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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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 In the Matter of Arbitration *
 between *
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 GILMANTON EDUCATION ASSOCIATION *
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 and *
 *
 SCHOOL DISTRICT OF GILMANTON *
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Case IV
 No. 26406 MED/ARB 766
 Decision No. 18201-A

Appearances:

Mr. William Mihalyi, Superintendent, for the District.
Mr. James C. Bertram, Executive Director, Coulee Region
 United Educators, for the Association.
Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The School District of Gilmanton, hereinafter referred to as the District, and Gilmanton Education Association, hereinafter referred to as the Association, were unable to reach an agreement on the terms of a collective bargaining agreement. The undersigned was appointed mediator-arbitrator through the appointment procedures of the Wisconsin Employment Relations Commission and a public hearing and mediation session were held on January 9, 1981 at Gilmanton. An arbitration hearing was then held on March 7, 1981 and the parties filed post-hearing briefs.

There are two issues in dispute: the salary schedule and fair share. The final offers of the parties are as follows:

Board's Final Offer:

Salary Schedule

BA Base \$10,400
 12 Steps
 Increments of \$275
 A \$100 one-time payment to teachers at the
 maximum step of their line.

Union Security

Dues Checkoff

Association's Final Offer:

Salary Schedule

BA Base \$10,400
 13 Steps
 Increments of \$315
 One additional lane, MA + 8 credits

Union Security

Fair Share

ASSOCIATION'S POSITION:

The Association contends its proposal to add an MA + 8 lane is a modest request compared to contracts of other districts in the Dairyland Conference. Nine other districts within the Conference have educational lanes beyond the Master's Degree, and five of the nine districts have an MA + 6 lane. Thus, those teachers in the other districts receive credit earlier than is proposed in this District.

According to the Association, it has departed from the MA + 6 credit lane in favor of the MA + 8 credit lane to be consistent with the eight-credit intervals already existing within the salary schedule. This District stands alone with no lane beyond the Master's Degree. Only one of eighteen other schools in the geographic area has no lane beyond the MA + 8 lane.

The Association also proposes one more experience step be added to each lane in the salary schedule, thus having thirteen steps. The Association submits that the thirteenth step on the BA lane has existed in numerous schools within a thirty-mile radius of Gilmanton. Additionally, six of the nine other schools showing an MA lane have at least a thirteenth step, and four of the six have steps beyond thirteen. Only two of seventeen other schools have twelve steps as the Board is seeking to continue.

According to the Association, its position is more common and more frequently found in salary schedules of comparable groups. The Board is proposing a one-time longevity payment of \$100. The Board's proposal is unsupported, unsubstantiated, and unjustified in any of the exhibits presented at the arbitration hearing. In contrast, the Association's position is supported by the evidence. Therefore, the proposal of the Association should be adopted by the arbitrator.

The Association is requesting an improvement of \$40 be added to the current experience step increment of \$275 for a new increment of \$315. The proposed \$315 experience increment would be applied across-the-board on the salary schedule. The Association submits its proposal is closer to the Conference increments than is the Board's proposal. Even if the Association's proposal is accepted, the District will still rank at the bottom of the nine schools in the Dairyland Conference with contracts settled for 1980-81.

The Association submits its proposal of a \$315 increment is low considering increments in all educational lanes of the Conference salary schedules. Additionally, the Association emphasizes that its proposal does not move the District out of last place; it does, however, move the District from its position as a "distant last-place finisher."

Compared to schools within a thirty-mile radius the Association's proposal of \$315 is modest. Increments of \$328, with many over \$600, to as high as \$675 in nearby Arkansas and \$450 in Independence, are common. The Board's position of a \$275 increment for the BA lane is too low an increment and stands alone in all of the school districts.

If the Board's position were to be adopted, it would leave the District \$50 behind the next higher increment of \$325. In the MA lanes six of the nine Conference schools have increments over \$400, with two as high as \$484--nearly \$200 above the Board's proposal.

According to the Association, whether the Conference is used as a guide or whether schools in a thirty-mile radius of the District are a guide, the evidence clearly establishes that the increment proposed by the Board is substantially below increments paid in other districts. Both the Association's and the Board's proposal would leave the District in last place. The Board's proposal makes the gap even wider.

The Association contends that there is no issue involved in the instant dispute beyond the lawful authority of the municipal employer. The Association submits the Board has legal authority to obtain the money to implement an award issued by the arbitrator. At the time of the arbitration hearing, in response to a question of the arbitrator, the Board representative stated that the Board cannot find the money in the budget to pay the proposal made by the Association. However, the Association notes that the Board's representative further stated, "Based on the budget as it was put together, I would say yes," indicating the money was not available; and he immediately followed that statement with the statement, "The budget hasn't completed the cycle." The Association submits that the only conclusion that can be reached is that the Board is not locked into the budget that is established.

