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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Arbitration Between	
ST. FRANCIS EDUCATION ASSOCIATION	Case XXXIX No. 26654
and	Decision No. 18215-A
ST. FRANCIS SCHOOL DISTRICT NO. 6	MED/ARB-830
	OPINION AND AWARD

APPEARANCES:

For the Association: James Gibson, UniServ Director, WEAC UniServ Council #10, Milwaukee

For the Employer: Steven B. Rynecki, Esq., von Briesen & Redmond, Milwaukee

BACKGROUND

On August 13, 1980, the St. Frances 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 to resolve a collective bargaining impasse between the Association and the St. Francis School District (referred to as the Employer or Board).

On November 6, 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 November 20, 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)(6)(b-g). No citizens' petition pursuant to Section 111.70(4)(cm)(6)(b) was filed with the WERC.

By agreement, the mediator-arbitrator met with the parties on December 12, 1980 to mediate the dispute. The parties were unable to settle their dispute in mediation. An arbitration meeting (hearing) was held in St. Francis, Wisconsin, on December 18, 1980, at which time the parties were given a full opportunity to present evidence and make oral arguments. Post hearing briefs and reply briefs were exchanged and filed with the arbitrator.

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 interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other 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.

ISSUES AT IMPASSE

During collective bargaining and mediation, the parties resolved all but two issues. These remaining issues are: 1980-81 salary schedule and duration of the agreement. The Association's final offer on the 1980-81 salary schedule changes the 1979-80 B.A. base of $10,950 to $12,270 and increases longevity pay to $835 for those with a Bachelor degree and to $880 for those with a Master degree. The Employer's final offer on this issue changes the B.A. base to $11,700 and makes no change in longevity pay. As to duration, the Association's final offer is for a one year contract while the Employer proposes a two year contract with renegotiations for 1981-82 on the calendar; Article III, Salary; Article IV, Hourly Rates; Article VI, Insurances; Article IX, Section K, Prep Time Hourly Rate; Appendix B, Dental Plan; Appendix C, Salary Schedule; and, Appendix D, Extra Pay Schedule. Under the Board's proposal, no language issues are to be negotiated for 1981-82.

POSITIONS OF THE PARTIES

The Association

To support the selection of its final offer, the Association relies upon three statutory factors: d, comparisons with other groups of comparable teachers; e, cost of living; and h, the need for "catch-up."

On the threshold question of what constitutes appropriate comparables, the Association argues that the "Zeidler hybrid approach" (developed by Arbitrator Zeidler in South Milwaukee, MED/ARB-438, 2/4/80) is the most valid. This approach to comparability established three levels of comparables. In addition to St. Francis, Group A consists of the south suburban Milwaukee industrial communities of Cudahy, South Milwaukee and Oak Creek and is considered to be the most comparable. The next grouping consists of Group A plus Group B, four additional south suburban Milwaukee communities (Franklin, Greendale, Greenfield and Whitnall). These are considered regional comparables. The third level consists of all 18 Milwaukee metropolitan school districts (Group A plus Group B plus Brown Deer, Germantown, Elmbrook, Menomonee Falls, Muskego, New Berlin, Nicolet, Shorewood, Wauwatosa, and West Allis). These are considered general comparables. The Association rejects the School Board's inclusion of the Pewaukee and Slinger School Districts in any of the above groupings as being without foundation and contrary to past bargaining practices in St. Francis.

After looking at some basic school finance data comparing the St. Francis School District with the three comparability groupings noted above, the Association concludes that although St. Francis is the smallest K-12 district and has a low taxpayer income, its effort to support education (defined in terms of local property taxes and budgeted cost per pupil) are above the average and its ability to support education (state aids and taxable property per pupil) is "about average" for the southern suburban Milwaukee school districts.

