ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
	)	
Between	)	
	)	
JOINT SCHOOL DISTRICT NO. 1, CITY OF LAKE GENEVA, et al.	)	
	)	
And	)	Case VIII
	)	No. 29372
LAKE GENEVA TEACHERS ASSOCIATION	)	MED/ARB-1583
	)	Decision No. 19817-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

Mediation
December 1, 1982
Lake Geneva, Wisconsin

Arbitration
December 1, 1982
Lake Geneva, Wisconsin

Appearances

For the District

WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.
By David R. Friedman
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122 West Washington Avenue
Madison, WI 53703

For the Association

SOUTHERN LAKES UNITED EDUCATORS
By Esther Thronson
Executive Director
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Burlington, WI 53105

BACKGROUND OF THE CASE

This dispute is a statutory interest arbitration proceeding between Joint School District No. 1, City of Lake Geneva, et al, and the Lake Geneva Teachers Association, with the matter in dispute the terms of a renewal labor agreement.

The parties' prior labor agreement expired on June 30, 1982, and in their negotiations, they were able to reach agreement with respect to all the elements of the new agreement, with the single exception of the appropriate salary schedule. In light of the parties' inability to reach a negotiated settlement, the Association, on February 24, 1982, filed a petition requesting mediation-arbitration pursuant to Section 111.70(4) of the Wisconsin Statutes. After preliminary investigation, the Commission, on August 11, 1982, issued certain findings of fact, conclusions of law, certification of results of investigation, and an order requiring mediation-arbitration of the dispute. On August 31, 1982, the undersigned was appointed by the Commission to act as mediator-arbitrator in the matter.

Unsuccessful preliminary mediation of the matter took place between the undersigned and the parties on December 1, 1982, after which the undersigned determined that a reasonable period of mediation had taken place, and that it was appropriate to move to arbitration. The matter was arbitrated on the evening of December 1, 1982, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties closed with the submission of comprehensive post-hearing briefs, after which the record was closed on January 17, 1983.

THE FINAL OFFERS OF THE PARTIES

The Employer is proposing a salary schedule with annual salaries ranging from $13,600 at the BA -Step 1 entry level, to a $25,450 schedule maximum for an MA +18 or a BA +54 at Step 9, with 18 years of service. The Employer proposes BA increments of $450.00 for years one through nine, with $550.00 increments thereafter; it proposes MA increments of $450.00 for years one through nine, with $600.00 increments thereafter. The Employer also proposes consistent differences of $300.00, between the various steps in the salary schedule.

The Association is proposing a salary schedule with annual salaries ranging from $13,600 at the BA entry level, to a schedule maximum of $25,740 for an MA +18 or a BA +54 at Step 9, with 18 years of service. The Association is proposing increments ranging from $450.00 to $610.00 per year, and proposing differences between the steps in the salary schedule, ranging from $325.00 to $935.00.

THE STATUTORY CRITERIA

The merits of the dispute are governed by 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) The 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) Comparisons 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 of 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, holiday 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."

POSITION OF THE DISTRICT

Preliminarily; the District emphasized the narrowness of the dollar differences between the parties in their respective final offers, submitting that this condition had resulted from the good faith efforts and the reasonable approaches to negotiations of both parties. In this connection, it submitted that the Employer's final offer would entail a package increase of 8.7% as against the 9.4% increase embodied in the Association's final offer; it additionally emphasized that both parties were proposing changes in the salary schedule, with the differences in the offers relating primarily to the degree of change to be implemented during the current year.

In addressing the various statutory criteria, in support of the suggested adoption of its final offer, the District emphasized the following principal arguments:

(1) It urges that consideration of comparables by the Arbitrator should not be a major factor in the final offer selection process in these proceedings. In this connection, it submits that comparisons among the various feeder schools in the union high school group should not be persuasive, primarily due to the narrowness of the differences between the parties, and the fact that Lake Geneva Joint School District #1 is the largest of the various feeder elementary schools.

(2) Those statutory criteria principally argued by the Employer included the interests and welfare of the public, movement in the consumer price index, the overall level of compensation of those in the bargaining unit, and stability of employment considerations.

