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STATE OF WISCONSIN  
BEFORE THE MEDIATOR/ARBITRATOR

MAY 1 1981

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

Arbitration	*	
	*	
of	*	WERC Case VII, No. 26849
	*	
PLAMANN EDUCATION ASSOCIATION	*	Decision Number 18286-A
	*	
and	*	MED/ARB-893
	*	
OUTAGAMIE COUNTY HANDICAPPED CHILDREN'S EDUCATION BOARD	*	ARBITRATOR'S AWARD
	*	
*****		

INTRODUCTION

On October 2, 1980, the Plamann Education Association, hereinafter identified as the Association, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting Mediation-Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA) in order to resolve the dispute between the Association and the Outagamie County Handicapped Children's Education Board, hereinafter identified as the Board. The WERC, having found that an impasse existed despite efforts to resolve the dispute during the November 13, 1980 investigation of WERC staff member, William Houlihan, issued an order dated December 2, 1980 initiating mediation-arbitration for the purpose of resolving the dispute, and issued a further order dated December 17, 1980, appointing the undersigned to serve as mediator-arbitrator for the purpose of resolving the dispute through mediation in accordance with Section 111.70(4)(cm)6.b., and, if not successful, through arbitration in accordance with Section 111.70(4)(cm)6.c.

Mediation having failed on February 16, 1981, and proper notices having been filed prior to the mediation session, the arbitration hearing was conducted on February 16, 1981 after both parties notified the mediator-arbitrator in writing that they did not wish to withdraw their final offers. The Association was represented by Hank Krokosky, Jr. Executive Director, Winnebago Land Educational Staff Council; the Board was represented by Roger E. Walsh, Attorney, Lindner, Honzik, Marsack, Hayman & Walsh. Exhibits were exchanged at the arbitration hearing and argument was made by post-hearing written briefs exchanged through the arbitrator on March 27, 1981.

ISSUES

The two issues in dispute were the increase in the salary schedule for the 1980-1981 school year and the items to be included in the 1981 contract re-opener negotiations.

BOARD OFFER

ASSOCIATION OFFER

Salary Schedule with a 1980-81 Base of \$11,500

Salary Schedule with a 1980-81 Base of \$11,710

Items subject to negotiation in 1981:

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- (a) Salary Schedule, excluding pay for summer school, curriculum pay & pay for Special Olympic Activities
- (b) STRS (Pension) Schedule
- (c) Health Insurance Premiums

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- (b) STRS (Pension) Schedule
- (c) Health Insurance Premiums
- (d) Dental Insurance

In the following discussion, the arbitrator first states briefly his finding on the re-opener issue and then analyzes the salary issue.

SCOPE OF THE RE-OPENER CLAUSE

The arbitrator reviewed the arguments of the parties on the scope of the re-opener clause but finds it unnecessary to go into them because he believes that the salary issue is far more important than the differences in the scope of the re-opener and that his finding on the salary issue will outweigh any finding he would reach on the re-opener question. The arbitrator believes that both the Board and the Association share his opinion of the relative importance of the two issues and, in their briefs, devoted relatively little attention to the re-opener issue. The arbitrator therefore makes no finding on this second issue other than that it is substantially less important than the salary issue and that his finding on the salary issue will be determinative of his finding on the offers as a whole.

1981 SALARY SCHEDULE

Under the Association proposal, the base salary will be raised in 1980-1981 by 10%, from \$10,650 to \$11,710 and other steps adjusted accordingly. Under the Board proposal, the base salary will be raised by 8% from \$10,650 to \$11,500 and other steps adjusted accordingly. According to Association Exhibits #81 and #82, the Board offer increases costs by 10.34% as compared to the 12.28% increase under the Association offer. Converted to dollars per teacher per year, the difference between the offers amounts to \$317. The Board's calculation of the difference in the offers is similar (see Board Exhibit #12) and amounts to a \$303 difference per teacher per year. It appears that the \$210 difference in the base salaries proposed by the parties generates a 50% greater difference in total compensation than that amount primarily because of the impact of the indexed salary increments.

According to Association Exhibits #2 and #4, the 1980-1981 enrollment of the Plamann School was 88 students, of whom 17 attend the Foster School in the Appleton School district. All of the students attending these schools are moderately or severely mentally retarded (MR) and require the service of teachers with an "MR" or Speech and Language specialty. There are 17 teachers in the bargaining unit which "consists of all full-time teachers certified for teaching handicapped children as defined in Section 115.76(1) Wisconsin Statutes, including speech therapists, . . ." (1978-1980 Agreement, Section II, Board Exhibit #1).

Although both parties make reference to all of the criteria listed in Section 111.70(4)(cm)7a.-h., the greatest reliance is placed on various aspects of criterion d., "comparability." The Association relies on three sets of comparisons and urges the arbitrator to give greatest weight to the first -- (1) salaries of area schools with comparable MR FTEs; (2) salaries of feeder schools which do not have comparable MR FTEs; and (3) salaries of CESA #8 schools that do not have comparable MR FTEs.