As for cost of living, according to Association calculations, its offer permits St. Francis teachers to recoup cost of living losses for the prior

twelve months which it calculates to be 13.7% (using the July 1979 to July 1980 Milwaukee CPI-W figures). Except for those teachers at the maximum, the Association's final salary offer also includes a 2.2% improvement or "catch-up" factor. The Association contrasts the beneficial effects of its final offer with a 3.7% decrease in average teacher purchasing power which it calculates will result from the implementation of the Employer's final offer. Moreover, if more recent CPI-W figures are used, the cost of living factor justification for the Association's offer becomes even stronger. Additional Association calculations relating to the adverse effects of recent inflation upon St. Francis teachers' salaries and their relative positions compared with teacher salaries in neighboring school districts were also presented to justify the Association's offer which averages $2549 per teacher (or 15.9%).

The Association presented detailed data to demonstrate that in 1979-80, the comparable position of St. Francis teachers diminishes by amounts ranging between $55 (Oak Creek) to $800 (Greendale). The Association noted that teachers at the maximum in St. Francis were the most adversely affected group when compared to their counterparts in comparable districts in 1979-80. For all these reasons, the Association concludes that appropriate comparability data clearly justify the "catch-up" component contained in its final offer which was designed to lift St. Francis from its bottom or near bottom position among all three levels of comparables.

Turning toward 1980-81 comparability data, the Association noted that no pattern had yet been established at the time of the St. Francis hearing. However, it considered its final salary offer to be in line with other association final offers in Milwaukee area school districts at impasse. Indeed it noted that the average dollar increases which it proposes for 1980-81 were slightly lower than the average dollar increases proposed in Milwaukee area comparables. In contrast, it argues that the School Board's final offer is not in line with other current school board final offers. In addition, in the few school districts with recently negotiated 1980-81 settlements, the Association contends that West Allis, Wauwatosa, and Germantown settlements support its position. For example, using salary settlement figures alone, the West Allis settlement was "worth" an average of $2626 (or 13.6%) per teacher, the Wauwatosa settlement was "worth" on the average $2301 (or 12.5%) per teacher and the Germantown settlement was "worth" on the average $1981 (or 12.1%) per teacher. For the Association, the fact that Germantown is more distant from St. Francis than either West Allis or Wauwatosa is significant.

Finally, in response to the Employer's inability to pay argument, the Association argues the following:

1) The June 1981 year end budgeted balance of $476,737 is more than adequate to finance the additional costs of the Association's salary offer (estimated to be approximately $102,500 by the Association);

2) According to undisputed testimony, the Association's offer can be implemented within state cost control limitations and, even if it could not, many Wisconsin school districts exceed cost control limitations without penalties;

3) 1980-81 budget priorities can be reordered to finance the Association's salary offer; and

4) The financial difficulties of the St. Francis School Board are largely self imposed. Specifically, the Association points to:

   a) Board failure to increase 1979-80 taxes sufficiently to cover that year's teacher settlement which resulted in borrowing to meet this known obligation.

   b) Board decision not to close the Faircrest Elementary School this school year and thus a substantial savings in operating expenses and salaries was lost.

   c) Board decision not to participate in Chapter 220 integration program with the Milwaukee School District and thus an opportunity to receive additional state revenues available to program participants was lost.

As to other issues at impasse, the Association acknowledges that the existing St. Francis longevity pay is well within the longevity pay of comparable districts. It justifies its proposal to increase longevity pay as an integral part of a needed and overdue correction of the St. Francis salary schedule and as a means to give to teachers at the maximum salaries an adequate cost of living increase. As to its duration proposal for a one year teacher agreement, the Association argues that one year agreements have been the past practice in St. Francis since 1970-71 except for one two year teacher agreement (without reopeners) for 1976-78. As for comparables on the duration issue, the Association presented evidence that a majority of the comparables will be negotiating new agreements for 1981-82 and even where there are reopeners (or proposed reopeners among the comparables), there is no precedent for the restrictive reopener proposed by the Board in its final offer herein which entirely precludes negotiations on language items.

