

FEB 16 1983

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of the Petition of :
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MISHICOT EDUCATION ASSOCIATION :
: Case III
To Initiate Mediation-Arbitration : No. 30177
Between Said Petitioner and : MED/ARB-1851
: Decision No. 19849-A
SCHOOL DISTRICT OF MISHICOT :
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APPEARANCES

Otto H. Schultz, District Administrator, on behalf
of the District

Dennis W. Muehl, Executive Director, Bayland Teachers
United, on behalf of the Association

On September 9, 1982 the Wisconsin Employment Relations Commission appointed the undersigned to serve as Mediator-Arbitrator pursuant to Section 111.70 (4) (cm) 6 b. of the Municipal Employment Relations Act in the dispute existing between the School District of Mishicot, hereafter the District or the Board, and the Mishicot Education Association, hereafter the Association. Pursuant to statutory responsibilities, the undersigned conducted a public hearing and mediation proceedings between the parties on November 1, 1982. Said proceedings failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on November 2, 1982 for final and binding determination. Post hearing exhibits and briefs were filed by both parties by December 20, 1982.

The Association submits that the Board abused the intent of the post hearing arrangements by submitting certain documents that are either beyond the scope of the post hearing agreement or which are presented in argument form.

It asserts that the record was closed at the hearing on November 2, except for the narrow purposes of verification of certain exhibits and the introduction of new evidence regarding final certified offers, arbitration awards, and any ratified settlements in comparable districts which became finalized by December 15, 1982, the agreed upon deadline for either party to request a reopening of the hearing for the submission of additional evidence. Such request was not made by either party.

Therefore, the Association argues that the arbitrator should disregard any post hearing evidence that goes beyond the constraints set at the arbitration hearing, and the record should be purged of any offers of proof that were not consistent with the timeliness and procedures agreed upon by the parties at the hearing.

In response to the Association's assertions, the undersigned has reviewed his notes of the arbitration proceeding which indicate that in addition to the post hearing exhibits referred to by the Association, arrangements had been made to allow the District to submit post hearing exhibits supporting its assertion that its proposed comparables constitute a distinguishable socio-economic center. Accordingly, the post hearing exhibits pertinent to said issue which have been submitted by the District were in accord with the arrangements made at the hearing and are therefore an appropriate part of the instant record.

The undersigned's notes indicate that there may have been a legitimate basis for some misunderstandings regarding the parties' right to file rebuttal exhibits. Although the undersigned intended that rebuttal exhibits be limited to the post hearing exhibits initially exchanged, it is possible that such intent was not clearly communicated to both parties. In any event, it is clear that the District did submit post hearing rebuttal exhibits which were responsive to the Association's original exhibits, some of which were argumentative in format. Although the undersigned did not contemplate the submission and receipt of such exhibits, they shall be received into the record, for whatever they are worth, based upon the following considerations: The District's representatives in this proceeding were inexperienced in the conduct of such proceedings and may have legitimately misunderstood the procedures outlined by the undersigned for the exchange of post hearing exhibits and briefs, the arguments contained in the District's exhibits could have been properly submitted in its brief, and there was no timely objection by the Association to the District's submission of rebuttal exhibits which exceeded the scope of the arrangements made at the hearing nor did the Association request the opportunity to reopen the record to respond to these exhibits, which it had the right to do under the agreed upon procedures. In sum, the undersigned does not believe the Association has been prejudiced in any way by the receipt of the District's rebuttal exhibits, nor are the arguments contained therein inappropriate for the undersigned's consideration just because they were submitted in an inappropriate format. In proceedings such as this, particularly where the parties are relatively unfamiliar with evidentiary rules and procedures, it is the undersigned's belief that strict adherence to rules of evidence would be both unfair and harmful to the process. The parties must be apprised of the difference between evidence and argument, but their failure to distinguish same because of inexperience and unfamiliarity with the process should not foreclose them from having their arguments considered in the disposition of such disputes.

Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.70(4)(cm), Wis. Stats., the undersigned renders the following arbitration award.

SUMMARY OF ISSUES

This dispute covers the agreement between the parties for the 1982-1983 school year. In dispute are the salary schedule and the method by which the calendar shall be adopted in the future.

In addition, an issue has arisen over what the appropriate comparables should be. The outcome of this dispute may have a significant impact on the other substantive issues in dispute, and therefore, it will be addressed initially. Thereafter, the merits of the two other issues in dispute will be discussed individually. Lastly, the relative merit of the total final offer of both parties will be addressed.

COMPARABILITY

Position of the Parties

Association Position

The Association proposes the following three groups of comparables:^{1/}

^{1/} Relevant Arbitral Citations: School District of Gibraltar, Yaffe, 4/82, WERC Dec. No. 19112-A; Southern Door County School District, Gunderman, 2/81, WERC Dec. No. 18106-A; Two Rivers Public School District, Yaffe, 10/81, WERC Dec. No. 18610-A; Two Rivers Public School District No. 2, Zeidler, 9/78, WERC Dec. No. 16357-A; School District of Hilbert, Vernon, 5/82, WERC Dec. No. 19198-A; Reedsville Public Schools, Richard U. Miller, 4/81, WERC Dec. No. 18024-A.

GROUP I
PACKERLAND ATHLETIC
CONFERENCE

Algoma
Denmark
Gibraltar
Kewaunee
Luzemburg-Casco
Mishicot
Sevastopol
Southern Door
Sturgeon Bay

GROUP II
OLYMPIAN ATHLETIC CONFERENCE
PLUS CHILTON, NEW HOLSTEIN & KIEL

Brillion
Chilton
Denmark
Freedom
Gibraltar
Hilbert
Kiel
Mishicot
New Holstein
Reedsville
Sevastopol
Valders
Wrightstown

GROUP III
TWO RIVERS AREA

Brillion
Chilton
Kiel
Mishicot
New Holstein
Plymouth
Random Lake
Sheboygan Falls
Two Rivers
Valders

Mishicot participates in both the Olympian and Packerland Athletic Conference.

The Board would like to have the luxury of using only the Olympian Conference schools as comparables, with the exception of the four higher paying school districts. Thus, the Board's effort to define comparables is self-serving and without reasonable cause.

The Association's proposed comparables are appropriate and meaningful based upon the fact that the districts are geographically proximate, and they have similar characteristics which have been utilized by other arbitrators in making comparability determinations, including athletic conference membership, similar size, and relatively similar ability to support their educational programs.

District Position

The following districts are comparable based upon their socio-economic comparability: Brillion, Hilbert, Reedsville, Valders, Wrightstown.

All of the above are members of the Olympian Conference, as is Mishicot.

Many of the districts proposed by the Association as comparables are affected by different socio-economic centers which have higher wages than the Manitowoc area in the private sector, which in turn should also be reflected in the public sector.

Discussion

As the undersigned has indicated in several previous arbitration awards, at least up until the present time, absent an ability to pay issue - which is not present herein - it would appear that the most objective criteria to utilize in selecting comparable employer-employee relationships are:

1. similarity in the level of responsibility, the services provided by, and the training and/or education required of such employees
2. geographic proximity
3. similarity in size of the employer.

While it is true that the undersigned and other arbitrators have indicated that Mishicot is an appropriate comparable for all of the districts the Association has proposed, utilizing the aforementioned criteria, the undersigned believes it is more appropriate in this instance to utilize the following list of districts, which are the most similar in size geographically proximate districts to Mishicot:

Algoma, Kewaunee, Southern Door, Sturgeon Bay, Denmark, Brillion, Chilton, Kiel, Valders, Freedom, and Reedsville.