According to the testimony of Dr. Charles Frailey, based on data submitted to the Department of Public Instruction by the District, the District is well below the maximum controllable costs by \$28,594. Thus the cost of \$9,700 more for the Association's proposal is well within the amount of money the District can spend before reaching its maximum controllable costs.

As to the interest and welfare of the public and the financial ability of the unit of government to meet the cost of the proposed settlement, the Association notes that at the public hearing no one from the public spoke in opposition to fair share. It is obvious the fair share clause does not run counter to the interests and welfare of the public. Additionally, at no time at the public hearing did the public say there was an inability to pay the cost of the proposed settlement.

The Association notes the Board presented no exhibits or substantiated facts concerning its financial status or its inability to pay the cost of the Association's proposal. The Board presented neither exhibits nor testimony in support of its position. Additionally, the Association notes that the Board did not cost out the Association's proposal; therefore, the Board cannot make an argument regarding inability to pay when it does not know the amount of money differences between the two proposals. The Association submits that the mere unqualified and unsupported contention of the Board that it does not have \$9,700 is unsupported by any evidence or testimony.

According to the Association a comparison of wages, hours and conditions of employment of municipal employes in the arbitration proceedings with the wages, hours and conditions of employment of other employes in comparable employment establishes that the Association's proposal is the more reasonable of the two proposals. The evidence clearly establishes that over successive years the District has gone from fifth to ninth and to eleventh place relative to comparable districts. Under the Board's proposal the District would go from fifth to last place in the Conference in just four years. Not only would the District be in last place, but it would be further behind the other districts if the Board's proposal were to be adopted.

If consideration is given to the average consumer price for goods and services commonly known as the cost of living, the Association's evidence clearly establishes that its salary proposal is more reasonable. If the Board's proposal were to be adopted, it would leave the teachers further behind the cost of living.

Another statutory criterion is the overall compensation presently received by municipal employes, including direct wage compensation, vacation, holidays, insurance, pensions, medical and hospitalization benefits. The Association submits that the evidence establishes there are more fringes provided by other school districts than are provided in this District.

According to the Association the Dairyland Conference has been used as its primary comparison. Likewise, the Board appears to have used the same Conference. The Association also used schools of similar size in a thirty-mile radius of the District as a second group to draw comparisons from. The Association contends the Board used the Conference schools and then went outside the Conference to select three non-conference schools based solely on the fact that they would reflect favorably compared to the salary proposal made by the Board. The Association submits such selectivity of schools by the District for comparisons and conclusions can only skew the picture.

Regarding fair share, comparable school districts have fair share and therefore the comparables support the Association's position. While the Association anticipates the Board will object to fair share as eliminating the option of the teacher to join or not join the Association, the Association emphasizes that the fair share language itself provides this option. The Legislature provided this option when it legislated public policy to allow negotiating a fair share provision. Membership is not required under the fair share provision, and it is not a condition of employment.

The District apparently is standing alone with its opposition to fair share. At no time did the public rise up against fair share at the public hearing. The Board did not present any problems with the fair share language during negotiations or at the arbitration hearing. Therefore, according to the Association, the arbitrator should award fair share.

In concluding its arguments the Association contends that both parties had access to the same data in terms of comparability, and in fact had been using the same comparables as their primary source of comparisons. Based on those comparables, the evidence supports the Association's position over that of the District's. The Association submits that the resources of the District are available to address the disparities which have occurred throughout the years and which under the Board's proposal would become even greater. Therefore the Association submits that as long as the District has the means to implement the Association's final offer, and its final offer is the more reasonable of the two offers put forward, the arbitrator must adopt the final position of the Association.

DISTRICT'S POSITION:

The District contends that several of the comparables submitted by the Association, due to the fact that they are in a thirty-mile radius of the District, are not valid comparables. Altoona is physically joined to the largest city in the area, Eau Claire. Arcadia, while a rural community, is considerably larger than the District. Additionally, Arcadia has a large parochial school. Durand has more than four times the school population of the District. Elk Mound has not quite three times the school population of the District. Additionally, it is located between Menomonie, home of U. W. Stout, and Eau Claire, the home of U. W. Eau Claire, thus it is effectively tied to two major university centers. Elmwood has twice the school population of the District but is tied to Menomonie. Fall Creek has almost four times the population of the District, and is only nine miles from Eau Claire. Plum City, with 414 students, is the nearest in size of the seven schools listed in the Association's exhibits; however Plum City has St. John the Baptist Grade School with eighty-eight students, and a Christian Learning Center with about thirty students enrolled. Therefore Plum City is really different from the District. The only nearby city to the District is Mondovi. The residents of the District do have ties with Mondovi and shop there, but the two communities are not alike in size, character or other characteristics.

