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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF MEDIATION-ARBITRATION BETWEEN

Oconto Education Association)
Oconto, Wisconsin)

-and-

Oconto Unified School District)
Oconto, Wisconsin)

Award

Mediator-Arbitrator:
John W. Boyer, Jr.

Case V
No. 29808, MED/ARB-1694
Decision No. 19895-A

APPEARANCES

For Oconto Education Association

Ronald J. Bacon, Executive Director
UNITED NORTHEAST EDUCATORS
Rose Bowen, President
Calvin Knaide, Teacher
George Timmerman, Negotiator

For Oconto Unified School District

Dennis W. Rader, Attorney
Pat Feller, Research Associate
MULCAHY & WHERRY, S.C.
Victor Riewe, Board Member
John Shaw, Board Member
Jerome Sommer, Superintendent
Daniel J. Stemper, Board Member

STATEMENT OF JURISDICTION

Pursuant to the provisions of the Municipal Employment Relations Act, on May 26, 1982, the Parties filed a petition with the Wisconsin Employment Relations Commission alleging an Impasse existed in the process of collectively bargaining matters affecting wages, hours and conditions of employment, and requesting the Commission initiate the Mediation-Arbitration process. Subsequently, on July 28, 1982, a Commission staff person conducted an investigation that concluded the Parties were at Impasse, the Parties were directed to and duly submitted respective statements of "final offers" and stipulations of matters agreed upon; and

on September 13, 1982, the Commission issued its "Findings of Fact, Conclusions of Law, Certification of Results of Investigation, and Order Requiring Mediation-Arbitration".

The Mediator-Arbitrator, selected from a list submitted by the Wisconsin Employment Relations Commission, was John W. Boyer, Jr. The Mediation-Arbitration Hearing was convened on December 13, 1982, at 4:00 P.M. in the District's Board Room in Oconto, Wisconsin. The Parties requested opportunity to submit post-hearing briefs, such were duly submitted by the dates established, and the Hearing was declared closed on May 26, 1983 when the Association submitted written request for the Mediator-Arbitrator to render the Award after having requested the Mediator-Arbitrator's clarification of the intent of his pro forma inquiry at the Hearing of the extent to which the Association's members had been accorded full, fair and/or adequate representation, to which each responded in the affirmative.

ISSUES AT IMPASSE

1. 1982-1983 Salary Schedule

POSITIONS OF THE PARTIES

At the Hearing, the Parties mutually requested the "Non-BA" Lane be deleted from their proposed 1982-1983 Salary Schedules; according such Lane is not a part of the Award.

Issue: 1982-1983 Salary Schedule

Position of Association

The Association's final offer (Association Exhibit 3) included the following modifications of the existing 1981-1982 (Association Exhibit 6) Salary Schedule:

1) the BS Lane base salary shall be increased \$900, from \$11,900 to \$12,800.

2) the MA Lane base salary shall be increased \$900, from \$12,600 to \$13,500.

3) the 1981-1982 increment structure of 4.6% of each Lane base salary shall be continued for 1982-1983.

4) the wages-only increase for 1982-1983 was calculated at approximately 9.8% (Association Exhibit 8), and total cost of final offer at approximately 11.03% (Employer Exhibit 6) above 1981-1982 wage and benefit costs.

Position of District

The District's final offer (Association Exhibit 2) included the following modifications of the existing 1981-1982 (Association Exhibit 6) Salary Schedule:

1) the BS Lane base salary shall be increased \$1200, from \$11,900 to \$13,100.

2) the MA Lane base salary shall be increased \$1400, from \$12,600 to \$14,000.

3) the 1981-1982 step increment structure of 4.6% of the Lane base salary shall be replaced by a fixed-dollar scale as follows:

a) the Step increment for BS, BS+8, BS+16 and BS+24 Lanes shall be \$500.

b) the Step increment for MS, MS+8 and MS+16 Lanes shall be \$600.

The effect of the proposal will be to increase the Step increments for the BS, BS+8, BS+16, BS+24, MS+8 and MS+16 Lanes from \$150 to \$200 each, and to increase the Step increment for the MS Lane from \$250 to \$300.

4) the BS Lane Steps 13 and 14, and BS+8 Lane Step 14 shall be eliminated. The "Grandfather Clause" would prohibit teachers entering such Steps after August 1, 1983. However, those teachers either occupying or only one (1) year from reaching the deleted Steps are guaranteed the Step increase as if the Steps were continued.

5) the existing Longevity Pay schedule shall be continued, such provides: a) a teacher receives \$300 the year after reaching the last Step, and b) all teachers in their twentieth (20) year or more of teaching in the District receive an additional \$100, or a total Longevity payment of \$400.

6) the wages-only increase for 1982-1983 was calculated at approximately 7.56% and total cost of the final offer at approximately 8.99% (District Post-Hearing Brief) above 1981-1982 wage and benefit costs.

