

DEC 2 1983

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF MEDIATION-ARBITRATION BETWEEN

| | | |
|-------------------------------|---|-------------------------|
| Gilman Federation of Teachers |) | Award |
| Gilman, Wisconsin |) | |
| |) | Mediator-Arbitrator: |
| -and- |) | John W. Boyer, Jr. |
| |) | |
| School District of Gilman |) | Case VIII |
| Gilman, Wisconsin |) | No. 31543, MED/ARB-2251 |
| |) | Decision No. 20870-A |

APPEARANCES

For Gilman Federation of Teachers
 Fred Skarich
 WISCONSIN FEDERATION OF TEACHERS
 Christine Beadles
 Jane DeStaercke
 Patrick Gunn
 Duane Jenson
 Eugene Mechelke
 Marge Raether
 James Whelan
 Ron Ziemba

For School District of Gilman
 Stephen L. Weld
 MULCAHY & WHERRY
 Robert L. Deetz, Superintendent
 James F. Miller, Board Member
 Joe Pawlik, Board Member
 James Schley, Board President
 Marlene Skabroud, Clerk
 Peter Tarris, Board Member

STATEMENT OF JURISDICTION

Pursuant to the provisions of the Municipal Employment Relations Act, on May 4, 1983, 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 June 14, 1983, 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 July 29, 1983, the Commission issued its "Findings of Fact, Conclusions of Law, Certification of Results of Investigation, and Order Requiring Mediation-Arbitration".

The Mediator-Arbitrator, mutually selected by the Parties, was John W. Boyer, Jr. The Mediation-Arbitration Hearing was convened on September 28, 1983 at 4:00 P.M. in the District's Board Room in Gilman, 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 November 22, 1983 when the Federation submitted updated settlement data.

ISSUES AT IMPASSE

1. 1983-1984 Salary Schedule

POSITIONS OF THE PARTIES

The Position and requests of each of the Parties were outlined by their representatives and supported by a variety of documents and testimony as follows:

Position of Federation

The Federation's final offer (District Exhibits 5 and 15) included the following modifications of the existing 1982-1983 Salary Schedule:

1) the BA Lane base salary shall be increased from \$12,815 to \$13,570.

2) the MA Lane base salary shall be increased from \$13,730 to \$14,820.

3) the wages-only increase for 1983-1984 was calculated at \$58,628.00 or an average teacher wage increase of approximately 7.06%, and in terms of total compensation the final offer represents a \$81,701.85 increase or approximately 7.72% above 1982-1983 wage and benefit costs. The resultant 1983-1984 Salary Schedule to be as follows:

| <u>Step</u> | <u>BA</u> | <u>BA+8</u> | <u>BA+15</u> | <u>BA+23</u> | <u>MA</u> | <u>MA+8</u> |
|-------------|-----------|-------------|--------------|--------------|-----------|-------------|
| 1 | 13570 | 13820 | 14070 | 14320 | 14820 | 15070 |
| 2 | 14015 | 14265 | 14515 | 14765 | 15265 | 15515 |
| 3 | 14460 | 14710 | 14960 | 15210 | 15710 | 15960 |
| 4 | 14905 | 15155 | 15405 | 15655 | 16155 | 16405 |
| 5 | 15370 | 15620 | 15870 | 16120 | 16620 | 16870 |
| 6 | 15835 | 16085 | 16335 | 16585 | 17085 | 17335 |
| 7 | 16320 | 16570 | 16820 | 17070 | 17570 | 17820 |
| 8 | 16805 | 17055 | 17305 | 17555 | 18055 | 18305 |
| 9 | 17290 | 17540 | 17790 | 18040 | 18540 | 18790 |
| 10 | 17795 | 18045 | 18295 | 18545 | 19045 | 19295 |
| 11 | 18300 | 18550 | 18800 | 19050 | 19550 | 19800 |

| <u>Step</u> | <u>BA</u> | <u>BA+8</u> | <u>BA+15</u> | <u>BA+23</u> | <u>MA</u> | <u>MA+8</u> |
|-------------|-----------|-------------|--------------|--------------|-----------|-------------|
| 12 | 18825 | 19075 | 19325 | 19575 | 20075 | 20325 |
| 13 | 19350 | 19600 | 19850 | 20100 | 20600 | 20850 |
| 14 | 19875 | 20125 | 20375 | 20625 | 21125 | 21375 |
| 15 | | | 20920 | 21170 | 21670 | 21920 |
| 16 | | | | | 22215 | 22465 |

