

STATE OF WISCONSIN  
MEDIATION/ARBITRATION AWARD

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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Mediation/Arbitration :  
between :  
SCHOOL DISTRICT OF POTOSI :  
and : Re: WERC Case X,  
POTOSI COUNCIL OF AUXILIARY PERSONNEL, : No. 30029  
SOUTH WEST TEACHERS UNITED : MED/ARB - 1805  
: Decision No. 19997-A  
:-----

Appearances: For the Potosi Council of Auxiliary Personnel,  
South West Teachers United, Paul R. Bierbrauer, Executive  
Director, South West Teachers United, Route 1, Barber Avenue,  
Livingston, Wisconsin 53554.

For the School District of Potosi, David R. Friedman, Staff  
Counsel, Wisconsin Association of School Boards, Inc., 122 West  
Washington Avenue, Madison, Wisconsin 53703.

This proceeding involves a dispute over the terms of a  
renewal of an agreement between the parties. The collective bar-  
gaining unit consists of regular full-time and regular part-time  
auxiliary personnel, including custodial, cooking and clerical  
workers and teaching aides. There are fifteen employees in the  
unit. The agreement expired on June 30, 1982. The parties were  
unable to agree on the terms of a renewal, and the Union peti-  
tioned the Wisconsin Employment relations Commission for media-  
tion/arbitration on June 30. On October 6 a Commission staff  
member conducted an investigation of the dispute and determined  
that the parties were at an impasse. They submitted their final  
offers as of that date. The undersigned was notified of his  
selection as mediator/arbitrator by letter from the Commission  
on October 28. A mediation session was held in Potosi on  
December 22. When mediation was unsuccessful, the parties agreed  
that a hearing should be held on February 21. The hearing was  
held on that date and the parties were given an opportunity to  
present evidence from witnesses and documents as well as the  
opportunity to cross-examine the witnesses. At the conclusion  
of the hearing it was agreed that the parties would submit written  
briefs, to be mailed to the mediator/arbitrator by March 25. The  
briefs were duly exchanged by the mediator/arbitrator and the  
hearing record is considered closed as of that date.

The Issues to be Arbitrated

There are three issues. The Union would raise all wage rates  
by \$.30 per hour. The Board would raise them by \$.17 per hour.  
The Union proposes the adoption of a fair share clause in the  
agreement. The Board makes no proposal on that issue. The Union  
would have the agreement terminate on June 30, 1983. The Board  
would have the agreement run for two years with a reopener on  
wages only at the end of the first year.

The final offers are attached to this report. The Union's  
final offer is marked Exhibit "A" and the Board's final offer is  
marked Exhibit "B".

Position of the Union

On the wage issue the Union would compare this collective bargaining relationship with other collective bargaining relationships in the area. Specifically, the Union asserts that there are five other similar units within commuting distance and that salary conditions that have been established by collective bargaining in those units are the appropriate comparison to make with the conditions to be established by this arbitration award. The five other units and their distance from Potosi are as follows:

Boscobel	in Grant County	30 miles
DeSoto	in Vernon County	55 miles
Richland	in Richland County	46 miles
Riverdale	in Grant County	37 miles
Seneca	in Crawford County	40 miles

The Union presented the following table to show the comparisons for 1981-82:

Union Exhibit #1

MINIMUM AND MAXIMUM WAGE RATES\*

SOUTHWEST WISCONSIN AUXILIARY STAFF CONTRACTS

1981 - 1982

<u>Districts</u>	<u>Aides</u>	<u>Cooks</u>	<u>Custodians</u>	<u>Secretaries</u>
Boscobel	4.20-5.04	4.20-5.04	4.83-5.88	4.62-5.46
DeSoto	4.20	4.28-4.64	4.79-5.48	5.07
Potosi	4.05-4.85	4.30-4.95	4.95-6.10	4.65-5.25
Richland	-	-	4.65-5.50	-
Riverdale	3.73-5.50	3.73-5.31	4.25-5.50	4.25-5.50
Seneca	4.26-4.63	4.00-4.22	4.44-5.45	4.33-4.79
Average	4.10-4.84	4.05-4.80	4.59-5.56	4.57-5.21
Potosi + or (-) Average	(.05)-(.01)	.25- .15	.36- .54	.08- .04

\*Does not use probationary rates nor night shift differential.

