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In the Matter of Mediation/Arbitration between

EAU CLAIRE AREA VOCATIONAL, TECHNICAL & ADULT EDUCATION DISTRICT ONE

and

VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT ONE CUSTODIAL-MAINTENANCE UNION, LOCAL #560-1, AFSCME, AFL-CIO

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No. 29857, MED/ARB 1715
Decision No. 19827-A

Appearances:

Mr. Stevens L. Riley, Attorney, Losby, Riley, Farr & Ward; for the Employer.

Mr. Guido Cecchini, Staff Representative, Wisconsin Council of County and Municipal Employees; for the Union.

Mr. Neil M. Gundermann, Mediator/Arbitrator.

ARBITRATION AWARD

Eau Claire Area Vocational, Technical & Adult Education District #1, hereinafter referred to as the Employer, and Area Vocational, Technical and Adult Education District #1 Custodial-Maintenance Union, Local #560-1, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to reach an agreement on the terms of a new contract. The undersigned was appointed mediator/arbitrator pursuant to Sec. 111.70(4)(cm)6.b. of the Municipal Employment Relations Act, and when mediation failed to resolve the dispute the parties continued with an arbitration hearing on October 25, 1982. Post-hearing briefs were filed.

FINAL OFFERS OF THE PARTIES

Employer's Final Offer:

Custodian	Step D	$7.86 per hour
Custodian/Maintenance	Step D	$8.09 per hour
Maintenance	Step D	$8.32 per hour

Union's Final Offer:

Effective 7/1/82	35¢ per hour increase
Effective 4/1/83	33¢ per hour increase

UNION'S POSITION:

It is the Union's position that its proposed 5.6% annual increase, which by the tenth month of the year will lift the average wage rate by 9%, is below the negotiated wage pattern in the Eau Claire community for fiscal year 7/1/82 through 6/30/83.

The Union urges the arbitrator to give the preponderance of weight to the three public employe settlements in the immediate Eau Claire locality. In support of its request, the Union contends that the population and tax base of the city of Eau Claire area makes comparisons with adjacent communities, which have lower tax base and populations, dissonant. Within the community the most logical comparable unit of government, which offers identical services to the same community, is the Eau Claire Area School District which has traditionally made an effort to maintain parity with the city of Eau Claire. The Union claims these are direct comparables which must be utilized and given great weight. Of the three units of government which the Union proffers as most comparable, the least comparable is Eau Claire County.

While the three local employers' settlements emanate from the second year of two-year agreements, the Union claims it has given due consideration to recent economic trends by proposing lower annual yield and lower wage-rate lift than has been won by the other community comparables.

It is argued by the Union that the evidence introduced by the Employer in support of its position is unpersuasive in that inappropriate comparables skew the Employer's statistical "facts." In support of this contention the Union notes that among the comparables is a law office which probably employes one or two employes and undoubtedly pays close to the Federal minimum wage rate. Additionally, the Union contends that some of the other comparables come from geographic areas substantially smaller than the Eau Claire area with less full value tax support. Given these circumstances, it is unreasonable to consider those examples as "comparables." Additionally, when the comparables are expressed in terms of averages, the averages are skewed by the high and low figures contained in the analysis.

The Union argues that the economic trends in the area support its final offer as substantially more reasonable than the Employer's final offer. The two most comparable employers in the area are the Eau Claire School District and the City of Eau Claire. Both have agreed to higher annual increases, as well as higher wage rate increases for the fiscal year 1982-83 herein in question. Eau Claire County has agreed to a substantially larger increase for calendar year 1983 than the Employer is offering.

It appears to the blue-collar workers of this bargaining unit that the Employer is not concerned with internal harmony. Without explanation, the Employer admitted under cross-examination that it had offered a 6.4% increase to the clerical bargaining unit. Thus, even in-house comparison weakens the Employer's position.

The Union also argues that there have been other settlements in the geographic area which exceed even the requested settlement of the Union.

