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MAY 11 1983

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Mediation/Arbitration Between	)	
	)	
Northwest United Educators	)	Case XV MED/ARB-1845
	)	No. 30166
and	)	Decision No. 20143-A
	)	
School District of Clear Lake	)	

Appearances: Mulcahy & Wherry, by Stephen L. Weld, for the District
Northwest United Educators, by Alan D. Manson, for the Union

On May 11, 1982, representatives of the School District of Clear Lake (hereinafter referred to as the "Board") and the Northwest United Educators (hereinafter referred to as the "Association") exchanged initial proposals for a 1982-83 collective bargaining agreement to be effective July 1, 1982 through June 30, 1983. Thereafter, the parties met on two occasions in an effort to reach a voluntary settlement on a new collective bargaining agreement. However, the parties were unable to reach agreement on several issues.

On July 26, 1982, the Association filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the initiation of mediation/arbitration pursuant to Section 111.70(4)(cm)6, Wisconsin Statutes. On October 12, the parties waived WERC investigation and agreed to exchange their respective final offers. Thereafter, the Board and the Association submitted their respective final offers and, on December 3, 1982, the WERC certified the impasse and ordered that the parties select a mediator/arbitrator.

On December 21, 1982, Mr. John J. Flagler of Minneapolis, Minnesota was notified of his selection as the mediator/arbitrator. Arbitrator Flagler met with the parties on January 25, 1983 and mediation efforts were made resulting in an agreement to modify final offers. The parties then proceeded with the arbitration hearing, after which the parties agreed to submit written briefs in support of their amended final offers.

Reply briefs were received on April 9, 1982 at which time the record of these proceedings was closed.

Union Revised Final Offer
(8.25% Per Cell)

Salary Schedule

Lane Step	BS	BS+8	BS+16	BS+24	BS+30	MS	MS+16
0	12,963	13,104	13,244	13,385	13,526	13,667	14,100
1	13,481	13,628	13,774	13,921	14,067	14,213	14,664
2	14,000	14,152	14,303	14,457	14,608	14,760	15,228
3	14,518	14,675	14,832	14,993	15,150	15,307	15,792
4	15,037	15,199	15,362	15,528	15,691	15,853	16,355
5	15,556	15,723	15,891	16,064	16,232	16,400	16,919
6	16,074	16,247	16,420	16,600	16,773	16,947	17,483
7	16,593	16,771	16,950	17,136	17,315	17,493	18,047
8	17,111	17,295	17,479	17,672	17,856	18,040	18,611
9	17,630	17,819	18,008	18,208	18,397	18,587	19,175
10	18,148	18,343	18,538	18,743	18,938	19,133	19,739
11			19,067	19,279	19,480	19,680	20,303
12			19,596	19,815	20,021	20,227	20,867
13						20,773	21,431
14						21,320	21,995

1982-83 Board Revised Final Offer
(6.75% Per Cell)

Salary Schedule

Lane Step	BS	BS+8	BS+16	BS+24	BS+30	MS	MS+16
0	12,783	12,922	13,061	13,200	13,338	13,477	13,904
1	13,295	13,439	13,583	13,728	13,872	14,016	14,460
2	13,806	13,955	14,105	14,256	14,406	14,555	15,017
3	14,317	14,472	14,627	14,785	14,940	15,094	15,573
4	14,829	14,989	15,149	15,313	15,473	15,634	16,129
5	15,340	15,505	15,671	15,842	16,007	16,173	16,685
6	15,851	16,022	16,193	16,370	16,541	16,712	17,241
7	16,363	16,539	16,715	16,899	17,075	17,251	17,797
8	16,874	17,055	17,237	17,427	17,608	17,790	18,354
9	17,385	17,572	17,759	17,955	18,142	18,329	18,910
10	17,897	18,089	18,281	18,484	18,676	18,868	19,466
11			18,803	19,012	19,210	19,407	20,022
12			19,325	19,541	19,743	19,946	20,578
13						20,485	21,134
14						21,024	21,691

Criteria to be Utilized
by the Arbitrator in Rendering the Award

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., as follows:

> 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator/arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulation of the parties.
>
> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> d. 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 in public employment in the same community and in comparable communities and in private employment in the same community and comparable communities.
>
> e. The average consumer prices for goods and services, commonly known as the cost-of-living.
>
> f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
>
> g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
>
> h. Such other factors, confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties in the public service or in private employment

Discussion

The hearings and receipt of briefs in both the Clear Lake and Prairie Farm disputes were practically contemporaneous and involved the same law firm, teachers' advocate, mediator-arbitrator and Athletic Conference school districts. Noone should find it surprising, therefore, that highly similar data sets and arguments were heard in both cases. Neither is it remarkable that the mediator-arbitrator applied a consistent analytical framework to both disputes.

No useful purpose can be served by repeating the main thrust of my analysis in what is virtually the companion case. A copy of the Prairie Farm award is appended, however, for reference.

