

BEFORE THE MEDIATOR-ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration
of an Impasse Between

BLACKHAWK BOARD OF VOCATIONAL, TECHNICAL
AND ADULT EDUCATION

And

BLACKHAWK TEACHERS' FEDERATION,
LOCAL 2308, WFT, AFL-CIO

Decision No. 19181-A

Appearances:

Mulcahy & Wherry, Attorneys at Law, by Mr. John T. Coughlin, for the
Municipal Employer.

Mr. Steve Kowalsky, Representative, for the Union.

ARBITRATION AWARD

The undersigned Mediator-Arbitrator was selected by the parties pursuant to the provisions of the Wisconsin Municipal Employment Relations Act (Sec. 111.70(4)(cm)6.) and Orders of the Wisconsin Employment Relations Commission (Case XXXV, No. 27804, MED/ARB-1100). Mediation was conducted on April 6 and 12, 1982.¹ An arbitration meeting was held at Janesville, Wisconsin on April 29, 1982.² A transcript was made. Briefs were exchanged on May 22, 1982.

This proceeding is also based upon Article X, Section C of the parties' 1980-1982 collective bargaining agreement. That provision stated as follows:

"This agreement shall become effective on July 1, 1980 through and until June 30, 1982.

Bargaining shall be reopened January 15, 1981, solely for the purpose of negotiating the salary schedule, Article VI, Section N - Certification (2), Article VI, Section F - Staff Reduction, Insurance, authorized travel and STRS."

The bargaining unit represented by the Union was described at Article 1, Section A of the aforesaid collective bargaining unit as follows.

"...all full time teaching personnel...excluding clerical, custodial and supervisory personnel, but including the positions of Student Counselor, Librarian and Federally Funded Teacher,... Federally Funded Teachers, (are) defined as being teachers who teach more than 50% of their time in projects which are numbered federal projects that are contingent upon an annual funding by the Federal Government."

1 There was no petition for a public hearing previous to mediation under Sec. 111.70(4)(cm)6.b. of the Act. During Mediation the parties settled a number of the issues contained in the final offers transmitted to the mediator-arbitrator by the Employment Relations Commission.

2 The parties waived written notification by the mediator-arbitrator of his intent to resolve the dispute by arbitration under Sec. 111.70(4)(cm)6.c. of the Act.

THE PARTIES' FINAL OFFERS

Federal Project Teachers:

During mediation by the undersigned the parties agreed to add the following definition to their recognition article.

"Instructional staff who teach full-time, in State-designated programs, shall be defined as those whose scheduled total point load for the school year (38 weeks) is 101 or more points."

The Union would add another section to Article I of the 1980-1982 collective bargaining agreement providing as follows.

"Section D-Federal Project Full-Time Instructional Staff

Federal Project full-time staff are employed 35 hours per week for 38 weeks. For the purposes of this clause, twenty-eight (28) student contact hours per week per semester shall be equal to 100 points. Therefore, full-time staff shall be considered as those who teach a total point load for the school year (38 weeks) of 101 or more points."

The Employer would maintain 1980-1982 provisions in this respect.

Assignments:

The Union proposes to add the following to the 1980-1982 agreement's "Assignments" provisions at Article VI, Section E, 1.

"If there is a reduction of the full-time work assignment of a certified full-time teacher, (including Federally Funded Teachers) counselor, librarian, or media specialist, then for the next contract year, the aforesaid categories of employees shall have the right to perform the bargaining unit work encompassed within the above noted job categories currently being performed by non-bargaining unit employees provided such assignment - reduced employees qualify by certification and experience to perform such work.

a. For assignment reduced employees, normal hours of employment shall not exceed a total of eight (8) hours, including a lunch period.

b. The bargaining unit work encompassed within the Federally Funded Teacher job category is limited to Women's School, ABE, Learning Lab, English As A Second Language, GED, and Piano Technology."

The Employer's offer in this respect differs in that it omits "(including Federally Funded Teachers)" from the first paragraph, and omits the third paragraph.

Salary:

The 1980-1982 agreement included a salary schedule format for the 1980-1981 school year consisting of a grid reflecting years of service and levels of educational attainment. The Union would 1) "add one step at the top of each lane (BA through MA + 24), 3% above present top steps" and 2) "increase each cell by 9%".

The Municipal Employer's offer would add 10% to each cell of the 1980-1981 schedule and provide no changes in the number of steps on that grid.

DISCUSSION

An Employer exhibit lists 34 "federal projects". Most of these, based upon the exhibit's brief statements of each project's contents and other evidence in this record, seem to include ordinary instruction of students by teachers.

(e.g. Piano Training and Repair for the Visually Handicapped, Pre-Vocational/Vocational Training for the Handicapped, Remediation in Basic Skills/Vocational Training for the Disadvantaged, Lifework Training Center, Apprenticeship Training) Other projects appear to provide for student counseling and assessment such as might be performed, in general, by unit members. (e.g. Career Development and Assessment for the Handicapped) However, some of the projects appear to be programs without a teacher-student component. (e.g. Educational Television, Excess/Surplus Property Acquisition Program, Curriculum Planning and Development, Adult Basic Education Staff Development)

The 1980-1982 labor agreement, at its recognition Section, quoted above, referred to "full-time teaching personnel" and "full-time Federally Funded Teachers, defined as being teachers who teach more than 50% of their time in projects which are numbered federal projects that are contingent upon an annual funding by the Federal Government." (Presumably the 34 projects are such.)

The Union contends that its offer, where it proposes "Section D-Federal Project Full-Time Instruction Staff", offers a definition whereby teachers in federal funded programs may be identified as being in or out of the unit. It states that this definition does not suggest what wages, hours, or working conditions are provided by the agreement to such employees who are in the unit, i.e. it alone provides no additional benefits.