Source: Local Contracts

The Union also introduced the following comparisons for the year 1982-1983:

MINIMUM AND MAXIMUM WAGE RATES\*  
 SOUTHWEST WISCONSIN AUXILIARY STAFF CONTRACTS  
 1982-1983

<u>District</u>	<u>Aides</u>	<u>Cooks</u>	<u>Custodians</u>	<u>Secretaries</u>
Boscobel	4.20-5.04	4.20-5.04	4.83-5.88	4.62-5.46
DeSoto	4.45	4.53-4.89	5.04-5.73	5.32
Richland	-	-	5.20-7.50	-
Riverdale	4.07-5.99	4.07-5.79	4.63-5.99	4.63-5.99
Seneca	4.55-4.95	4.30-4.55	4.80-5.85	4.65-5.15
Average	4.32-5.11	4.28-5.07	4.90-6.19	4.81-5.48
Potosi (Union)	3.90-4.80	4.15-4.80	4.80-5.95	4.50-5.10
+ of (-) Average	(.42)-(.31)	(.13)-(.27)	(.10)-(.24)	(.31)-(.38)
Potosi (District)	3.77-4.66	4.02-4.67	4.67-5.82	4.37-4.97
+ or (-) Average	(.53)-(.43)	(.26)-(.40)	(.23)-(.37)	(.44)-(.51)

\*Does not use probationary period rates nor night shift differential.

Source: Local Contracts

In addition, the Union introduced the following table to show the rate adjustments that were made for the 1982-1983 year in those five jurisdictions:

BARGAINED RATE ADJUSTMENTS  
SOUTHWEST WISCONSIN AUXILIARY STAFF CONTRACTS

1982-1983

<u>District</u>	<u>Rate Adjustment</u>
Boscobel	.23 July 1, .20 Jan. 1 .33 Annualized
De Soto	.25
Richland	.20 July 1, .20 Jan. 1 .30 Annualized
Riverdale	.34 - .65 .47 Average
Seneca	.32 - .43 .37 Average
Potosi (Union)	.30
Potosi (District)	.17

Average of Settled Contracts	34.4¢
Potosi (Union) to Average	-4.4¢
Potosi (District) to Average	-17.4¢

Source: Local Contracts

The Union also introduced some annual salary figures for the five other units. These purport to show that whether the Union or the Board offer is accepted in this proceeding, Potosi would still be fourth in terms of total annual compensation among the six units that the Union feels are comparable.

In addition, the Union points out that the Potosi professional unit (teachers) and the Board negotiated a mediated settlement. The Union estimates that settlement to be a total compensation package of 7.46 per cent. The Union estimates its own total package proposal to be 8.2 per cent and the District's proposal to be 5.17 per cent. Thus, the Union asserts that its own proposal is closer to the settlement that the Board had previously voluntarily agreed to than the Board's final offer in this case.

The Union makes a general argument that it is inappropriate to compare wage data with the adjacent school districts of Cassville, Cuba City, Lancaster, Platteville and Hazel Green, as the Board has done. In all those cases the wage level has been determined unilaterally rather than by collective bargaining. The Union cites awards in 1979 (by Zel Rice in DeSoto Area School District, Decision #16814-A) and 1981 (by Richard U. Miller in Dane County, Decision #18181-A) to support its position. In both

of those cases the arbitrators are quoted as saying that they would confine their comparisons to collective bargaining agreements for reasons of equity.

On the issue of fair share, the Union points out that all the school districts with which it would compare the Potosi unit have fair share agreements and that 26 of 31 agreements of school districts in CESA #14 have such clauses. Figures were also introduced purporting to show that 362, or 84 per cent of the 433 school districts with collective bargaining in the State of Wisconsin, have fair share clauses and that 89 per cent, or 356 out of 399, of Wisconsin Education Association Council locals have fair share agreements. Fair share was also recently included in the teachers' agreement at Potosi.

As to the issue of whether the labor agreement should run for one or two years, it is clearly not in the interest of the members of this unit to have a two year agreement, given the fact that it would delay adoption of the fair share clause for two years. Adoption of the Employer's final offer, of course, would not only reduce the wage increase to what the Union feels is an unreasonably low level but would also make it more difficult to negotiate a satisfactory amount at the time of the reopening.

#### Position of the School Board

The Board points out that all the comparable districts that the Union would use are from 30 to 55 miles away from Potosi. This is not normal commuting distance for such employees, and the Board considers those places to be in different labor markets and therefore not useful as comparables. Furthermore, there are adjacent school districts of a size and characteristics similar to Potosi that have the same kind of personnel. It is therefore appropriate to make the comparisons with the five adjacent districts of Cassville, Lancaster, Platteville, Cuba City and Hazel Green (or Southwestern). Although the last named is not immediately adjacent to the Potosi district, it is separated by only a few miles. A comparison of the rates for the classifications of Custodian, Cook, School Secretary, and Teaching Aide in these districts indicates that Potosi rates are comparable and competitive.