Position of District

The District's final offer (District Exhibits 5 and 10) included the following modifications of the existing 1982-1983 Salary Schedule:

- 1) the BA Lane base salary shall be increased from \$12,815 to \$13,100.
- 2) the MA Lane base salary shall be increased from \$13,730 to \$14,015.
- 3) the wages-only increase for 1983-1984 was calculated at \$25,668.00 or an increase of approximately 3.09% over 1982-1983 wage costs, and in terms of total compensation the final offer represents a \$41,527.42 increase or approximately 3.93% above 1982-1983 wage and benefit costs. The resultant 1983-1984 Salary Schedule to be as follows:

| <u>Step</u> | <u>BA</u> | <u>BA+8</u> | <u>BA+15</u> | <u>BA+23</u> | <u>MA</u> | <u>MA+8</u> |
|-------------|-----------|-------------|--------------|--------------|-----------|-------------|
| 1 | 13,100 | 13,300 | 13,500 | 13,700 | 14,015 | 14,215 |
| 2 | 13,535 | 13,735 | 13,935 | 14,135 | 14,470 | 14,670 |
| 3 | 13,990 | 14,190 | 14,390 | 14,590 | 14,905 | 15,100 |
| 4 | 14,425 | 14,625 | 14,825 | 15,025 | 15,360 | 15,560 |
| 5 | 14,880 | 15,080 | 15,280 | 15,480 | 15,795 | 15,995 |
| 6 | 15,335 | 15,535 | 15,735 | 15,935 | 16,270 | 16,470 |
| 7 | 15,810 | 16,010 | 16,210 | 16,410 | 16,725 | 16,925 |
| 8 | 16,265 | 16,465 | 16,665 | 16,865 | 17,200 | 17,400 |
| 9 | 16,740 | 16,940 | 17,140 | 17,340 | 17,655 | 17,855 |
| 10 | 17,215 | 17,415 | 17,615 | 17,815 | 18,150 | 18,350 |
| 11 | 17,710 | 17,910 | 18,110 | 18,310 | 18,625 | 18,825 |
| 12 | 18,185 | 18,385 | 18,585 | 18,785 | 19,120 | 19,320 |
| 13 | 18,680 | 18,880 | 19,080 | 19,280 | 19,595 | 19,855 |
| 14 | 19,195 | 19,395 | 19,595 | 19,795 | 20,130 | 20,330 |
| 15 | | | 20,130 | 20,330 | 20,645 | 20,785 |
| 16 | | | | | 21,180 | 21,380 |

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 Federation. The basic reasons for the Award are the following:

1) Initially, the Mediator-Arbitrator can readily empathize with the concerns and apparent frustration inherent in the disparate positions of the Parties when after protracted attempts to resolve all negotiable issues through bargaining, a partially successful attempt of the Mediator-Arbitrator to mediate the matter, and the Parties' additional efforts to negotiate their differences after the date of the Hearing, the Parties remain at Impasse on the emotion-laden aspect of the levels of compensation to be provided in the 1983-1984 Salary Schedule.

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, with a sporadic pattern of recovery differentiated by industry and geographic region concurrent with additional and/or continuing plant closings, employee layoffs, reductions in benefits, etc., all effectively portrayed by the communication media.

Further, the Record clearly indicates the District provides educational services to a three (3) county region characterized as primarily a rural and farm-based population (District Exhibit 38). Consequently, the relative position and "lagging" rate of recovery of both the State and local regional economy was effectively portrayed in terms of declining farm income and increasing rates of farm loan delinquency (District Exhibits 42 and 43), high rates of plant closures in the multi-state region (District Exhibit 56), and the persistent problem of local unemployment rates exceeding the State average (District Exhibit 47). Finally, the Neutral is equally aware of the emerging pattern of public and private sector wage and/or benefit settlements within the public and private sectors, that with the singularly significant exception of Teacher-Board settlements seldom exceed the rates of increase in the Consumer Price Index (CPI-U or W), and frequently are less than the current rate of inflation as measured by these indicators (District Exhibits 51, 52, 55 and 39).

