ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
MAPLE TEACHERS FEDERATION)
LOCAL # 1293, WFT, AFT, AFL-CIO)
)
And)
)
SCHOOL DISTRICT OF MAPLE)
)

Interest Arbitration
Case VI
No. 26283
MED/ARB-733
Decision No. 18305-A

Mediator-Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Hearings Held

February 9, 1981
Maple, Wisconsin

Appearances

For the Employer — Edward J. Coe
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the School District of Maple, and the Maple Federation of Teachers, Local Union #1293, WFT, AFT, AFL-CIO.

The dispute arose in connection with contract renewal negotiations on the labor agreement which was effective through June 30, 1980. Due to the parties' inability to reach agreement, the Union filed a petition with the Wisconsin Employment Relations Commission on May 28, 1980, alleging the existence of an impasse, and requesting statutory mediation-arbitration of the matter. After a preliminary investigation of the matter, the Commission on December 8, 1980, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring mediation-arbitration. On December 29, 1980, the Commission issued an order appointing the undersigned to act as mediator-arbitrator, pursuant to the provisions of Section 111.70 of the Wisconsin Statutes.

The required preliminary mediation took place on the morning of February 9, 1981, after which the Mediator-Arbitrator determined that it was appropriate to proceed to final and binding arbitration. The arbitration hearing took place on the afternoon of February 9, 1981, and both parties received a full opportunity to present evidence and argument in support of their respective positions; the record was kept open for a period of time to allow both parties the opportunity to present certain factual data in support of their positions, after which each party filed a post-hearing brief. The hearing was closed by the Mediator-Arbitrator on March 17, 1981.

THE STATUTORY CRITERIA

The merits of the dispute are governed by the provisions of the Wisconsin Statutes, which in Section 111.70(4)(cm)7 direct the Mediator-Arbitrator to 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 employees performing similar services and with other employees 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, and 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."

THE FINAL OFFERS OF THE PARTIES

The impasse items before the Arbitrator include a relatively large number of both economic and language items. The final offers of the parties within each of the impasse areas are described below; the contract references are to the provisions of the expired labor agreement.

(1) The parties are in agreement with respect to the addition of a fair share provision to the current contract; they differ, however, with respect to the contract language to implement the change.

(2) Article II, Section 1 requires teachers with bachelors and masters degrees to secure at least three additional credits every five and seven years, respectively. The Federation proposes the elimination of these requirements, while the District proposes their continuation.

(3) Article III, Sections 7 and 8 provide for retention of teachers on probationary status by management, following two years of employment, and/or for placing an established teacher on probationary status. The Federation proposes the elimination of these extended probation provisions, while the District proposes their retention.

(4) Article III, Section 9 provides for up to three day suspensions of teachers, for violations of either the contract or certain professional ethics. The Federation proposes elimination of this provision, while the District proposes its retention.

(5) Article III provides for the use of terminal contracts. The Federation proposes the elimination of terminal contracts, while the District proposes their continued use.

(6) Article III, Section 14 provides for high school sponsorships being assigned by the high school principals, after consultation with a faculty committee of Union Members. The Federation proposes a new procedure, which proposal is opposed by the District.

(7) Article III, Section 17 recommends that full time teachers be limited to taking no more than three semester hours of college credit for each semester of teaching; it prohibits probationary teachers from exceeding the three credit limit. The Federation proposes elimination of this provision, while the District proposes its continuation in the new agreement.

(8) Article IV, Section 3 provides for certain compensation for non-instructional duties. The Federation proposes an increase to $5.50 per hour for ticket takers plus a 9.5% increase for other employees; it also seeks mileage reimbursement for certain events. The Employer proposes a 9.2% increase in rates, and opposes the introduction of any new mileage reimbursement program.

(9) Article IV, Section 8 provides for up to a maximum of four years credit for prior teaching or related experience

outside of the District. The District proposes modification of the section, to provide for two years credit for teaching or related experience, with more credit to be allowed at the discretion of the School Board. The Federation opposes the proposed change.

(10) Article V, Section 1 provides for ten days per year of sick leave. The Federation seeks an increase to twelve days per year, while the Employer opposes the increase.

(11) Article V, Section 2 provides for three days per year of paid absence for death or critical illness in the immediate family. The Federation seeks to have the three day period excluded from the annual sick leave allowance, while the Employer opposes the increase.

(12) Article V, Section 5 currently covers procedures to be followed in the event of teacher absence due to temporary illness or accident. The Employer proposes four changes in the new agreement: (1) greater discretion in filling-in for absent teachers, if the absence is not known prior to 6:45 AM, (2) requiring absent teachers to call in between 6:15 AM and 6:45 AM (rather than prior to 7:00 AM), (3) elimination of the privilege of calling-in by collect phone calls, and (4) a requirement that written verification be supplied, upon request, for absences in excess of five per year. The Federation opposes all four of the proposed changes.

(13) Article V, Sections 6 and 7 provide for maternity leave and child rearing leave. The Federation seeks the elimination of language providing for a normal thirty day minimum, and extensions by MD certification for maternity leaves; it also seeks to make the granting of child rearing leave mandatory, for new born or newly adopted children. The Employer opposes both changes.

(14) Article V, Section 9 provides for health and hospitalization coverage; it provides certain limitations in the application of family coverage for those with working spouses who may be covered by another employer's insurance. The Federation seeks to provide for employee election of either family or single coverage, without regard to spouse insurance coverage. The Employer seeks retention of the current contract provision.

