

Review

BEFORE THE ARBITRATOR

RECEIVED

JUN 14 1984

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 In the Matter of the Petition of :  
 :  
 HERMAN CONSOLIDATED EDUCATION :  
 ASSOCIATION :  
 :  
 To Initiate Mediation-Arbitration :  
 Between Said Petitioner and :  
 :  
 SCHOOL DISTRICT NO. 22, :  
 TOWN OF HERMAN :  
 :  
 ----- x

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

Case VI  
No. 30981  
Med/ARB-2120  
Decision No. 20977-A

APPEARANCES

John Weigelt, Cedar Lake United Educators, on  
behalf of the Association

Kenneth Cole, Wisconsin Association of School  
Boards, on behalf of the District

On September 28, 1983 the Wisconsin Employment Relations Commission (WERC) appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70(4)(cm)6b. of the Municipal Employment Relations Act (MERA) in the dispute existing between the School District No. 22, Town of Herman, hereafter the District or Board, and the Herman Consolidated Education Association, hereafter the Association. Pursuant to statutory responsibilities the undersigned conducted mediation proceedings between the parties on December 8, 1983 which failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on February 2, 1984 for final and binding determination. Post hearing exhibits and briefs were filed by both parties and exchanged by March 19, 1984. A reply brief was filed by the Association and was transmitted to the District by April 17, 1984. Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.70(4)(cm), Wis. Stats., the undersigned renders the following arbitration award.

SUMMARY OF ISSUES

This dispute involves the teachers' salary schedule for the 1982-83 school year. In addition, the parties are also in disagreement as to which school districts should be considered as the appropriate comparables in this proceeding. Because the disposition of the latter issue may have an impact on the resolution of the salary schedule issue, it will be addressed first. Thereafter, the relative merit of the parties' positions on the salary schedule issue will be discussed.

COMPARABILITY

Association Position

The primary group of comparables which should be considered in this arbitration are those which were used by Arbitrator R. U. Miller in the Plat arbitration. This list would include Hartford High School, Hartford Elementary, Saylesville, Plat, Richfield and Neosho. In addition, secondary comparables that should be considered include the Hartland area schools of Lakeside, Swallow, Arrowhead High School, Bark River, Stone Bank, Merton, Richmond, Nashotah, North Lake and Hartland Elementary.

While the District argues that it is only comparable to the other K-8 school districts which feed into Hartford High School, where

there are neighboring school districts of approximately the same size situated geographically proximate to one another and which share the K-8 structure, they should all be included as comparable schools.

The Association chose not include Erin and Friese Lake in its selection of comparable districts since the Association does not represent the teachers of those two districts and therefore it has no control over the conditions of employment in existence therein. In fact, the teachers in both districts are unrepresented.

Following the reasoning of Arbitrator Imes in her prior decision in Herman, consideration must be given to the Hartland area schools because they are in the same geographical area.

The Association agrees with this Arbitrator's prior decision that organizational distinctions between K-8, K-12 and union high schools are not sufficient to negate the comparability of such districts. Included in the Association's proposed list of comparables, therefore, are Arrowhead High School and Hartford High School.

The primary and secondary tiers of comparables are of similar size in terms of pupil population. In addition, when taken as a whole, both the Hartford and Hartland schools are virtually identical as well as being geographically proximate to one another. Furthermore both Hartland and Hartford share the K-8 structure and union high school structure.

These two tiers of comparability should thus be selected in recognition of historical patterns, arbitral decisions, and commonly accepted practices.

#### District Position

The comparable school districts identified by the District include only those feeder districts that send students to the Hartford Union High School. They include Erin #2, Hartford Jt. #1, Nesosho Jt. 3, Richfield #2, Richfield #7, Richfield #11 and Rubicon #6. This position is consistent with the prior arbitration award involving the Herman School District and a more recent award by Arbitrator Imes involving the Stone Bank School District.

In the Stone Bank dispute, the Association's representative did not contend that the District here was a comparable to the Stone Bank District, which it now asserts is comparable to the District. This lack of consistency in choosing comparables can only be viewed as an attempt to exploit the mediation-arbitration process.

