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BEFORE THE MEDIATOR-ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration	:	
of an Impasse Between	:	
SCHOOL DISTRICT OF HUDSON	:	
And	:	Decision No. 18976-A
WEST CENTRAL EDUCATION ASSOCIATION	:	

Appearances:

Mulcahy and Wherry, Attorneys at Law, by Mr. Stephen L. Weld, for the District.

Mr. Rex F. Gilligan, Executive Director, for the Association.

ARBITRATION AWARD

The above-captioned parties selected the undersigned Mediator-Arbitrator pursuant to the provisions of Section 111.70(4)(cm) 6 of the Municipal Employment Relations Act, and the Order of the Wisconsin Employment Relations Commission. (Case IX, No 28030, MED/ARB-1172, Dec. No. 18976, 9/18/81)

Mediation was conducted in Hudson, Wisconsin on November 23, 1981 and pursuant to an agreement of the parties, reflected in a letter from the undersigned dated October 5, 1981, an arbitration hearing was held, on November 24, 1981. No transcript was made. Briefs were exchanged on January 9, 1982 and February 4, 1982.

The Association represents the employees of the Municipal Employer in a bargaining unit consisting of all employees engaged in teaching, including classroom teachers and librarians. The record indicates that there are approximately 149.38 or 154.88 bargaining unit members, in terms of "full time equivalency."

The parties agree that the following final offers are for the 1981-1982 school year.

The final offer of the Association, as amended, includes the following items in contention. (1) The parties salary schedule should be increased by a "10% rate adjustment to all cells...i.e. each step, increment, longevity..." (2) Article VI, "Compensation" of the 1980-81 collective bargaining agreement where it provides for pay in addition to basic salary for combined elementary grades, and extra classes at the middle, junior and senior high levels should be revised to provide for 10% higher extra pay. This would raise these levels from \$750.00 to \$825.00. Should these proposals be adopted the parties new agreement would represent an increased cost over that of its predecessor of approximately 13.47-13.5%, including a wage increase of 12.38-12.48%. (3) Amend Article V, D. "Staff reductions" to provide as follows:

"D. Staff Reductions

1. If it becomes necessary to reduce the number employed by the school district in whole or in part, the Board may lay-off the number of teachers necessary based upon the following criteria:
 - a. Normal attrition resulting from teachers retiring or resigning from the district shall be taken into consideration by the Board to the extent administratively feasible for the continuation of the District's program, and provided that the Board has written notice of such requirement and/or resignation in sufficient time to meet any time limitations imposed upon it by budget or considerations by law.

- b. Remaining teachers to be laid off, if any, will be selected by the Board, taking into consideration inverse order of seniority within an area of qualifications/certification.
 - c. In the event that the application of the criteria in sub-part b. will result in the layoff of a teacher having exceptional academic skills or extra-curricular or administrative assignments which, in the Board's discretion, makes him critical to the educational program of the District, the Board may exempt that teacher from the layoff procedure. This exemption procedure may be invoked once per year by the Board.
2. Definitions:

For the purposes of this section, the following definitions will apply:

 - a. "Certified" shall mean holding a current certificate in a subject matter area issued by the Wisconsin Department of Public Instruction
 - b. "Seniority" shall mean continuous service as a teacher commencing with the first duty day in the School District. In the event of equal seniority, the order of layoff and recall shall be within the discretion of the School Board.
 - c. "Qualified" or "qualification" shall mean a teacher who is certified in the subject matter category as defined herein and who is currently teaching or has taught in each subject matter category within the past five (5) years in the Hudson School District. A teacher shall appear in each subject matter seniority list for which he/she is qualified as defined herein.
3. Prior to effecting the layoffs required, the Board will notify the Association and each teacher concerned of the impending layoff(s). The Association and the teacher concerned will be afforded an opportunity to consult with the Board prior to the layoffs taking effect, if they so desire, provided that such request for consultation is made in a timely manner to enable the Board to meet any time limitations imposed upon it by budgetary consideration or law. Upon being notified pursuant to Step 1 above of a layoff a teacher(s) may elect in writing to transfer to a teaching position for which they are certified and qualified to teach and thereby replace a less senior teacher (exception to 1c above.)
4. Ties in Seniority: In the event of equal seniority, the order of layoff and recall shall be within the discretion of the School Board.
5. Recall: In the event of recall of staff, employees shall be recalled in order of seniority within areas of qualification.
 - a. An employee shall have the right to recall for a period of two (2) years from the last duty day in the School District.
 - b. If a position becomes available for a qualified employee on layoff, the School District shall mail a written notice to such employee at the last address on file as provided by the employee and contained in School District records, who shall have seven (7) calendar days from the date of such notice to respond in writing accepting or rejecting the offer of recall and an additional seven (7) calendar days to report for duty, if the employee accepts recall. Failure to provide written notice of acceptance or re-employment, or to report within the time period provided herein, shall constitute forfeiture of the right to recall and the employee's right to recall shall be terminated.
6. Retention of Benefits: An employee on layoff pursuant to this section shall retain such amount of experience credit for pay purposes and leave accrual and other accrued benefits, if any, which he/she had accrued at the time he/she went on leave for use upon recall.