(15) The Federation seeks the introduction into the contract of a new plan of employer paid long term disability income insurance. The plan would provide for income insurance at the rate of 66 2/3% of up to $1500 per month of earnings; it would provide benefits after a 90 day waiting period, until age sixty-five. The Employer opposes the introduction of this new benefit into the contract.

(16) Article VI, Section 3(b) provides for the dismissal of a teacher for three days of absence without cause, during a school term. The Federation seeks the elimination of this provision, while the Employer proposes its retention in the new agreement.

(17) Article VII currently provides for the filing of employee grievances only. The Federation seeks contractual

recognition of the Union's right to file and process grievances, while the Employer opposes this change.

(18) Article IV and Addendum A currently provide for the reimbursement of teachers at the rate of $20.00 per credit. The Federation proposes the increase of this figure to $25.00 per credit, while the Employer proposes continuation of the benefit at the existing level of payment.

(19) The current salary schedule appears in Addendum A of the agreement. The Federation proposes that each of the rates be increased in the amount of 9.5%, while the Employer proposes an increase of 9.2%.

(20) Addendum B provides for certain special pay and reimbursement situations. The Federation proposes normal increases equal to the total percentage settlement, an increase in mileage allowances from 17.5 to 21 cents per mile, an hourly rate for school nurses of $8.00, and elementary school principal compensation at the rate of $190 per teacher. The Employer proposes an increase of 9.2% for all employees covered by Addendum B, plus a 9.2% increase in the old mileage allowance.

(21) Addendum C provides for extra compensation for certain described extra-curricular duties. The Federation seeks an increase equal to the total percentage settlement, the addition to the schedule of non-bus duty at $5.50 per hour, bus chaperon duty at $6.00 per hour, an Intramural School Coordinator at $297.00 and a District Reading Coordinator at $297.00. The Employer submits that non-bus duty and bus chaperons are already covered by Article IV, Section 3; it has proposed an increase of 9.2% for each job, which would provide for $4.26 per hour and $5.25 per hour respectively. The District proposes to pay the Intramural Coordinator at $230.00 per year, but opposes any additional compensation for the District Reading Coordinator.

POSITION OF THE EMPLOYER

The District submitted that its final offer was the more appropriate of the two before the Impartial Arbitrator, defending the specifics as follows.

(1) In support of its salary credit proposal it offered the argument that the change was necessary for it to attract and hold experienced and qualified teachers from outside the system, submitting that the present language was a deterrent to hiring from outside the district. It also submitted that none of the ten schools that it regarded as comparable, had language as restrictive as that in the prior labor agreement.

(2) It supported its recommended changes in sick leave language on a variety of bases.

(a) It defended its proposal for an earlier call-in time, by citing the language of the teacher's handbook and the past practice; it also emphasized the need for sufficient notice to get qualified substitutes into the classroom as needed.

(b) In support of its proposed elimination of toll call privileges for teachers, it cited the fact that there are no restrictions on where teachers can live, arguing that there was no basis for continuing to favor those who lived in a different toll area.

(c) It supported its proposed written verification of illness language, by citing a study showing apparent abuse of current sick leave provisions; the study showed that the greatest numbers of sicknesses presently occur on Mondays and Fridays.

It also disputed Federation evidence of comparables on the verification of illness proposal, citing at least three other districts that require verification.

(3) While it had no dispute relative to the concept of fair share, the District submitted that its proposed language was superior to that proposed by the Federation for a variety of reasons.

(a) It suggested that the save harmless proposal of the Federation was deficient in that it did not contain a provision for attorney's fees and court costs.

(b) It argued that the Board proposal more closely conformed to the Wisconsin Statutes and case law, in that it made the amount of the fair share contribution equivalent to the cost of collective bargaining.

(4) It submitted that there was no substantial difference between the salary schedule adjustment offered by the District and that requested by the Federation. In defense of its proposed 9.2% salary adjustment, it also relied upon the comparison criterion, citing the fact that its proposal would actually improve the relative standing of the District's teachers among the ten purportedly comparable districts.

(5) In connection with its offer for the School Nurse, the Intramural Coordinator and the Elementary Principal positions, the District offered the following arguments.

(a) Its School Nurse proposal of $7.09 per hour represents a 9.2% increase over the $6.49 rate paid during the prior school year, which is consistent with its offer for other employees in the District. It cites no basis for the 23% increase requested by the Federation.

(b) It cited the proposed 9.2% salary increase to $230.00 for the new Middle School Intramural Coordinator position as justified by the rate paid for other middle school coordinator positions. It challenged the Federation's proposal as being 29% higher, suggesting that this would create internal salary inequities.

(c) It defended its elementary school principal offer of a 9.2% increase to $191.00 per teacher as superior to the Federation's request of $190.00.

In addition to its defense of its own final proposal in this matter, the District also suggested that the Federation's final offer was not justified for various reasons. In this connection, it emphasized the following principal arguments.

(1) It suggested that the deletion of continuing education requirements for teachers would be inconsistent with current trends in other professions, suggesting also that proposed changes in DPI rules would not be an adequate substitute. It also challenged the Federation's attempt to remove this negotiated provision from the collective agreement through the arbitration process, citing the lack of any evidence that the present provision is inequitable, unwise or has created a hardship.