The District recognizes that Arbitrator Miller in the Plat decision utilized both sets of feeder schools. However, the Plat School District is located approximately in the middle of both sets of feeder districts while the District is located much farther north and can no longer be regarded as part of suburban Milwaukee. This distinction is significant because of enrollment trends as well as variances in costs.

#### Discussion

Considering the size and geographic location of the District, the undersigned is of the opinion that the feeder schools serving the Hartford Union High School District are the most appropriate comparables to utilize herein, with the exception of Hartford elementary, which is significantly larger than the other feeder districts, and Friese Lake, which had no salary schedule in 1981-83 which could be utilized as a basis for the salary comparisons made herein.

The undersigned is not of the opinion that the Hartland area districts of similar size are as appropriate comparables based

upon the fact that the District appears to be the northern most district in the Hartford area, and therefore it is not as close to the Hartland area schools as are other districts in the area, such as Plat, and in addition, it seems reasonable to conclude that it is much less influenced by the Waukesha metropolitan area than are the other districts in the Hartland area.

#### SALARY SCHEDULE

##### Herman Association Final Offer Salary Schedule 1982-1983

<u>Step</u>	<u>BS</u>	<u>BS+9</u>	<u>BS+18</u>	<u>BS+27</u>	<u>MS</u>	<u>MS+9</u>	<u>MS+18</u>
1	12465	12777	13088	13400	13712	14023	14335
2	13088	13400	13712	14023	14335	14646	14958
3	13712	14023	14335	14646	14958	15270	15581
4	14335	14646	14958	15270	15581	15893	16205
5	14958	15270	15581	15893	16205	16516	16828
6	15581	15893	16205	16516	16828	17139	17451
7	16205	16516	16828	17139	17451	17763	18074
8	16828	17139	17451	17763	18074	18386	18698
9	17451	17763	18074	18386	18698	19009	19321
10	18074	18386	18698	19009	19321	19632	19944
11		19009	19321	19632	19944	20256	20567
12			19944	20556	20567	20879	21191
13				20879	21191	21502	21814
14					21814	22125	22437

##### Herman Board's Final Offer Salary Schedule 1982-1983

<u>Step</u>	<u>BS</u>	<u>BS+9</u>	<u>BS+18</u>	<u>BS+27</u>	<u>MS</u>	<u>MS+9</u>	<u>MS+18</u>
1	12600	12800	13000	13200	13400	13600	13800
2	13100	13300	13500	13700	14000	14200	14400
3	13600	13800	14000	14200	14600	14800	15000
4	14100	14300	14500	14700	15200	15400	15600
5	14600	14800	15000	15200	15800	16000	16200
6	15100	15300	15500	15700	16400	16600	16800
7	15600	15800	16000	16200	17000	17200	17400
8	16100	16300	16500	16700	17600	17800	18000
9	16600	16800	17000	17200	18200	18400	18600
10	17100	17300	17500	17700	18800	19000	19200
11		17800	18000	18200	19400	19600	19800
12			18500	18700	20000	20200	20400
13				19200	20800	20800	21000
14					21400	21400	21600

#### District Position

Certain circumstances present only in the District support the reasonableness of the District's salary proposal. First, the District believes that the arbitrator must consider the relatively substantial and somewhat sudden loss of enrollment in the District. Costs per pupil in the District, because of this reduction, were 13% greater than the next highest cost district and 46% greater than the lowest cost district in 1982-83. Furthermore, the District received no state aid to offset these high costs while all of the other feeder schools received state aid. The net result when these various factors are combined is high costs with only the property tax to support the program. The reaction of taxpayers in the District to this situation took the form of a petition by 55 families asking to leave the District. While the petition was ultimately denied, the Board was concerned not only with the petition but also the conditions that generated it.

The Board responded to these taxpayer concerns by making a variety of reductions in expenditures that impacted on virtually every aspect of the educational program. Included were the combination of two grades into one classroom in grades one through six, closing a portion of its facility, cutting the

music and art programs by 25% and 20% respectively, instituting a full day kindergarten program to reduce transportation costs, and termination of the Federal Hot Lunch Program. The reductions impacted on all aspects of the District's operation and represented a serious attempt by the Board to reduce or at least control costs so that the tax levy would not need to be increased. Under such circumstances comparability cannot be utilized to justify a settlement that will threaten the existence of the District, especially when the comparable districts do not face similar economic problems.