According to the Union, the cost of living at the time the parties were negotiating the current agreement had increased

by 6.5% over the preceding twelve months. It is also emphasized by the Union that since the first negotiated agreement existed between the Union and the Employer, the CPI has increased by 77%, while the wages paid to custodians have increased by 72%. This represents a net reduction in purchasing power of 5%. While the Union does not dispute the fact that recently the rate of increase in the CPI has been slowing, the Union projects that if consumers start to spend their money again, if the level of unemployment decreases, and if interest rates decline, inflation will increase at a rate higher than is currently being experienced.

The Union emphasizes that there was one meeting between the bargaining unit and the Employer. Without one caucus, the Employer declared an impasse and proposed a stipulation to resolve the deadlock by the mediation/arbitration process. Such action by the Employer is clear evidence that it artificially contrived its proposed 4.9% increase without giving due consideration to trends, or empirical or scientific evidence. It is asserted by the Union that there is nothing unique about this Employer; whatever additional expenses there may be have been experienced by similar employers.

It is argued by the Union that it would be disruptive to the broader system of collective bargaining to issue an award which would ignore earlier settlements arrived at voluntarily and in good faith which are substantially higher than the Employer is proposing in this case. There is no question that the employes of this Employer would be unfairly penalized if the wage gains in comparable units, as proffered by the Union, were to be ignored. The area wage pattern would be unstabilized.

The Union has given due consideration to the recent economic trends by deferring 48% of its wage rate increase for nine months, and by reducing its expectations by 1% below its counterparts in this community.

For the above reasons the Union respectfully requests the arbitrator to award its final offer.

EMPLOYER'S POSITION:

The Employer notes that the average cost for its twenty-three custodial/maintenance employes during the past fiscal year was $8.60 per hour, which includes wages of $7.48, health insurance of 47¢, dental insurance of 16¢, retirement 38¢, life insurance 6¢, and long-term disability of 5¢.

The Employer agreed to absorb 100% of the 1982-83 increases in health and dental insurance premiums of 18¢ and 2¢ per hour, respectively. The total cost of the Employer's offer includes 37¢ per hour in wages combined with 21¢ for insurance and retirement increases, or 58¢ per hour. That represents an increase of 6.75%. (Retirement would add 1¢.)

While the Union will undoubtedly argue that the total cost of its proposal for the current school year would only be slightly more than the Employer's final offer or 7.2%, the Employer notes it is critical in making this comparison to recognize that a very substantial part of the Union's increase will not be felt in the current school year, but will impact dramatically upon the Employer for the next school year. Under the Union's proposal the custodians will end up with a total increase of 68¢ per hour and an hourly rate of $8.17, as opposed to an hourly rate

of $7.86 under the Employer's proposal. This 31¢ per hour represents a material increase from which negotiations will begin next year.

One of the statutory guidelines which guides the arbitrator is the following: "The interest and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlement." While the Employer does not maintain it would be unable to pay the cost involved should the arbitrator determine that the Union's final offer should be incorporated into the party's collective bargaining agreement, the Employer submits that the interest and welfare of the public require the arbitrator to take note of the fact that Wisconsin statutes set forth operational budget limitations prescribed by the legislature for all VTAE districts. The statute directs that the Employer not increase its operational budget for the 1982-83 school year over the 1981-82 school year by more than 9.5%. If the Union's offer is incorporated into the agreement, this limitation will be exceeded requiring the Employer to cut its personnel or programs to recover the difference.

The budget adopted by the Employer anticipates revenues and expenditures which will result in an increase to the students of 9.47% over the corresponding measure for 1981-82. Should the District exceed its limit, a penalty will be invoked. This penalty is the reduction in the amount of State funding to which the District would normally be entitled by an amount approximately equal to the amount which the District has expended beyond the cost control limitation. The Employer notes that the settlement proposed by the Union exceeds that of the Employer's offer by approximately $2,000. Since there is no source of revenue that can be utilized during the current fiscal year to raise the additional monies, the District would need to borrow the money and repay it through the levying of additional property taxes in the 1983-84 year. The total impact, however, would be significantly greater in that in addition to repaying the $2,000 together with the associated interest, an additional $2,000 would have to be levied in order to compensate for the penalty which would be invoked by reducing the 1983-84 State funding by this amount. Thus, the District would be required to levy an additional amount approaching $4,000 for the 1983-84 year.