(2) It defended retention of the current extended probation language in the agreement as mutually beneficial to both the teachers and the District, also citing certain comparisons in support of the practice. The District also challenged the Federation's attempt to remove the provision from the labor agreement through the arbitration process, without evidence of problems, difficulties or abuse.

(3) It defended retention of the current language providing penalties for contract or ethics violations by teachers, challenging the attempt of the Federation to remove this provision from the parties' labor agreement, without evidence of past problems, difficulties or abuse.

(4) The Employer suggested that no basis had been established for the addition of a just cause requirement for disciplinary actions under the labor agreement. It submitted that the present contract provided just cause protection in job security situations, and argued that no basis had been established for the change in contract language proposed by the Federation.

(5) It challenged the Federation's proposal relative to appointment to the faculty committee on advisorships, suggesting that such a change would interfere with the District's ability to carry out its responsibilities. It submitted that the Union's theoretical arguments relative to continued assignments of the same teachers, could be addressed in another manner, submitting also that there was no evidence of past problems or abuse. The District also cited the comparison criterion in support of retention of the prior language.

(6) It cited the need for continuing use of terminal contracts where short term or temporary positions were to be filled, also citing the lack of evidence of abuse or problems in connection with the past use of terminal contracts.

(7) It alleged that the language restricting the number of credits to be taken by a teacher during any semester was negotiated into the parties' labor agreement in response to a particular problem in the past. It suggested that the figure was reasonable, and that no evidence of problems or abuses had been introduced by the Federation in support of its suggestion for a change.

(8) It defended its proposal for a 9.2% increase for ticket

taking activities, suggesting that the Union proposal of a 41% increase was not justified. It suggested that an examination of the comparables did not support the demand of the Federation.

(9) It characterized the Federation's demand for mileage for events occuring more than one hour after the close of school as unjustified by comparables, inconsistent with current IRS philosophy, and an incentive for teachers to reside outside of the District.

(10) It defended retention of the current 10 days per year of paid sick leave on the basis of comparables, and on the basis of abuses of the current system. It also cited a lack of evidence of hardship, problems, or inadequacy in the current allowance.

(11) It suggested that no overriding need or basis had been demonstrated for the deduction of funeral or serious illness leave from annual sick leave, also citing past abuses in sick leave.

(12) The District challenged the requested changes in child rearing leave as unsupported by comparables. It additionally cited the need to retain flexibility in the granting of such leaves, to avoid disruption to the District, and characterized the change as having a potential for substantial future fiscal impact upon the District.

(13) The District cited no need for the adoption of paid long term disability insurance on the basis of comparables; it also referenced the relative improvement in salaries for those in the District, arguing that this added cost in salary did not support the additional costs to the District of disability insurance.

(14) The District defended retention of its right to dismiss teachers for three unexcused absences, citing the lack of evidence of any problems or difficulties with the current contract language. It also argues that each teacher has the ability to avoid any problem by the simple expedient of calling-in in advance to report the intended absence.

(15) In connection with the proposed increase from $20.00 to $25.00 per credit, the District emphasized that this allowance is a lifetime payment applying for each year after the credits are taken. It cited the lack of evidence that the cost of taking credits exceeded the cumulative reimbursement, also citing the lack of any credit reimbursement program in the vast majority of comparable districts.

(16) The District supported a 9.2% increase in mileage allowance for required travel on school business, rather than the increase to 21¢ per mile requested by the Federation. It cited the minimal impact, suggesting that the difference between the parties on this item was not of any substantial significance.

(17) It resisted the addition of non-bus duty and bus chaperons to Addendum C, suggesting that such duties were already

covered by Article IV, Section 3. It defended its proposed increases of 9.2% in the rates paid, over the increases requested by the Federation which amounted to 25% and 41% respectively.

(18) It opposed the Federation's proposal for a $297.00 annual salary for the District Reading Coordinator, citing the 1977 agreement of the parties whereby the position was to receive two hours per day of released time, in lieu of additional salary. It cited the lack of evidence of any duties outside of normal working hours, or of any justification for additional salary.

(19) It defended its proposed increase of 9.2% to $4.65 per hour, in the hourly rate paid for additional duties outside the normal school day, and rejected the Federation's proposal for a 29% increase to $5.50 per hour. It alleged no basis in the record for any increase in excess of the increase for salaries in general.

(20) It challenged the meaning of the Federation's proposal that the School Nurse receive all benefits granted to the teaching staff, suggesting instead that all benefits sought for the position should be specifically identified and bargained for.

In summary, the District submits that its final offer is the more reasonable of the two before the Impartial Arbitrator.

POSITION OF THE FEDERATION

The Federation presented a variety of arguments in support of its final offer in these proceedings. It conceded that there was little to choose from, as between the final offers of the parties on such economic items as basic salary increases, increases in the extra curricular salary schedule, and the cost of long term disability insurance. It emphasized in its arguments, the non-monetary impasse items.

Generally speaking, the Federation stressed the comparison criterion in support of its final offer components. In so doing, it particularly emphasized the relationship between the Maple and the Superior School Districts; in this connection, citing such factors as the close proximity of the two districts, the fact that 30% of the Maple District teachers live and shop in Superior, and alleging a close bargaining relationship between the two districts in the past.

In connection with the specific impasse items, the Federation presented the following principal arguments.

(1) It cited the fair share language dispute as being dependent upon the outcome of current litigation in another district.