7. No Loss of Seniority: For purposes of seniority standing, an employees' seniority date will be unaffected by layoff pursuant to this section, or any Board approved leave pursuant to Article VIII of this Agreement."1

The District's final offer is as follows. (1) Increase the 1980-1981 BA base by \$900 to \$12,000 and increase the increments for years of service by \$38.00. (2) No change in the extra compensation paid for combination classes or extra classes. (3) The 1980-1981 staff reduction provisions quoted below should be continued. Should the District's position prevail the new agreement would cost approximately 11.25% to 11.3%, including a salary increase of 10.03 to 10.47%.

"D. Staff Reductions

1. If it becomes necessary to reduce the number employed by the School District, for whatever reason(s) the Board deems justified, the Board may lay off the number of teachers necessary based upon the following criteria:
 - (a) Normal attrition resulting from teachers retiring or resigning from the District shall be taken into consideration by the Board to the extent administratively feasible for the continuation of the District's programs, and provided that the Board has written notice of such retirements and/or resignations in sufficient time to meet any time limitations imposed upon it by budgetary considerations of law.
 - (b) Remaining teachers to be laid off, if any, will be selected by the Board, taking into consideration the following factors: the individual teacher's length of service in the District, the teacher's academic training and certification, the over-all teaching experience of the teacher, and the ability and performance of the teacher in the District. The salary of a teacher considered for lay-off shall not be a criteria in determining whether or not the teacher is to be laid off.
2. Prior to effecting the lay-offs required, the Board will notify the Association and each teacher concerned of the impending lay-off(s). The Association and the teacher concerned will be afforded an opportunity to consult with the Board prior to the lay-offs taking effect, if they so desire, provided that such request for consultation is made in a timely manner to enable the Board to meet any time limitations imposed upon it by budgetary consideration or law.
3. (a) Teachers who have been laid off, and were previously assigned if desiring reemployment, file application with the Superintendent, listing the position(s) for which applying.
 - (b) Applying teachers shall be reinstated in inverse order of being laid off, should a vacancy occur within two (2) years of said lay off, if said vacancy occurs within an area for which the teacher is applying and within the individual teacher's area of permanent, subject matter certification and experience. And, in the elementary level, if the teacher is experienced within the grade range of the vacancy K-3, 4-6. It shall be the responsibility of the individual teacher to keep the Administration apprised of his/her current address.

The Board shall notify said teacher of the vacancy by certified or registered mail to his/her last known address and said teacher shall respond as to whether or not he/she will take said vacancy within seven (7) calendar days of the mailing of the notification. The recalled teacher shall commence employment within fourteen (14) calendar days of acceptance.

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1. The parties agreed at the hearing that there are certain typographical errors in this proposed provision which would be corrected if it is selected.

- (c) Laid off teachers who file requests for substitute employment shall be placed at the top of the substitute list and, when available, by given preference for assignments in their field of qualification."

DISCUSSION:

SALARIES

Exhibits placed in evidence by the Board indicate, based upon the equivalent of 149.38 full time teachers, that its final offer will cost \$230,662 more for salaries than was expended in 1980-1981, whereas the Association's offer would cost \$284,705 more. This is a difference of \$54,043. The same documents specify that the cost difference between the entire settlements proposed by the parties is \$68,184. This is an average cost increase per teacher for the entire settlement of \$2,343 under the Board's proposal and \$2,797 under the Association's offer. These figures are admittedly approximate, should not be confused with the increases that will actually be received by the individual teachers, and cover many items of compensation, insurance and retirement benefits, in addition to salaries.

The District is within the metropolitan Minneapolis-St. Paul, Minnesota area. It is, according to the record herein, a relatively affluent residential community many of whose residents commute to the larger cities. Apparently, prosperity and economic growth have been enjoyed despite general trends. While per capita income grew during 1973-1979 in the United States by 75.6% and in Wisconsin by 73%, it increased in Hudson by 78%.

However, the salaries of the District's teachers have been consistently below Wisconsin averages during 1979-1980 and 1980-1981. This is, at least in part, reflective of the fact that the District's costs per pupil have also been below average among Wisconsin districts. Further examination reveals that while the share of the District's budget paid by the State has been above average, its local share has been below average.