DISCUSSION

On the basis of the considered evaluation of all documents, testimony and arguments presented by the Parties at the Hearing and in post-hearing briefs, the decision of the Mediator-Arbitrator is to sustain the position of the District. The basic reasons for the Award are the following:

1) Initially, the Arbitrator can readily empathize with the concerns and apparent frustration inherent in the disparate posi-

tions of the Parties when after protracted attempts to resolve all negotiable issues through eight (8) bargaining sessions, and an unsuccessful attempt of the Mediator-Arbitrator to mediate the matter, the Parties remain at Impasse on the emotion-laden aspects of both the structure and levels of compensation inherent in their proposed 1982-1983 Salary Schedules.

Further, the Award shall not be interpreted as reflecting upon the integrity of the principals, given the behavior of each exhibited at the Hearing could be characterized as an open, reserved and sincere attempt to provide convincing argumentation supportive of their respective positions. Nevertheless, the Award was predicated upon the statutorily mandated criteria, the standards of contract arbitration recognized by principals in a dispute and neutrals alike, and the express requirement the Arbitrator Award that final total position of either Party determined as most appropriate.

2) The Mediator-Arbitrator was totally cognizant of the significant impact of the local, regional and national economies on the labor negotiations process, and equally aware of the inherent impact of such on the statutorily mandated criteria [Wis. Stats., Section 111.70 (4)(CM)] for the Award. Certainly, there is general absence of disagreement as to the constrained condition of the national economy as reflected in the ever present pattern of plant closures, employee layoffs, reduction in benefits, etc., all effectively portrayed by the public mass communication media. Aspects of such pattern were reflected in the District's survey of the Oconto area business community (District Exhibit 10); and the Oconto County level of unemployment that has ranged from 8.6% to 16.8% since September, 1981, a rate generally exceeding the state-wide average by approximately three (3) percentage points during 1982 (District Exhibit 12).

Further, as generally acknowledged by neutrals, the Mediator-Arbitrator was cognizant of the explicit and implicit impact of the Parties' positions on the tax-paying public, recognizing teachers are in fact a significant sub-group of that population in a heavily agriculturally-oriented region, where the District's final offer significantly exceeds the annual rate of inflation as measured by the Consumer Price Index (CPI-U, 1967=100) which for the twelve (12) months ending December, 1982 was approximately 3.9%, while other economic indicator range from a similar 3.9% to 5.8% for the period. Accordingly, the District's proposal appears more responsive to the economic needs of the community and its teachers when assessed in terms of stipulated and assumed impact of both the declining rate of inflation and the short-term reality of a "sluggish" upturn in the economy, that must be assumed at least equally applicable to the Oconto area. Therefore, while the District failed to plead "inability to pay" as contended by the Association, such is implicit in any interest arbitration dispute involving wages and/or benefits and the Neutral was impressed by the level of 1981-1982 equalized valuation per pupil (District Exhibit 18) that reflected the lowest such level among the comparable districts studied.

Accordingly, the Mediator-Arbitrator was compelled to conclude the District's proposal must be characterized as more consistent with the current level of the national and local economy, appears to effectively constrain discernible fiscal impact upon the community, and provides a fair and equitable increase in salary when compared to recent actual and anticipated rates of inflation as measured by the Consumer Price Index (CPI).

3) The Mediator-Arbitrator was equally cognizant of the Parties' positions relative to "costing" of the Step increments as reflected in the Association's percentage of Lane base system and the District's fixed-dollar alternative. The cogent conclusion is such increments are a cost associated with the unique characteristics of teacher placement on a given salary schedule and must be calculated as a portion of the total cost of any settlement given the singular criterion for attainment of such is completion of the specified time requirements for the appropriate Lane. Similarly, such is equally appropriate to the time requirements of the Longevity Pay provision, and to the increased cost of providing any existing benefits such as Health-Care where neither the benefit-level or coverage may increase, but the premiums must be funded by the District and all such costs are appropriate for inclusion in the analysis of comparative costs of the Parties' positions. Finally, the Mediator-Arbitrator acknowledges the legitimacy of costing the settlement on the basis of 75.5 Full-Time Equivalent (F.T.E.) teachers advancing on the salary schedule from 1981-1982 to 1982-1983.