In addition, the Board argues that its own estimates of the relative costs of the Board and the Union settlement puts its own offer closer to the cost of the teacher settlement than the Union's offer is. The Board estimates the teacher settlement to have been 7.05 per cent. Its estimates of the cost of the Board's and the Union's final offers in this proceeding is based on the actual expenditures made in 1981-1982 for employees in the unit and a projection of relative costs of the Board's \$.17 offer and the Union's \$.30 offer using the same number of hours for the 1982-1983 school year that were actually worked by the members of the bargaining unit in 1981-1982. Using these calculations, the Board estimates its own offer to cost 5.94% and the Union's offer to cost 3.37%. The difference between 7.05% and 5.94% is 1.11%. The difference between 7.05% and 8.37% is 1.32%.

The Board devoted a substantial amount of time at the hearing and a large part of the argument in its brief in attempting to show that the economy of Potosi is in distress. The community is heavily dependent for jobs on the City of Dubuque, and the two largest private employers in that city have laid off thousands of workers. Many of the laid off workers live in the Potosi school district. And Grant County is generally an economically distressed area with high rates of unemployment and tax delinquencies. The taxpayers in the district were said to have a negative attitude toward pay increases for school district employees when there is so much unemployment and income deprivation among them.

on the subject of fair share the Board is opposed to the idea for both philosophical and practical reasons. Philosophically the Board does not see why there should be any compulsion to support the union as an organization. Practically the Board recognizes that all the members of the unit are now members of the Union. Therefore, the Board fails to see why it is important for the Union to obtain the fair share agreement.

As to the two year agreement, the Board points out that it is already late in the school year and the time to start bargaining for 1983-1984 is almost upon us. This is a time-consuming process, and since the Board believes that conditions in effect for bargaining unit employees are already superior, both parties would be best served by confining the bargaining for next year to the wage issue.

Discussion

The Union makes a reasonable argument when it proposes to use as comparables the other collective bargaining units of similar employees within the general area of the southwest corner of the state. Although one or two of those districts are a substantial distance away from Potosi, I am impressed with the argument that it is inequitable to compare collectively bargained conditions with those that have been established unilaterally by employers. And in the case of the fair share clause, of course, there is no other comparison that can be made.

The Union has made a convincing argument, using its comparables, on the issue of fair share. This appears to be a well-established condition of employment in the public sector and among school district bargaining units. If this were the only issue, I would have to choose the Union's final offer. This would spill over into the issue of the length of the agreement as well. It can easily be inferred that the principal reason the Board in this case wants a two year agreement is to put off adoption of a fair share clause for another year despite the fact that it has already agreed to such a clause for its teacher unit.

But in spite of my inclination to choose the Union offer on those two issues, I am quick to admit that the wage issue is more important than the other two issues. And on this issue, if the Union's comparisons with the collectively bargained wage rates in the other five districts were accurate, I would have no doubts about adopting the Union's final offer as the award in this case. Unfortunately for the Union those comparisons are not accurate. The following table is taken from the 1981-1982 labor agreement between the parties:

APPENDIX B

<u>SALARY SCHEDULE</u>				
1980-81 Salary Schedule				
	Start	7	14	
	Start (60 working days)			
Head Custodian	\$4.50	\$5.15	\$5.35	\$5.65
Custodians	\$3.85	\$4.50	\$4.80	\$5.10
Head Cook	\$3.25	\$3.90	\$4.20	\$4.50
Baker/Cook	\$3.25	\$3.85	\$4.10	\$4.40
Secretary	\$3.55	\$4.20	\$4.50	\$4.80
Clerical Aide	\$3.25	\$3.90	\$4.20	\$4.50
Teacher Aide	\$3.25	\$3.60	\$4.00	\$4.40
Night Work - 20¢ an hour more				

	1981-82 Salary Schedule			
	Start (60 working days)		7	14
Head Custodian	\$4.95	\$5.60	\$5.80	\$6.10
Custodians	\$4.30	\$4.95	\$5.25	\$5.55
Head Cook	\$3.70	\$4.35	\$4.65	\$4.95
Cook/Baker	\$3.70	\$4.30	\$4.55	\$4.85
Secretary	\$4.00	\$4.65	\$4.95	\$5.25
Clerical Aide	\$3.70	\$4.35	\$4.65	\$4.95
Teacher Aide	\$3.70	\$4.05	\$4.45	\$4.85

Night Work - 20¢ an hour more

If this is compared with the table reproduced on page three of this report, the table marked Union Exhibit #11, it will be seen that the Union has based its Potosi comparisons for 1982-83 on the rates from the agreement for the year 1980-81, adding 30 cents to those figures on the line marked "Potosi (Union)" and 17 cents on the line marked "Potosi(District)." This has produced figures showing the Union's offer to be anywhere from 10 to 42 cents lower than the average of the other five districts and for the District's final offer anywhere from 23 to 53 cents lower.

