BEFORE THE ARBITRATOR

In the Matter of the Petition of

KIMBERLY EDUCATION ASSOCIATION

To Initiate Mediation-Arbitration Between Said Petitioner and

KIMBERLY AREA SCHOOL DISTRICT

Case XV
No. 26947 MED/ARB-910
Decision No. 18246-A

Appearances:

Mr. Dennis W. Muehl, Executive Director, Bayland Teachers United, appearing on behalf of the Association.

Mulcahy & Wherry, S. C., Attorneys and Counselors at Law, by Mr. Dennis W. Rader, appearing on behalf of the Employer.

ARBITRATION AWARD:

On December 1, 1980, the undersigned was appointed by the Wisconsin Employment Relations Commission as Mediator-Arbitrator in the above entitled matter, pursuant to Section 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Kimberly Education Association, referred to herein as the Association, and Kimberly Area School District, referred to herein as the Employer. Pursuant to statutory responsibilities, the undersigned conducted mediation between the Association and the Employer on January 20, 1981, over matters which were in dispute between the parties as they were set forth in their final offers filed with the Wisconsin Employment Relations Commission. Mediation efforts failed to resolve the dispute, and pursuant to prior advice to the parties arbitration proceedings were conducted on January 20, 1981, after the parties had executed a waiver of the statutory requirements found at Section 111.70 (4)(cm) 6.c., which require the Mediator-Arbitrator to provide written notification to the parties and the Commission of his intent to resolve the dispute by final and binding arbitration, and to establish times within which either party might withdraw his final offer. During the arbitration proceedings the parties were present and given full opportunity to present oral and written evidence and to make relevant argument with respect to their final offers. The proceedings were not transcribed, however, briefs were filed in the matter which were exchanged by the Arbitrator on March 3, 1981.

THE ISSUES:

Two issues remain unresolved in the parties' negotiations for a successor Collective Bargaining Agreement. They are:

I. DISABILITY INSURANCE

A. Employer Offer - The Employer offers to continue the terms of the long term disability benefits unchanged from the predecessor Agreement, inclusive of the 365 day qualifying period.

B. Association Offer - The Association proposes to modify the terms of the long term disability benefits so as to provide a qualified period of 90 days.

II. SALARY

A. Association Offer - The Association proposes an increase in base salary from $10,900.00 to $12,100.00. Additionally, the Association proposes a change

in the salary structure so as to provide a consistent 3% differential between each of the lanes. Additionally, the Association proposes that all vertical increments be established at 4%, which affects only vertical steps 15 and 17 of the predecessor salary schedule. The Association proposal at step 17 of the MA + 12 lane results in a salary proposal there of $22,766.00 (longevity not included).

B. Employer Offer - The Employer offers a base salary increase from $10,900.00 to $11,880.00. Additionally, the Employer proposes that the differential between the BA + 24 lane and the MA lane be increased from $250.00 to $550.00. Furthermore, the Employer proposes that the 3% increments at vertical steps 15 and 17 contained in the predecessor salary schedule be maintained.

In their final offers the parties have submitted specific salary schedules setting forth salary rates to be paid at all steps and lanes. The undersigned in the foregoing has summarized the differences in the parties' positions with respect to their salary schedules, and will not set forth in this Award the entire schedule of either party.

DISCUSSION:

Section 111.70 (4)(cm) 7 directs the Arbitrator to consider certain factors in arriving at his decision. The parties to these proceedings have presented evidence and argument with respect to certain of the criteria. The Employer relies on criteria d, e, f, g and h in presenting his evidence and argument. The Association relies on criteria d and e. Thus, the criteria to which the parties present evidence deals with the comparables, the cost of living, total compensation, and changes in circumstances during the pendency of the proceedings. [1]

LONG TERM DISABILITY INSURANCE

A review of the evidence satisfies the undersigned that the Association proposal to reduce the qualifying period for long term disability insurance is reasonable. The undersigned, however, recognizes the comparative minor costs of the parties' differences with respect to long term disability. Consequently, the undersigned now concludes that the long term disability insurance issue will not control the outcome of this dispute. It is obvious that the principal disputed issue between the parties is the salary schedule. Therefore, if the evidence supports the Association position on the salary schedule, the long term disability issue will be adopted as well. Conversely, if the evidence supports a finding for the Employer offer on salary schedule, the preference for the Association proposal on its long term disability proposal cannot outweigh the primacy of the salary dispute. The decision, therefore, will turn on whose salary schedule should be adopted.

