties on salaries using the 1979-80 teacher work force of 169.15 FTEs. The School Board reaches a different result by using the actual 1980-81 staff of 158.1. It estimates the salary difference between the parties to be $85,000. These differences are compounded because to date, among either party's comparables there have been few voluntary 1980-81 teacher settlements, no interest arbitration awards, and, even when there are settlements, there are disagreements on the costing of these settlements.

Of the two issues in dispute, it is quite clear that the dental insurance issue is less critical than the salary issue. Both parties agree that during 1980-81 the Employer should contribute toward the payment of premiums for employee dental insurance although they disagree about the amount. The School Board has offered to pay $11.83 toward family premiums and $4.08 toward single coverage. (These sums represent 50% of current premium costs.) The Association proposal requires the Employer to pay all the premiums beginning March 1, 1981. As to the level of benefits and coverage, the parties agree to look to WEA Trust Dental Plan 704H-1A as a benchmark or standard. The Association's

proposal speaks in terms of benefits and coverage that is no less than this benchmark while the Employer's language uses the "substantially equivalent" approach. The Employer's right to choose the carrier is explicitly recognized in both proposals. Thus the area of disagreement on this issue is narrow. Under either proposal the Employer will contribute all or half of the premiums toward a policy which is either "no less than" or "substantially equivalent" to an agreed upon plan and the Employer has discretion within this framework to select the carrier. Both parties argue that comparability data support its position. In addition, the Employer has argued that "phasing in" of a new fringe benefit is a perfectly acceptable approach while the Association contends that the Employer's proposal will result in troublesome implementation problems. In view of the limited area of disagreement between the parties on this issue, the fact that most of the contract year will have passed before either parties' offer can be implemented, and that implementation disputes may possibly arise under the language of either party's final offer, this arbitrator concludes that a determination on the merits of this aspect of the parties' impasse will not affect the final outcome of this arbitration proceeding, particularly since the very critical issue of salary remains unresolved. Therefore, without determining the extremely close and less critical issue of dental insurance, she will proceed to consider directly the major issue in dispute in this case, the 1980-81 salary schedule.

For the Association, the basic fact of geography that the Brown Deer School District is located in Milwaukee County means that it is appropriate and self evident that Brown Deer teachers look to the rates at which teachers are paid in other suburban Milwaukee County school districts. In the judgment of the Association, therefore, the Brown Deer School District salary schedule should reflect this natural grouping of school districts which share a common geography. Since the existing salary schedule in Brown Deer is so far below suburban Milwaukee County school districts' averages, there is a clearcut need to "catch up", although in structuring its final offer for 1980-81, the Association recognized that it was unrealistic to attempt to "leap-frog its relative position to the mid-range of the comparisons" in one year. The Association notes that implementation of its offer will still leave Brown Deer at the bottom of the suburban Milwaukee County grouping and argues that the Association's approach on comparables is both supported by prior arbitral opinion and is in line with recent 1980-81 voluntary settlements in Wauwatosa and West Allis.

The Employer rejects this Milwaukee County approach of the Association on comparables. For comparables, the Employer looks primarily to the school districts which constitute the Braveland Athletic Conference. It argues that Brown Deer is significantly different from all the suburban Milwaukee County school districts except Glendale-Nicolet which is also in the Braveland Athletic Conference and that its overall 10.5% proposed salary increase keeps Brown Deer in line with the other Braveland Athletic Conference school districts, 1980-81 raises already granted to other Brown Deer employees, and teacher settlements throughout the state, particularly in school districts of similar size.

Before continuing, it should be noted that in this proceeding, both parties have presented final offer salary schedules which differ significantly in structure from Brown Deer's 1979-80 salary schedule. The Association has started with the existing number of steps and lanes, added a MA + 30 lane, and then filled in the figures by averaging 1979-80 salary figures in its comparables and adding 3%. It believes that this method has produced an appropriate sum of catch up dollars. The School Board constructed its final offer by taking the 1979-80 salary schedule, increasing the base salary of each lane by 5.5% and then adding 10.5% to obtain the appropriate sum for each succeeding step except for the maximums. It also added an MA + 30 lane with steps that sometimes are greater than 10.5% and sometimes are less than 10.5% of the previous step.