Because Mishicot appears to be located at a point which allows it to be compared with several different groupings of school districts, it has been so compared. The undersigned does not believe it would be appropriate here to utilize all of these other districts since several of them are appreciably larger and smaller than Mishicot, and as the undersigned has previously stated, the size of a school district does seem to correspond to the conditions of employment which seem to be appropriate therein.

Although the District's contention that the smaller districts in the Manitowoc area should be considered distinct because of their different socio-economic status would be quite relevant to the determination of comparables if ability to pay were at issue, since it is not, the economic factors cited by the District do not provide an appropriate basis for distinguishing said districts for the purposes of the determination of comparability.

The foregoing conclusion however does not negate the relevance of the District's evidence regarding the state of the economy in the Manitowoc area under several other statutory criteria, including:

1. "The interests and welfare of the public..."
2. "Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of...other employes generally in public employment in the same community and...in private employment in the same community...", and
3. "Such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...in the public service or in private employment."

The District's evidence on the state of the local economy may be considered therefore in the determination of the reasonableness of the parties' positions on economic issues together with the evidence that has been introduced concerning prevailing conditions of employment in comparable employer-employee relationships, even though in this instance the latter criteria is not controlled by the former.

In this regard, it should be noted at this point that because evidence has not been introduced concerning the conditions of employment which comparable employer-employee relationships have agreed upon for the 1982-1983 school year, comparability

cannot be given the same weight and consideration as would be the case if conditions of employment had been agreed upon in comparable school districts for that year. The only comparability evidence that can be considered pertains to the 1981-1982 school year. Said evidence is relevant to the question whether the conditions of employment in the District were in fact comparable last year, which in turn is relevant to the question whether any catch up is justified this year. Once that question is answered however, the record does not provide the undersigned with sufficient comparability evidence for the 1982-1983 school year to clearly ascertain what will constitute a catch up settlement. Therefore, if necessary, determinations in that regard may have to be based upon other statutory criteria.

SALARIES

The Association has proposed a base salary of \$12,850 for the 1982-83 school year while the Board has proposed a base salary of \$12,800. The Association has also proposed changing the 4.25% vertical increments in the 1981-82 schedule to 4.5% while the Board is proposing no change in this regard. The value of the District's salary proposal, utilizing a costing procedure based upon movement of the 1981-1982 staff forward one year, is 8.3%. The value of the Association's salary proposal, based upon the same costing procedure, is 10.6%.

Positions of the Parties

Association Position

The Association's salary offer does not place an unfair burden on the District's taxpayers.

Of 373 K-12 school districts in the State, Mishicot ranks 370 in terms of expenditures on its educational program, which represents 70.3% of the state average expenditure per child.

The record supports the allegation that the Board has been unwilling to spend money on its educational program and teachers' salaries at a rate that even comes close to the average.

The Board spends less, and pays less, but expects more from its teaching staff than most of the comparable districts.

The District does not contend inability to pay. In fact, the tax levy is set, the tax rate is set, and the taxpayer will not suffer any "increase" in taxes if the Association's offer is adopted.

The 1982-1983 Board offer adversely affects the salary relationship between the District and comparable districts in the area, especially at the salary maximums, in terms of what was paid teachers in comparable districts one year earlier. In 1982-1983, under the Board's offer, the District's teachers, especially in the Master's lane at the maximums, would actually be paid less than the 1981-1982 average in comparable districts. The District's teachers are basically one year behind in salaries.

Relatedly, it is important to note that more than half of the District's teachers are at the maximums in terms of salary level.

Although the economy may be in a depressed state, unemployment may be high, and the inflation rate may be lower than a year ago, the District's teachers are still suffering from past inequities.

In addition to substandard wages, the District's teachers do not enjoy the level of other benefits provided by comparable

districts. In this regard, the District's contribution of 80% toward the family health plan and 80% toward the family dental plan is the lowest, with few exceptions, Board contribution in both percentage and dollar amounts among the comparable districts.