SALARY ISSUE

Both parties to this dispute rely heavily on criteria d, the comparables. The parties, however, do not agree as to what constitutes the comparables. The Association relies upon the schools included in the Fox Valley Athletic Association as its comparables. The districts contained within the conference include Oshkosh, Neenah, Menasha, Appleton, Kimberly and Kaukauna.

The Employer argues that the most comparable school districts to the instant Employer are the following 11 districts: Ashwaubenon, Brillion, DePere, Freedom, Hilbert, Hortonville, Kaukauna, Little Chute, Seymour, West DePere and Wrightstown.

1/ At hearing exhibits and testimony were introduced bearing on criteria c, the financial ability of the unit of government to meet the costs of any proposed settlement. In its brief the Association devotes argument to this criteria, contending that ability to pay is not at issue here. The Employer, however, makes no argument in his brief with respect to criteria c. Because the Employer now makes no argument with respect to ability to pay, the undersigned concludes that it is unnecessary to address criteria c, and concludes that the Employer has abandoned all argument that his inability to pay would preclude the adoption of the Association offer.

Additionally, the Employer recognizes a lesser degree of comparability among the following five districts: Appleton, Green Bay, Menasha, Neenah and Oshkosh.

From the foregoing it is obvious that the parties dramatically differ in their positions as to what constitutes comparable districts for the purposes of this proceeding. While the Employer includes all of the athletic conference in its comparables, he includes only the district of Kaukauna from the athletic conference in his grouping of eleven most comparable districts. The remaining four conference schools of Appleton, Menasha, Neenah and Oshkosh the Employer relegates to a status of "not as comparable".

Both parties cite prior arbitration decisions supporting their respective positions on the appropriate determination of the comparables. The Employer cites Arbitrators Raskin, Mueller and Haferbecker in support of his position. Specifically, the Employer relies on Arbitrator Raskin's dicta in City of Brookfield (Police), WERC Dec. No. 14395-A (8/76), wherein he stated:

> It has been held that 'comparable' means equivalent of being compared with; it does not mean identical. Wheeler v. Barrera, 417 U.S. 402 ( ). It is enough, therefore, that the comparables relied upon are sufficiently similar that an expert can form an opinion on the subject in an issue. In this case municipalities could be deemed comparable where they are substantially equal in the following areas: population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and wages and fringe benefits paid such personnel. (Page 4, emphasis supplied.)

The Employer relies on Mueller's dicta in School District of Mukwonago, WERC Dec. No. 16363-A (10/78), in which Arbitrator Mueller indicated four basic criteria for determining comparability, which were: "(1) the geographic proximity, (2) average daily pupil membership and bargaining unit staff, (3) full value taxable property, and (4) state aid."

The Employer further relies on Arbitrator Haferbecker's dicta in City of Two Rivers (Police), Case XXVI, No. 25740, MIA-433 (9/80), in which Arbitrator Haferbecker stated:

> It is apparent that arbitrators differ as to what are appropriate comparables. As I indicated in my January, 1977 award in a Manitowoc case (Case XXVII, No. 20650, MIA-254), both geographic proximity and population should be considered in determining appropriate comparables. (Page 3, emphasis added.)

