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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of KENOSHA EDUCATION SUBSTITUTES ASSOCIATION To Initiate Mediation-Arbitration Between Said Petitioner and KENOSHA UNIFIED SCHOOL DISTRICT NO. 1	Case LXXXVIII No. 29943 MED/ARB-1763 Decision No. 19916-A

Appearances:

Mr. Michel Bernier, Executive Director, Kenosha Education Association, appearing on behalf of Substitutes Association.

Davis, Kuelthau, Vergeront, Stover, Werner & Goodland, S. C., Attorneys at Law, by Mr. Clifford B. Buelow and Mr. James Gormley, appearing on behalf of Employer.

ARBITRATION AWARD:

On October 12, 1982, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Kenosha Education Substitutes Association, referred to herein as the Association, and Kenosha Unified School District No. 1, referred to herein as the Employer, with respect to certain issues as specified below. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings between the Association and the Employer on January 18, 1983, at Kenosha, Wisconsin, however, said mediation failed to resolve the matters in dispute between the parties. At the conclusion of the mediation proceedings, after the Employer had proposed that it withdraw its final offer, and the Association determined that it would not withdraw its final offer, the Association and the Employer waived the statutory provisions of 111.70 (4)(cm) 6.c., which require the Mediator-Arbitrator to provide written notice of intent to arbitrate and to establish a time frame within which either party may withdraw its final offer.

Arbitration proceedings were conducted on February 11, 1983, at Kenosha, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed and briefs were filed in the matter, which were received by the undersigned on March 22, 1983.

THE ISSUES:

The issues joined by the final offers of the parties are as follows:

ASSOCIATION FINAL OFFER:

1. Long Term - The rate shall be determined by dividing B.A. base by 186 days. For 1982-83 the rate shall be $73.79.

2. Unlimited rate $51.25 ($2.00 increase)

3. Limited rate $45.75 ($2.00 increase)

4. Noon Hour Supervision $4.50 (current rate)

EMPLOYER FINAL OFFER:

1. Appendix A, Salary Schedule: 3% across the board.

2. Article V, D, Noon Hour Supervisors: Increase to $4.65 per hour.

DISCUSSION:

The statute directs that the Mediator-Arbitrator, in considering which party's final offer should be adopted, should give weight to the factors found at 111.70 (4)(cm) 7, a through h. The undersigned, in evaluating the parties' offers, will consider the offers in light of the foregoing statutory criteria, based on the evidence adduced at hearing, and the arguments advanced by the parties in their briefs.

The dispute is limited to a wage issue. Historically, the parties have negotiated separate daily rates for long term substitutes, unlimited substitutes, and limited substitutes. Association here proposes a $2.00 increase for unlimited substitutes and limited substitutes, whereas Employer proposes a 3% increase to the rates contained in the predecessor agreement for these classifications. The result of the separate proposals is that Association proposes $51.25 rate for unlimited substitutes, whereas Employer's 3% increase would generate a $50.73 rate; for the limited substitutes Association proposes $45.75 and the Employer proposes $45.06. Additionally, Association has proposed that the noon hour supervision rate be maintained at the rate contained in the predecessor agreement, i.e., $4.50, whereas, Employer proposes a 3% increase which would result in a $4.65 rate. Thus, the parties' final offers are very close with respect to two of the four disputed categories, so close, that the Arbitrator now determines that no attention need be given the differential between the rates proposed by the Association and the Employer with respect to the unlimited rate and the limited rate. With respect to noon hour supervision, Association proposes maintaining the former rate of $4.50, which is less than the $4.65 rate contained in the Employer offer. Obviously, the noon hour supervision rate is not the gravamen of the dispute here. Consequently, the undersigned will give no further consideration to the parties' final offers with respect to the rates paid for noon hour supervision.