For all the above reasons (as well as additional ones set forth in its exhibits and briefs), the Association concludes that its final offer should be selected as the more reasonable one before the arbitrator.

School Board

The Employer also supports its final offer by relying upon certain specified statutory criteria: c (interests of the public and financial ability of the employer to meet the proposed settlement costs); d (comparability); e (cost of living); and h (other factors including the Association's behavior prior to filing the mediation-arbitration petition and during the WERC investigation). The Employer calculates that its final offer (based upon the 1979-80 workforce of 101.5 full time equivalent teachers) amounts to an average salary and benefits increase of $2007 per teacher, including a 10% salary increase), with a difference of approximately $105,000 separating the parties' final offers.

The School Board begins its arguments by noting that St. Francis has the smallest student enrollment of the 18 Milwaukee suburban school districts (and enrollment is projected to continue to decline) and that St. Francis has one of the lowest equalized valuation per student and one of the higher net tax rates and budgeted costs per pupil. It emphasizes that severe financial difficulties face the Board at the present time including 1980-81 budget cuts already made,large outstanding loans to meet 1980-81 operation expenses, loss in 1979-80 state aids and anticipated loss in 1980-81 state aids. All these adverse events are occurring despite an already implemented property tax increase of 15% in a district where property owners are shouldering a very heavy tax burden and must continue to do so in view of declining pupil enrollments, revenues, and continuing heavy loan repayment obligations. The School Board contends that it will even have serious difficulties financing its own salary package. This is true because many budget cuts have already been implemented (for example, a decrease in teachers from 101.5 full time equivalents in 1979-80 to 92.3 full time equivalents in 1980-81). Moreover, additional teacher layoffs and program cuts at this time in this school year would be particularly unwise and ineffective to produce substantial savings. The district concludes therefore that it is unable to fund the Association's final offer "without seriously eroding the quality program the District offers its students", particularly since the District is unable at this late date to increase its property tax rate for this year.

As for the comparability factor, the Employer believes that appropriate comparable communities must be comparable in size to St. Francis rather than merely geographically close by. For the Employer, the athletic conference is a very appropriate comparable since it is composed of similarly sized school districts. Thus the Board looks for comparability to the two school districts of Slinger and Pewaukee, particularly since there are no other local settlements for comparably sized districts. For the Employer, the very favorable pupil-teacher ratio in St. Francis must be taken into consideration in evaluating comparability data. The high percentage of St. Francis teachers who hold only a bachelor degree (75.4%) must also be considered. Since St. Francis has had a relatively low salary schedule for many years in comparison to other Milwaukee area suburban schools, the School Board additionally contends that a broader regional district comparison is justified. It proposes that a

grouping of 23 school districts in southeastern Wisconsin*should be used in this proceeding as well as a state wide grouping of 188 school districts. If the later state-wide grouping is looked to, the Employer notes that the average dollar settlement in those districts for 1980-81 is $1741.37 or 10%. This figure is then used by the Employer to evaluate the reasonableness of its current offer valued at $2007 (for salary and fringe benefits). The District concludes this portion of its argument by also noting that no 1980 arbitration award approaches the Association's final offer of 15.9%,by rejecting the recent West Allis and Wauwatosa 1980-81 settlements as too unique to be used as precedents in this proceeding, and by indicating that its salary offer herein is in line with 1980-81 pay increases for all other St. Francis School District employees who are currently receiving pay increases amounting to less than 10%.