This dilemma has been brought about by a variety of other economic factors as well as declining enrollments. First and foremost among these factors is the District taxpayers' overwhelming reliance on dairying to produce their income. It is that income that ultimately supports the school through the property tax. In this regard the record demonstrates that farm incomes, especially those connected with milk production, have been reduced significantly, with further reductions anticipated.

Finally, the District does not have sufficient resources to fund the offer of the Union. In support of this contention, it is noteworthy that at the time the 1982-83 agreement was being negotiated, the District had to engage in short-term borrowing to the extent of \$40,000 to cover a shortfall in revenues caused in part by increases in deferred taxes. The District believes that given all of the circumstances, its offer should be selected.

#### Association Position

At the outset it should be noted that there are only a few school districts remaining in Wisconsin where the K-8 structure remains. The Association contends that this structure is being used by the District as a means to insure lower teacher salaries and consequently lower taxes for the residents of the area. There is no reason for a school teacher in any of the K-8 grades to receive a salary which is substantially, or even slightly, less than that received by teachers in other grade levels.

The Consumer Price Index has not been utilized by the Association because of the fact that the cost of living is obviously low and not reflective of the salary increases which teachers have been given in comparable groupings of school districts. To now apply the CPI to the District's teachers' salary increases would be to deny its historical inapplicability, and it would unfairly prohibit the District's teachers from maintaining a competitive salary portion vis-a-vis the teachers in the other school districts in the comparable groups.

The District and the Association have used different figures in costing their final offers and comparing the final offers with settlements in comparable districts. The District has included lane changes when comparing costs, but it has not been able to provide similar information for its proposed comparables. The Association believes that an accurate assessment of the value of both parties offers should be based upon the costs of the proposals utilizing the prior year's staff moved one step on the salary schedule, excluding any additional lane changes and assuming that all of said staff returned. Because the District has raised the inability to pay argument, the Association requests that this arbitrator also invoke the long standing practice of considering the actual costs of the parties' final offers. Since the District's costing is inaccurate and the District did not contend that the Association's costing data regarding actual staff costs was in any way inaccurate, this arbitrator should rely exclusively on the data provided by the Association.

The Association also believes that the pattern of settlements among comparable school districts is the most appropriate indicator of what constitutes a reasonable response to changes in the cost of living. Arbitrators have consistently ruled that the pattern of comparable settlements should be given

commanding weight as the measure of appropriateness of salary increases for public school teachers. 1/ The settlements in the comparable districts herein were made under economic, agricultural, and social conditions no different than those present in this case. The District has offered no evidence that the conditions in the District were markedly, or even slightly, different from the conditions present in comparable districts. In the absence of such evidence, and based upon prior arbitral authority, the Association believes that the relative cost of its salary proposal is more reasonable than the District's.

Since neither party to this dispute has presented evidence of cost comparisons based on total package, the arbitrator does not have sufficient information upon which to make a decision in that regard. Instead, a salary benchmark comparative analysis can readily be substantiated by verifiable data, thus avoiding the unreliability of comparisons of total package costing. Benchmark comparisons have frequently been adopted as a primary measure of settlement patterns. Their use is compelling not only because they have been utilized by a number of arbitrators, but also because they have been subsequently adopted by arbitrators who initially preferred total package comparisons. 2/

While both of the parties' proposals will keep the District's teachers at the lowest level among the comparables, the Association's proposal is more appropriate because it does not as dramatically increase the dollar disparity between the District and the next lowest school district. To allow an even more severe disparity between the District and other comparable school districts would create a situation where ultimately there would be no realistic correlation between the salaries paid to the District's teachers and those paid to teachers in other comparable districts. This flies in the face of a basic philosophy of equal pay for equal work and a sense of fair play.