(2) In support of its request for elimination of current college credit continuing education requirements, it cited the lack of any such requirement in either the Superior District or in any of the ten districts emphasized by the Employer for comparison purposes. It additionally argued that the current credit requirement was being superseded by the continuing education requirements contained in the 13 standards contained in Administrative Code PI 8.01, Section 121.02. The Federation's proposal, it argues, is

more in harmony with public policy in the State of Wisconsin.

(3) In support of its proposed elimination of discretionary retention of teachers on probation by the District, the Federation emphasized comparisons; it cited the lack of any such provision in the Superior agreement, and in the majority of the ten districts cited by the Employer. It also cited the lack of a just cause provision in the current agreement which, it alleges, would allow an established teacher to be placed on probation, frozen on the salary schedule and eventually discharged at the discretion of the Employer.

(4) In support of the proposed elimination of the three day absence/suspension provision, it cited the lack of such a provision in either the Superior contract or in any of the ten other comparables. It cited comparables in support of the proposal for a just cause provision covering discipline in the parties' current labor agreement.

(5) In support of its class advisorship proposal, the Federation suggested that other districts provide for either rotational, voluntary or paid assignments; it additionally argued that if the committee is to represent the Union, it should have the ability to appoint the membership.

(6) In connection with its proposal to eliminate terminal contracts, the Federation emphasized the lack of such contracts in either the Superior District or in the other ten comparables. It additionally suggested that such contracts were contrary to public policy, and that the need to fill temporary openings could be adequately handled under current staff reduction and transfer provisions.

(7) In support of the proposed elimination of restrictions on the number of allowable outside credits per semester, it cited the lack of such a provision in Superior or in any of the other ten comparables. It submitted that all members of the bargaining unit should not be restricted by a single past problem.

(8) In connection with assigned ticket taking, it submitted that comparables more closely supported the Federation's demand of $5.50 than the Employer's final offer of $4.25 per hour.

(9) The Federation defended its proposal for mileage allowance for commuting for required non-instructional duties on two primary bases; it referenced the escalating cost of transportation and the size of the district (495 square miles). It additionally cited the fact that certain administrators already receive such a benefit.

(10) The Federation defended its proposed increase in the annual sick leave allowance by citing the current practice in the Superior District, and total sick leave practices in other districts, including the use of sick leave banks, long-term disability insurance, and retirement payment for unused sick leave.

(11) It cited comparables as justification for the proposed exclusion of the first three days of death or critical illness leave from annual sick leave allowances.

(12) It submitted that the proposed changes in maternity leave and child rearing leave were justified on the basis of comparables, and on the additional basis of the Federation's proposal that such leaves be taken "for new born or for newly adopted children".

(13) It suggested that current restrictions on selection of single or family hospitalization coverage were discriminatory, and not justified by comparables.

(14) It argued that the basic justification for the addition of disability income protection was supplied by examining the overall fringe benefits packages of other districts. Five of eleven have long term disability protection, four have dental coverage, and all but one have full hospitalization; the Maple District, it submits, has no long term disability, no dental, no fully paid hospital insurance, and no fully paid life insurance. It argued that the requested disability insurance at .04 percent of gross salary would be a relatively minor addition to current costs of employment.

(15) It alleged that the present three day absence provision which allows dismissal, was not supported by comparables; also emphasizing that present language allows for dismissal without just cause.

(16) It justified the request for the filing of Union grievances on the basis of comparables, also relying upon public policy in Wisconsin which recognizes the Union's right to enforce the collective agreement.

(17) It justified the proposed increase to $25.00 per credit on the basis of comparables.

(18) In connection with the salary schedule adjustment proposals, the Federation conceded that the difference between the final offers of the parties is rather slight. It defended its final offer of a 9.5% increase on the basis of the comparison between the Superior and Maple districts. It submitted that Maple has been a leader in the athletic conference, and argued that this will not change with the implementation of the final offer of either of the two parties.

The latter request it regarded as particularly justified by the history accompanying the appointment of the current coordinator to her position, and her testimony at the hearing.

Apart from the merits of its own final offer, the Federation argued that certain aspects of the Employer's final offer were particularly inappropriate.

(1) It suggested that the proposed additional restrictions and requirements relative to sick leave scheduling were not justified by comparables, and did not arise from any administrative need (particularly the early call-in requirements).

(2) It argued that the proposal for the granting of teaching experience on the salary schedule would destroy the single salary schedule concept, and would create division within the teaching staff. It alleged that none of the comparable schools allowed such discretion on the part of the Employer.

In summary, the Federation urged the conclusion that its final offer was the more appropriate of the two before the Impartial Arbitrator. It urged the conclusion that either consideration of the Superior District as the most comparable, or consideration of the Heart of the North Conference plus Ashland and Park Falls would support the Federation's final offer.

FINDINGS AND CONCLUSIONS

Initially, the Impartial Arbitrator will reflect upon the highly professional manner in which both parties have presented and summarized their cases at the arbitration stage of the impasse proceedings. Unfortunately, however, both the number and the nature of the remaining impasse items, indicate that the parties were unable to operate as effectively in the preliminary negotiations stages leading to arbitration.