It is the long term substitute rate which, in the opinion of the undersigned, has created this impasse. Association proposes that the long term substitute rate be set by a formula making the long term substitute rate equal to the daily rate paid at the BA base in the teacher unit. For the year of the instant dispute, 1982-83, the rate proposed by the Association is $73.79. Employer proposes a 3% increase over the rate contained in the predecessor agreement ($57.00), which would generate a rate for the 1982-83 school year of $58.71. For the year 1982-83 the Association is proposing a rate for long term substitutes which is $15.26 per day higher than the proposal of the Employer. Thus, the Association is proposing an increase to the long term substitute rate which calculates 29.46%, whereas the Employer proposal on its face calls for a 3% increase to the long term substitute rate.

The data contained in the preceding paragraph establishes the percentage increase to the rates over and above the rates which existed in the predecessor collective bargaining agreement, and not the package cost of the settlement. Evidence adduced at hearing with respect to package cost establishes that if one were to utilize the same composition of days taught as was utilized in the year 1981-82, the package cost of the Association proposal calculates to 11%. Evidence was adduced at hearing establishing an 11.79% package cost when measured against the average cost of the prior three school years, and 11.4% when measured by the average of the prior two school years. The undersigned considers the 11% costing to be the most accurate calculation and, therefore, concludes that the 11% package cost of the Association proposal is the most valid.

Evidence was entered at hearing with respect to patterns of settlement among other unions bargaining with this same Employer, as well as patterns of settlement with the County of Kenosha. The internal patterns of settlement establish that this same Employer has bargained three other collective bargaining

agreements with other units for the 1982-83 school year. The aides unit, consisting of 107 employees, settled at a package cost of 2.8%; the carpenters unit, consisting of 5 employees, settled at a package cost of 2.83%, and the painters unit, consisting of 7 employees, settled at a package cost of 2.92%. Thus, the internal patterns of settlement, where the Employer successfully negotiated voluntary settlements with three other units, establish that the 3% package pattern offered by the Employer here exceeds the percentage package settlements entered into with the other three units.

With respect to the patterns of settlement of other public employers in the City of Kenosha, the record establishes from District Exhibit 3-2 that Kenosha County, which is the next largest public employer in Kenosha after this Employer, settled for 1982 with a wage and cola freeze for the year 1982 and a wage freeze for the year 1983. The foregoing County settlement is the only evidentiary submission with respect to other public employers in the City of Kenosha settlements for the relevant years, and is supportive of the Employer's 3% offer in this unit. There are, undoubtedly, other public employers' settlements entered into for the relevant year, e.g., City of Kenosha, however, there is nothing in the record before this Mediator-Arbitrator with respect to other public employer settlements in the City of Kenosha.

Association has argued that percentages of settlements among units which are not inclusive of substitute teachers should not be considered, because said units are not comparable to a unit comprised of substitute teachers. The undersigned disagrees. Patterns of settlement are a persuasive criteria to consider, in the opinion of the undersigned, irrespective of whether the unit is comprised of the same type of employees as the unit being arbitrated, because patterns of settlement are separate and distinct from a comparison of wage rates being paid to employees. In comparing wage rates or salaries being paid to employees, it is proper and appropriate to consider only comparable employees. In this matter, to compare wage rates, it would be appropriate to compare only rates paid to substitute teachers in this unit compared to rates being paid to substitute teachers in the employ of comparable employers. The patterns of settlement, however, provide a valid guide to the Mediator-Arbitrator as to what percentage increase is reasonable in a given round of bargaining, irrespective of whether the units are comprised of similar employees or dissimilar employees, assuming of course that costing methods are consistent from one unit to another. Here, since wages only are involved; and because there is no salary schedule of the type found in teachers' collective bargaining agreements, the patterns of settlement among the other units submitted into evidence in these proceedings are, in the opinion of the undersigned, consistently calculated with the methods used here. Therefore, the undersigned concludes that the local patterns of settlement favor the Employer's final offer in this matter. It remains to be determined, however, whether patterns of settlement among comparable employers outside of the immediate vicinity of the Employer among comparable school districts support the Association final offer here; or whether the comparison of actual wages paid by comparable employers to substitute teachers favors the Association final offer.