The Union asserts that its proposal "defines full-time according to what the existing practice is and has been in the district." Particularly, it emphasizes that the standard that the Employer has been applying is "in the neighborhood of 28 contact hours per semester", or over 14 hours of teaching per week per semester.

The Employer, on the other hand, contends that the current contract provisions should be allowed to remain with the understanding that they, in conjunction with the practice under them, provide a satisfactory definition for determining unit membership. It urges that unless some inequity or other substantial defect is found in this definition, the Arbitrator should not disturb it.

The Employer also argues that disparate treatment of teachers in federally funded projects is warranted based upon the student populations of such projects, the broad spectrum of contact hours involved among such offerings, and the variety of course lengths involved. Further, the Employer emphasizes, the parties have recognized such disparities in their agreements' provisions defining the work year, the work day, and teaching load.

Robert Borremans, an Administrator with responsibility for federally funded programs, testified on behalf of the Municipal Employer that the practice has been to consider as "full time", "a person that works under a project that receives at least partial reimbursement by some source of federal funds, that works a total of seventeen and a half hours or more for 38 weeks." He further stated that such employees must work more than 17 1/2 hours, and that "work" is not synonymous with pupil contact time.

Administrator Walter Babula also testified. His responsibilities include all of the programs specified in subsection b. of the assignments provision proposed by the Union. According to Babula during 1981-1982 there were seven teachers (one of whom was an "evaluator") who were regarded as full-time and who were entirely occupied by federally funded projects, and one teacher who was regarded as full time who taught in a federally funded project and in non-federally funded programs. All others who taught in federally funded projects were regarded as part time, and therefore out of the bargaining unit.

According to the Union, its proposal's reference to 28 contact hours is based upon Babula's testimony as to the current norm. However, Babula's testimony in this respect seemed as much a matter of estimates impelled by questioning as based upon specific research or reliable methods. In at least two cases Babula could make no estimate. Further, because these courses tend to be scheduled over periods that do not correspond to the regular school year the matter of estimating averages in these terms seems especially unenlightening. Finally, Babula also testified, regarding contact hours in particular, that it was typical of these courses for such hours to vary greatly and quite unpredictably due to student attendance patterns.

The differences in the parties' offers regarding the assignment provisions also refer to teachers in federally funded positions. Specifically the Municipal Employer, contrary to the Union, would not include such employees in the subsection which allows the displacement of non-unit personnel at times of reduction. Those included by the Union's offer are limited to certain specified categories, including those programs to which all of the full time federally funded teachers were assigned in 1981-1982.

The Union characterizes this as "the most important issue contained in this case", and contends that its position should be sustained "solely on the basis of equity", rather than comparisons to treatments in other districts. The disparate rights proposed by the Municipal Employer, the Union argues, constitutes "discrimination without justification." The Union emphasizes that the aforesaid full time teachers commonly teach in more than one of the categories specified in its offer.

In the Arbitrator's view the Union's offer on these items regarding federally funded program teachers are questionable in terms of the supporting data and practical feasibility. It is reasonable, on intellectual grounds, for the agreement to provide a definition of such teachers for unit membership determination purposes as a counterpart to the definition of other full time teachers. However, there is no evidence that the absence of such a definition has been a problem; and secondly, the definition must be sound. The Union's proposed definition's reliance upon contact hours appears to be unwarranted. In other words, whereas a definition seems appropriate and conventional, the Union's definition appears to be flawed and therefore not preferable to the status quo.

The Union's proposal respecting these teachers' rights during reductions seems to lack feasibility. That is, its implementation, based on the instant record, can not be relied upon to resolve rather than generate problems. Most federally funded teachers, including those in the categories specified by the Union's proposal, are not unit members. They teach at a number of locations and vary in number from month to month as enrollment requires, and courses begin and end. A program may include only one full time teacher and ten part timers at a particular time, for example. The scheduling and rescheduling of these teachers and courses suggested by the full timers' displacement of the part timers under these circumstances may be onerous beyond justification. The record herein simply does not persuade the Arbitrator that the Union's proposal can be implemented without excessive compromises of management flexibility or program offerings.

Inasmuch as the Union has characterized the items discussed above as the most important of those left in dispute by these reopener negotiations, it would be unwarranted, having concluded contrary to the Union on those items, to discuss the remaining issue - salaries - as though it was critical to the outcome of this case. The Arbitrator must sustain the entire offer of one of the parties.

On that ground, the following should serve to adequately reflect the dimensions of the parties' dispute on the salary issue. According to the Union's calculations its proposal may be described as providing salary increase of 12.89% whereas the Municipal Employer has approved 12.34%. The cost of the difference between these is specified as \$8,500, with an "actual budget" impact of \$6,300. The Union, recognizing these differences to be relatively minor emphasizes that the justification of its offer lies in the structure change it proposes.

By adding a step to the structure the Union would address the compensation of nearly half of the teachers it represents. Comparing the salaries of these teachers to their counterparts at other selected vocational, technical and adult education districts, the Union finds the salary schedule at the instant district "lacking", whereas it is in the middle range for less experienced teachers. The Union also emphasizes that the number of steps that it proposes compares to those provided at the districts it contends are comparable.

The Municipal Employer would compare itself among a different group of districts and disputes the Union's conclusions on numerous grounds. In the view of the undersigned the relative magnitude of this issue favors offering

no conclusions by the Arbitrator. That is, given the relatively minor disparity between the parties on this issue, and the greater importance of the other issues, the Arbitrator's preference on this issue would not change the choice of offers and therefore stating his preference is of no value.

AWARD

On the basis of the foregoing, and the record as a whole, the undersigned Mediator-Arbitrator adopts the final offer of the Municipal Employer.

Signed at Madison, Wisconsin this 28th day of July 1982.

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