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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Mediation/ :
Arbitration of a Dispute Between :
 :
NORTH CENTRAL VOCATIONAL, :
TECHNICAL AND ADULT EDUCATION :
DISTRICT :
 :
and : AWARD AND OPINION
 :
NORTH CENTRAL PARAPROFESSIONAL/ : Decision No. 18070-A
TECHNICAL ASSOCIATION, :
CWUC-NORTH WEA :
 :

Case No. XI, No. 26595
MED/ARB - 819
Hearing Date November 24, 1980
Appearances:
For the District Mulcahy & Wherry, S.C.,
Attorneys at Law, by
MR. RONALD J. RUTLIN
For the Association MR. THOMAS COFFEY,
UniServ Director
Mediator/Arbitrator MR. ROBERT J. MUELLER
Date of Award January 16, 1981

JURISDICTIONAL FACTS

The above parties failing agreement on the issue of wages under a reopener in their 1979-81 agreement, petitioned the Wisconsin Employment Relations Commission for Mediation/Arbitration under the provisions of Section 111.70, Wisconsin Statutes. Following a certification of an impasse, the undersigned was selected by the parties and appointed by the Wisconsin Employment Relations Commission to serve as Mediator/Arbitrator to resolve the dispute.

The matters raised by the respective final offers of the parties came on for mediation on November 24, 1980. A strong effort was made by the parties to resolve the dispute in mediation. Such efforts, however, failed to result in a mutual settlement and the undersigned thereupon declared an impasse and advised the parties of intent to arbitrate. The parties were afforded the opportunity to modify or withdraw their respective final offers. Both parties declined and the matter thereupon was heard in arbitration on that same day.

THE FINAL OFFERS

The parties had reached partial agreement voluntarily on two elements. First, the parties had agreed to reclassify the classifications of Interpreter I from pay range 5 to pay range 7

and Interpreter II from pay range 7 to pay range 9. Second, the parties had agreed that there would be no step increases to be received by any employee for the 1980-81 fiscal year. The sole issue thus remaining for resolution was that of determining the percentage increase to be applied to the salary schedule of the contract.

DISTRICT'S FINAL OFFER:

The District proposes to increase all rates on the salary schedule by 10.5%.

ASSOCIATION'S FINAL OFFER:

The Association proposes to increase all rates in the salary schedule by 12.5%.

ARGUMENT OF THE PARTIES AND DISCUSSION

Each party presented documentary evidence and testimony into the record directed at the factors specified in Section 111.70(4)(cm) of the Wisconsin Statutes. Each party presented what they contended constituted the most appropriate comparables within the application of factor "d." Each party also presented evidence and argument with respect to factor "e" (cost of living). The District also presented into evidence and made argument concerning the comparability of the District's offer based on the overall compensation factor "f." The Association specifically called to attention and presented argument as to factor "h."

The District supported its choice of the other VTAE comparables on the basis of pupil enrollments and geographic proximity. At pages 7 and 8 of their brief they state as follows:

"On the basis of the above criteria, the District has chosen to compare the North Central-VTAE District with seven (7) other VTAE Districts in the Northern half of the State of Wisconsin: Fox Valley, Northeast Wisconsin, Western Wisconsin, District 1-Eau Claire, Indianhead, Mid-State, and Nicolet. With the exception of the Western Wisconsin VTAE District, each of the seven (7) other Districts is contiguous to the North Central District. The geographic proximity of these seven districts to the North Central District establishes a prima facie case for comparability. The criteria of proximity is relevant in that each of Districts included within the group selected for comparison with the District naturally competes in the labor pool of paraprofessionals within the same general area. District Exhibits 12 and 13 demonstrate the geographic relationship of each of the Districts to the North Central VTAE District. Clearly each of the Districts chosen by the District is comparable on the basis of geographic proximity. Although the Western Wisconsin VTAE District does not border on the North Central District it, like the other six Districts, is clearly comparable on the basis of enrollment. (Dist. Ex. 12)

"The District has also chosen to compare the District's and Association's final offers with collective bargaining settlements reached in the three counties which comprise the District -- Marathon Lincoln and Langlade and in other large Wisconsin Valley Districts. Thus, the District has introduced data for the School Districts

of Wausau, Stevens Point, Mosinee, Wisconsin Rapids, Wittenberg-Birnamwood, Antigo, and Rhinelander. The District has presented settlement evidence concerning public employees in Weston, Schofield, Merrill, Wisconsin Rapids, and Tomahawk, as well as the employees of Consolidated Papers in Wisconsin Rapids as indicia of general economic conditions in the Wisconsin River Valley."