In regard to the third factor relating to cost of living increases, the School Board argues that Wisconsin arbitrators were meant to look at other considerations besides the "raw" figures published by the U.S. Labor Department's Bureau of Labor Statistics. The Board challenges the Association position that 13.7% accurately indicates the increase in the cost of living for St. Francis teachers by pointing to what some specialists have labeled as substantial distortions in the current BLS approach. The Employer is persuaded that a more appropriate indicator of increases in the cost of living is the "underlying inflation rate" approach recognized by the Council on Wage and Price Stability (CWPS) and others. Thus, according to the Employer, any cost of living analysis in this proceeding should begin with the annual BLS figure published in January and should utilize the U.S. City Average rather than specific Milwaukee figures. This more accurate indicator of 12.7% must then be discounted or adjusted by 2.5% to reflect the general BLS distortions. Using this net figure of 10.2%, the Board concludes that this figure represents a more accurate cost of living factor. That figure of 10.2% also demonstrates that the Board's final offer herein adequately meets the statutory factor relating to cost of living.

Finally, the School Board contends that the history of the Association's bargaining offer of $12,060 which was raised to $12,270 in its final offer is a distortion of the arbitration process, is inconsistent with the public policy embodied in MERA, and reflects adversely upon the reasonableness of the Association's final offer in this proceeding.

In a supplemental letter, the Board argues that multi-year agreements are not uncommon particularly where there is a broad reopener.

Based upon all its evidence and arguments, the Employer concludes that its final offer should be selected as the one that more closely matches the statutory factors.

DISCUSSION

Although there are two distinct issues at impasse in this proceeding, the 1980-81 teacher salary schedule and duration of the agreement, it is clear from the parties' presentations at the arbitration hearing and in their briefs that the major issue which separates them is the salary schedule. Within that single issue, however, there are several significant subissues over which the parties vigorously disagree. These include: 1) what are the appropriate comparables and what do you do for comparables when few current settlements or awards are available in comparable districts, 2) how are increases in the cost of living appropriately measured, 3) has the Employer presented a valid inability to pay argument herein (in contrast to a "difficulty" or "unwillingness" to pay argument), and 4) what significance, if any, should be given to a bargaining history wherein the Association's final offer on salary is higher than its bargaining demand on that issue prior to impasse. Each of these four areas of disagreement deserve exploration, comment, and resolution.

Discussing these subissues in reverse order, the undersigned notes that the last listed problem was raised at the arbitration hearing when the Association objected to the propriety of Employer testimony and arguments relating to the Association's pre-impasse and during impasse behavior. At the hearing and in its brief, the Employer argued that it is relevant and proper for the undersigned to consider the fact that during pre-impasse negotiations the Association had proposed an increase in the 1979-80 B.A. base from $11,700 to $12,060 in 1980-81 but that in its final offer the Association raised its demand to $12,270. The Board contends that this is suspect behavior and goes directly to the reasonableness of the Association's final salary offer while the Association

contends that this evidence should not be considered at all or, if admitted, it should not be given much weight since the offer of $12,060 was in the nature of a settlement offer reflecting the willingness of the Association to accept a lower starting base if an immediate voluntary settlement was possible. Although, it is true, as the Employer points out that consideration of bargaining history of this type differs from consideration of a party's willingness to compromise or its "reasonableness" during the mediation phase of mediation-arbitration, yet the facts herein presented by the Employer relating to the Association's behavior are quite ambiguous and susceptible to many different explanations. The undersigned does not believe, therefore, that the arbitration phase of mediation-arbitration will be advanced in any way by adopting the Employer's point of view on this issue in this case and, accordingly, will not give any weight to this Board argument.

On the crtical question of what constitutes a valid inability to pay defense by an Employer (in contrast to an unwillingness or a difficult to pay argument) under MERA's mediation-arbitration provisions, the undersigned finds this to be more difficult to resolve. The present financial outlook for the St. Francis School District is not a good one, according to any version of the facts. Declining state revenues and pupil population together with existing substantial debts have placed this small school district in a difficult position. The St. Francis teaching staff has already been significantly reduced from 1979-80 to 1980-81; money has already been borrowed to meet operating expenses; and the 15% property tax increase in 1980-81 appears to be insufficient or barely sufficient to meet all of the Employer's commitments, including funding its final offer in this dispute. Yet, as the Association points out, at least part of the present financial plight of the district is self-imposed. The District had the legal capacity to increase taxes even more than it did; the Board voluntarily rejected participation in the Section 220 integration program which would have brought into the District additional state revenues; and it also failed to close a small elementary school and thus failed to take advantage of additional savings. The Association correctly notes that funding either final offers is within state cost control limitations. In a technical sense, it is difficult to conclude that the admittedly constrained financial circumstances of the St. Francis School District representa a true inability to pay situation. Even the Employer's phrasing of its position on this issue is a qualified one. "Can the District provide a minimally acceptable education program if SFEA's salary offer is adopted?"