Below, I produce the comparisons that should have been made, using 1981-1982 Potosi rates as the basis for the final offers:

	<u>Aides</u>	<u>Cooks</u>	<u>Custodians</u>	<u>Secretaries</u>
Average	4.32-5.11	4.28-5.07	4.90-6.19	4.81-5.48
Potosi (Union)	4.35-5.15	4.60-5.25	5.25-6.40	4.95-5.55
+ or (-)				
Average	+ .03 +.04	+ .32 +.18	+ .35 +.21	+ .14 +.07
Potosi (District)	4.22-5.02	4.47-5.12	5.12-6.27	4.82-5.42
+ or (-)				
Average	(.10)-(.09)	+ .19-+.05	+ .22- +.08	+ .01- (.06)

Thus the results of this comparison are somewhat different from those given in the Union's table. Although the classification of Aides is ten cents lower at the entrance level and nine cents lower at the top and the classification of Secretaries is six cents lower at the top, the classifications of Cooks and Custodians would be paid more than the average of the other districts if the Employer's final offer were accepted in this proceeding. And if the Union's offer were adopted, all classifications would be paid more than the average of the other five districts with which the Union wishes to have this unit compared.

Since the Union itself advocates these comparisons with the levels of wages resulting from collective bargaining in these other districts, and since both parties agree that the wage increase issue is more important than the other issues in this proceeding, I feel compelled to adopt the Employer's final offer.

Although I also considered the Employer's account of the economic distress of many of the taxpayers in the Potosi School District and the Employer's argument that the cost of living in

the past year has risen considerably less than the percentage involved in either final offer, I view the issue of comparability as the most important in arriving at a determination of this dispute for the reason that both parties argued for its prime importance. Their disagreement was mainly on which districts were the proper comparables. I have also considered the other factors in Section 111.20(4)(cm)7 of the Municipal Employment Relations Act, which arbitrators are required to take into consideration in arriving at an award in this kind of proceeding. I do not find the applicability of any of the other factors to be as important as the comparability factor and therefore do not believe that any of them have an important bearing on this outcome.

AWARD

The final offer of the School District of Potosi is adopted as the award in this proceeding and that final offer will be incorporated in the 1982-1983 agreement between the parties.

Dated: April 2, 1983  
at Madison, Wisconsin


Signed:   
David B. Johnson  
Mediator/Arbitrator



EXHIBIT "A"

FINAL LAST OFFER  
POTOSI COUNCIL OF AUXILIARY PERSONNEL  
SOUTH WEST TEACHERS UNITED

The attached are items of contract language and economic proposals offered as the Last Best Final Offer of the Potosi Council of Auxiliary Personnel. The stipulations of the parties and those items contained in the Last Best Offer, with the items left unchanged in the 1980-1982 Agreement will constitute the 1982-1983 Agreement between the Board of Education of the Potosi School District and the Potosi Council of Auxiliary Personnel.

Paul P. Bierbaum  
For the PCAP

October 6, 1982  
Dated

1 ARTICLE XIII

2 FAIR SHARE

3 A. The Union, as the exclusive representative of all of  
4 the employees in the bargaining unit will represent all such employ-  
5 ees, members and nonmembers, fairly and equally, and all employees  
6 in the unit will be required to pay, as set forth in this section,  
7 their fair share of the costs of representation.

8 No employee shall be compelled to join the Union but member-  
9 ship in the Union shall be made available to all employees who  
10 apply.

11 B. The employer shall deduct from the wages of each employee,  
12 upon authorization by them the dues of the state, UniServ, and local  
13 union. These dues shall be deducted in equal installments begin-  
14 ning with the September pay period and continuing through August.  
15 The sum so deducted shall be paid directly to the Treasurer of the  
16 Union before the end of the month in which the dues were deducted.

17 C. The employer shall provide the Union with the names of its  
18 employees who are members of the bargaining unit and other related  
19 information which will allow the Union to determine the amount of  
20 dues to be deducted from the wages of each employee.

21 D. In the event that certain bargaining unit employees choose  
22 not to become members of the Union, the employer shall be required  
23 to deduct from the wages of said non-members an amount equal to  
24 that portion of the dues determined by the WEAC as their fair share  
25 of the costs of representation.