The interest arbitration process, particularly the final offer procedure in the State of Wisconsin, is designed to encourage the parties to reach voluntary agreement on as many items as possible, after which the remaining items go to an arbitrator, who is limited to the selection of the final offer of one party in toto. Contrary to normal expectations in such cases, the parties have given the Arbitrator an extremely large number of impasse items in the case at hand, including many proposed changes in past collective agreements, which seem not specifically directed to improve any real problems. To put it plainly, the parties have proposed a number of changes in the agreement which are justified solely on the basis of somewhat theoretical and subjective grounds, the types of proposals which normally wash-out in the process rather early, in the give and take of negotiations between the parties.

Unfortunately, the Arbitrator is being asked to select a single final offer, certain components of which probably could not have been agreed upon by the parties across the table. In this connection, it should be emphasized that interest arbitration is generally regarded as an attempt to reach the same decisions that the parties themselves would have reached had they been successful in bargaining to a satisfactory conclusion. These factors are well described in the following extract from the book by Elkouri and Elkouri: 1./

"In a similar sense, the function of the 'interest'

arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:

> 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?... To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...'."
> (emphasis supplied)

In accordance with the above, it must be recognized that any interest arbitrator is reluctant to overturn established practices or established benefits, and/or reluctant to innovate unless the statutory criteria are clearly met. The reluctance of interest arbitrators to disturb existing benefits or negotiated provisions contained in prior agreements is also referenced by the Elkouris:2./

> "The past practice of the parties has sometimes, although infrequently, been considered to be a standard for 'interests' arbitration....
>
> Arbitrators may require 'positive reason' for the elimination of a clause which has been in past written agreements.[197] Moreover, they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement.[198]"

The role of the interest arbitrator and his or her normal reluctance to plow new ground or to modify past practices is also very well described in the following excerpt from an interest arbitrationdecision by Arbitrator John Flagler:3./

> "The role of interest arbitration in such a situation must be clearly understood. Arbitration, in essence, is a quasi judicial not a legislative process. This implies the essentiality of objectivity--the reliance on a set of tested and established guides.
>
> In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
>
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit

> and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table."

With the above as preliminary background, the Impartial Arbitrator will move to consideration of the impasse items. Despite the fact that the final offer of one of the parties will be selected in its entirety, each of the impasse items and various of the arbitral criteria will be separately discussed and considered.

The Arbitral Criteria

During the course of these proceedings, the Impartial Arbitrator has given consideration to each of the arbitral criteria specified by the Legislature in Section 111.70(4)(cm)7 of the Wisconsin Statutes. Those criteria receiving the primary attention of the parties consisted of the following:

(1) The comparison criterion as referenced in sub-paragraph (d);
(2) The interests and welfare of the public criterion as referenced in sub-paragraph (c);
(3) The overall compensation criterion as referenced in sub-paragraph (f).
(4) The past practice and the negotiations history criteria as permitted by sub-paragraph (h).

The Comparison Criterion

Although the legislature has established no priority of importance among the various arbitral criterion, there is little doubt that the comparison factor is normally the single most extensively used, and the most significant criterion in the resolution of interest disputes. This point is very well described in the following extract from the book by Elkouri and Elkouri: 4./

> "Without question the most extensively used standard in 'interest' arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis in most 'interest' cases. In a sense, when this standard is applied the result is that disputes indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through when the outside bargain is indirectly adopted by the parties."

Irving Bernstein in his excellent book on wage arbitration makes the same points, and expands upon the rationale as follows: 5./

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions)

> profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'."

The Employer suggested that the most meaningful comparisons would be found by looking to the school districts contained in the Heart of the North Athletic Conference (Barron, Bloomer, Chetek, Cumberland, Hayward, Ladysmith, Maple, Rice Lake and Spooner); it also submitted that two additional districts in Cooperative Educational Service Agency #1 should be included (Ashland and Park Falls). Conversely, the District suggested that there was no logical basis for the comparison of Maple with the Superior School District; in this connection it cited the rural/urban distinction, the much larger size of Superior, the larger industrial tax base and other distinctions.

The Federation suggested that the most logical comparison to use would be Maple and Superior. In this connection it emphasized the common border of the two districts, the fact that many Maple teachers and administrators live and/or shop in Superior. Alternatively, the Federation cited and relied upon certain arguments based upon the eleven comparisons suggested as most appropriate by the Employer.

While it is sometimes difficult for parties to relate to the rural/urban distinctions for comparison purposes, differences are almost universally credited by interest arbitrators. This factor is addressed as follows by the Elkouris: 6./

> "Geographic Differentials - Although the individual worker does not always understand why higher wages should be paid to another worker doing the same work but in a different area, there is believed to be sound reason for geographic differentials, as simply stated by one arbitration board: '* * *(E)veryone knows our country cousins, workmen, professional men, all, on the average, earn less than urbanites; and need less. They get on the whole more comforts, services, and commodities for their dollars.'"

Although it is impossible to completely disregard the Superior data, the Impartial Arbitrator cannot agree that they should provide the sole comparisons. The physical proximity of Maple to Superior has undoubtedly impacted significantly upon the fact that Maple salary rates are higher than average in the comparisons with the other districts referenced above, and the fact that it is a leader in various salary categories. On balance, it seems appropriate to look to comparisons between all of the districts suggested by the Employer in addition to giving due consideration to Superior data as appropriate.

The Interests and Welfare of the Public Criterion

The Employer cited this important statutory criterion in connection with various of the proposals before the Impartial Arbitrator, most notably the District's salary credit proposal, which it indicated would improve its ability to attract and hold experienced teachers, and the proposed retention of its current probation alternatives, which it argued contribute to the retention of teachers.