The Association responded in their brief as follows with respect to the comparables:

"Section 111.70(4)(cm) Wis. Stats. states that the mediator/arbitrator shall give weight to comparisons of wage rates with other employees in the public and private sector performing similar services. The Association framed its final offer to meet this criteria, particularly considering the need for 'catchup' in most wage categories. Because of the nature of Wausau's economic area, the most comparable wage rates for these employees would be the technical schools in Eau Claire, Appleton and Green Bay. To a lesser extent, the technical schools at Madison and Milwaukee are comparable. Of course, the Association recognizes arbitral authority suggests that the urban areas of Madison and Milwaukee are not as comparable as Eau Claire, Appleton and Green Bay. However, the statewide nature of VTAE school systems suggests more weight be given to such urban comparisons than would be given in K-12 districts.

"In addition, for certain job classifications private sector comparables are particularly relevant. The rationale for this is simple. These technicians are performing similar job duties to their private sector counterparts and none or limited comparables exist in Eau Claire, Appleton, and Green Bay Technical Schools. The immediate connection between the world of work in the local area and technical school graduates lends further support to wage comparability between skilled workers at the technical school and those in the private sector performing similar duties."

The District had the following to say about the Association's comparables:

"The Association, on the other hand, has made no consistent overall comparison of the North Central District positions with any other VTAE District or District positions in the state. Instead the Association has chosen, willy nilly; to compare mere job titles of employees at the North Central District with mere job titles at a broad variety of unrealed, (sic) far-flung employers. Said selection of comparables ignores the primary indicia routinely utilized by arbitrators to determine comparable pools, namely; size and geographic proximity. If the selection process of the Association is deficient at the very outset, then it must follow that its comparables are highly suspect as well."

The general consideration of determining the first line of what constitutes the most appropriate comparables as followed by most arbitrators, including the undersigned, is that of geographic proximity, average daily pupil membership, average size of bargaining unit staff, full value taxable property, and level of state aid. On the basis of those considerations, it would therefore appear on its face, that the designation of those comparables advanced by the District should be the most appropriate comparables in the first instance. In many cases, once having determined the most appropriate comparables, it then becomes simply a matter of comparing rates. That is not the situation in this case, however. The bargaining unit in this case consists of the technical and paraprofessional employees. The unit consists of 29 full-time employees and 4 part-time employees. The contract contains 23 different classifications. The current salary schedule consists of 22 salary ranges with the salaries within each range consisting of 8 steps. The various classifications and employees therein are scattered throughout such salary schedule at different salary ranges and at different steps within such ranges.

The salary schedules contained in the various comparables presented by the parties, vary considerably from that of the District in this case and also vary one from the other. At Eau Claire, the various classifications are grouped into seven different pay levels and each pay level contains five levels of pay applicable over a five-year period. In each classification, an employee progresses from the lowest first-year step to the highest rated fifth-year step in five years. At Fox Valley, the contract contains 15 labor grades and within each labor grade the salary schedule is made up of three levels of pay. Employees attain the top pay level after three years of service. At Northeast, the salary schedule contains 24 different pay levels, each carrying a specified single rate. New employees are paid 95% of the specified salary during their 90-day probationary period and are then placed at such single rate.

The above major differences that exist in the various salary structures and schedules therefor, make it extremely difficult to make a meaningful comparison of employees in the various classifications from this District to the others. For instance, the single rate that exists at Northeast is one that is meaningful as all employees are at such single rate of their respective classification. On the other hand, one cannot take the eight-step pay range at North Central and apply it on a median average to Northeast as the median may or may not accurately depict where the employees are on the eight-step salary schedule. In this case, the Employer leans toward making comparison of the top pay step in the North Central contract with the rates of the other comparables, whereas the Union contends that the actual pay step in which an employee is in, or some lesser step on the eight-step pay range, should be utilized in making a comparison with the rates of the other comparables.