Prior to determining whether settlements for substitute teacher units among comparable employers outside of the immediate vicinity favor the Association final offer; or whether the wage rates paid to substitute teachers by comparable employers outside of the immediate community favor the Association final offer, it is essential to determine the comparables which are to be considered. The parties are in disagreement as to what constitutes comparable employers. The Association advocates that the comparables, for the purposes of these proceedings, be established as the 15 largest school districts in the State of Wisconsin. Association then would exclude those districts that do not bargain collectively with their substitute teachers. The 15 largest districts in the state are Appleton, Eau Claire, Elm Brook, Green Bay, Janesville, Kenosha, Madison, Milwaukee, Oshkosh, Racine, Sheboygan, Waukesha, Wauwatosa, West Allis and Wausau. After excluding those districts who do not engage in collective bargaining with substitute teachers, the 15 comparables advocated by the Association are reduced to Green Bay, Kenosha, Madison and Milwaukee.

Employer advocates several sets of comparables. Employer submits evidence with respect to comparability for a set of comparables which are 11 school districts in Kenosha County consisting of: Brighton, Bristol, Paris, Randall, Central Westosha, Salem #7, Salem Jt. 2, Salem Jt. 9, Silver Lake, Twin Lakes and Wilmot. As a separate set of comparables Employer advocates those comparables which were determined by a prior arbitration award by Arbitrator Zeidler where in Kenosha Unified School District No. 1, MED/ARB-188, Dec. No. 16851-A (July 31, 1979), Arbitrator Zeidler, in a unit comprised of educational aides, determined that the comparables were Racine as the primary comparable and a second tier of comparables including: New Berlin, Waukesha, Menomonee Falls, West Allis, Elmbrook, Oak Creek and Wauwatosa. Association opposes adoption of the comparables as determined by Arbitrator Zeidler in the foregoing Award, principally because in that proceeding the Association adduced no evidence and made no arguments with respect to what constituted the comparables, Association, therefore, claiming that the comparables determined by Zeidler, hereinafter Zeidler-8, were selected solely from the Employer's proposed comparables. The undersigned rejects the Association argument for several reasons. First, it is clear from a reading of the Zeidler Award at page 7 that in those proceedings the Employer had proposed comparables which included the 27 largest school districts in the state and abstracted therefrom the 12 largest districts, excluding Milwaukee and Kenosha, leaving Appleton, Elmbrook, Eau Claire, Green Bay, Janesville, Madison, Oshkosh, Racine, Sheboygan, Waukesha, Wausau and West Allis. Zeidler in his Award considered the adoption of those comparables and rejected the same and essentially these are the same comparables that the Association proposes in these proceedings from which the Association now eliminates districts who do not bargain with substitute teachers. Consequently, it is clear to the undersigned that Arbitrator Zeidler considered essentially the same districts which the Association now advocates in these proceedings and rejected them. Therefore, it would follow that even though the Association in the Zeidler award proposed no comparables, Arbitrator Zeidler considered the comparables now proposed by the Association in these proceedings and found them not to be comparable. Second, it is the opinion of the undersigned that once comparables have been determined for parties, it is in the best interest of those parties for the purposes of future collective bargaining, to maintain a consistency of where the comparables reside. In maintaining that consistency it avoids comparability shopping in which parties often engage and, therefore, creates a basis for comparisons which are conducive to settlement, which the undersigned believes the mediation-arbitration statute was intended to encourage. Therefore, the undersigned adopts the Zeidler-8 as the comparables in this matter, even though he may have made some minor modifications among those comparables if he were considering the matter de novo.