The Employer emphasizes the fact that the impact of the 33¢ per hour the Union wants for the last three months of the fiscal year will impact on the Employer for all twelve months of the next fiscal year. The Employer's problem with the cost control legislation described above will be severely exacerbated by the built-in full-year cost increase mandated by the April, 1983 increase over which the Employer will have no control for the 1983-84 fiscal year.

While the Employer admits there are circumstances where split increases are necessary to permit a public employer to play "catch-up" and spread the cost over more than one year, the Employer submits there is no basis in the instant dispute to warrant a settlement of this type. Additionally, when "catch-up" settlements involving delayed implementation of benefits occur, they should occur as a result of a voluntary settlement with the Employer voluntarily accepting its responsibility in subsequent years.

An additional statutory criteria to be followed by the arbitrator is:

> "Comparison of wages, hours and conditions of employment of municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities."

It is generally the practice of parties in school mediation/arbitration cases to limit their comparables to other school districts. Primarily this is because most of the cases involve teachers, and the wages, hours and working conditions of teachers are somewhat unique and therefore difficult to compare with other classifications of employes.

The Employer submits that such is not the case in the instant dispute. Custodial and maintenance workers are required in all areas of employment. The Employer submits that the survey conducted by David Olson for the Employer in this case provides very valuable information on all elements of the criteria set forth above. While it is anticipated that the Union will attempt to discredit this survey, Olson is a qualified expert in the field and for twelve years he was a labor market information specialist whose job was compiling exactly the same information for the Eau Claire area as he prepared for this case. Additionally, his survey was impartial as he testified the Employer's instructions to him were limited to asking him to compile a survey as to the current wages in public and private employment for custodian/maintenance employes within a fifty-mile radius of Eau Claire.

References to the Union exhibit purporting to show comparable rates indicated that every employer unit listed thereon was included in Olson's survey, as well as several others which are clearly comparable to the Employer. In addition, the survey by Olson included the most directly applicable employers, i.e., the four VTAE districts which border the Employer in this case.

An analysis of the comparables indicates that the Employer in this case, even without considering the final offers of the parties, compares very favorably with the other employing units referred to in the statutory criteria set forth above. When the final offers of the parties are taken into consideration, the conclusion is inescapable that the Employer's final offer would not adversely affect the Employer's standing vis-a-vis the comparables.

It is clear from looking at the comparables, and then examining the two final offers presented to the arbitrator, that implementation of the Employer's final offer will do no harm to the bargaining unit employes. This analysis was used by Arbitrator Richard J. Miller in Stanley-Boyd Schools, Decision No. 19252-A, 4/23/82, where, in deciding for the Union, he found that the District's final offer caused more irreparable harm than did the gains achieved by the Union's offer. It is submitted that in the instant case it is the Union's offer which causes the more harm.

With respect to the weights to be given comparables, it was noted in Tomahawk Schools, Decision No. 18817-A, 11/12/81, that the comparison of comparables is a "major consideration." In that case the arbitrator awarded for the union because its final offer deviated less from the average than did the employer's. In this case it is the Employer's offer which deviates less from the average.

While the Union makes reference to the settlements it has negotiated in the Eau Claire area and which are set forth in its exhibit, the Employer notes a careful reading of that exhibit shows that all but one of the settlements are not the result of currently negotiated agreements, but are in fact settlements made over one year ago when inflation was at a near all-time high. A similar argument was made by the Union in the recent arbitration case involving the Westby Area School District, Decision No. 28123, 11/12/82, where the Union relied on so-called "comparable" settlements, most of which had been negotiated earlier on a multi-year basis. The arbitrator stated that "it is equally obvious that these agreements were arrived at prior to the disbursement of what is now clear and obvious evidence regarding the general decline in inflation," and that to award the association's position would be "out of step with the realities of the economy." It is emphasized by the Employer that the arbitrator in the instant case reached a similar decision in School District of Cudahy, Decision No. 19635-A, 10/28/82, applying the same principle.