It would seem that inasmuch as the parties have agreed that the movement within the pay steps would be frozen for this particular contract year, that the Union's position of making comparison from the pay level at which the employees are currently situated, would be the more realistic and reasonable. As to whether or not the eight-step pay ranges become meaningful, will hereafter depend upon whether or not the parties agree to unfreeze such movement or otherwise alter the salary schedule structure in subsequent negotiations.

The above noted difference in the salary structures and length of time it takes employees to reach any particular pay level, was made only on those comparables for which sufficient evidence was presented upon which to make such type determination. The record does not contain that particular evidence with respect to the other claimed comparable vocational schools or other public schools and private employers upon which such type evaluation could be made. The arbitrator therefore has accepted, where given, those rates specified in the exhibits of the respective parties as the appropriate pay level for comparison purposes.

A second feature of the comparability situation which causes substantial difficulties, concerns the differing contentions of the parties with respect to which classifications are similar from one district to the other. There are a number of situations where each party contends that a particular classification is comparable to a differently designated or even similarly designated classification in another district while the other party contends that it is not. In many situations, the Union has contended that a particular classification at North Central has greater responsibilities and performs duties of a higher level than a classification claimed by the Employer as being comparable in another district. In many cases, each party claims that the other is comparing an apple to an orange. While the Union presented a substantial amount of evidence in the form of exhibits detailing the exact nature of the duties in the various classifications at North Central, similar type exhibits and evidence of other classifications at other comparables of a similar nature were not presented upon which a judgment could be made of whether or not each is in fact comparable or not comparable. The arbitrator therefore, in the following consideration of the documentary evidence, has discounted to a large degree the contentions of both parties where there is a dispute as to whether or not two particular classifications are, in fact, similar and comparable. There are a few comparisons of certain classifications by both parties from the North Central contract to other comparables where such type dispute does not appear to exist and the arbitrator has therefore placed much greater consideration on those apparently undisputed areas of comparison.

The respective comparative analyses made by each of the parties in their respective exhibits, recited the ranges of the salary schedules in each of the comparables listed in their exhibits and therefore did not address the factual situation of where employees in fact were situated on the salary schedule. Because of the agreed upon freeze of movement in the salary schedule for the contract year, comparison of the ranges, per se, are extremely subjective and not factually realistic.

The undersigned is of the opinion that in order to make a realistic comparison to other districts, that the employees of this District should be compared on the basis of where they are presently situated in the salary schedule structure to where comparable employees are similarly situated within their respective salary schedules. To that end, the undersigned has computed from the information contained in Association Exhibit No. 6, which is a listing of all employees within the unit, the average position in the District's current salary schedule.

On the basis of such information, the undersigned has found that of the regular full-time employees employed in the District, that the average of all employees is at step four and one-fourth of the eight-step salary schedule. The following comparison is then made by computing the pay level at which each of the classified employees would be under both the District's and Association's final offer at step four of the salary schedule. Where other districts are compared, the rate of the compared classification at the fourth step or four-year comparative standing, where that is determinable, is utilized. The evidentiary data submitted into the record does not allow such specific placement for some of the districts to which comparison is sought. For instance, the data presented for Indianhead Vocational School, shows only the starting and top rates. There is insufficient evidence in the record to establish what any intermediate steps there may be and how long it takes an employee to progress from top to bottom. Where Indianhead is then utilized for comparison purposes to a particular classification, the undersigned has utilized the median salary point in that particular range for comparison purposes. The data presented into the record for Western Vocational School District, consisted of the ranges for 1980. There was no information presented to indicate what those rates were for 1981 and for the most part, any claimed comparisons to Western rates have not been utilized in the following comparative analysis.