The Association cites arbitrators Kerkman, Mueller and Imes in support of its position that the athletic conference schools should constitute the comparables in this matter. The Association relies on the dicta of Arbitrator Kerkman, Appleton Area School District, Case XXVIII, No. 24638, MED/ARB-461, Decision No. 17202-A, (January 11, 1980), wherein this Arbitrator in his dicta stated: "Turning to the comparables, the undersigned concludes that the proper comparables in this matter are the athletic conference schools, composed of Appleton, Kaukauna, Kimberly, Menasha, Neenah and Oshkosh." Additionally, the Association relies on the dicta of Arbitrator Mueller in Menasha Joint School District, Case XXXV, No. 26523, MED/ARB-797 (December 9, 1980), wherein at pages 4, 5 and 6 of his opinion Arbitrator Mueller limited his comparisons to Neenah School District (a conference member) because of his recognition of a special relationship between Neenah and Menasha as twin cities, where the Employer had argued that the entire athletic conference should be established as the comparables.[2]

Finally, the Association cites the dicta of Arbitrator Imes in Kaukauna Area School District, Case II, No. 26686, MED/ARB-640 (February 18, 1981), in

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2/ The Employer also cites Mueller in Menasha Joint School District, and argues that Mueller's recognition of Neenah-Menasha as twin cities should cause the undersigned to view Neenah-Menasha as a combined district, making them less comparable to Kimerly

which Arbitrator Imes in her dicta stated:

> The Employer has proposed a set of comparable communities which it considers most comparable. It used the following criteria to make the assertion: all the communities are located in the Fox River Valley; they all compete for the same goods and services and they are all influenced by the same fluctuations in the labor market and in the cost of living. The Employer did not, however, show the relationship of these communities in assessed valuation and receipt of state aids, generally indicia of a community's ability to absorb the costs of certain services. Additionally, the Employer proposed a set of comparables which relate to Kaukauna in the same manner that the Employer raised objection to (sic) relevant to the athletic conference. The majority of the districts the Employer proposes for comparison purposes are anywhere from two and one half times smaller to five and one half times smaller than Kaukauna. Even when the secondary set of comparables is considered (all of which are larger than Kaukauna), the number of communities larger than Kaukauna does not begin to offset the number of smaller communities presented. Additionally, no other relationship is shown to exist between these districts other than they are in the Fox River Valley and they may share some economic community of interest. Therefore, it is not reasonable to accept a new set of comparables when it is no more logical than those previously used. The undersigned thus selects the athletic conference as the appropriate set of comparables since there has been some indication that these communities have been at least part of previous comparables. Too, they demonstrate some similarities in that they are in the athletic conference; they are all in the Fox River Valley; the school districts maintained similar growth patterns over the past five years; the communities maintained similar assessed value increases over the past five years, and at least three of the districts are comparable in per pupil membership, full time teacher equivalencies and assessed valuations.

The guidance provided to this Arbitrator by these citations furnished by the Employer enunciate general principles with respect to determinations of comparables which set forth valid criteria for the Arbitrator to consider in determining where the comparables lie. The Employer argues that applying the criteria as set forth in the awards of Raskin, Mueller and Haferbecker it would follow that the Employer proposed comparables should be adopted. The undersigned disagrees. The general principles enunciated by Arbitrators Mueller, Haferbecker and Raskin were considered in other arbitration awards cited by the Association, where the athletic conference was held to be comparable. In fact, in the Menasha School District case decided by Robert Mueller, the Employer there argued that the athletic conference should establish the comparables. The fact that three arbitrators have determined the athletic conference to be comparable when considering disputes among athletic conference members causes the undersigned to conclude that the specificity of the cases upon which the Association relies, in that they are dealing with school districts of the same athletic conference, weighs heavily in favor of adopting the Association proposed comparables of the athletic conference. Furthermore, the undersigned has carefully reviewed the Imes award in Kaukauna School District, where the Employer there proposed the same comparables that they are proposing here, with the exception of the School District of Seymour, which the Employer here includes and was not included in Kaukauna. There Imes rejected the Employer argument because the Employer did not show the relationship of these communities in assessed valuation, receipt of state aids; and because the Employer proposed set of comparables contained districts which varied from two and one-half times smaller to five and one-half tires smaller than the District of Kaukauna. The record here with respect to the Employer comparables has the same deficiencies noted by Arbitrator Imes, and this Arbitrator rejects the Employer proposed set of comparables for those same deficiencies.