The Board believes it proper for the Arbitrator to give the greatest weight to the wage increases granted to other County employees, the salaries and increases granted at feeder schools, and wage increases granted in the private sector in the same geographic area. The Board contends also that the Association carries the burden of showing that the Board offer is not reasonable.

The arbitrator believes that the soundest comparison would have been the comparison of the salaries of Plamann teachers with other teachers who also teach moderately and severely mentally retarded children. Thirteen of the seventeen employees in the Plamann unit fall into this category (see Association Exhibit #15). Unfortunately, however, the sample of teachers who also teach moderately and severely mentally retarded children with whom to compare is somewhat limited. The Association shows that there are no such teachers in nine of the ten feeder schools (see Association Exhibit #38), only one in the tenth feeder school, Appleton (Association Exhibit #15), and 9.5 in CESA #8 schools -- 4 in Neenah, 1 in Clintonville and 4.5 in Oshkosh (Association Exhibits #15 & #56).

If one were to base the choice of final offers on the comparative salaries of teachers serving only moderately and severely retarded children, the Association offer in this case would be chosen. The salary at the fifth BS step for the 4.5, 1, 4, and 1 teachers at Oshkosh, Appleton, Neenah, and Clintonville in 1980-1981 would be \$14,592, \$14,781, \$14,484 and \$12,888 respectively compared to \$13,340 under the Board offer and \$13,584 under the Association offer (Association Exhibit #60-A).

It should be noted, however, that the salaries of the teachers of mentally moderately and severely retarded children are not established by market conditions independent of the salaries paid to other teachers in the same schools. Rather, these teachers who make up a small minority of the total number of teachers in most of the schools where they supply this special service, receive the same salary as the K-12 teachers with other certifications in the schools in which they teach. Although economists would contend that Plamann teachers should be compared with true substitutes -- teachers supplying the same service -- this approach is not the one that prevails in the teaching profession in Wisconsin. Instead, teachers are usually compared with other teachers even though they hold different certifications and are not true substitutes for each other.

Even though this arbitrator personally thinks that the comparison of similarly certified teachers providing like services is logical, it is not the customary procedure and therefore in most instances would not be controlling under the criteria listed in Section 111.70(4)(cm)7. In this dispute, the arbitrator would have been willing to distinguish the Plamann situation from the usual teacher salary dispute on the grounds that the school handles only mentally retarded children and hires only teachers with the certifications to handle this special student population. But the absence of a sufficient number of comparables makes this approach unsound and the arbitrator therefore is forced also to use the salaries of teachers without regard to certification.

The arbitrator turned next to a comparison of the salaries of the Plamann school teachers with the salaries of teachers at the feeder schools -- a comparison advocated by the Board and considered tertiary by the Association. Board Exhibit #8 shows that Plamann BA base would rank seventh when included with its ten feeder schools and that it had ranked sixth or seventh in the two previous years. Furthermore, according to that exhibit, the average increase for the feeders in '80-'81 will be 8.5% (assuming that the Union offer is selected in the pending Kimberly Med/Arb) as compared to the Board offer of 8.0% and the Association offer of 10%. Although these statistics provide support for the Board position, the arbitrator does not find them conclusive for several reasons.

First of all, the simple average of the 1980-1981 BA bases of the ten feeder schools is closer to the Association offer than to the Board offer. The arbitrator calculated the simple average from the data in Board Exhibit #8 and found it to be \$11,677. (The arbitrator used the average of the Kimberly Board and Association offers in this and subsequent calculations because those are the figures before the mediator/arbitrator in that dispute.) The \$11,677 is closer to the Association offer of \$11,710 than to the Board offer of \$11,500.

Second, the arbitrator believes that a comparison at the fifth step should be given greater weight than a comparison at the base level because the average number of steps of teachers at Plamann is 4.35 and because the Association has claimed that the feeder schools have been placing extra money in the structure rather than at the base. By use of the fifth step comparison, both of these factors are taken into account.

Third, the arbitrator believes that the importance of Appleton to Plamann cannot be disregarded. As has already been noted, some teachers in the Plamann unit teach in the Appleton Foster school along with Appleton teachers. Also, the listing of the number of students supplied by each feeder school in Association Exhibit #2 shows that 33 of the 88 retarded students under the care of the Plamann teachers come from Appleton.

In order to take these factors into account, the arbitrator constructed a weighted average of the fifth BS step in order to generate a salary to compare with the Board and Association offers. As weights, the arbitrator used the distribution of students shown in Association Exhibit #2 and multiplied these weights by the salaries at the fifth BA/BS step of the feeder schools shown in Association Exhibit #42-A. This weighting scale reflects the relative proportion of the Plamann student population emanating from each of the feeder school districts. Also, the use of the fifth step salaries takes into account the possibility that some feeder schools have been putting more of the salary increases than Plamann into the steps rather than the base.

The weighted average of teachers in the feeder schools at the BA/BS in 1980-1981 at the fifth step as shown in the table below based on Association Exhibits #2 and #42-A was calculated to be \$14,047 compared to \$13,340 under the Board offer and \$13,584 under the Association offer.