In both Northeast and Fox Valley, a four-year employee would be at the single rate which is provided for in the Northeast contract and at the top rate in the three-step Fox Valley salary schedule. At the Eau Claire District, the undersigned has utilized the step four rate for the purposes of comparison. In many of the classifications, both parties indicated by their exhibit, that they were in agreement to the effect that no comparable position existed at various other districts. In the following comparative analysis, the undersigned has utilized only those comparables which both parties have listed in their respective exhibits as constituting similar positions for comparative purposes. The undersigned thereby compiled the following comparative analysis and computed where each employee would compare to employees in other mutually cited districts on the basis of being at the step four or fourth year level under the contracts in effect at each district.

	<u>Classification</u>	<u>Comparables</u>	<u>Step 4 or Equivalent</u>	<u>Difference</u> (- =below the comparable + =above the comparable)
I	Audio-Visual Material Prod. Sp.	(Range 9) District proposal Assn. proposal Northeast	10485 10675 10920	- 435 - 245
II	Graphic Artist (Range 9)	District proposal Assn. proposal Northeast Eau Claire Fox Valley	10485 10675 12600 11964 11664	- 1591 - 1401 (12076) average

<u>Classification</u>	<u>Comparables</u>	<u>Step 4 or Equivalent</u>	<u>Difference</u> (- =below the comparable + =above the comparable)
III Library Tech. (Range 9)	District proposal	10485	- 1241
	Assn. proposal	10675	- 1051
	Northeast	11016	
	Eau Claire	11964	(11726) average
	Indianhead	12198 (median)	
IV Computer Opr. (Range 11)	District proposal	11315	- 1315
	Assn. proposal	11520	- 1110
	Northeast	12864	
	Eau Claire	12900	(1263) average
	Indianhead	11268 (median)	
	Fox Valley	13488	
V Financial Aids Tech (Range 13)	District proposal	12215	+ 1241
	Assn. proposal	12436	+ 1462
	Eau Claire	11964	
	Indianhead	9984 (median)	(10974) average
IV Electronic Labs Tech (Range 16)	District proposal	13702	- 1466
	Assn. proposal	13950	- 1218
	Eau Claire	15168	

	<u>Summary of the above District's Proposal</u>	<u>Assn. Proposal</u>
I	- 435	- 245
II	- 1591	- 1401
III	- 1241	- 1051
IV	- 1315	- 1110
V	+ 1241	+ 1462
VI	- 1466	- 1218
Totals	- 4807 ÷ 6 =	- 3563 ÷ 6 =
Adj. to Step 4½	- 801 + 110*	- 594 + 110*

* The average placement of all employees is at step 4½ on the salary schedule. The average range between step 4 and step 5 is approximately \$440. A one-fourth adjustment would then call for adding \$110.00 as an adjustment thereto.

It would then appear from the above analysis, that under either offer, the salary of the employees as averaged, is below that of the comparables.

One additional matter must, however, be incorporated into those results to reflect the evidence and arguments made by the Employer with respect to incorporating a comparative analysis to include the overall compensation of the employees as compared to others. The arbitrator has computed the fringes detailed by the Employer as having bearing in this case consisting of health, dental and optical insurance, life insurance, disability insurance, Wisconsin Retirement Fund, longevity, holidays, vacations,

sick leave, and additional pay for education credits. In making such comparison, the arbitrator utilized the VTAE districts of Northeast, Eau Claire, Fox Valley, Indianhead and Western. On the basis of an analysis of all such fringes, the arbitrator arrives at the following:

<u>Benefit</u>	<u>Difference in Percent</u> (+ means better than comparables - means less than comparables)
Insurance	+ .002%
Longevity	+ .001%
Holidays	+ .03%
Vacations	--
Sick Leave	+ .006%
Education Credits	+ .015%
Total	+ 2.7%

In order to equate such percentage to an annual dollar figure, the undersigned computed the average salary of all regular full-time employees. For such purposes, the undersigned implemented the District's offer of 10.5% as applied to the step 4 rate adjusted to step 4 and one-fourth and arrived at an average salary of all employees at step 4.25 of \$11,199.00. If one then applies the 2.7% better total fringe benefits furnished to the employees times the average annual salary, one obtains the figure of \$302.00 per year per employee average. If one then applies such figures to the negative amounts as computed from the wages only survey, one would conclude that under the District's final proposal, the difference from the comparables based on the overall compensation of employees, would indicate that the District's proposal was below the average in the amount of \$389.00 per employee per year, whereas the Association's final offer would result in an amount of \$182.00 per employee per year below the comparables.