In addition, there are additional inequities in terms of life insurance and LTD coverage.

The Association's offer in most cases is closer to the Consumer Price Index increase (May 1981 to May 1982) at 6.5% than the Board's offer.

Moreover, the Association's offer is much more reasonable than the Board's when compared to the cost of living, especially when viewed in a proper historical context. The career teacher in Mishicot has not kept up with the ravages of inflation over the past six years. The Association's proposal is not a catch up proposal in that regard, but it does come closer to minimizing the pain of lower purchasing power than does the offer of the Board.

Lastly, two settlements for 1982-1983 in comparable districts, (Southern Door and Random Lake) clearly support the reasonableness of the Association's final offer herein.

District Position

The District's proposal results in a total average benefit increase of 9.5%. Adoption of the Board's offer would bring the District's three-year pattern to 11.65%, 12.97% and 9.5%.

During this period the District has increased its contribution to health and dental insurance programs, and in addition, it has experienced large premium increases.

In addition, recently the District has found it necessary to effect economies such as reducing aides to 32 hours/week, reducing the unit leader program, reducing one art position to half-time, and not replacing retiring teachers.

Furthermore, with the exception of the bus drivers who received an 8.5% increase for special trips, with no increase for daily routes, all other non-teaching staff were given an 8% increase in wages.

A 9½% increase at a time when inflation has been reduced would seem to be fair, particularly when businesses in the area are in trouble and the people in the community have been adversely affected. In this regard, it is clear that unemployment in the Manitowoc area is higher than in the surrounding area.

This economic climate should not be ignored for it is these people in the community who are required to pay the bill.

Reflecting current economic conditions, current year settlements are for the most part lower than last year; in fact, a clear majority are single digit settlements.

Contrary to the Association's contentions, District salaries have improved relative to comparables since the 1979-1980 school year. This relative improvement would continue under the Board's offer.

The Board's offer also compares very favorably with settlements for city and county employees of Manitowoc.

Nor is there any demonstrated need based upon the record for catch up due to increases in the cost of living.

Lastly, the Association's contentions regarding per pupil costs and pupil teacher ratios lack sufficient specificity to be valid.

In sum, the Board's salary proposal is the more reasonable of the two in that it is more responsive to economic factors in the community it serves, and it will continue to improve the relative position of the District's teachers vis a vis teachers in comparable districts.

Discussion

In order to analyze the merits of the Association's contention that the conditions of employment of the District's teachers are inferior to those of teachers in comparable districts, the undersigned has constructed the following comparative charts.

1981-82 SALARIES

	<u>BA Base</u>	<u>BA 7th Step</u>	<u>BA Max*</u>	<u>MA Base</u>	<u>MA 10th Step</u>	<u>MA Max*</u>	<u>Schedule Max*</u>
Algoma	12,200	15,860	20,374	13,000	18,850	22,360	22,960
Kewaunee	12,300	15,990	20,672	13,050	19,053	22,002	22,412
Southern Door	12,300	15,990	20,030	12,900	18,435	21,860	21,860
Sturgeon Bay	12,475	16,220	21,210	13,475	19,090	23,130	23,880
Denmark	12,150	15,795	20,090	13,050	18,792	21,530	21,530
Brillion	11,000	14,378	17,620	12,650	16,916	19,470	19,470
Chilton	12,000	15,300	17,700	12,700	18,098	21,563	21,901
Kiel	12,000	15,240	18,480	13,200	18,060	21,300	21,540
Valders	11,925	14,730	18,670	12,725	16,970	20,075	20,475
Freedom	12,150	16,038	19,683	14,337	19,683	23,814	24,907
Reedsville	12,000	14,820	17,640	12,900	17,130	19,950	19,950
Average	12,045	15,487	19,288	13,090	18,279	21,550	21,898
Mishicot	11,975	15,029	18,082	13,173	17,753	19,759	19,759
+/- Average	- 70	- 458	-1,206	- 83	- 527	-1,791	-2,140
Rank Among							
12	10	9	9	4	9	11	11

*Includes longevity (without gaps).