Table 1

WEIGHTED AVERAGE OF FEEDER SCHOOL TEACHERS AT THE BS/BA FIFTH STEP

<u>Feeder School</u>	<u>Number of Children Attending Plamann in 1980-1981</u>	<u>BA/BS Fifth Step Salary</u>
Appleton	33	\$14,781
Kaukauna	12	14,326
Kimberly	7	13,909 <sup>a</sup>
Little Chute	3	13,781
Seymour	9	13,514
Freedom	6	13,440
Hortonville	8	13,150
New London	6	13,055
Shiocton	3	13,046
Wrightstown	1	12,800
	<u>88</u>	<u>\$14,047 Weighted Average</u>
Board Offer		\$13,340
Association Offer		\$13,584

<sup>a</sup>This is the average of the Kimberly Board offer of \$13,781 and the Kimberly Association offer of \$14,036.

\* \* \* \* \*

It is clear from the above table that the weighted average feeder school salary comparison favors the selection of the Association offer in this dispute. It seems to the arbitrator that this comparison should be determining because it accurately reflects the population served by Plamann. If the County were to continue paying the teachers presently at Plamann, but were to disperse them throughout the feeder schools and paid the salaries prevailing at those schools, then the average salaries paid to these teachers would be the same as the weighted average generated above.

After completing the calculations shown above, the arbitrator reviewed again the arguments of the Board to ascertain whether, in total, they were sufficient to offset the preliminary finding based on Table 1. The arbitrator recognizes that districts characterized as "Goliaths" in the Board brief (which depicted

itself as David without a slingshot -- although it should be noted that it is ably represented by an experienced "hired gun") are not usually included in comparisons with much smaller districts. It is recognized that the salaries in all of the suburban schools clustered about a major city are influenced by the salary set in the major city but that the differential between the city and each of the suburbs should be similar and therefore that the comparisons are usually limited to suburban schools. This arbitrator does not take issue here with that line of reasoning -- although why there should be a city-suburban differential and what it should be are not crystal clear -- but believes that the situation in Plamann is distinguishable from that general approach. Plamann is a specialized school serving Appleton (the Goliath) as well as small schools. This is quite different from the Milwaukee example cited by the Board in which suburban school districts do not have this same relationship.

The Board also claimed that its offer in the Plamann dispute was closer to the raises offered to other employees of the County than the raise under the Association offer. The arbitrator does not challenge that statement but believes that the community of interest between the Plamann teachers and other county employees is less than the community of interest with teachers in the feeder schools.

In most intra-unit comparisons in cities and counties, arbitrators, including this one, are careful not to upset patterns established in the first units to settle unless there is a clear indication that the salaries of the unit in question are out of line with employees of other jurisdictions doing similar work. In teacher disputes, however, the tendency is to give greater weight to salaries of other teachers rather than to increases given by the city or county in which the school is located. It is true that the County is the employer of the Plamann teachers and as such differs from the norm. The arbitrator does not believe, however, that the fact that the County is the employer, rather than the CESA or individual school districts, is sufficiently important to warrant the abandonment of the usual teacher to teacher comparisons.

The Board also cites wage and unemployment statistics in the metropolitan area surrounding Plamann. The arbitrator believes that such statistics are much more important in disputes involving major pattern setting public settlements than in disputes such as this one. The arbitrator therefore believes that in this dispute involving a rather small district the private sector settlements carry less weight than the teacher comparisons discussed previously.

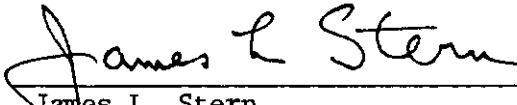
Finally, the arbitrator rejects the Board claim that the Association carries the burden of showing that the Board offer is not reasonable. Although this standard has been used by some arbitrators in grievances challenging a disciplinary action by management -- where the arbitrator finds that the employer action was not arbitrary or capricious and that he should not substitute his judgment for that of the employer -- the language of Wisconsin statute 111.70 which guides the arbitrator in this dispute does not put the burden on the Union. If, instead of the customary equal burden on both parties, there is to be an interpretation of the MERA along the lines argued by the Board, it seems to this arbitrator that the agency to make such a determination is the WERC. It, not the ad-hoc arbitrators, is the logical agency to rule on this particular argument of the Board.

This review of the Board arguments confirms the preliminary finding of the arbitrator that the Association offer on wages is preferable under the criteria of Section 111.70 to that of the Board because it is closer to the average salary at the BA/BS fifth step of the feeder schools weighted to reflect the number of pupils they send to the Plamann school district. Therefore, the arbitrator will select the Association offer.

AWARD

After careful consideration of the exhibits and arguments of the Board and the Association and with due weight given to the criteria listed in Section 111.70 of the Wisconsin statutes, the arbitrator selects the final offer of the Association for the reasons explained above and orders that the 1979-1980 Agreement be amended to include the agreed upon stipulated items and the Association final offer on 1980-1981 salaries and the scope of the re-opener clause in 1981.

4/28/81  
April 28, 1981

  
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James L. Stern  
Mediator-Arbitrator