The above evaluation is clearly a fragmented one. The undersigned is not at all comfortable with such data. There simply were very few established comparable classifications of the North Central District to classifications in other districts. Both parties contended that the other was attempting to compare apples to oranges with respect to many classifications and claimed comparables. There simply was not sufficient evidence entered into the record upon which the arbitrator could judge and resolve those differing contentions of the parties. As a result, the arbitrator has been required to exclude a large amount of evidence by both parties and simply not consider it. As a result, the credibility of the above fragmented type analysis and comparison is extremely questionable. Because of the fact that under the statute, the arbitrator must chose on a package basis, the detailed examination of each particular classification must be subordinated to an average or overall type computation. While an analysis of individual classifications has bearing and influences an overall determination, the lack of identity and agreement, or even existence of comparables in other districts, serves to make any analysis extremely difficult and potentially inaccurate.

In the final analysis, it would then seem that the comparative analysis of the types engaged in by both parties and of the type hereinabove set forth by the arbitrator, is more questionable as to reliability and therefore the comparability factor should presumably be given somewhat less weight in final consideration than it would be where there is agreed upon comparables to which both

parties make reference. That brings the undersigned then to the other factors to be considered in resolving this dispute.

Each of the parties presented evidence and made reference to the pay levels of certain selected classifications in other public schools and/or other private employer situations. The data offered by each would appear to be such data that would tend to favor the respective position of each and from a total analysis thereof, any conclusions to be drawn therefrom would be extremely hazardous. It does, however, appear that a small number of positions in the District do have some comparative standing with similar positions in public schools. From the analysis of the evidence presented by the District in such area, it would appear that the level of pay of such select few classifications at the District is favorable and above the level of pay for those similar type select few classifications at the public schools. It would therefore appear that a very narrow and fragmented type comparison to employers, both public and private other than VTAE districts, would slightly favor the District's offer.

With respect to consideration of the cost of living factor as reflected by the Consumer Price Index, it would appear that if one were to base the final offers upon the percentage increase as literally computed from the Consumer Price Index for the appropriate period, that one would be constrained to favor the Association's final offer. The Association computed such factor as being 13.7%.

The Employer, however, has argued that such literal percentage application of the Consumer Price Index is not realistic and that it has come in for considerable criticism as being a true reflection of the impact of inflation upon the general public. There is no doubt but that the cost of buying a house and the cost of borrowing money has contributed significantly during the past period to the percentage increase reflected in the Consumer Price Index. It is also recognized as one of the main criticisms points out, that a person does not purchase a house or borrow money therefor each year. As a result, the application of the literal percentage computation historically derived from the Consumer Price Index, has become very questionable and this arbitrator is unwilling to apply such literal application at this time. In the considered judgment of the undersigned, the more relevant reflection of the impact of inflation upon employees in a given area of the country is more accurately reflected by that level of contract settlements that evolve during the period under consideration. It then follows that one must next examine the level of settlements that have resulted in other VTAE districts involving comparable employees, in other public sector employment groups in the geographic area, in other private employment areas in the geographic area, and such other settlement levels as are normally and historically taken into consideration as expressed by factor h of the statutes.

The District computed the actual cost of the two respective final offers of 10.5% and 12.5% in conjunction with the range increases or upgrading that had been agreed upon with respect to the interpreters and concluded that the actual percentage increase under the Board's offer constituted an 11.9% wage increase whereas under the Association's offer the wage increase was 13.9%. The clerical and custodial personnel employed by NCTI received a 9.6% increase on wages for 1981, the faculty received a 10.3% increase and the administrative staff received a 9.2% wage increase.