Inclusion of the Prairie Farm salary data in the Comparison Pool, however, improves the quality of the sample. A more discernible pattern emerges which generally preserves the historical salary relationships within the conference. Perhaps, in a strictly statistical sense, the sample would be improved by a judicious selection of some of the districts proposed as comparable by NUE in its Northwest Quadrant group.

Mitigating against broadening the comparison pool under the facts of the present dispute, however, was the history of bargaining which has long emphasized intra conference comparisons. The trade off between these two options in determining the appropriate comparison pool favors preservation of the parties' bargaining practices over a marginal enhancement of statistical validity. The selection of a comparison group has such long run implications for salary determination that, wherever possible, this critical decision should be left in the hands of the negotiators.

Examination of the available data in the following table isolates the dimension of variances between the final offers of the parties. The value of the mediation session in the present dispute is manifested by the relatively narrow margin of variance in the amended final offers herein reviewed.

In an objective sense, the preliminary offers would have set a virtual "Hobson's Choice" before the arbitrator. Either would have resulted in a significant disturbance of the existing relationship of the Clear Lake teachers' salary schedule to the other districts within the Conference. The pre-mediation proposal of NUE would have unduly enhanced their relative ranking, while that of the Board would have unduly eroded it.

Accordingly, the parties can take satisfaction in the results of their good faith cooperation in the mediation effort. The true value of the mediation was not in easing the arbitrator's dilemma but rather in guaranteeing that, whatever the decision, a reasonable result would flow from these proceedings.

Turning now to the analysis of the discernible effects of the competing amended final offers, the following computations were developed:

Conference Average	Difference in Board's Offer ($)	Difference in Union's Offer ($)	Difference in Board's Offer (%)	Difference in Union's Offer (%)
BA Mininum $12,865	-$82	+$98	-1.2	+ .3
BA Maximum $18,463	-566	+315	-1.22	+ .28
MA Minimum $13,744	-267	+ 77	-1.2	+ .3
MA Maximum $21,007	+ 17	+313	-1.2	+ .3
Scheduled Max. $21,794	-103	+201	-1.1	+ .39

There is little to choose between the final offers on the basis on the above array of the effects on the Clear Lake salary schedule as compared with others in the selected comparison pool, all else being equal. All else is not equal, however. The Board's offer is contingent upon an increment freeze. The Union's position assumes no increment freeze. It is precisely this kind of circumstance which shifts the balance of the decision to the overall consequences of the total average percentage increase and distinguishes the Clear Lake award from the Prairie Farm case.

The stabilizing factor in Prairie Farm, circa 1983, was that neither party postured its final offer on the assumption of an increment freeze. In the present dispute, the Board's final offer attempts to fix this feature into its salary package, based upon negotiation discussions and certain movement which took place in mediation. The operative fact is that the amended final offer of the Union did not assume an increment freeze, while that of the Board did, in fact, contain such a contingency.

As it turns out in this very close call, the question of the increment freeze proves to be the hinge upon which the proper resolution of the present case turns. In short, in what develops as a virtual "dead heat," the Board's offer gains a slight advantage only if the increment freeze were to be removed. Clearly, the arbitrator has no authority to effect such removal. To do so would constitute an arbitral amendment of one of the parties' final offers -- an action prohibited by the applicable Wisconsin statute.

Absent the factor of an increment freeze, therefore, the Union's final offer more nearly meets the test of comparability within the Athletic Conference. The overall improvement relative to the other districts in the conference is slight, certainly it does not significantly disturb existing intra conference salary relationships.

A final word is in order on the application in this present dispute of the other statutory criteria set forth in the preliminary statement of this award. While the parties dutifully addressed the various criteria, it was obvious throughout these proceedings that the most cogent arguments and relevant data emphasized the priority the parties themselves placed on comparability. Accordingly, this award does not disregard the other criteria but rather takes its cue from the advocates that the most useful focus of its analysis be directed to the priority concerns raised in the hearing and briefs.

As discussed at greater length in the attached Prairie Farm case, the plain fact is that the comparability criteria tends to embrace the other standards of determination. The remaining criteria have special relevancy in circumstances where they operate to distinguish significant differences among school districts.

In the present situation, no evidence was presented which would serve to mark the Clear Lake District from others in the conference similarly impacted by current economic adversities and budgetary restrictions. While it may appear to some that conference teachers are not being called upon to share in the sacrifices imposed on many by economic downturn, the historical fact is that traditionally teachers have lagged behind in sharing economic prosperity.

The secular effect tends to level out perceived inequities by moderating teachers' income increases in up swings of the business cycle and tempering losses in real income during cyclical downturns. The present adjustment in Clear Lake teachers' salaries is not inconsistent with this secular pattern of wage movement in public education.

Award

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

3/9/83
Date

John J. Flagler
John J. Flagler, Arbitrator