An analysis of the comparables shows the exhibits contain data compiled from the four adjacent VTAE districts, thirteen private employers in a fifty-mile radius from Eau Claire, twelve public employers, and two non-profit public hospitals. A summary of the data demonstrates that if the Employer's offer is implemented for the 1982-83 school year, its maintenance employes will be receiving only one cent per hour less than the highest average maintenance wage paid by these comparable employers, while the custodians will be paid 77¢ per hour more than the highest average custodian. If the Union's offer is implemented, by April 1, 1983 the maintenance men will be 28¢ over the highest average maintenance men, and the Employer's custodians will be receiving $1.08 per hour more than the highest average custodian.

Another statutory guideline for the arbitrator provides: "The average consumer prices for goods and services commonly known as the cost of living." From July 1981 through October 1982, the CPI increase (annualized) for each month averaged 8.7%. For the first twelve months of that period the bargaining unit involved in this arbitration enjoyed a negotiated increase in total wage and fringe benefits over the prior school year of 11.1%. The CPI annualized average increase for the first four months of this contract year is 5.6%, and the Employer's total package offer of 6.75% is well above this level.

Another statutory criteria provides:

> "The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received."

The survey conducted by Olson establishes that the practice of the Employer of assuming 100% of the cost of insurance and retirement is clearly more beneficial to its employes than the practice of most of the comparables. The average number of paid holidays is 9.6 among the comparables, while the Employer provides 10. The annual accumulation of sick leave is 10 days for the average comparable, while the Employer provides 15. The average total accumulation is 94, while the Employer's is 135. While the Employer does not compensate for unused sick leave, only a minority of others do. It is obvious that the final offer of the Employer does not suffer by comparison to the Union's when this criteria is applied.

The statute also directs the arbitrator to take into consideration "[c]hanges in any of the foregoing circumstances during the pendancy of the arbitration proceedings." The only significant change since the commencement of the proceedings is that the economy has continued to decline and the CPI is at a lower rate of increase.

Another statutory criteria provides:

> "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 Employer submits this factor is more significant in the instant dispute than the other factors. The economy of the entire nation is in dire straits, and in the Employer's area and elsewhere unemployment is higher than at any time since the depression of the 1930's. Plant closings and temporary shutdowns due to the loss of business are commonplace in this area as well as throughout the country.

Workers at Eau Claire's largest industrial employer, Uniroyal Inc., have voted to accept cuts in pay and benefits in order that the plant can remain productive. The state of the economy was recognized by Arbitrator Robert J. Mueller in Madison Area VTAE, Decision No. 19793, where he awarded for the Employer. In reaching his decision the arbitrator felt that the other material factors (comparability and the cost of living) were a toss-up. In the instant case these factors actually weigh on the side of the Employer.

For the above reasons the Employer respectfully requests that its final offer be awarded.

DISCUSSION:

There is some dispute in this case regarding comparables. The Union contends the most relevant comparables are the other governmental jurisdictions within the city of Eau Claire,i.e., the City, the Board of Education, and the County. The Employer contends the range of comparables is broader and should include private employers as well as public employers in the geographic area and the four adjacent VTAE districts.

In terms of similarity of work place, the most obvious comparables are the other VTAE districts. In terms of similarity of economic environment, the most obvious comparables are the other units of government located within the City as well as the private employers located within the City. There is little meaningful data available for private employers within the City, and even the data for the adjacent VTAE districts is lacking in specifics. The only wage data provided for the adjacent VTAE districts is the average minimum and maximum of the building maintenance and custodial classifications. There is no evidence to indicate what the 1982-83 pattern of settlements were, whether there were multi-year agreements, or when the agreements expire.

In contrast to the evidence relating to private employers within the City and the adjacent VTAE districts, there is substantial evidence in the record regarding the other governmental

jurisdictions; their collective bargaining agreements were introduced into evidence.

The evidence establishes that for 1982-83 the Board of Education granted a wage increase of 76¢ per hour, the City granted a wage increase of 75¢ per hour, and the County granted a wage increase of 8%. (The 8% represents an increase of 49.83¢ per hour for a County custodian, and 50.87¢ per hour for a custodian-maintenance.) Significantly, the above noted increases were for the second year of two-year agreements. Both the Board of Education and City contracts became effective July 1, 1981 and expire June 30, 1983. The County's agreement became effective January 1, 1982 and expires December 31, 1983.