26 Deductions shall occur at the same time, and in the same man-  
27 ner as for those holding union membership.

28 The Union shall inform the Board by September 25th of each

*RRB*  
*10/16/82*

1 year of the amount of dues. In the event an employee terminates  
2 before the total amount is deducted, the Board is under no obligation  
3 to the Union for the balance owing.

4 Written authorizations for dues deductions shall be irrevoc-  
5 able for a period of one year or until the termination date of the  
6 present Agreement between the parties, whichever occurs sooner.

7 E. As individuals subject to this section leave or enter the  
8 employment of the district during the school term, the employer will  
9 provide the Union with a list of such changes as soon as practicable.

10 F. The Union shall provide employees who are not members of  
11 the Union with an internal mechanism within the Union which allows  
12 those employees to challenge the fair share amount certified by the  
13 Union as the cost of representation and receive, where appropriate,  
14 a rebate of any monies determined to have been improperly collected  
15 by the Union pursuant to this section.

16 G. Nothing in the foregoing shall prevent Union members, or  
17 those subject to the fair share payments, from transmitting dues/  
18 payment directly to the Union Treasurer in a lump sum payment. In  
19 the event that the lump sum payment is made the Union will prompt-  
20 ly inform the District.

21 H. The Union and the Wisconsin Education Association Council  
22 do hereby indemnify and shall save the District harmless against any  
23 and all claims, demands, suits, or other forms of liability, in-  
24 cluding court costs, that shall arise out of or by reason of action  
25 taken or not taken by the District, which District action or non-  
26 action is in compliance with the provisions of this Article (Fair  
27 share agreement), and in reliance on any lists or certificates which  
28 have been furnished to the District pursuant to this Article;

QPB  
1/15/82

1 provided that the defense of any such claims, demands, suits or other  
2 forms of liability shall be under the control of the Union and its  
3 attorneys. However, nothing in this section shall be interpreted to  
4 preclude the District from participating in any legal proceedings  
5 challenging the application or interpretation of this Article  
6 (Fair share agreement) through representatives of its own choosing  
7 and its own expense.

8 I. The Fair Share provisions of this Article shall take  
9 effect at the beginning of the 1982-83 school year.

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ARTICLE XV

DURATION OF AGREEMENT

- A. This Agreement shall be effective as of the first (1st) day of July, 1982 and shall continue and remain in full force and effect as binding on the parties until the thirtieth (30) day of June, 1983. The parties acknowledge that this Agreement is a full and complete understanding between the parties and shall not be subject to negotiations during the term set forth herein except as Board policy enacted effects or impacts on the employee's wages, hours or conditions of employment.
- B. Notice of intent to commence negotiations for a successor Agreement may be given by either party on or before March first of any year the term of this Agreement is to expire.
- C. Advancement on the Pay Scale will be effective on July 1 each year.

POTOSI AUXILIARY PERSONNEL

BOARD OF EDUCATION  
SCHOOL DISTRICT OF POTOSI

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SECRETARY

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CLERK

*Handwritten:*  
10/1/82

SALARY SCHEDULE  
 School Year 1982-83

	Start (60 working days)		7	14
HEAD CUSTODIAN	5.25	5.90	6.10	6.40
CUSTODIAN	4.60	5.25	5.55	5.85
HEAD COOK	4.00	4.65	4.95	5.25
COOK/BAKER	4.00	4.60	4.85	5.15
SECRETARY	4.30	4.95	5.25	5.55
CLERICAL AIDE	4.00	4.65	4.95	5.25
TEACHER AIDE	4.00	4.35	4.75	5.15

Night Work--20¢ an hour more

*GRB*  
*10/2/82*

EXHIBIT "B"

Name of Case:

Potosi School District

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

10-6-82

(Date)

[Signature]

(Representative)

On Behalf of:

Potosi School District

Final Offer  
Board of Education  
School District of Potomac  
Auxiliary unit ~~#1~~  
Oct. 6, 1982 #2

1. Art. XV Duration
  - a. Par. A. change "1980" & "1982" & "1982" to "1984."
  - b. Add proviso & 1<sup>st</sup> sentence of Par. A. "except that for ~~July 1, 1983~~ year starting July 1, 1983 and ending June 30, 1984 Appendix B shall be open for negotiation."
2. Appendix B For 1982-83
  - a. Add 17¢ to each salary figure of the 1981-82 salary schedule.
  - b. No change in rate for night work for 1982-83.
3. All provisions of the 1980-82 agreement not modified by the parties final offers remain unchanged and will be incorporated in the new collective bargaining agreement.

David R. Friedman  
on behalf of the Board