The Overall Compensation Criterion

The Federation urged consideration by the Arbitrator of certain fringe benefit cost data, which allegedly show overall cost comparisons for the various districts in the comparison group. It additionally urged consideration by the Arbitrator of the overall comparison of insurance benefits within the comparison group, in support of its long term disability proposal.

The Employer challenged the persuasiveness of the total fringe benefit cost comparison data, on the basis of lack of definitive information relative to the figures and the methods used in computing the average costs. While the data was accepted into evidence at the hearing, the Impartial Arbitrator agrees that it cannot be assigned definitive weight in the resolution of this dispute.

The Past Practice and the Negotiations History Criteria

Although these criteria are not specifically referenced in the Wisconsin Statutes, they are frequently used in the resolution of interest disputes, and fall well within the general coverage of Paragraph (h) of Section 111.70(4)(cm)7 of the statutes.

The Employer cited the past practice and the negotiations history criteria in support of the retention of many items negotiated into the collective agreement in the past by the parties. In this connection, it accused the Federation of attempting to "take away" language or practices previously agreed upon in good faith by the parties. As referenced above, these factors are normally quite persuasive to an Interest Arbitrator who will require rather clear justification from the application of the arbitral criteria, before he will order the abandonment of previously negotiated provisions or practices.

Apart from the above, the parties cited and relied upon either past practice or negotiations history as follows:

(1) The Employer defended its proposed earlier call-in time on the basis of bringing the contract language into conformity with past practice.

(2) The District cited a past problem and past negotiations in support of retention of the limit on the number of college credits that may be taken duriny any semester.

(3) The Federation defended the request for supplemental pay for the Reading Coordinator position on the basis of the history accompanying the appointment of the current teacher to the position.

With the above as background, the Impartial Arbitrator has applied the statutory criteria to the various impasse items as described below.

The Fair Share Dispute

With the parties in agreement with respect to the principle of fair share, the Arbitrator finds that their continuing dispute over contract language is more theoretical than practical.

While it may be true that there is some residual legal uncertainty relative to the monthly amount that can be properly deducted

from a non-member's paycheck under a fair share agreement, it must be remembered that any such agreement must be interpreted and applied in light of the law in the State of Wisconsin. Indeed, in the Saving Clause, (Article X in the old agreement), the parties have specifically agreed that the agreement is subject to certain legal requirements.

The Impartial Arbitrator finds that the application of the statutory criteria to the language proposals of each party on the fair share agreement, does not definitively favor the position of either party. Accordingly, the Arbitrator finds that neither party's proposal is either strongly favored or strongly negative when viewed in light of the statutory criteria. This impasse item cannot, therefore, be assigned definitive importance in the selection of the final offer of one of the parties.

The Continuing Education Requirement of Article II, Section 1

As referenced above, the application of the past practice and/or the negotiations history criteria would strongly justify the position of the Employer. Additionally, there is no evidence in the record which would suggest the existence of problems, hardship or difficulty in the continued application of the requirements of Article II, Section 1.

The Arbitrator cannot reasonably conclude that the proposed D.P.I. standards indicate that a continuing education program, such as the one in question, would be contrary to public policy in any way, or could be considered mutually exclusive with the so-called thirteen standards.

The Federation cited the lack of support for a college credit requirement among comparable employers, but this factor alone cannot offset the importance attached to the criteria referenced above. Accordingly, the Arbitrator finds that the record strongly supports the position of the Employer in connection with this impasse item.

The Extended Probation, Three Day Suspension and the Just Cause Dispute

While comparisons support the position of the Union with respect to the use of suspensions and extended probationary periods, there is no evidence in the record which would support a finding that these negotiated provisions of the current agreement have been troublesome, or have caused any problems to individual employees.

The lack of a just cause requirement in the collective agree-

The Use of Terminal Contracts

In connection with this impasse item, the Arbitrator is again faced with a request to eliminate a negotiated provision of past agreements, based upon comparative data from other districts. The application of the past practice and the negotiations history criteria, however, strongly support the Employer's position on this matter. There was also no evidence of actual problems in connection with the past or the continued application of this provision of the labor agreement; the testimony showed, in fact, that terminal contracts had never been used except in filling non-continuing openings.

The High School Advisorship Dispute

The present agreement provides for advisorship appointments to be made by the high school principal after consultation with a faculty committee.

The Federation cites rather theoretical, rather than practical reasons for the proposed elimination of the negotiated provision, and the specifics of its proposal are not supported by comparables.

There is little in the record to justify the proposed departure from past practice and negotiations history, and the Arbitrator must conclude that the record supports the position of the Employer on this impasse item.

The Three Credits Per Semester Rule

Article III, Section 17 recommends that current teachers take no more than three semester hours of college credit per semester of teaching; such action is prohibited for probationary teachers. The record shows that the provision was jointly negotiated into the labor agreement in response to specific performance problems with at least one teacher. While comparables support the position of the Federation, there is no indication of any denial of requests to take more than the recommended number of credits, and no evidence of problems or abuse. Accordingly, the past practice and the negotiations history criteria strongly favor the retention of this negotiated provision in the parties' agreement.

The Increase for Non-Instructional Duties and the Mileage Dispute

The dispute over the appropriate rate of pay for ticket taking is not susceptible to resolution on the basis of the comparables; the practices of other employers varies significantly relative to both the amount, and the basis upon which compensation is paid.