The District notes that the original Association Exhibit #10 listed the District school offer for 1980-81 for MA maximum salary at \$14,500 rather than the actual \$14,700 figure, thus necessitating a change in a number of Association exhibits. The District submits that accuracy is of paramount importance when comparing the Association's position and the District's position.

According to the District, the average net taxable income within the District is substantially less than the income found in other districts. Thus, the District does not have the funds available that some of the other districts might have. Additionally, the aid received per student is substantially less than the aid received by a number of other districts within the Conference. The equalized valuation of the District is substantially higher than that of some of the other districts within the conference. The evidence further establishes that the District's tax levy per pupil is \$1,541.93. This is exceeded only by Plum City and Arcadia. The average levy of the seven other schools is \$1,200.85. Thus it is apparent that the District attempts to fund the educational activities of the District.

An additional argument is advanced by the District that the pupil-teacher ratio of the District is 11.66 pupils per teacher. This is substantially below the pupil-teacher ratio of the other schools within the Conference. The average of seven schools within the Conference is 16.50. The state-wide average is 16.02.

According to the District, based on the exhibits introduced by both the Association and the Board, the evidence establishes that the District has the lowest state aid per student. There are three exceptions and all are based on school districts which have large parochial school populations which causes an aberration in general school aids in those districts. School aids are drastically diminished in such districts because students not enrolled in public school are not counted for such state aids. The District submits the general state school aids do affect the

"ability to pay." The District has the lowest such state aid with no parochial school to affect the computation.

With the exception of Taylor and three school districts with large parochial school enrollments (Independence, Arcadia and Plum City), Gilmanton has the highest tax levy per pupil. The three districts with large parochial school enrollments are in financial difficulty because of the impact of those enrollments. A high tax levy reflects the community's interest in the schools, and the residents of the District do levy many dollars per pupil despite their low net income. The District further contends that low pupil-teacher ratio affects the "ability to pay" because low pupil-teacher ratios mean there are more teachers to pay. Increasing the pupil-teacher ratios and employing fewer teachers would be one method by which the District could recoup the difference between the respective final proposals of the parties.

In regard to fair share, the District believes the freedom of choice--the right to join or not to join the Association--is the paramount issue. Currently all eligible staff members are members of the Association, thus not having fair share has not caused membership problems for the Association. The District quite early in the history of collective bargaining voluntarily recognized the Association as the representative of the teachers of the District. If one individual chooses not to join, however, that individual should be permitted to refrain from joining the Association. Such individual action would do little to damage a healthy Association.

According to the District it has been attempting to do better in the teaching salary schedules. In 1979-80 the base became \$9,550, after a previous base salary of \$8,800 in 1978-79. The proposed salary for 1980-81 is \$10,400 with improvements in lanes, an added \$100 payment for those who were at the top of the schedule in 1979-80, improved fringe benefits, and improved pay for co-curricular activities. The District would sincerely like to make further improvements in compensation, but finds it impossible to do so at this time.

The deep concerns of the residents of the District were evident when well over 100 persons attended a public hearing prior to the mediation session on a cold Friday night in January with a high school boys' basketball game going on and at a time when the largest segment of the population was engaged in milking cows.

The District respectfully requests that the arbitrator award its final offer.

DISCUSSION:

There are two major areas of dispute in the instant case: the salary schedule and fair share. Not all aspects of the salary schedule are in contention; the parties have agreed to a BA base salary of \$10,400 and an increment between lanes of \$250. The areas of dispute regarding the salary schedule include the size of increments, the number of increments, and the addition of an MA + 8 lane.

The Association is proposing increments be increased from \$275 to \$315, while the District is proposing increments remain at \$275. A review of Association Exhibit #21 establishes that all of the schools in the Dairyland Athletic Conference have increments greater than \$315, the increment proposed by the Association. If a comparison is made with the increments received in schools within a thirty-mile radius of the District (Association Exhibit #22), it must be concluded that an increment of \$315 is also below the increments of those schools.

Whether a comparison is made within the Conference or geographic proximity, the increment proposed by the Association is below the increment in other schools. The disparity is even greater when the District's proposed increment of \$275 is compared to the increments of other schools. While there may be valid reasons why the District should not be a leader in the area of compensation, there is no justification for the District falling further behind, a situation which would result if the increment remained at \$275. This is especially true when some of the other districts base their increments on a percentage of the base salary. The comparables clearly support the Association's position.