In other words, viewing the entire State, although the District has been comparatively prosperous, it makes a relatively low financial contribution to its schools and provides less than average salaries to its teachers. Judging from the 1981-1982 data available at the hearing herein, under both parties' proposals that below average status will continue.

The undersigned views this state-wide data as material and persuasive, but is less impressed by comparisons, urged by the Association, among the District and certain nearby Minnesota districts, and between the District and the school district at Franklin, Wisconsin. Although the Minnesota districts are proximate, different certification requirements may obviate a shared teacher employment market. Moreover, Minnesota districts are subject to Minnesota financing methods and restrictions which may invalidate comparisons. Franklin is also a suburban community - in the Milwaukee metropolitan area - and apparently shares certain demographic characteristics with Hudson. However, the data in this record is insufficient to provide confidence in that comparison.

More conventional and persuasive evidence reflects the status of this district among the eight that comprise the Middle Border Athletic Conference. In this grouping, Hudson had the greatest number of both students - approximately 2560-2700 and teachers; the highest taxpayer's income (by a considerable amount); a generally mid-range cost per pupil, and a somewhat above average levy rate. The equalized valuation per student was in the mid-range of the Conference.

During the 1975-1976 through 1980-1981 period the average teacher salary in the Conference increased by 45% while the average Hudson teacher salary increased 42%, the same amount as the average teacher salary state-wide.

Comparing the District's teacher salary schedule for 1979-1980 within the Conference shows it was in the middle range and dropped within the same range in 1980-1981. The parties' offers herein do not indicate any dramatic readjustment of these placements. A longevity compensation provision has enhanced the schedule's placement for teachers who qualify, and under the Association's proposal would continue to do so.

The Board does not ground its salary offer on its "ability to pay". Rather it emphasizes comparisons among the Conference districts and two others that are contiguous to Hudson. Within this group of ten the District is the largest in terms of both enrollment and teacher complement. In fact, except for two of these districts, all of the others are less than one-half the size of the Employer. Among the ten, the District is fifth in cost-per-pupil, State aid per pupil, equalized valuation per pupil and levy rate.

At selected points in the salary schedule, during 1980-1981, the District ranked generally slightly above the median. Where the longevity provision pertained its position was higher. The Board's proposal would drop the District comparatively, but by very little. The Association's offer would elevate the District's rank by approximately one position.

The record indicates that both parties' offers, in terms of the percentage increases that they represent, are greater than the increases received by the District's unrepresented staff, other public employees in Hudson, and public and private sector employees generally across the United States.

The evidence regarding 1981-1982 settlements in the 10 districts which the Board emphasizes indicates an average wage increase of 10.28% and an average overall cost increase of 11.57%. This evidence is incomplete and it is not clear that a uniform calculation method has been used. However, it suggests that the Board's salary offer is within .25%, more or less, of the norm, whereas the Association's proposal exceeds the norm by 2-2 1/2%. Likewise, the Association's proposal seems to place the total increase nearly 2% above the average, while the Board's offer is slightly below the norm.

The Arbitrator shares at least some of the Board's skepticism regarding the validity of the Consumer Price Index as an indicator of the cost of living but recognizes, as do both parties, that cost of living changes must be considered in these awards. Here the evidence indicates that both offers exceed current cost of living increases but, of course, the Association's is more above that growth level.

EXTRA AND COMBINED CLASSES

The record indicates that only three elementary teachers are involved in combined grade classes, and that there are approximately 10 middle, junior and senior high extra classes. The current rate of \$750.00 for these assignments, which the Association would increase by 10% to \$825.00 and the Board would maintain, was negotiated for the 1980-1981 year. The record is inconclusive as to how many other districts have extra or combined classes. Only three or four provide extra compensation for them, and only one is more generous than the instant parties' current provision.

STAFF REDUCTION

The layoff and recall provisions proposed by the Association differ from the current terms, which the Board would maintain, in a number of particulars. These include the following:

The current provision provides for layoffs "for whatever reason(s) the Board deems justified." The Association would delete the quoted phrase and would state "if it becomes necessary to reduce the number employed by the school district in whole or in part....". (New wording underscored.)

The current article provides for factoring attrition into layoff judgments within "limitations imposed upon (the Board) by budgetary considerations of law." The Association offer would amend the last phrase to "budget or considerations of law."

The current provision, at section 1. (b) specifies several factors to be taken into consideration in determining which teacher to layoff. The Association proposes "taking into consideration inverse order of seniority within an area of qualifications/certification," and includes certain pertinent definitions.

The Association provides for bumping at the second paragraph of subsection "3". There is no provision for bumping in the current article.

The Association offer revises and adds specifics to the current recall provisions. Among other things it calls for recall by seniority, rather than order of layoff.

The Association proposal drops subsection 3.(c) which applies to laid off teachers who desire to work as substitutes.