(a) It submits that the interests and welfare of the public are well served by employing competent and qualified teachers, and through paying them commensurate with their skills and abilities; in this connection, it argues, both offers are very close, and both meet these needs. It urges, however, that the approximate $10,000 saved under the District's final offer, is particularly important due to the current state of the economy, and it cites the likelihood that the money saved can productively be spent on such other educational needs as textbooks and supplies.

(b) It submits that evidence introduced at the hearing establishes that the adoption of the final offer of either of the two parties would exceed recent movements in the consumer price index. It emphasized excerpts from the decisions of other arbitrators in recent interest arbitrations in Wisconsin, in support of the arguments that cost-of-living considerations and general economic conditions favor the selection of the final offer of the Employer in this dispute.

(c) It urged that stability of employment in the District should be a major consideration in the selection of the final offer; in this connection, it cited testimony offered at the hearing, to the effect that certain adjacent elementary school districts have experienced stability problems, particularly citing the Woods and the Traver districts.

(d) It submits that interest arbitration is generally regarded as an attempt to reach the same settlement that the parties themselves would have reached, had they been successful at the bargaining table; and it argues that paragraph (f) of Section 111.70 (4)(cm)7 requires selection of the final offer which is closest to that which could or should have been reached in the negotiations process. It cited various possible settlements which might have evolved from the parties' final offers, arguing that the Employer's final offer should be adopted, because it is closer to the points that the parties might have reached through voluntary negotiations; in developing these arguments, the Board primarily addressed possible two year settlement alternatives, and various ways of splitting the money differences between the final offers of the two parties.

(3) Finally, the Board cited the stipulations of the parties criterion, referencing the fact that during their preliminary negotiations, the parties modified the layoff clause in the agreement, eliminated the deductible in the dental insurance program, and changed the insurance eligibility requirements for new employees. It submits that the monetary concessions implicit in the above changes must be considered by the Arbitrator in the final offer selection process.

In summary, the Board submits that the above cited criteria, along with a lesser emphasis upon comparisons, justify the selection of the final offer of the Employer.

POSITION OF THE ASSOCIATION

In urging the selection of its final offer by the Arbitrator, the Association referenced, compared, and relied-upon the patterns of settlement, in six major comparison groups, each composed of various public sector school districts. It also submitted that consideration of the cited patterns of settlement, is also the best method of addressing cost-of-living considerations.

(1) It submitted extremely well organized and comprehensive comparison data as between the District, and groups composed of: 33 Cesa #18 schools, for which four year salary data are available; 26 schools comprising the Southern Lakes Athletic Conference and Feeder Schools; 10 schools located in Walworth County; 5 K-8 schools in Walworth County; 4 K-8 schools in the athletic conference within which Lake Geneva students participate; 5 feeder school districts within the Lake Geneva-Genoa City Union High School District, minus Traver and Woods, which are considerably smaller than the others, which are not organized and do not bargain collectively, and for which reliable comparison data is not available.

It urged the conclusion that the most comparable group, and the most persuasive data is that which relates to the District versus the four other K-8 districts in the same athletic conference, within which Lake Geneva competes.

(2) In addressing comparisons within the six groups, the Association utilized seven benchmarks: BA Min; BA 7; BA Max; MA Min; MA 10; MA Max; Schedule Max. Specific comparisons included: four year salary rankings at the

benchmarks; the average dollar and percentage increases within the groups at each benchmark, versus the Association's and the Board's final offers; the average dollar differences at the benchmarks between the 1981-1982 and the 1982-1983 average settlements within the groups, versus the Association's and the Board's final offers. In addition to the above, the Association also prepared similar comparisons for only those members of each group which had reached settelements during calendar year 1982.

(3) It urged the conclusion that consideration of data at various salary benchmarks constituted the most valid and persuasive comparisons, for interest arbitration purposes. In the above connection, it cited the decisions of many distinguished arbitrators in recent Wisconsin interest arbitration proceedings.

(4) It urged that the above referenced benchmark salary comparisons, better indicate the necessary amounts of cost-of-living salary adjustments, than do the more traditional measurements of changes in consumer prices. It also cited arbitral adoption of this rationale in a number of awards, in support of the persuasive value of benchmark comparisons as a valid reflection of cost-of-living considerations.