After taking all of the above arguments into consideration, noting the lateness in the school year of this award and limited implementation options, and accepting the Employer's view that the large projected end of the year (June 1981) balance is mostly needed to cover summer 1981 expenses (including, but not limited to, teacher salaries), the undersigned believes that she must give substantial weight to the Employer's current economic circumstances. While the Association is correct in pointing out that some of the Employer's present difficulties may be self-imposed and political in nature, yet there is some substantial evidence that the District has made certain good faith efforts to cope responsibly with its fiscal situation to minimize its impact and these deserve recognition. Therefore, in considering criterion c, the arbitrator concludes that significant weight must be given to certain arguments presented by the Employer which reflect a "difficulty" to pay situation, although there is insufficient proof to establish "inability" to pay.

The next disputed issue relates to the cost of living increases and which salary offer is more reasonable in light of this statutory factor. The Association relies heavily upon the July 1979-July 1980 Milwaukee CPI-W figures of BLS and notes the serious erosion of the buying power of bargaining unit members in recent times. The Employer criticizes the Association's approach, noting what has been labeled as distortions contained in the BLS approach and emphasizing the need to "adjust" BLS figures to determine the "underlying inflation rate." Each side using its own approach reaches the not unexpected conclusion that its view of the cost of living statutory factor justifies the salary offer it is proposing. Similar arguments have been made by other parties in other interest arbitration proceedings in this state and elsewhere on this same problem of defining an appropriate cost of living figure. Elsewhere, the undersigned has noted that CPI figures in this period of economic instability should be used with caution and that in a period of spiraling inflation, few employees

can expect absolute protection against the adverse impact of rapid increases in the cost of living. Yet, if this factor were the sole factor to be considered in this proceeding and if the Association's final offer did not contain (as it in fact does) an additional "catch-up" component, the undersigned would agree with the conclusion of Arbitrator Zeidler in his recent arbitration award in Greenfield School Board, MED/ARB-817 (2/6/81) that this factor favors the Association's approach herein as it did in Greenfield. The alternative calculation presented by the Employer is too speculative to be accepted and is not compatible with the parties' past practices. Since no single factor is entitled, as a matter of law, to be determinative, and this arbitrator's above conclusion regarding the cost of living factor disregards the catch-up factor which is an integral part of the Association's final offer, she must proceed to consider additional arguments raised by the parties. Neither final offer receives clearcut support from an appropriate cost of living analysis.

Having discussed the inability to pay and the cost of living arguments, the arbitrator now turns to the comparability factor, the remaining subissue herein. For this round of bargaining and during this proceeding, the Association has argued in favor of the "Zeidler hybrid approach". It notes that there have been few current settlements and no current arbitration awards in these groupings of comparables as of the date of the arbitration hearing in this case. It urges that serious consideration be given to recent 1980-81 settlements in West Allis and Wauwatosa and generally emphasizes comparability data as of 1979-80 which placed St. Francis teachers at the bottom (or close to the bottom) of all the Zeidler comparability groupings. The Employer argues for a very different approach on this issue. It urges that serious consideration be given salaries in the Slinger and Pewaukee School Districts because of their similar size to St. Francis. It also urges that serious comparability consideration be given to a grouping of 23 districts in southeastern Wisconsin* plus settlements and awards around the state. The undersigned is persuaded that the Zeidler hybrid approach is basically sound and is a reasonable approach to meet the parties' needs. If Slinger and Pewaukee are to be included in a comparability analysis, she believes that they should be grouped with all the Milwaukee County suburban districts. In future bargaining the parties may wish to voluntarily agree to modify the Zeidler approach in this manner. Having resolved this aspect of the comparability dispute, the parties and the arbitrator are still left with the complication that few settlements or awards for 1980-81 are available in the above comparables. Further there is disagreement between the parties as to how to interpret the West Allis and Wauwatosa settlements.