In addition, 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 and recognizes teachers are in fact a significant sub-group of that population in a agriculturally-oriented region, where the District's "final offer" significantly exceeds the annual rate of inflation as measured by the Consumer Price Index (CPI) for the period, and such occurs in a District where the average adjusted gross income for municipalities approximates only half of the State average (District Exhibit 48).

However, the Mediator-Arbitrator was particularly sensitive to the pattern of atypically high internal settlements with the District's Administrator of ten (10%) percent, High School Principal of fourteen and eight-tenths (14.8%) percent, and Bookkeeper of six plus (6.09%) percent for the 1983-1984 school year (District Exhibit 19). Such increases regardless of consideration of any modifications in duties associated with the positions, if appropriate, significantly exceeded either Parties' position in the instant dispute and the amount Awarded. It must be noted, the Neutral was equally cognizant such positions are not associated with a Step or Lane incremental structure as characteristic of the Federation's constituency, where in the latter instance the incontrovertible effect of such is to increase the "real" impact of the rates of salary increase Awarded resultant from any given teacher's advancement on the Salary Schedule, and/or participation to varying degrees in extra-curricular program(s) where the Parties stipulate salaries shall also increase at the rate Awarded.

Therefore, the Mediator-Arbitrator is compelled to conclude the final positions of both Parties exceed the rates of settlement in both the public and private sectors State-wide and nationally. However, the District's position is totally inconsistent with both its pattern of internal settlements with administrative staff, the effect of settlements within its Athletic Conference comparison group and other regional districts, and the State-wide pattern for elementary and secondary teachers, each addressed further below.

Nevertheless, during the lengthy mediation process prior to the Hearing, the Neutral was impressed by the District's awareness of both such emerging patterns of Conference, regional and State-wide "settlement packages", and sensitivity to the perceived needs of the Federation. Further, the Neutral is cognizant of a traditional definition of "bargaining power" utilized by practitioners as "the ability to affect wages beyond the point the other side would voluntarily move". Accordingly, the Federation's position Awarded shall not be characterized as significantly different from what the Parties had "on the table" during the preliminary process, and as such the decision is totally consistent with the "Flagler Principle" of Interest Arbitration that the Neutral attempt within the available constraints to approximate a settlement he/she believes the Parties could have voluntarily achieved and/or accepted had the bargaining process continued. In the instant matter given the statutory criteria for selection of a "final position" such flexibility is inherently limited. Therefore, given the reference to internal patterns of settlement and perceptions of the mediation process cited, the Mediator-Arbitrator was less than sufficiently compelled by any explicit and/or implicit contentions of the District as to its inability to pay, acknowledging the District's Board is a structured electorate representative of all constituencies within the community, such group was unable to finalize the settlement in dispute, and the Neutral by Statute is limited to selection of the final position adjudged most consistent, or perhaps least inconsistent, with multiple criteria and to effectively substitute his judgement for that of the Parties. The inevitable result of such being one (1) of the Parties is the most advantaged or disadvantaged by the process that is predicated upon assumed levels of understanding by both of the procedure, criteria and "risks" associated with development of their respective "final positions", aspects of which are

3) The genesis of much of the dispute evolved from the Parties' selection of alleged "comparable" districts, with the District relying upon their Cloverbelt Athletic Conference (small schools) that includes Altoona, Cornell, Fall Creek, Greenwood, Loyal, Owen-Withee, Thorp and Gilman, where few have settled for 1983-1984 (District Exhibits 20 and 21); and the Federation adding other regional districts in Cadott and Rib Lake and supplementing such with various State-wide averages and other parameters (Federation Brief Appendices A, B and C). Further, the Neutral was totally cognizant of the traditional criteria for such comparisons such as full-time equivalent staff, student-teacher ratios (Federation Brief Appendix D), per pupil operating costs, full-value tax rate (District Exhibit 22) and equalized value (District Exhibit 23) that generally characterize the District as approximately mid-range in such indices.