The Federation presented strong equitable considerations which would support some form of compensation for mileage to those in the bargaining unit for attendance at required extra curricular activities, but the addition of such a new benefit is not supported by application of any of the statutory criteria. There is a total lack of support for such a proposal, for example, in the comparison data before the Arbitrator.

The parties are not in dispute with respect to the concept of the general salary increase being applied to increase the non-instructional duty pay, and the record supports neither the extraordinary increase for ticket taking nor the proposed addition of a mileage allowance.

Credit for Prior Teaching or Related Experience

Both parties cited comparison data in support of their respective positions with respect to this impasse item. The Employer additionally cited theoretical arguments and some specific cases in support of its position, exphasizing the need to encourage experienced teachers to come into the District. The Federation emphasized the need for a uniform wage policy, and opposed the change.

The Impartial Arbitrator finds that the position of the Federation is strongly supported by the past practice and the negotiations history criteria as referenced above. A much stronger case for change, including more persuasive evidence of recent difficulties or problems, would be needed to justify eliminating this negotiated provision. Accordingly, the position of the Federation is strongly favored by the application of the statutory criteria.

The Sick Leave/Death or Critical Illness Impasse

The impasse here relates to the amount of annual sick leave and the question of whether death or critical illness leaves should be offset against the annual sick leave.

While the Employer defended its proposal on the basis of alleged abuses in the system, the Federation relied primarily upon comparables. While the increase from ten to twelve days is not, in itself, strongly supported by comparables, the overall superior level of such benefits elsewhere, is apparent from the record; this is particularly apparent when addressing the offset issue. The Employer's objections relating to abuses in the system by a few employees relate to administration of the system, rather than to the appropriate level of benefits for all employees.

Application of the comparison criteria to the overall sick leave/death benefits practices strongly supports the position of the Federation on this impasse item.

The Temporary Illness or Absence Procedures Impasse

In this connection, the Employer seeks three basic changes in the current agreement. The movement from a 7:00 AM call-in requirement, to one requiring a call between 6:15 AM and 6:45 AM is strongly supported by evidence that this has been the actual practice of the parties for an extended period of time. The Employer presented no persuasive arguments based upon the statutory criteria, for the elimination of the toll call privileges of teachers who call-in. Additionally, the allegation of certain specific abuses in sick leave utilization in the past, does not persuasively justify a verification requirement being added to the current contract requirements. The Employer has substantial ability to handle inidividual abuses at the present time, which procedures would be preferable to modification of the contract for all employees.

While the early call-in time proposal has considerable merit, based upon the parties' actual past practice, the remainder of the proposed changes are not justified by the application of the statutory criteria. Accordingly, the position of the Federation is the preferable one on the remainder of this impasse item.

The Maternity Leave/Child Rearing Leave Impasse

The Arbitrator can find no significant change which would result

from the Federation's suggested deletion of sub-sections (a) and (b) of Article V, Section 6. The normal 30 day period described in the contract cannot legally be regarded as either a required minimum or a required maximum. Under current law, the length of maternity leaves must be based upon individual capabilities, rather than contractual minimums or maximums.

The comparables in connection with the child rearing demand, slightly favor the position of the Federation with respect to this proposal, and its suggestion that the leaves apply solely to newborn or newly adopted children, would seem to eliminate a major employer objection.

The application of the statutory criteria to this impasse item slightly favors the position of the Federation.

The Hospital Insurance Limitations/Non-Duplication Provisions

The contract provision in dispute, limits the employee selection of family coverage where a working spouse may be covered by another employer's insurance. The basic purpose of the limitations is to avoid duplication of coverage and/or duplication of recovery of medical benefits where an individual might be covered by two or more policies of medical insurance.

The comparison data submitted by the Federation did not address the existence of non-duplication language in the insurance coverage of comparable employers, and there was no additional persuasive evidence in the record which would justify the Arbitrator disregarding the past practice and the negotiations history relative to this impasse item.

The application of the statutory criteria strongly favor the position of the Employer on this impasse item.

The Long Term Disability Insurance Impasse

The most persuasive evidence before the Arbitrator on this impass item is comparison data. Only a distinct minority of comparable employers have such long term disability insurance, and there is no statutory criteria cited which would strongly support the request for the addition of such coverage.

The Three Days Absence/Dismissal Impasse

The current contract provides that a teacher who is absent for three days, without cause, shall be subject to dismissal. The Federation strongly objects to the continuation of this provision into the next contract, citing the contrary practices of comparable

statutory criteria to this impasse item does not support the proposed change.

The Filing of Union Grievances Impasse

The Federation suggests the addition of language to the contract to provide for the filing of union grievances, citing both comparables and public policy considerations. It also alleged the existence of certain past problems in connection with the attempted resolution of general type complaints.

While the Employer opposed the proposed change, the application of the statutory criteria, particularly the comparison data, strongly favors the position of the Federation.

The Credit Reimbursement Impasse

In connection with the proposed increase from $20.00 to $25.00 per credit, both parties cited the comparison criterion. As this factor was clarified by the parties in their post-hearing submissions, the Arbitrator finds no persuasive comparison data which would support the proposed change. The Employer is one of very few employers which compensate on the basis of credits taken beyond the lanes specified in the salary schedule.

The application of the statutory criteria, particularly the comparison data, strongly supports the position of the Employer on this impasse item.