The record indicates no recollection of any layoffs in the District, and there are no suggestions of future causes for same other than budget reductions to compensate for cost increases, perhaps due to collective bargaining.

ANALYSIS

The Board recognizes, and the Arbitrator agrees, that the salary issue in this case may be regarded as close. The District is relatively prosperous, but by state-wide standards the teachers are somewhat underpaid. On the other hand, by more localized benchmarks, they are substantially average in this respect. Whereas the Board's offer does not promise to advance the teachers' comparative position, the Association proposes an increase that is materially greater than the current norm for increases. The question is whether there is such justification for correction as would support such a large increase percentage.

The Arbitrator favors the Association's position because of the District's state-wide position. Although the Association's argument that there is public policy in favor of state-wide uniformity is not entirely convincing, it seems that the local comparisons are biased against these teachers. The District adds the two contiguous districts to the Conference. The objective value of this is not established. Although these other municipal employers touch the District's borders, it is not clear why the regional comparison should end with them. Furthermore, they are less than 1/3 the size of the District in enrollment and serve to lower the norms when added to the Conference. The Conference is a more conventional grouping which is often persuasive, but the District is its largest member although it hovers about the median levels of compensation to teachers. Many of the Conference members are considerably smaller than the District. Perhaps a comparison to districts of similar size in the general region would have been more telling.

Neither party urges that their positions regarding compensation for extra and combined classes should be very influential in this determination. In the judgment of the undersigned the Association has offered very little rationale indeed for its proposal. The current provisions are only one agreement old and the proposed increase seems to be explained in terms of abstract consistency with other benefit increases. This does not draw much support from the statutory criteria for such awards.

The District urges that the Association's staff reduction proposal is so unjustified as to resolve whatever balance may otherwise be found in favor of its final offer. It emphasizes that there is no history of layoffs and characterizes the Association's language changes as "radical." The Board states "if it isn't broken, don't fix it."

The Association views its proposed provision as insurance which should be obtained before there is a fire, not afterwards. It emphasizes that its "seniority-based" proposal reduces the possibility of "subjective" determinations, but allows for an exception and only applies seniority among "qualified" teachers with relatively recent (within 5 years) experience.

The Board is especially concerned that the bumping allowed by the Association's offer would cause a series of movements among the staff and that "a teacher could end up in a position for which he/she would never have been hired in the first place." This seems an apt analysis, but describes how bumping often operates. It provides an employee who has some seniority with certain job security advantages, especially over someone who is seeking initial employment.

In the Arbitrator's view the staff reduction provision offered by the Association is not radical nor should it be necessary to suffer layoffs or reduced employment to justify enhancing job security. Moreover, there can be no ideal or neutral provision because the points of view of management and employees are both contrary and legitimate. On this basis, arbitrators prefer negotiated provisions over awarding modifications. Thus, what favors the Board's position is the fact that the Association is seeking to change a negotiated provision, not the lack of layoff history or the merits of the current provision. The Arbitrator agrees that it is unsound to obtain insurance following a loss, but is impressed in this case that 1) there is no particular basis for anxiety over layoffs, and 2) the Association may be failing to recognize that obtaining "insurance" usually means purchasing it.

As should be evident from the foregoing, in the judgment of the Arbitrator, neither parties' position is substantially superior. Although over 150 exhibits were entered and the parties' briefs approached 100 pages, neither the evidence nor the arguments revealed an obviously preferable selection. That is because each party relied on one of the items in dispute to carry other items. The Association hoped its salary position was strong enough to support its entire offer, whereas the Board placed confidence in its staff reduction provision contentions. The Arbitrator's ambivalence reflects the fact that neither party was ill-advised.

The Association's offer has been selected because, in the final analysis, the Board's criticisms of the Association's staff reduction provisions are speculative whereas the merits of the Association's salary offer are concrete. It seems better to respond to the clearer practical issue. Furthermore, this effort by the Association to improve the job security of the teachers should not be confused with employer proposals which seek to return to an earlier arrangement. It is conventional to support such a withdrawal of rights or benefits with a somewhat more generous offer on other items than might otherwise be required. On the other hand, here the Employer is attempting to support a below-average or average salary position by reference to an improvement in employee rights to which it will not agree.

It is not incisive enough to argue that major "language" changes should not be accepted without especially compelling justification. If staff reductions are truly not a realistic concern, that is as true for the Board as for the Association, and a change for which no adverse consequence can be confidently forecast should not reinforce a less than preferable position on another item.

AWARD

On the basis of the foregoing, and the record as a whole, it is the decision and award of the undersigned Mediator-Arbitrator that the final offer of the Association should be, and hereby is, adopted.

Signed at Madison, Wisconsin this 22nd day of May, 1982.

By: Howard S. Bellman
Howard S. Bellman
Mediator-Arbitrator