4) The genesis of much of the dispute evolved from the Parties' selection of alleged "comparable" districts, the District relying upon the Central Wisconsin Athletic Conference of which it is a member where not all other members have yet settled for 1982-1983; and the Association addending contiguous districts in Lena and Peshtigo and supplementing such with a variety of less than well-defined state-wide averages and other parameters. Accordingly, the Neutral was appreciative of a central premise of dispute resolution that in the absence of agreement between the Parties as to other comparables, the athletic conference is a primary barometer, and the essentiality of the Party alleging otherwise to "shoulder" the burden of proof to substantiate its position. A representative statement of such with incontrovertible applicability to the instant matter was provided by Arbitrator Vernon as follows:

The districts deemed comparable by the Mediator-Arbitrator include the schools of the athletic conference and five others that both sides agree are comparable. Arbitrators have generally held that the schools in the athletic conference should be used as comparable. In this case, there are several schools outside the athletic conference that both sides agreed were comparable. The Mediator-Arbitrator should give significant weight to these schools too. Outside of schools in the athletic conference and other stipulated schools, a party seeking to include districts as comparable must demonstrate a reasonable basis, in terms of the factors normally considered to establish comparability, for the schools they

consider comparable. This demonstration should be persuasive and go beyond mere assertion or broad stroke inclusions, in addition to adequately rebutting challenges by the opposition to the alleged comparability. The neutral must be convinced that the justification for comparability is more than an inclusion of a district(s) solely because they tend to support a Parties' position. The chance for voluntary settlements will be enhanced when opposing parties begin to consistently observe certain standards in the selection of comparability rather than choosing marginally comparable or non-comparable schools based on their partisan value. (Emphasis Added.)¹

Accordingly, the Mediator-Arbitrator was compelled by the consistency of the external comparisons offered by the District on the basis of relative comparability of Oconto to the athletic conference in contrast to the contiguous districts offered by the Association. Specifically, the levels of average pupil membership and Full-Time Equivalent (F.T.E.) staff of Oconto are within sixty-six (66) students and 1.8 F.T.E. of the Conference averages, while the Association's criteria for selection of the contiguous communities other than proximity was less than incontrovertibly clear when assessed against the statutory criteria.

Therefore, the Mediator-Arbitrator is compelled to conclude the Conference schools comprise the more appropriate comparative barometer, however, any/all such can primarily function to render approximations and must be interpreted in terms of any unique geographical proximities to districts with some unspecified set of perceived problems and/or priorities as reflected in either negotiated or arbitrated settlements.

5) Another primary difference between the Parties' positions was the District's proposal for significant structural modifications in the 1982-1983 Salary Schedule from that existing. The Mediator-Arbitrator was totally cognizant of the general reluctance of neutrals to Award such change, as contended by the Association, and would prefer to leave such for the principals at the bargaining table, but given the statutorily mandated dispute resolution procedure he was compelled to assess both the significance and perceived impact upon the Parties.

The District proposed substitution of a fixed-dollar Step increment for each Lane for the existing fixed-percentage of the Lane base salary system. Acknowledging the existing system was negotiated, nevertheless when compared to comparable incremental structures (District Chart 8) for the "selected" matrix cells identified such could be characterized as relatively high. However, more importantly, the underlying philosophy inherent in such negotiated salary schedules as almost universally characteristic of the industry is to encourage/motivate teachers to progress both vertically through the schedule in terms of rewarding years of service and horizontally across the Lanes reflective of

¹See Arbitrator Gil Vernon in School District of Marion, WERC Dec. No. 19418-A, 7/29/82.

attainment of additional credit credentials generally perceived as indicative of continued professional credibility and/or competence in the classroom beyond that achieved upon initial employment or achieved singularly through years of service.

Further, the implicit effect of the District's proposal is to "purchase" the modification with a combination of larger Lane increments than proposed by the Association, to "grandfather" those teachers already incumbent in the Steps to be deleted, and to continue the Longevity bonus structure. The result is an apparent decision by the District to encourage those long-tenured teachers with limited additional/applicable educational experience to initiate that process and to compensate and/or reward other members of the teaching staff who have demonstrated a propensity to progress. While the perceived educational benefits to be derived by the students must remain for conjecture, the District is effectively "purchasing" a modification in Salary Schedule structure in a manner totally characteristic of the process of compromise and concession characteristic of collective bargaining, readily knowledgeable of the "negative" impact on a percentage of its staff, but addressing other needs perceived as having priority.

As cited, the Mediator-Arbitrator is cognizant of the impact of such on the approximately thirteen (13) teachers potentially affected, but the "grandfather clause" provides both a reasonable degree of protection, due notice and a reasonable period for individual accommodation to the modification in a manner totally consistent with any such change resulting from the bargaining process, rather than from any settlement characterized as "forced", that is, having resulted from the Mediation-Arbitration process as in the instant matter.

6) The selection of the most equitable, appropriate or perhaps least inappropriate position was an extremely demanding responsibility where the Mediator-Arbitrator was compelled to weigh the statutorily mandated criteria to select a single "total package". However, while the preponderance of documentation appears supportive of the efficacy of the District's position, the cumulative double-digit magnitude and impact of the Association's position must be characterized as dysfunctional in its behalf. Accordingly, the decision on the relative merit(s) of the Parties' total wage and benefit packages as summarized in detail above was complicated by both the analysis above and by the nature of differences inherent in the resultant format of the Salary Schedule also cited above.