In adopting the Association comparables, the athletic conference, the undersigned, nevertheless, recognizes the size disparities which exist internal to the conference, and as a result will place primary considerations in this matter on the comparables of the districts in this conference which are closest to the size of the Kimberly District. The record establishes that the districts of

Kaukauna and Menasha are the districts most comparable in size. Menasha, however, must be considered less comparable to Kimberly than Kaukauna by reason of Mueller's conclusions that the special twin city relationships of Neenah-Menasha placed primary emphasis on that relationship. Consequently, the undersigned will look primarily to the relationship of salaries between Kaukauna and Kimberly in determining which salary proposal should be adopted.

SALARY COMPARISONS

From Employer Exhibits 13 through 17 the record establishes that the relationships set forth in the following table existed for the year 1979-80:

	BA Minimum	BA Maximum	MA Minimum	MA Maximum	Schedule Maximum
Kaukauna	$11,225.00	$16,950.00	$12,123.00	$20,542.00	$22,562.00
Kimberly	$10,900.00	$16,896.00	$11,600.00	$19,372.00	$19,790.00 [3]

From Employer Exhibits 18 through 22 a comparison for the year 1980-81 is set forth below showing the Kaukauna salaries paid pursuant to the arbitration award there, compared to the Employer and Association offers at the same levels in Kimberly:

District	BA Min.	BA Max.	MA Min.	MA Max.	Schedule Max.
Kaukauna	$12,350.00	$18,649.00	$13,338.00	$22,601.00	$24,824.00
Kimberly:					
Association Offer	$12,100.00	$18,676.00	$13,189.00	$22,165.00	$22,706.00
Employer Offer	$11,880.00	$18,414.00	$12,860.00	$21,510.00	$21,927.00

A comparison of the foregoing tables establishes that if the Employer offer is adopted the relationships between salaries paid in Kimberly and Kaukauna at each of the points of comparison set forth in those tables would produce the following results:

	Kaukauna-Kimberly 1979-80 Difference	Kaukauna-Kimberly Employer Offer 1980-81 Difference	Kaukauna-Kimberly Association Offer 1980-81 Difference
BA Minimum	$ -325.00	$ -470.00	$ -250.00
BA Maximum	- 54.00	-235.00	+227.00
MA Minimum	-523.00	-456.00	-149.00
MA Maximum	-1170.00	-1091.00	-465.00
Schedule Maximum	-2772.00	-2697.00	-2056.00

The comparisons of the Kaukauna-Kimberly salaries paid at the five points of comparison in the schedule contained in the foregoing tables establishes that in the year 1979-80 Kimberly teachers were paid an average of $975.00 less than Kaukauna teachers in averaging the differences of all five points of comparison. If the Employer offer were adopted the averages of the five points of comparisons contained in the foregoing tables would result in the Kimberly teachers slipping to $1,030.00 behind Kaukauna teachers for the average of the five points of comparison. If the Association offer were adopted the Kimberly teachers would remain behind the average of the five points of comparison, however, the gap would be narrowed to $539.00 behind Kaukauna teachers on the average of the five points of comparison. Therefore, adopting the Employer offer would result in further widening the differential between salaries paid to Kimberly teachers compared to Kaukauna teachers, while adopting the Association offer would narrow the differential. All of the foregoing comparisons raise the question as to whether the Kimberly teachers are entitled to "catch up". Given the significant disparities between salaries paid to Kaukauna teachers vis a vis Kimberly teachers, the undersigned concludes that further slippage of Kimberly teachers should be

3/ The foregoing table excludes longevity payments in both districts.

avoided. The Arbitrator is most concerned about the differentials at the salary maximums. If the Association offer is adopted the differential between Kimberly and Kaukauna teachers at the salary maximum, wtihout longevity, will remain $2,058.00. If longevity were included that differential would be even greater. In 1979-80 the differential, inclusive of longevity, between Kimberly and Kaukauna teachers was $3,171.00. If the Employer offer were adopted the differential at schedule maximum, inclusive of longevity, would increase to $3,328.00. If the Association offer were adopted the differential at the schedule maximum would become $2,501.00. The undersigned concludes that there is no justification for a differential of maximum salary paid to teachers in neighboring school districts of the same conference and of the same relative size which would result if the Employer offer were adopted. It follows from all of the foregoing that the Association has established a need for catch up, and that based on the comparisons of salary schedules the Association offer should be adopted.