1981-1982 FRINGE BENEFITS

	<u>Health & Dental Insurance</u>				<u>Life Insurance</u>	<u>LTD</u>
	<u>Single</u>		<u>Family</u>			
	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>		
Algoma	48.47	100	133.33	100	50% 1 x salary	100%
Kewaunee	45.97	92	123.42	92	100% 2 x salary	100%
Southern Door	49.02	90	133.62	89	None	
Sturgeon Bay	46.68	89	133.56	89	100% 1 x salary	100%
Denmark	35.92	86.5	100.00	89.7	100% 1 x salary	100%
Brillion*	33.94	100	95.64	100	41% 1 x salary	None
Chilton	45.38	100	130.76	100	41% 1 x salary	100%
Kiel	39.58	100	119.92	100	100% 1 x salary	100%
Valders	40.98	100	119.00	96.7	41% 1 x salary	None
Freedom	53.03	100	141.18	100	100% 1 x salary	100%
Reedsville	59.56	92.9	99.76	93.8	41% 1 x salary	None
Mishicot	41.36	100	97.97	80	\$6,000	None

*No Dental Insurance

The data contained in the foregoing charts indicates that the District's 1981-1982 salaries, while relatively low among the comparables, were not all that significantly out of line, except at the M.A. and Schedule maximums. Based upon such data, it would appear that if any catch up were justified, it would be needed only at the top end of the salary schedule.

Furthermore, it would appear from the foregoing data that the District's fringe benefit package was also relatively inferior to the norm among the comparables in 1981-1982. However, in the undersigned's opinion, such evidence provides less support for salary improvements than it does for an improved fringe benefit package.

Based upon all of the foregoing it would appear that the record supports the Association's assertion that some catch up salary adjustments appear to be justified at the top end of the salary schedule, but it does not appear that the District's 1981-1982 salary schedule was sufficiently out of line to require a dramatic, wholesale catch up settlement.

The difficulty the undersigned must confront under these circumstances is determining what constitutes a reasonable catch up adjustment when comparable districts have not yet settled their 1982-1983 agreements.

Absent such comparability evidence, the undersigned believes it is appropriate to examine and consider other evidence in the record pertaining to the rather severe economic recession in the economy in the Manitowoc area, including extremely high unemployment, and significant increases in delinquent taxes. It is significant also that these economic factors are accompanied by a substantial reduction in the rate of inflation.

The foregoing economic factors, to some extent, have affected current negotiations and med/arb proceedings across the State. Although by far the majority of 1982-1983 school district agreements which are currently being negotiated have not been concluded, based upon the first several med/arb awards which have been issued, it would appear, at least preliminarily, that the total value of awarded settlements has seldom exceeded 10%. ^{2/} The undersigned believes that these settlements reflect a growing consensus among arbitrators that current economic conditions such as those cited above must be given considerable weight in determining what constitutes a reasonable settlement in these times.

In this context, it is important to note that although the Association's salary proposal amounts to approximately a 10.6% increase, when rollups and insurance premium increases are factored into the computation, the total value of the Association's proposal amounts to 11.5%. On the other hand, while the District's salary proposal amounts to about an 8.3% increase, the total value of its proposal amounts to approximately 9.4%. In these economic times, and based upon the med/arb awards which have recently been issued, it is the undersigned belief, though it is in large part conjecture at this time, that the District's proposed 9.4% total increase may prove to be a rather large settlement which will result