On an overall basis, the Association suggested that the dispute should not have proceeded to the arbitration step, emphasizing the comparison data from the patterns of 1982-1983 settlements, and the views of other arbitrators in similar cases. It also emphasized the narrowness of the dispute, submitting that it focuses only on the 50% of the staff at the Masters and Masters+ columns; it submitted that only the Association's offer would maintain the appropriate ratios from the entry level to the maximum salary, while arguing that the adoption of the Board's final offer would result in salary erosion.

FINDINGS AND CONCLUSIONS

The major arbitral criteria addressed by the Association consisted of the referenced comparisons with other school districts, and cost of living considerations. The District additionally addressed miscellaneous other criteria, including the interests and welfare of the public, the stipulations of the parties, and stability of employment considerations.

The Comparison Criterion

During the course of the proceedings, the Association's major arguments were addressed to arbitral consideration of the comparison criterion, while the Employer suggested that this factor should not be assigned its normal weight in the resolution of this dispute.

Despite the fact that the legislature did not prioritize the various arbitral criteria referenced in Section 111.70(4)(cm)7, there can be no dispute that the comparison criterion is normally the single, most influential factor in the interest arbitration process. While various types of wage comparisons may be offered, the intraindustry comparison (in this case comparisons between comparable school districts), is normally the most persuasive of the possible comparisons. These considerations are well addressed in the following extracts from the book by Irving Bernstein: 1./

"a. Intraindustry comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.

* * * * * *

A corollary of the preeminance of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination..."

What then of the Employer's arguments that the facts in the case at hand justify the conclusion that comparisons should not be assigned definitive importance? In this connection it particularly emphasized the narrow differences between the dollar salary proposals, and the percentage package totals; it also cited differences in sizes, and in numbers of students and teachers, within the various comparison districts, and submitted that the selection of valid comparisons is extremely difficult in the case at hand.

The District has touched upon a problem that is basic in the use of comparison criterion in almost all interest arbitration proceedings involving schools, the question of which school districts should be used for comparison purposes. Both parties to such interest disputes, normally recognize the importance and the persuasive value of appropriate comparisons, and both normally emphasize those comparisons which they regard as most favorable to their own position in the dispute.

Contrary to the normal situation, the District did not comprehensively address the comparison criterion, rather arguing merely that the factor should not be assigned definitive importance. The Association, on the other hand, presented comprehensively prepared and well organized wage comparisons, within six basic groups of districts, and utilizing seven benchmark levels within the various salary structures; rather than utilizing or urging a single group for comparison purposes, its arguments suggest that consideration of any or all of the comparisons, favor the adoption of its, rather than the Employer's final offer.

While the arguments of the Employer are both imaginative and innovative, they provide no basis for the Arbitrator to disregard, or to substantially de-emphasize the consideration normally accorded the comparison criterion. The use of salary benchmark comparisons, urged by the Association, is also a much more precise measuring tool than package costs comparisons, and an approach which more readily lends itself to consideration of the relative merits of two final offers which are relatively close to one another.

While the narrowness of the differences in the final offers of the parties has diminished the persuasive value of the salary rankings, at the various benchmark levels, an examination of the comparative 1982-1983 dollar increases and percentage increases at the various benchmark levels, rather definitively favors the adoption of the final offer of the Association. Keeping in mind that the final offers of the parties are identical at the BA Min, the BA 7, and the BA Max levels in the salary structure, the following comparisons are all quite persuasive.

(1) In looking to the 33 schools in CESA #18, which have settled for 1982-1983, the final offer of the Association is clearly more appropriate than that of the Employer at the MA Min, the MA 10, the MA Max, and the Schedule Max benchmarks; at each of the steps, both the percentage and the dollar increases urged by the Association are closer to the averages for the school districts in the group, than the increases proposed by the District.

In looking only to the schools in the group which settled during 1982, the Employer's dollar offer at the MA Min step is closer to the average, while the percentage increase suggested by the Association is favored by the average percentage adjustment at this level; the Association's final offer on both dollar and average increase grounds is favored at each of the remaining benchmark levels.