The Salary Increase, Mileage Increase, School Nurse, and Elementary School Principal Impasses

Both parties agree that there was no significant difference between the general salary increase offers of 9.2% and 9.5% or the proposed mileage increases. In light of the fact that the offers of the parties are only approximately one dollar apart on the rate for Elementary School Principal position, the Arbitrator finds no significant difference in this item.

The Federation cited the rate paid for the School Nurse Classification in Superior in support of a proposed increase that would be significantly higher than either the 9.2% or the 9.5% increase, but no comprehensive comparison data was presented for the other districts. Alternatively, the Federation equated the rates suggested for the nurse classification with the salary level for a teacher with a BA at lane one of the schedule.

The Arbitrator finds that certain of the language demands for the nurse are ambiguous, finds no persuasive basis for equating the nurse classification with the entry level teaching classification, and finds also that there is insufficient evidence relating to the statutory criteria, to support any extraordinary increase for the School Nurse.

The Remaining Impasse Items

The remaining pay issues include the request for extra compensation of $297.00 for the Intramural School Coordinator and the District Reading Coordinator positions. The record shows that the reading coordinator has already been compensated on a release time basis for her duties; while the negotiations history somewhat favors the Federation, there is no basis for concluding that the coordinator

should have extra pay in addition to release time.

In connection with the intramural coordinator position, the Arbitrator finds quite persuasive the fact that the remaining middle school coordinators are paid at a uniform rate considerably below that proposed by the Federation; there is simply nothing in the record which would justify the proposed higher rate of pay demanded for the single middle school coordination position in question.

Similarly, no basis has been established for the removal of the non-bus and the bus chaperon duties from the coverage of Article IV, Section 3, or for extraordinary increases beyond the percentage salary increase extended to other jobs and activities under the agreement.

Summary of Preliminary Conclusions

After consideration of the statutory criteria in connection with each of the impasse items, the Arbitrator has reached the following summarized preliminary conclusions.

(1) Neither party's position is favored in the language dispute relating to fair share.

(2) The Employer's position is favored in connection with the continuing education requirements of Article II, Section 1.

(3) The Employer's position is favored in connection with retention of present probation and three day suspension language, while the position of the Federation is favored relative to the extension of just cause principles to employee discipline.

(4) The Employer's position is favored in connection with the use of terminal contracts.

(5) The Employer's position is favored relative to the selection process for high school advisorships.

(6) The Employer's position is favored with respect to the three credits per semester rule.

(7) The Employer's position is favored with respect to the question of extraordinary increases for non-instructional duties and the introduction of mileage allowance for extra curricular activities.

(8) The Federation's position is strongly favored with respect to the matter of teaching credit for prior related experience.

(9) The Federation's position is favored with respect to the annual sick leave and death benefits impasse.

(10) The Employer's proposal for earlier calling-in on absences is favored, but the Federation's position is favored relative to proposed elimination of long distance calling privileges and the proposed additional verification requirements.

(11) The position of the Employer is favored relative to the maternity leave language, while the Federation's position is favored relative to child rearing leave.

(12) The position of the Employer is favored relative to the proposed elimination of certain hospital insurance limitations.

(13) The position of the Employer is favored relative to the proposed addition of long term disability insurance.

(14) The position of the Employer is favored relative to the retention of the three days absence/dismissal provisions in the agreement.

(15) The position of the Federation is favored relative to the proposed addition of the right to file Union grievances.

(16) The position of the Employer is favored with respect to the retention of the $20.00 credit reimbursement policy.

(17) There is no substantial difference in the final offers of the two parties relative to salary increase, mileage allowance and Elementary School Principal rates. The position of the Employer is favored on the School Nurse pay rate dispute.

(18) No basis has been established for an extraordinary increase for the Intramural Coordinator or for a salary allowance in addition to release time for the District Reading Coordinator position. No basis has been established for removal of the non-bus and the bus chaperon duties from the rates provided in Article IV of the agreement.

Selection of the Final Offer

During the proceedings, the Impartial Arbitrator has considered all the statutory criteria of Section 111.70(4)(cm)7. Those factors emphasized by the parties are discussed in detail above.

The Mediator-Arbitrator is convinced that many of the impasse items could and should have been either resolved by the parties in negotiations, or withdrawn prior to the initiation of the mediation-arbitration process. This is particularly true when considering the major number of changes proposed by the parties in the negotiated provisions of the expired agreement. As emphasized above, the application of the past practice and the negotiations history criteria normally strongly militate against the elimination of benefits or the modification of the negotiated provisions of the past agreements, unless there are strong, statutory criteria based reasons for such a change.

In consideration of the entire record before me, including the preliminary conclusions summarized above, it is the conclusion of the Impartial Arbitrator that the final offer of the Employer is the more appropriate of the two offers before me. While certain of the statutory criteria favor the position of the Federation on various of the impasse items, the preponderance of major considerations favors the final offer of the Employer.

FOOTNOTES

1./ How Arbitration Works, Bureau of National Affairs, Third Edition 1973, page 54.

2./ Ibid. page 288.

3./ 38 LA 666, 671.

4./ Ibid. page 746.

5./ The Arbitration of Wages, University of California Press, 1954. page 54.

6./ Ibid. page 757.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.70(4)(cm)7 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the employer is the more appropriate of the two final offers;

(2) Accordingly, the Employer's final offer, herein incorporated by reference, into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Mediator-Arbitrator

April 23, 1981
Waterford, Wisconsin