The Association is proposing that the number of increments be increased from twelve to thirteen, while the District is proposing the increments remain at twelve. Association Exhibit #23 establishes that of the districts which have settled for the 1980-81 school year, only Eleva-Strum in the Conference has thirteen increments. The evidence relating to the number of increments supports the District's position.

When the size of the increments are taken into account, however, the District's position is less persuasive. A district with fewer but larger increments moves teachers to the maximum of the lane more rapidly. This is graphically demonstrated in the following table.

BA LANE

<u>Steps</u>	<u>Augusta</u>	<u>Board</u>	<u>Association</u>
0	\$10,800	\$10,400	\$10,400
1	11,232	10,675	10,715
2	11,664	10,950	11,030
3	12,096	11,225	11,345
4	12,528	11,500	11,660
5	12,960	11,775	11,975
6	13,392	12,050	12,290
7	13,824	13,325	12,605
8	14,256	12,600	12,920
9		12,875	13,235
10		13,150	13,550
11		13,425	13,865
12		13,700	14,180
13			14,495
	(\$432)	(\$275)	(\$315)

Augusta has a maximum of \$14,256, which is reached at the beginning of the ninth year. Under the District's proposal a teacher would reach the maximum of \$13,700 at the beginning of the thirteenth year. Under the Association's proposal a teacher would reach the maximum of \$14,495 at the beginning of the fourteenth year. Adding an additional step raises the maximum salary, but because the

increments are less, under either the Association's or the District's proposal, it takes longer to reach the maximum in this District than it does in other districts.

There is no doubt that by increasing the increment even to \$315 and adding one step the maximum salary increases substantially. Under the Association's proposal the maximum for the BA lane would become \$14,495, while under the District's proposal the BA lane maximum would become \$13,700. This represents a substantial difference. Under the Association's proposal three districts would have lower maximums, but each of those districts have larger increments meaning the teachers reach the maximum sooner. Under the District's proposal the teachers would have the smallest increment and require a substantial period of time to reach the lowest maximum. The comparables support the District regarding the number of increments, but the comparables support the Association regarding the maximum salary.

At the present time the salary schedule has only an MA lane. Based on the evidence, particularly Association Exhibit #25, all but two other districts in the Conference have one or more lanes beyond the MA. Five of the districts have lanes based on an MA + 6 credits and four of the districts have MA + 15 or MA + 18 lanes. The evidence clearly establishes that a lane beyond the MA is the norm. The Association's proposal of an MA + 8 lane, two credits more than five other districts require for a lane change, appears totally reasonable based on the comparables.

The Association is proposing fair share, while the District is proposing the continuation of dues checkoff. Association Exhibit #5 indicates that a majority of the districts within the Conference have fair share. At the time of the arbitration hearing all members of the bargaining unit were members of the Association, thus it cannot be argued that some current teacher is being forced to support the Association against his or her will.

Essentially the District argues that membership in the Association should be a matter of choice. Fair share does not require membership in the Association, it simply requires a teacher to contribute financially to the costs associated with the negotiation and administration of the collective bargaining agreement. Thus the individual teacher still has the choice of joining or not joining the Association.

Throughout the proceedings the District raised an issue as to its financial ability to implement the Association's final offer claiming it simply does not have the money. One of the statutory factors which the mediator-arbitrator must take into consideration is:

"The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement."
(Chapter 111.70(4)7.c., Wis. Stats.)


In the opinion of the undersigned an employer asserting inability to pay has a burden extending beyond merely making such an assertion; the employer has an affirmative obligation to support its claim with evidence. In the instant dispute the District failed to offer any evidence in support of its claimed inability to pay, thus the undersigned must reject its assertions.

There is considerable evidence in the record that the District has placed a high priority on educating students. The District levies a high tax rate to support its schools, while its citizens' earnings are lower than those found in other areas. Additionally, the District has maintained a low pupil-teacher ratio. Despite these efforts, a fair evaluation of the evidence establishes that the teachers in the District are paid less than teachers in comparable districts. Even under the Association's final offer the teachers will only modestly improve their relative position.

After having given due consideration to the statutory guidelines contained in Chapter 111.70(4)7 of the Wisconsin Statutes, the evidence and arguments of the parties, the undersigned renders the following

AWARD

That the final offer of the Association be implemented.



Neil M. Gundermann, Arbitrator

Dated this 14th day
of May, 1981 at
Madison, Wisconsin.