^{2/}Westby Area School District, Med/Arb Dec. No. 19513-A, 11/82 - total package of 8%; Madison Area Vocational Technical and Adult Education District, Med/Arb Dec. No. 19793-A - total package of 8.32%; School District of Cudahy, Med/Arb Dec. No. 19635-A, 10/82 - total package of 8%; School District of South Milwaukee, Med/Arb Dec. No. 19688-A, 12/82 - total package of 9.6%; Waunakee Community School District, Med/Arb Dec. No. 1677, 12/82 - total package of approximately 11%; Cochrane-Fountain City School District, Dec. No. 19771-A, 2/83 - 9.5%; School District of New Glarus, Dec. No. 19778-A, 2/83 - 7.3%; DePere School District, Dec. No. 19728-A, 12/82 - 8.2%; Rhineland School District, Dec. No. 19838-A, 1/83 - 8%.

in some salary catch up for the District's teachers. Whether or not that will be the case, based upon current economic conditions, the developing pattern of med/arb awards in 1982-1983 school year disputes, and the District's relative standing among comparables for the 1981-1982 school year, the undersigned is persuaded that the District's salary proposal is the more reasonable of the two submitted herein and it shall be so considered in this proceeding. While the District's proposal does not assure catch up, it would appear to be relatively generous, particularly in light of the current economic circumstances which affect the parties as well as the community they serve.

NEGOTIATION OF CALENDAR

Association Proposal

"On or before February 1 of each year the school board will submit a proposed calendar for the ensuing school year to the Mishicot Education Association for negotiations. The final school calendar will be attached to and made a part of the agreement."

District Proposal

"On or before February 1st of each year, the school board will submit a calendar to the Mishicot Education Association for recommendations. The school board will finalize the calendar on or before March 15th."

Positions of the Parties

Association Position

The Association's offer on calendar negotiations is consistent with state law and is supported by the comparables.

On the other hand, the offer of the Board seeks to return to "the old days of unfettered management's rights with the power to set the calendar and the number of days worked by its employees in any way which it determines."

The Association concedes that the Board has the legal right to set aspects of the calendar at proper times in order to properly and efficiently run the school district. The Association's proposal does not limit the Board's rights in that regard.

The Board has offered no rationale to support a public policy in Mishicot that is contrary to state law and the practice in comparable districts.

District Position

Calendar is a very clumsy negotiable item.

The Board, as the representative of the people, is better qualified to establish a calendar which meets community needs and which is consistent. The Board has offered the teachers an opportunity for meaningful input which is a reasonable approach for the handling of this issue.

The Association has negotiated and reached agreement on the most important calendar items, namely:

1. the total days in the contract year
2. the total number of teaching days
3. included holidays
4. the number of parent conference days
5. the number of in service and record keeping days
6. the disposition of make up days.

The Board is better able to formulate opening and closing dates and vacation periods which meet the needs of the community. It

also has established a predictable calendar which is of great assistance to affected individuals in the community.

Discussion

Like the circumstances present in School District of Markesan, Dec. No. 17902-A, 12/80, the District has not persuasively demonstrated that there are circumstances present in Mishicot which justify a waiver of the Association's clear legal right to negotiate the school calendar. The Association's position is supported by law, as well as practice, and there has not been a showing that negotiations of the school calendar would in any way harm the District. Accordingly, the Association's proposal on this issue will be deemed the most reasonable of the two submitted herein.

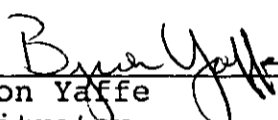
TOTAL PACKAGE

It is clear that the salary issue is the most critical issue in dispute, and for reasons discussed above, the District's proposal in that regard has been deemed to be the more reasonable of the two. Thus, even though the Association's proposal regarding the negotiation of the calendar has been deemed to be more reasonable than the District's, the District's total final offer must be deemed the more reasonable of the two submitted herein. Accordingly, the undersigned hereby renders the following:

ARBITRATION AWARD

The final offer submitted by the District herein shall be incorporated into the parties' 1982-1983 collective bargaining agreement.

Dated this 7th day of February, 1983 at Madison, Wisconsin.



Byron Yaffe
Arbitrator