(2) In looking to either the 26 schools comprising the Southern Lakes Athletic Conference and feeder schools, and/or in considering only the 20 schools which settled in 1982, the Association's final offer is also clearly favored! This is uniformly true in both dollar and percentage increase terms for all four benchmark salary levels, where the final offers of the parties differed.

(3) In looking to the 10 Walworth County Schools which have settled for 1982-1983, the Association's final offer is favored on both dollar and percentage increase bases at the three highest benchmark comparison levels, while the Board's dollar increase offer is closer to the average increase at the MA Min step.

In looking only to the 8 1982 settlements reached at these schools, the Employer's dollar offer is closer to the average in three of the top four benchmark levels, while the Association's offer is favored on a percentage basis at two of the four levels. Evidence at the hearing indicated, however, that three of the settlements entailed a no-layoff commitment, in exchange for lower salary increases, during the 1982-1983 school year.

(4) In looking only to the 5 Walworth County K-8 Schools which reached settlements for 1982-1983, the final offer of the Board would be favored; three of the five schools in the group, however, were those referenced above, where no-layoff commitments were exchanged for lower salary increases during the 1982-1983 school year.

(5) In looking to the four schools comprising the K-8 Athletic Conference, the final offer of the Association is the more appropriate on both dollar and percentage incease bases, at all four of the top benchmark levels in the salary structure.

In looking solely to the single school settling in 1982, the Employer's offer is favored at the MA Min step, while the Association's offer is the more appropriate in the three higher benchmark steps.

(6) In looking to the three schools comprising the Lake Geneva-Genoa City Union High School District and related feeder school districts, both of the other schools settled in 1982. The final offer of the Association is favored on both dollar increase and percentage increase grounds at all four of the top benchmark salary levels.

On the basis of all the above, the Impartial Arbitrator has preliminarily concluded that the comprehensive benchmark comparisons urged by the Association persuasively support the conclusion that its final salary offer, rather than the Employer's, is the more appropriate of the two before the Arbitrator. While an examination of the average dollar and percentage settlements at the benchmark levels, in the group consisting of 5 Walworth County K-8 Schools, appears to favor the final offer of the Employer, these data must be considered in light of the no-layoff commitments made by three school boards, in exchange for lower salary adjustments, factors not present in the case at hand.

The Cost of Living Criterion

Cost of living considerations have assumed growing importance in recent years, due to substantial increases in the rate of inflation, followed more recently by a relative stabilization in the inflation rate. The traditional approaches to this consideration, have been based upon use of the Consumer Price Index (CPI), and/or the Personal Consumption Expenditure Index (PCE), in support of the final offers of the parties.

In the case at hand, the Association argued that the comparison data referenced above, reliably indicated what constituted a fair and reasonable response to recent changes in cost of living. It cited and emphasized the decisions of various interest arbitrators in Wisconsin, who had recently placed greater reliance upon patterns of settlement, as a more reliable indication of cost of living considerations, than the indexes referenced above.

The Employer cited recent movement in the Consumer Price Index as reflected in Employer Exhibit #4, submitted cost analysis data for the final offers of the parties in Employer Exhibit #5, and argued that the final offers of either party exceeded the recent

movement in the index. It additionally introduced various exhibits dealing with the state of the economy in Wisconsin, and cited the decisions of Wisconsin Interest Arbitrators, who had recently referenced the state of the economy in support of the need for moderation in the size of wage and benefits increases in current labor agreements in the State.

While both the CPI and the PCE are imperfect measurements of inflation, the Impartial Arbitrator is not prepared to suggest that their use should be abandoned in interest arbitration, in favor of expanded consideration of the comparison criterion. When there is a combination of very close final offers, in combination with very definitive comparison data, however, the persuasive value of the latter is particularly enhanced.