PATTERNS OF SETTLEMENT

In making comparisons as to dollars generated by the respective salary schedules, the undersigned has relied on a comparison between Kimberly and Kaukauna for the reasons described above. The undersigned, when considering patterns of settlement, however, will not limit the comparisons to Kaukauna because that would be too narrow a comparison when considering the percentages for which parties have settled for the year 1980-81. Having established the athletic conference as the comparables, the undersigned will consider the patterns of settlement, expressed as percentages, for the year 1980-81 for the entire athletic conference.

The record satisfies the undersigned that adopting the Employer offer here would result in a settlement of 12.01%, and adopting the Association offer would result in a settlement of 14.71%. 1980-81 settlements within the conference show that the Kaukauna settlement was 12.3%; Appleton settlement was 12.1%; Menasha settlement was 11.9%; Neenah settlement was 11.0%; Oshkosh settlement was 12.3%. Thus, the record reflects that the Association offer would result in a settlement of approximately 2.4% higher than any other settlement for 1980-81 within the athletic conference. Clearly, the Employer offer of settlement of 12.01% more nearly approximates the patterns of settlement which have been established within the conference. Based solely on the patterns of settlement the Employer offer would be adopted.

SUMMARY:

The undersigned is now confronted with determining whether the preference for the Employer offer based on patterns of settlement should control the outcome of this dispute; or whether the preference for the Association offer when comparing salary dollars generated by the salary schedules of this District compared to the Kaukauna district should control. The undersigned has concluded that the teachers here are entitled to catch up, however, awarding a settlement of 14.71%, which is 2.4% higher than anyone else in the conference, should be approached with extreme caution. The undersigned now concludes that the Association offer should be adopted, notwithstanding the 14.71% increase it represents. The Association has made an extremely strong case for catch up. Additionally, the undersigned notes from the stipulations of the parties that for the first time teachers employed in this district will reach a STRS payment of 5%. The undersigned concludes that a significant portion of the 2.4%differential in patterns of settlement is attributable to the parties' agreement to go to a 5% STRS payment on behalf of the teachers, and the undersigned further concludes that the percentage attributable to STRS contribution improvement should be discounted because Association Exhibit #43 establishes that all other schools within the conference had already been at 5% STRS, and the amounts necessary to bring these teachers to full STRS merely establishes that the teachers here are placed on equal footing with the comparable school districts for this item. Furthermore, given the lower base from which the teachers here are departing, the impact of percentages on that lower base mathematically results in less actual dollars than if the same percentages were applied to the higher bases found at Kaukauna. The undersigned, therefore, concludes that the higher percentage of settlement here is justified.

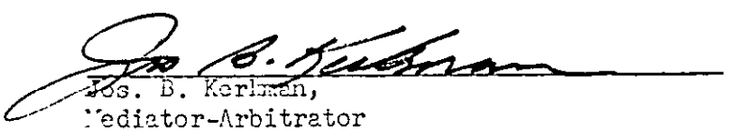
Both parties adduced evidence with respect to cost of living criteria. In view of the foregoing discussions, the undersigned finds it unnecessary to establish which offer is more acceptable based on the cost of living criteria.

Based on the record in its entirety and the discussion set forth above, after considering the argument of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Association, in addition to the stipulations of the parties filed with the Wisconsin Employment Relations Commission, as well as those provisions of the predecessor Collective Bargaining Agreement which remain unchanged through the course of bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement for 1980-81.

Dated at Fond du Lac, Wisconsin, this 3rd day of June, 1981.



Jos. B. Kerkman,
Mediator-Arbitrator

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