Since the arbitration hearing was held in this case, three arbitration awards involving comparable school districts have been issued. In each case (Brown Deer, Greenfield and Greendale), the arbitrator selected the Employer's final offer as the more reasonable one although union arguments on a number of points were acknowledged as valid. While it is still too early to predict, it appears that there is a slowly emerging body of 1980-81 Zeidler comparables. These tend to favor the Employer in this proceeding. While the Association has demonstrated need for some "catch-up", it should be noted that there is nothing in a comparability approach which requires all districts in a grouping to have substantially similar salary schedules. Comparability analysis may demonstrate that for many years a particular school district has been at the bottom of comparability groupings and it is not inconsistent with the common understanding of this criteria to issue an award which retains an employer's relative position. The Association has failed to demonstrate at this time its absolute right to a significant "catch-up" component particularly during a year when it is also attempting to keep pace with double digit inflation, when taxpayers are already carrying a heavy burden, and when significant cuts in programs and staff have taken place. While the arbitrator is concerned that implementation of the School Board's offer may leave St. Francis teachers with a less than adequate salary schedule in 1980-81, she is even more concerned that implementation of the Association's offer will adversely affect important public interests because of the demonstrated difficulty to pay argument presented by the School Board. Good faith negotiations for the 1981-82 salary schedule and other economic negotiations under the reopener clause proposed by the Employer will provide the parties with a new opportunity to review resources, comparability data and other statutory criteria. The Association may legitimately expect the School Board to take every reasonable step in 1981-82 to help St. Francis teachers maintain at least their historic comparability

position.

Little mention has been made in this award regarding the duration issue. As noted at the beginning of this section, the parties have concentrated their arguments and evidence on the salary issue and the arbitrator followed the parties in this regard. Because of the primary importance of the salary issue, selection of the Employer's final offer on salary is determinative of the outcome of this proceeding. This is true even though, if duration were the sole issue in dispute, the arbitrator must conclude that the statutory factors favor the Association's position on duration.

One final note: Atlhough some Employer evidence was presented regarding other economic benefits (in addition to salary) received by teachers in this bargaining unit as compared with appropriate comparable districts, both parties concentrated their arguments on salary schedule data. While the complexity of salary schedules makes serious salary comparisons between school districts difficult, yet the undersigned is uneasy about this focus. The mediation-arbitration legislation directs mediator-arbitrators to give weight to overall compensation. Even without such a statutory direction, many arbitrators believe that it is important to know about total compensation before choosing between final offers. It is unfortunate that this relevant information is not available in many disputes.

AWARD

Based upon all the evidence and arguments presented by the parties and the discussion above and after consideration of the statutory factors set forth in Section 111.70(4)(cm)(7) of MERA, the arbitrator selects the final offer of the Employer and directs that it be incorporated into a collective bargaining agreement along with all already agreed upon items.

Madison, Wisconsin
March 23, 1981

June Miller Weisberger
Mediator-Arbitrator

* Watertown, West Bend, Hartford, Pewaukee, Whitefish Bay, Muskego, Fox Point #2, Brown Deer, Fox Point #8, Elmbrook, New Berlin, Hartford #1, Janesville, Kenosha, Cudahy, Glendale-Nicolet, Glendale #1, Greenfield, Oak Creek, St. Francis, Wauwatosa, South Milwaukee and Milwaukee.