Nevertheless, the Mediator-Arbitrator's decision to select the District's position was primarily predicated upon the following: a) the District's position is less inconsistent with the pattern of negotiated and/or arbitrated wage and benefit settlements among public sector employers nationally, regionally and within the general geographic region, b) the most appropriate barometer for comparison of the positions is the District's athletic conference, c) the Award grants wage and benefit increases at a level generally exceeding the average dollar and/or percentage increases provided in comparable districts where settle-

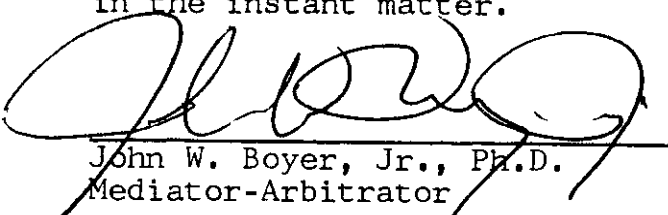
ments have either been achieved or "final offers" certified, d) the District's position must be characterized as significantly less inconsistent with the concept of internal equity associated with the pattern of increases granted other employee classifications (District Chart 7) in the District and such also constitutes a "key" variable in wage-benefit negotiations, e) the modifications in Salary Schedule format appear generally responsive to a perceived need, consistent with the philosophy of reward and motivation inherent in such format, and are being "purchased" and "phased-in" in a manner totally characteristic of a procedure typically evolving from a negotiated settlement, and f) the District's position must be characterized as a reasonable compromise between the legitimate needs of both the Employer and its teachers to address the economic and educational realities of the area for the time period inherent in the Agreement that inherently suggests resumption of the process of delineation of demands, assignment of priorities, and development of strategy associated with imminent initiation of additional negotiations.

Therefore, on the basis of all conclusions cited, the Mediator-Arbitrator is compelled to render the Award below.

AWARD

- 1) The 1982-1983 Agreement shall include the Salary Schedule proposed in the District's "final offer". (Attachment 1)
- 2) The 1982-1983 Agreement shall include all previously stipulated Agreements.
- 3) The Mediator-Arbitrator shall retain jurisdiction to resolve any residual matter(s) of format or implementation of the Salary Schedule Awarded.

The Mediator-Arbitrator accepts and appreciates the stipulated desire of the Parties to cooperate in implementation of the specifics and intent of the Award. Further, the Award shall constitute finalization of all Issues remaining in dispute between the Parties in the instant matter.


 John W. Boyer, Jr., Ph.D.
 Mediator-Arbitrator

Dated: June 22, 1983
 Duluth, Minnesota

1982-1983 Salary Schedule

	B.S.	B.S.+8	B.S.+16	B.S.+24	M.S.	M.S.+8	M.S.+16
	500	500	500	500	600	600	600
0	13100	13300	13500	13700	14000	14200	14400
1	13600	13800	14000	14200	14600	14800	15000
2	14100	14300	14500	14700	15200	15400	15600
3	14600	14800	15000	15200	15800	16000	16200
4	15100	15300	15500	15700	16400	16600	16800
5	15600	15800	16000	16200	17000	17200	17400
6	16100	16300	16500	16700	17600	17800	18000
7	16600	16800	17000	17200	18200	18400	18600
8	17100	17300	17500	17700	18800	19000	19200
9	17600	17800	18000	18200	19400	19600	19800
10	18100	18300	18500	18700	20000	20200	20400
11	18600	18800	19000	19200	20600	20800	21000
12	19100	19300	19500	19700	21200	21400	21600
13		19800	20000	20200	21800	22000	22200
14			20500	20700	22400	22600	22800

19,600 20,300
20,100

1. Note: All credits above the Bachelor's Degree shall be in the teacher's current teaching field or fields, and/or education courses and/or guidance courses which relate to methods and/or improvement of techniques for purposes of improving the teacher's ability to communicate and relate to students. The responsibility for providing proof of the credits at a deadline date set by the superintendent rests with the teacher.
2. Note: The responsibility for notifying the superintendent on a change from one category to another rests with the teacher; a deadline time for said notification to be set by the superintendent.
3. Longevity Pay: (a) The year after a teacher reaches the last step he/she will receive a longevity payment of \$300. (b) All teachers who will be in their 20th year or more of teaching in the Oconto School District will receive an additional payment of \$100, or a total of \$400.
4. Grandfather Clause: No staff member will be allowed to enter B.S. steps 13 and 14 and B.S.+8 step 14 after August 1, 1983. (This language is included to continue the benefit of the three removed steps for the 15 teachers who are already in the removed steps or are one year away from entering these steps.)