Although the City, County and Board of Education may be deemed comparables, the fact that the increases for the 1982-83 year were second-year increases reduces the significance of the comparables. Those agreements were negotiated in an entirely different economic environment. During July of 1981, the month in which the City's and the Board of Education's agreement became effective, the CPI on an annualized basis had risen 10.7%. During January of 1982, the month the County's agreement became effective, the CPI on an annualized basis had risen 8.4%. Interestingly, the increase for the City represents 9.7%, while the increase for the Board of Education represents 10.1% for custodians, and 9.4% for maintenance I. As previously noted, the County's increase was 8%. During July of 1982, the effective date of this agreement, the CPI (annualized) had risen 6.5%. As of December, 1982, the rate of increase (annualized) was 3.9%.

Clearly, the economic environment as reflected by the CPI had changed significantly from the time the City, County and Board of Education entered into their agreements until July of 1982, and even more significantly from July of 1982 to December of 1982. Along with a lessening in the rate of increase in the CPI, unemployment during the period of July 1981 to the present has reached levels not experienced since the Great Depression of the 1930's. This is the economic climate in which the instant dispute is being arbitrated.

The Employer has offered a wage increase of 4.9% and a total package, including increases in insurance and retirement, of 6.75%. The Union is requesting, through a split increase, an increase of 5.6%, with an effective increase in rates of 9% effective April 1, 1983.

The actual percentage difference in wages over the term of the agreement is .7%, or approximately 5¢ per hour--not a significant difference. However, the manner in which the difference is applied to the wage structure makes a substantial difference. Under the Union's proposal the wage rate effective April 1, 1983, will represent an increase in the rate structure of 9% over the rates at the expiration of the prior agreement. Negotiations for the 1983-84 agreement will start at that point.

The evidence establishes that the 1981-82 cost for the average employe was $8.60 per hour which included the following: wages $7.48, health insurance 47¢, dental insurance 16¢, retirement 38¢, life insurance 6¢, and long-term disability insurance 5¢. The Employer's wage offer of 37¢ per hour plus an 18¢ increase in health insurance, 2¢ increase in dental insurance, and 1¢ increase in retirement payment will raise the total cost to $9.18 per hour--an increase of 58¢ per hour or 6.74%.

Under the Union's proposal the employes would receive the fringe improvements (which under its wage proposal would increase the retirement contribution by 1¢) equaling 22¢ per hour, and wage increases during the life of the agreement totaling 68¢. Going into the 1983-84 negotiations wages and fringes would have increased during the 1982-83 agreement by 90¢ per hour. This represents an increase in wages and benefits of 10.47%. This is not the actual cost to the Employer for the 1982-83 agreement, but it does represent the increase the Employer will have to fund beginning with the 1983-84 agreement.

The cost to the Employer for the 1982-83 agreement would be 21¢ in fringes and 43¢ in wages, (35¢ for the full year and 33¢ for 25% of the year, or 8¢). This would represent an increase in costs of 64¢, or a percentage increase of 7.4% (64¢ ÷ $8.60). While the cost of the Union's final offer for the 1982-83 agreement is not totally unreasonable, a package which results in an end-of-contract cost of 90¢ per hour, or an increase of 10.47%, appears totally unreasonable in the present economic environment--especially considering the fact this is a one-year agreement.

It must be further noted that the wages of the bargaining unit employes are competitive. Thus, no argument for "catch-up" can be persuasively made.

Having given due consideration to the evidence and the statutory criteria it is the opinion of the undersigned that the Employer's final offer is the more reasonable of the final offers.

It therefore follows that the undersigned renders the following

AWARD

That any and all stipulations entered into by the parties and the Employer's final offer be incorporated into the 1982-83 agreement effective July 1, 1982.

Neil M. Gundermann

Neil M. Gundermann, Arbitrator

Dated this 15th day
of February, 1983 at
Madison, Wisconsin.