Having now determined that the Zeidler-8 constitute the comparables, it remains to be determined whether the Association argument that only districts who bargain collectively with their substitute teachers should be considered as comparables and those that have no bargaining relationship should be excluded from the comparables. The foregoing argument from the Association presents to the undersigned two separate questions as it goes to comparisons of actual wages paid, and the comparisons of patterns of settlement. With respect to patterns of settlement, the undersigned concludes that patterns of settlement can only be established in a bargaining relationship and, consequently, for the purposes of comparing patterns of settlement, the undersigned will consider only those districts among the Zeidler-8 which bargain collectively with their substitute teachers. With respect to actual wages paid, however, the undersigned concludes that all of the Zeidler-8 are proper comparables, irrespective of whether employers within the Zeidler-8 bargain collectively with their substitute teachers. In arriving at the foregoing conclusion, the Arbitrator has considered the statutory criteria found at 111.70 (4)(cm) 7, d, which directs the Mediator-Arbitrator to consider 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 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. Factor d provides no instruction to the Mediator-Arbitrator that when considering the comparisons of wages among comparable employers that only consideration be given to those employers who bargain collectively with their employees. The undersigned, therefore, concludes that the statutory direction at factor d is to

make the comparison among comparable employers irrespective of whether those employers engage in collective bargaining with similar employees.

Having determined the Zeidler-8 are the appropriate comparable districts for the purposes of these proceedings, it remains to be determined whether said comparables support the Association or the Employer final offer. Employer Exhibits 4-3 and 4-4 set forth substitute teacher rates paid in the Zeidler-8, as well as the days on which each rate become effective, and a calculation for a compilation of pay at periods of six days employment, ten days employment, twenty days employment, and twenty-five days of employment. The undersigned notes that the Zeidler-8 Award found the Racine district to be the most comparable district among his 8 comparables and, consequently, the undersigned would give special attention to the comparison of proposed rates of pay in this dispute to the rates being paid in Racine. The Arbitrator further notes, however, that the rates set forth in Employer Exhibit 4-3 for the Racine school district reflects rates that were in existence for the 1981-82 school year and, consequently, the Racine rates which will be set at the conclusion of teacher bargaining are unknown at this time. As a result, the comparison with the Racine district, as the Zeidler Award holds, becomes less relevant to these proceedings because the undersigned is unwilling to anticipate what the 1982-83 rate will become in the Racine school district. The highest rates paid for substitute teachers in the Zeidler-8 Award (Employer Exhibits 4-3 and 4-4) are: Elmbrook $50.00 per day; Menomonee Falls $45.00 per day; New Berlin pays pursuant to salary schedule ($14,870 base); Oak Creek pays $73.00 per day up to 46 days; Racine pays pursuant to the salary schedule, with a maximum payment of three years (1981-82 base $10,900.00); Waukesha $60.00 per day; Wauwatosa $57.00 per day; West Allis $50.00 per day; Employer offer here is $58.71 per day, and Association proposes $73.79 per day. Thus, the Employer final offer here among the Zeidler-8 ranks ahead of all other districts, with the exception of New Berlin, Oak Creek and Waukesha. (Racine excluded by reason of no current year data) The Association final offer for long term subs ranks slightly behind New Berlin and Oak Creek. Ranking here is not as significant as it may be in other cases in view of the wide disparity of the rates of pay being paid in the New Berlin and Oak Creek districts vis a vis the remaining districts in the Zeidler-8 rate (Racine excluded for the foregoing reasons). The Employer final offer for long term subs falls approximately $15.00 to $20.00 per day short of the rates being paid by the leading districts, New Berlin and Oak Creek; whereas, the Association final offer approximates the rates being paid in Oak Creek and is approximately $6.00 per day under the rates being paid in the district of New Berlin. A comparison of the rates being paid, however, are not illustrative of the amounts of money substitute teachers earned in this district compared to the comparable districts by reason of the variations as to when the long term rates become effective and the amount of retroactivity for which the long term rate will be applied. For example, in Elmbrook the long term rate becomes effective after 21 days of substitute teaching, but is retroactive to day 1. In Menomonee Falls the long term rate becomes effective on the 11th day of teaching, but is not retroactive. In New Berlin, the long term substitute teacher rate becomes effective after 21 days of teaching and is not retroactive. In Oak Creek the $73.00 rate becomes effective on the 21st day of teaching retroactive to day 1, and the salary schedule rate becomes effective on the 46th day of long term substitute teaching, but is not retroactive unless known in advance. In Racine the long term substitute rate becomes effective on the 21st day of substitute teaching, retroactive to day 11. In Waukesha the long term substitute rate becomes effective on the 21st day of teaching, retroactive to day 1 only if known in advance. In Wauwatosa, the long term substitute rate becomes effective on the 30th day of teaching, not retroactive. In West Allis, the long term substitute rate becomes effective on the 20th day of teaching, retroactive to the 6th day. In Kenosha, under both offers the long term substitute rate becomes effective on the 11th day of substitute teaching retroactive to day 6, unless it is known in advance that it will be long term, in which event the retroactivity applies to day 1. Thus, it is imperative to make a comparison of wages received over a period of time under the various formula in order to make a determination as to the comparability of wages received here vis a vis the wages paid in the comparable districts.