According to Employer calculations, its final salary offer represents a 10.21% increase and the Association's represents a 12.76% increase. Considering all economic increases for 1980-81, the Employer calculates its package to be 10.55% and the Association's to be 12.89%. The Association's estimates for its salary proposal is 13.12%; for the Employer's offer, 10.34%. The Association also estimates that its package represents a 13.14% increase while the Employer's

package represents a 10.38% increase. (As was noted previously these differences are due to different methods of calculation. The Association utilized the 1979-80 workforce of 169.15 FTEs and moved that entire group onto the 1980-81 final offers while the Employer used the 1980-81 actual workforce of 158.1 FTEs, placed them on the 1979-80 schedule and then moved them onto the 1980-81 proposals.)

From all the evidence presented in this proceeding, it appears reasonable and relevant to this arbitrator to consider salary data from both the Braveland Athletic Conference, as argued by the School District, and from other suburban Milwaukee County school districts, as argued by the Association. The Brown Deer School District is both similar to but also distinct from many of the school districts which constitute these two diverse groupings of comparables. Unfortunately, insufficient data was presented for this arbitrator to determine whether there exists a special sub-grouping of comparables from the Association's Milwaukee County listings and/or from the Employer's Athletic Conference listings which would constitute the primary grouping of comparables in this dispute although she believes that this might be possible with additional data. Looking, therefore, at both sets of comparables and noting the additional fact that 1980-81 data from these comparables are both sparse and disputed, this arbitrator must conclude that neither side has demonstrated that its offer follows established patterns in comparable districts and thus should be clearly preferred.

Any arbitrator faces a dilemma in a case such as this where no clear pattern has yet emerged for 1980-81 teacher salaries in the Milwaukee suburban area. Examination of cost of living arguments unfortunately does not provide a clearcut resolution to this dispute. Milwaukee CPI data must certainly be seriously considered. Arbitral practice and the Wisconsin mediation-arbitration statute require such consideration. However, the meaning of Bureau of Labor Statisics' CPI data is not universally accepted and should be considered in the context of current national economic difficulties. CPI data needs to be examined with some degree of understanding as to its meaning in a time of rapidly escalating energy, transportation, housing, and other costs and a general need for many consumers to reexamine and restructure traditional expenditure patterns. Except where there is a requirement embodied in a statute or employment agreement, CPI figures in this period of economic instability should be used with caution and, while entitled to some weight, they should not be determinative.

Since neither final offer presents an "easy winner" in this proceeding, additional analysis is needed to determine which offer is to be preferred. In interest arbitration cases, it is customary to require special justification by the party proposing an abrupt departure from past or customary practices. In this proceeding, although both sides have proposed salary schedules which incorporate significant (and unprecedented) changes from the 1979-80 Brown Deer teachers salary schedule, the Association's approach represents a greater departure. Its structure and emphasis on average increase per teacher is admittedly unique. While the Association has some valid arguments to justify an increase in excess of the Employer's final offer, it is this arbitrator's belief that the Association has not made suffificently strong arguments to justify its basic approach herein, i.e. that Brown Deer teachers are entitled to receive salaries which approximate average salaries paid in all the other Milwaukee County school districts or salary increases averaging $2321, using its own calculations. This burden or need to present strong justification is particularly important, in this arbitrator's view, because of her conclusion, embodied in a prior interest arbitration award, that once a bargaining demand becomes part of a collective bargaining agreement, absent special circumstances, the fact that the contractual clause was a result of "free collective bargaining" or was a result of "winning" a final offer whole package arbitration award is immaterial in future interest arbitration proceedings.

This conclusion is further supported by other factors which the arbitrator believes to be relevant in this proceeding. These include current reports that some employers and unions in both the private and public sectors are negotiating and renegotiating contracts to save bargaining unit jobs by sacrificing anticipated wage increases, state and federal aids which are uncertain and in jeopardy, serious layoff problems in many school districts due to declining pupil enrollments, and the general pattern of current Wisconsin public sector settlements and awards. For all these reasons, the undersigned has concluded that the

Employer's final offer, although perhaps somewhat on the low side, more closely conforms to the statutory standards applicable to this arbitration proceeding than does the final offer of the Association.

AWARD

Based upon full consideration of the testimony, exhibits and arguments presented by the parties at the arbitration meeting (hearing) and members of the prior public at the public hearing (meeting) and due weight having been given to the statutory factors set forth in Section 111.70(4)(cm)(7) of MERA, the arbitrator selects the final offer of the School District of Brown Deer and orders that the Employer's final offer be incorporated into a written collective bargaining agreement as required by statute.