Accordingly, the Mediator-Arbitrator was appreciative of a central premise of dispute resolution that in absence of agreement between the Parties as to other comparables, the Athletic Conference is a primary barometer, but not the singular indicator to the extent of being dispositive of the matter. However, it is generally acknowledged the Party alleging otherwise shall "shoulder" the burden of proof to substantiate its position, and the Federation is adjudged to have sufficiently sustained that responsibility in relation to specific criteria deemed critical and controlling.

Therefore, in the instant matter given both the unique characteristics of the District cited above and the "reality" of a limited few settlements within the Athletic Conference, the Mediator-Arbitrator was compelled to consider such in relation to other indicators given the singular conclusion in each and/or all instances is to characterize the Federation's position as the least inconsistent with the multiple criteria utilized as follows:

A) Examination and contrast of several traditionally acknowledged "bench mark" cells or points on the Salary Schedule with the Fall City, Thorp and Owen-Withee districts who have concluded 1983-1984 agreements in the Athletic Conference, and with the "certified" final positions of the Conference district at Altoona with the final positions of the Parties in the instant dispute (District Exhibits 31 through 36) indicates the following (Note: Annual Salary rates are rounded):

| <u>Settled Districts</u> | <u>BA Base</u> | <u>BAO, Step 7</u> | <u>BA Max</u> | <u>MA Min</u> | <u>MAO, Step 10</u> | <u>MA Max</u> |
|------------------------------|--------------------|------------------------|-------------------|-------------------|-------------------------|-------------------|
| Fall Creek | \$13.9 | \$17.2 | \$19.5 | \$15.0 | \$20.0 | \$21.7 |
| Thorp | 13.6 | 16.5 | 20.0 | 14.7 | 19.4 | 22.5 |
| Owen-Withee | 13.5 | 16.1 | 18.7 | 14.8 | 19.3 | 20.8 |
| <u>Final Positions</u> | | | | | | |
| Altoona | | | | | | |
| District | 13.8 | 17.9 | 21.3 | 14.9 | 21.2 | 24.3 |
| Association | 14.0 | 18.1 | 21.7 | 15.2 | 21.5 | 24.7 |
| Gilman | | | | | | |
| Federation | 13.6 | 16.3 | 19.9 | 14.8 | 19.0 | 22.2 |
| District | 13.1 | 15.8 | 19.2 | 14.0 | 18.1 | 21.2 |

Further, similar review of the other districts differentially alleged as comparable by the Parties, with Greenwood selected by the District and Cadott and Rib Lake by the Federation (Federation Brief Appendix C), indicates the following (Note: Annual Salary rates are rounded):

| <u>District</u> | BA | | BA | |
|-----------------|------------|------------|------------|------------|
| | <u>Min</u> | <u>Max</u> | <u>Min</u> | <u>Max</u> |
| Greenwood | \$13.4 | \$17.7 | \$14.4 | \$22.2 |
| Cadott | 13.5 | 19.5 | 14.7 | 23.5 |
| Rib Lake | 13.3 | 19.7 | 14.3 | 20.7 |

Accordingly, the Mediator-Arbitrator is compelled to note the obvious disparate impact of the Parties' positions on the relative status or standing of District teaching personnel. The incontrovertible effect of the District's position would be to reduce the competitive status of personnel in the existing work force as compared to other alleged comparable schools, both within the Conference and surrounding communities referenced, whereas the Federation's position essentially maintains the relative status of its constituents. However, the Neutral acknowledges such comparability could be modified to a non-determinable extent by subsequent settlements within the Conference perhaps influenced by this Award, and notes in many instances a relatively small number of dollars on an annualized basis separate districts relative standing in any hierarchy. Finally, in the instant matter the District's "real" cost will vary as a result of the stipulated relationship of increases in extra-curricular salary rates being "pegged" to the Awarded position as a percentage of increase, and other stipulations resultant from the negotiation and mediation process.