Perhaps the most persuasive argument that could be addressed by any public sector employer in 1982, was the depressed state of the economy. When local units of government are faced with high unemployment, with growing resistance to tax increases, and with the prospects for reduced levels of financial support from both national and state governments, proposals for wage and benefit increases must be closely scrutinized. Perhaps the most persuasive aspect of the comparison wage data offered by the Association, was the fact that there were separate comparisons of wage increases agreed-upon in 1982, and these wage data also favored the final offer of the Association.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that consideration of the cost of living criterion does not definitively favor the adoption of the final offer of either party. If the CPI data were a more exact measuring tool, it would slightly favor the adoption of the final offer of the Employer; if the collective response to cost of living considerations, reflected in the comparison data referenced earlier, is considered to be a fair and reliable response to this factor, the final offer of the Association would be favored.

Miscellaneous Remaining Considerations

In presenting its case and in its post-hearing brief, the District touched upon various other arguments, and arbitral criteria, which were not separately and comprehensively addressed by the Asscociation.

The Board cited concessions made during the current negotiations in such areas as modification of the layoff clause, elimination of the dental insurance deductible, and unspeicified improvments in insurance eligibility for new employees. While, as argued by the Employer, these changes carried with them certain unspecified cost implications, there is no evidence in the record which details these costs. The evidence simply falls far short of that necessary to significantly detract from the persuasive value of the salary comparison data referenced earlier.

The arguments of the Board relating to stability of employment considerations are also conceptually valid ones. Where employees enjoy outstanding stability of employment, this factor must particularly be taken into consideration when comparing wages and salaries with other employees who do not enjoy the same job security. There is no indication in the record, however, that any of the other districts do not have comparable stability, with the exception of the districts which negotiated lower salary levels in exchange for specific job security commitments for 1982-1983. While job security considerations can be quite persuasive in various interest arbitration proceedings, there is nothing in the record to indicate that this consideration can properly be assigned major weight in the case at hand.

The Employer's arguments relative to the role of an interest arbitrator generally being to arrive at the same settlement the parties would have reached, had they been able to achieve a negotiated settlement, is also quite valid in theory. The arguments addressed in support of this consideration were both ingenious and imaginative, but they simply cannot be assigned definitive importance in the dispute at hand. Speculation as to how the parties might have adopted a two year agreement in exchange for certain salary compromises is, indeed, speculation. Likewise, conjecture as to how the parties' salary differences might have been compromised and the new money added to the structure, is pure guesswork. An arbitrator might surmise how certain additional negotiations might have progressed, but such guesswork cannot be elevated to the same level of importance

as certain of the more definitive arbitral criteria such as comparisons. Indeed, when a legislature adopts a final offer arbitration procedure, it is logical to assume that it intends to minimize the impact of such arbitral guesswork and speculation.

Similarly, the argument that a savings of approximately $10,000 per year would serve the interests and welfare of the public, and that the savings might be reflected in additional educational expenditures for such items as textbooks and supplies, cannot be assigned determinative importance. Similar arguments might be advanced in support of any projected savings, but the textbook and materials rationale accompanying the argument is both speculative and uncertain, and this argument simply cannot offset the considerations discussed above.

Summary of Preliminary Conclusions

On the basis of all the considerations addressed above, the Impartial Arbitrator has reached the following summarized preliminary conclusions:

(1) The comprehensive benchmark salary comparisons offered by the Association, within six comparison groups, strongly and definitively favor the selection of the final offer of the Association.

(2) Consideration of the cost of living criterion, does not definitively favor the selection of the final offer of either party.

(3) Neither the evidence and arguments relating to the interests and welfare of the public, the overall level of compensation, stability of employment considerations, nor various adjustments made in the negotiations process during 1982, definitively favor the adoption of the final offer of the Employer.

Selection of the Final Offer

After a careful review of the entire record, and consideration of all the statutory criteria, the Arbitrator has preliminarily concluded that the final offer of the Association is the more appropriate of the two final offers. In this situation, the clear and persuasive intraindustry comparison data definitively favors the selection of the final offer of the Association, and this data is entitled to significantly greater weight than those considerations discussed above, where other arbitral criteria were addressed by either or both of the parties.

1./ The Arbitration of Wages, University of California Press, 1954, pages 56, 67. (footnotes omitted)

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 11.70(4)(cm)7 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

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

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

April 9, 1983