The undersigned determines that for the purposes of this comparison, the most critical comparison to be made is at the 25th day of long term substitute

teaching, and Employer Exhibits 4-3 and 4-4 establish that under the Employer final offer here a long term substitute, who teaches for 25 days, would be paid $1,427.85; under the Association final offer a substitute teacher teaching for 25 days in this district would receive $1,732.05. In comparable districts at the 25 day level of long term substitute teaching, the same exhibit establishes that Elmbrook teachers would receive $1,250.00; Menomonee Falls substitute teachers would receive $1,005.00; New Berlin teachers would receive $1,166.30; Oak Creek teachers would receive $1,825.00; Racine teachers would receive $1,294.35 (pursuant to 1981-82 rates); Waukesha teachers would receive $1,080.00; Wauwatosa teachers would receive $1,052.00; West Allis teachers would receive $1,195.00. Thus, it is established that the Employer offer and the Association offer would both rank second among the comparables when comparing amounts of pay received after 25 days. The Employer offer, however, at 25 days of earnings is $261.55 above the mean substitute teacher salary paid for 25 days at New Berlin; whereas, the Association final offer of $1,732.05 is $565.75 above the mean substitute teacher salary paid after 25 days at New Berlin. (Racine excluded from the foregoing comparison by reason of no data for the 1982-83 school year) When comparing the average substitute teacher salaries paid for 25 days of substitute teaching among the comparable school districts, from Employer Exhibits 4-3 and 4-4, it is calculated that the average substitute teacher salary for 25 days of long term teaching calculates to $1,224.75 among the seven comparable school districts (Racine excluded for reasons expressed above). Therefore, the Employer final offer is $203.09 above the average of comparable districts for substitute teachers teaching for 25 days; whereas, the Association final offer is $507.30 above the average of the comparable substitute teachers who teach 25 days. From the foregoing, the undersigned concludes that the Employer final offer more nearly conforms to salaries being paid to substitute teachers teaching 25 days on a long term basis when compared to salaries paid among the comparables.

At hearing the Employer introduced considerable evidence with respect to the general state of the economy in the community. Both parties in their briefs devoted considerable argument to what significance the state of the economy should play when the Arbitrator renders his decision in this matter. After reviewing all of the evidence and argument, the undersigned concludes that in this dispute it is unnecessary to make any findings or conclusions with respect to the impact of the state of the economy. In this dispute there is in evidence the patterns of settlement in the local community, both with this Employer as well as with the County. The undersigned concludes that the foregoing settlements in public employment establish the impact which the adverse economy has had in the bargaining process among public employers in this community, and the undersigned further concludes that said patterns of settlement are the best barometer to measure the impact of the adverse economic conditions as it impacts the bargaining process in the public sector.

Since the undersigned concludes that the patterns of settlement favor the Employer award in this matter; it would follow that the Employer's offer should be adopted, since the rates being paid to substitute teachers by comparable employers do not support the Association position in this matter.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering the arguments of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remain unchanged through the bargaining process, are to be incorporated into the written Collective Bargaining Agreement of the parties.

Dated at Fond du Lac, Wisconsin, this 8th day of June, 1983.

JBK:rr

Jos. B. Kerkman,
Mediator-Arbitrator