B) Similarly, comparison of the Parties' positions with the available data on "total package" settlements State-wide for 1983-1984 (Federation Brief Appendix B) for ninety (90) districts of varying size, location and multiple other individual characteristics indicates a "mean" increase of approximately seven and nine-tenths (7.9%) percent, with a range of approximately four and six-tenths (4.6%) percent to approximately twelve (11.9%) percent, with the distribution significantly skewed to the higher rates to produce the mean cited. There is no disputing the obvious conclusion that any such indicators significantly exceed the annualized rate of inflation and the levels of recent public and private sector wage settlements that have ranged from reductions and "freezes" or zero increases, to modest increases often not even approximating the lowest range values cited above.

However, again the singular compelling conclusion is the Federation's position although perceived as "high" by the District, is significantly more consistent with the State-wide mean rate of increase whereas the District's is very significantly less, and the Record fails to provide sufficient convincing substantiation of the basis for such differential when assessed against the total set of comparable criteria to warrant an Award of such marked differential from the regional and/or industry pattern.

4) As cited, 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 "final offer". However, while the preponderance of documentation must be characterized as individually and differentially supportive or non-supportive of the disparate positions of both Parties, the specificity and impact of the District's position in terms of both absolute and relative comparability to local, regional and State-wide data specific to teacher settlements was primarily dysfunctional in its behalf, although such position appears significantly more consistent with the pattern of other public sector settlements.

Further, given the statutorily mandated format for selection of a "final offer", the extent to which the Parties may be able to realistically address a "real" mutual problem of a disproportionate percentage of total staff at given cells of the Salary Schedule such as the BA Lane maximum with obvious implications for salary matters given the absence of opportunity to receive annual Step increments available to others unless each achieves a Lane change, and the District's concerns for not only encouraging/motivating some movement but for creating more competitive entry and mid-level salary rates to facilitate recruitment and retention resultant from the inevitable requirement for replacement of personnel in response to normal attrition and possible addition of "new" programs and/or programmatic emphasis to satisfy changing student needs, the Mediator-Arbitrator prefers remain for conjecture. However, the mutuality of such needs appear paramount and unresolved perhaps to the collective disadvantage of all constituencies, including the Parties, students and community.

Accordingly, the Mediator-Arbitrator's decision to select the Federation's position was primarily predicated upon the following: a) the Federation's position is less inconsistent with the limited pattern of negotiated and/or arbitrated wage-benefit settlements within the Conference, regional communities and State-wide for elementary and secondary teachers as differentiated from other public sector employees, b) the Award essentially retains internal Salary Schedule parity at specific levels not inconsistent with those rates provided in districts alleged to be "comparable" where settlements have either been achieved or "final offers" have been certified, and c) the Federation's position must be characterized as significantly less inconsistent with the concept of internal equity associated with the pattern of increases granted other administrative personnel for the 1983-1984 period in dispute and such typically constitutes a "key" variable in wage-benefit negotiations.

Further, cognizant the timing of the Award inherently provides for resumption of the process of delineation of demands, assignment of priorities and development of strategy associated with the imminent initiation of renewed negotiations given the Parties' reluctance to accept the concept of a multi-year Agreement, the Neutral is hopeful the Parties shall be able to realistically address their legitimately divergent needs and the economic and educational realities of the geographic area during the interim. Finally, the extent to which the District could/would have benefitted from opportunity to amend its final position and/or the impact of failure of the protracted effort

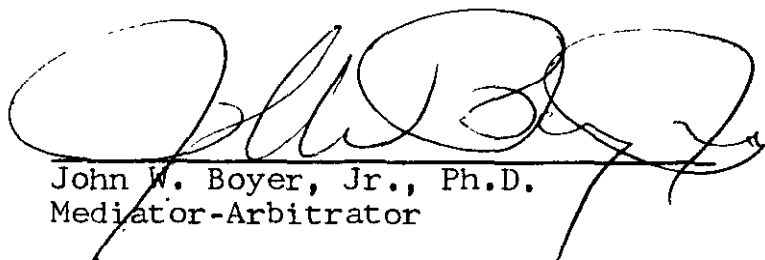
to mediate and/or negotiate the dispute shall have upon such future negotiations, the Mediator-Arbitrator prefers also remain for conjecture.

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

AWARD

- 1) The 1983-1984 Agreement shall include the Salary Schedule proposed in the Federation's "final offer".
- 2) The 1983-1984 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 or stipulations 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: December 21, 1983
Duluth, Minnesota