Madison, Wisconsin
January 14, 1981

June Miller Weisberger
Mediator-Arbitrator

SCHOOL DISTRICT OF BROWN DEER
1980-81 SALARY SCHEDULE

STEP	BA LEVEL I	BA+15 LEVEL II	BA+30 LEVEL III	MA LEVEL IV	MA+15 LEVEL V	MA+30 LEVEL VI
1	11,841	12,081	12,322	12,738	13,199	13,767
2	12,351	12,607	12,916	13,464	13,938	14,518
3	12,863	13,139	13,511	14,146	14,625	15,217
4	13,374	13,828	14,162	14,861	15,345	15,942
5	14,039	14,531	14,866	15,555	16,043	16,649
6	14,690	15,167	15,528	16,251	16,740	17,354
7	15,356	15,860	16,204	16,960	17,458	18,075
8	16,026	16,544	16,892	17,675	18,172	18,812
9	16,706	17,245	17,596	18,390	18,901	19,548
10	17,382	17,928	18,281	19,120	19,635	20,291
11	17,915	18,489	18,871	19,859	20,385	21,044
12	18,302	18,981	19,360	20,593	21,123	21,791
13	18,690	19,461	19,854	21,307	21,848	22,523
14	18,833	19,727	20,294	22,012	22,545	23,227
15	19,189	19,812	20,897	22,490	23,140	23,836
16			21,500	22,799	23,578	24,285
17			22,351	22,952	23,734	24,496

Association Offer

Annex A

PROPOSED SALARY SCHEDULE

1980-81

	I.	II.	III.	IV.	V.	VI
1.	$11,567.00	$11,801.00	$12,036.00	$12,270.00	$12,505.00	$12,9
2.	12,115.00	12,360.00	12,606.00	12,852.00	13,098.00	13,5
3.	12,636.00	12,895.00	13,214.00	13,466.00	13,719.00	14,2
4.	13,160.00	13,431.00	13,823.00	14,082.00	14,340.00	14,8
5.	13,683.00	13,966.00	14,432.00	14,696.00	14,961.00	15,4
6.	14,204.00	14,672.00	15,220.00	15,494.00	15,767.00	16,3
7.	14,903.00	15,214.00	15,836.00	16,116.00	16,397.00	16,9
8.	15,432.00	15,756.00	16,452.00	16,738.00	17,024.00	17,6
9.	15,961.00	16,297.00	17,068.00	17,360.00	17,653.00	18,2
0.	16,489.00	16,837.00	17,684.00	17,982.00	18,281.00	18,8
1.	17,019.00	17,379.00	18,299.00	18,604.00	18,910.00	19,5
2.	17,547.00	17,920.00	18,916.00	19,228.00	19,538.00	20,1
3.	18,076.00	18,462.00	19,533.00	19,850.00	20,167.00	20,8
4.	18,604.00	19,003.00	20,148.00	20,472.00	20,796.00	21,5
5.	19,308.00	19,809.00	20,764.00	21,094.00	21,424.00	22,3
6.			21,380.00	21,716.00	22,052.00	23,0
7.			22,594.00	23,147.00	23,604.00	23,9

Employer Offer

Annex B

EMPLOYER'S FINAL OFFER: DENTAL INSURANCE

The District shall provide dental insurance. The Wisconsin Education Association Plan 704H-1A shall be the basis for the benefit level. The Board may select the carrier for the plan so long as the benefit level is substantially equivalent. During the 1980-81 contract year the Board shall pay $11.83 (family) and $4.08 (single) toward the premiums for all full time employees. The employee shall pay the balance of the premium through a payroll deduction. Payment for part time employees shall be on a pro-rated basis.

ASSOCIATION'S FINAL OFFER: DENTAL INSURANCE

a. The District shall pay full family or single dental insurance premiums for each employee according to their needs. The dental insurance carrier may be selected by the District. However, the dental plan shall provide benefits and coverage not less than those provided by WEA Trust Dental Plan 704H-1A. Dental premiums for part-time teachers shall be paid on a prorated basis.

b. Commencement of Premium Payment.

   The District shall begin paying the full dental premium on March 1, 1981.

ANNEX C