In further computations concerning the final offers of the Board and Association, which included computing the change in cost if any of the fringe benefits and Social Security costs, the Board arrived at a total package cost under the Board's offer of 11.8% and of the Association's offer of 13.7%. The total compensation increase computed for the clerical and custodial personnel was 9.7%, for the faculty, a 10.7%, and for the administrative staff a 9.7% increase.

The District also presented the following compilation of percentage increases granted employees of other employers in the geographic proximity of NCTI at page 18 of their brief as follows:

<u>"Name of Employer</u>	<u>Percent Increase</u>
School District of Wausau	10 %
School District of Antigo	10.91
Whittenburg-Birnamwood School District	10.02
School District of Mosinee	9.6
Wisconsin Rapids Public Schools	10.716
School District of Rhinelander	11.1
Stevens Point Area Public School District	10.80
District Offer	11.8
Association Offer	13.7"

The Board stated that such percentage increases reflected total compensation increases that would then be comparable to the total compensation increases as above indicated.

The District also presented evidence to the effect that the increase in wages only ranged from 8.9% to 9.5% in the other VTAE districts to which they had made comparison and that the total compensation settlements ranged from 8.1% to 9.05%. The District also presented evidence with respect to other public employee groups in the geographic vicinity indicating that settlements for 1981 ranged from a low of 8.4% to a high of 10%.

One of the Association exhibits, specifically Exhibit No. 68, indicated that at Fox Valley VTAE, that subsequent to negotiations and settlement on the increase for the year, that a number of classifications were changed and upgraded. It is not possible to determine from the record evidence whether or not such referred to upgrading was included in the percentage increase settlement indicated by the District or whether it was in addition thereto and, if so, the amount thereof.

The Association contends that the relevance and reliability of, particularly the percentage increases attributed to other school districts, should be discounted because of their contention that there exists a number of different methods in costing out school settlements and arriving at a percentage calculation. While the arbitrator recognizes that there are several methods utilized in costing school settlements, the difference resulting from the different costing methods is relatively small.

In the considered judgment of the undersigned, where the first line of comparative analysis with employees employed by the same type of Employer, in this case VTAE districts, is somewhat unreliable because of the considerable dispute as to comparability as to districts and as to specific jobs and classifications one to another as in this case, that greater reliance and consideration must then necessarily be given and placed on other factors and considerations. In the judgment of the undersigned, the percentage

increases reached and settled upon through mutual voluntary agreement with other VTAE districts, other public employers, and other private employees within a reasonable and realistic geographic and otherwise comparative area, serves to more accurately reflect what others have considered to be the impact of cost of living and other factors and to indicate the general level of settlement that derives therefrom in the arena of free, open and mutual negotiations.

On the basis of the total evidence presented in this case, the arbitrator is of the judgment that the greater weight must, of necessity, in this case, be afforded to those levels of settlement that were mutually reached by other employer and employee groups that have been presented into the record in this case. As such, it appears that the total compensation offer of the District in the amount of 11.8% is favorable and in all cases, exceeds the level of settlement arrived at through free and mutual negotiations by all others referenced in the record. Although the fragmented comparative analysis would seem to indicate that the District's offer is somewhat deficient from such comparative evaluation, and that the data utilized to reach such conclusion was so fragmented, that the conclusions therefrom are found to be somewhat unreliable and render such factor subject to a lesser degree of consideration as compared to the general level of settlements arrived at in other employer/employee relationships.

The matter of specifically negotiating any necessary catch-ups and implementation of any particular inequity adjustments that may or may not exist with respect to any particular classification in the District, it would seem, would be more appropriately handled through open and voluntary negotiations by the parties where they each have the opportunity to specifically address and resolve their differences as to which classifications in other districts may or may not be used for comparative purposes. The record evidence that has been presented in this case before the undersigned is simply inadequate for the undersigned to intelligently make definitive and reliable findings with respect to such specific areas.

It therefore follows on the basis of the above facts and discussion thereon, that the undersigned renders the following decision and

AWARD

That the final offer of the District is found to be the more reasonable, and the parties are directed to implement such final offer pursuant to the Wisconsin Statutes.

Dated at Madison, Wisconsin this 16th day of January, 1981.



Robert J. Mueller, Arbitrator