The District also has failed to meet its burden of producing sufficient evidence of an inability to pay the Association's offer. While the Association agrees that the tax levy rate is higher in the District than for the other districts by some amount, the levy rate had actually decreased from the prior year when a voluntary settlement was reached under economic conditions as severe as those in 1982-83, and at a time when the District may have had an actual deficit as opposed to the surplus it enjoyed in 1982-83. There was no evidence presented by the District in regard to the borrowing it did to offset deferred tax receipts that such borrowing was unusual. Furthermore, the District failed to show how the effect of that loan created budgetary problems for the District. Based upon these considerations, the fact that the District took out a short-term note does not support its contentions herein.

Moreover, at the same time that the District was spending large amounts of money for capital objects within the building, the District had a budgetary surplus of over \$22,000 and the District was providing its Administrator with a salary increase of \$2,000. There is some arbitral authority supporting the contention that where a district is providing increases to managers, it cannot claim it has an inability to pay teacher increases.

The District has thus failed to provide persuasive evidence that it could not fund the Association salary proposal. While cutbacks in educational programs occurred, it has not demonstrated such cutbacks were different from those which have occurred in comparable districts. The District has also failed to show that it will or must continue to engage in long-term deficit financing, or that it is in fact engaged in long-term deficit financing at all. The District has shown a surplus for 1982-83 which would not be depleted even if the Association's proposal were implemented.

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1/Citations omitted.

2/Citations omitted.

Finally, the Association would like to point out that the actual amount spent by the District on salaries is nearly \$52,000 less than shown on the budget summary put into evidence by the District. This discrepancy is significant and the arbitrator should consider this factor in regard to the District's claim of an inability to pay the Association's final offer.

Discussion

It is undisputed that the Association's proposal is more comparable than the District's, and that fact is verified by the following benchmark analysis.

<u>BA MINIMUM</u>					
	<u>81-82</u>		<u>82-83</u>		
	<u>\$</u>		<u>\$</u>		
				<u>% Increase</u>	
				<u>\$ Increase</u>	
Saylesville-Rubicon#6	12,100		12,900	6.6	800
Richfield #2	12,100		12,965	7.1	865
Erin	11,824		13,125	11.0	1,301
Neosho	12,000		12,932	7.8	932
Richfield #7 - Plat	12,525		13,486	7.7	961
Average	12,110		13,082	8.1	972
Herman	11,975	B	12,600	5.2	625
		A	12,465	4.1	490
+/- Average	- 135	B	- 482	-2.9	-347
		A	- 617	-4.	-482
Rank Among 6	5	B	6		
		A	6		

<u>BA 7th</u>					
	<u>81-82</u>		<u>82-83</u>		
	<u>\$</u>		<u>\$</u>		
				<u>% Increase</u>	
				<u>\$ Increase</u>	
Saylesville	15,400		16,650	8.1	1,250
Richfield	15,730		16,855	7.2	1,125
Erin	14,961		16,608	11.0	1,647
Neosho	15,600		16,900	8.3	1,300
Plat	16,283		17,532	7.7	1,249
Average	15,595		16,909	8.5	1,314
Herman	14,975	B	15,600	4.2	625
		A	16,205	8.2	1,230
+/- Average	- 620	B	-1,309	-4.3	- 689
		A	- 704	- .3	- 84
Rank Among 6	5	B	6		
		A	6		

<u>BA MAXIMUM</u>					
	<u>81-82</u>		<u>82-83</u>		
	<u>\$</u>		<u>\$</u>		
				<u>% Increase</u>	
				<u>\$ Increase</u>	
Saylesville	16,500		17,900	8.5	1,400
Richfield	17,545		18,799	7.1	1,254
Erin	17,502		19,429	11.0	1,927
Neosho	18,000		19,500	8.3	1,500
Plat	17,535		18,880	7.7	1,345
Average	17,416		18,902	8.5	1,485
Herman	16,475	B	17,100	3.8	625
		A	18,074	9.7	1,599
+/- Average	- 941	B	-1,802	-4.7	- 860
		A	- 828	1.2	114
Rank Among 6	6	B	6		
		A	5		

MA MINIMUM

	<u>81-82</u>		<u>82-83</u>	<u>% Increase</u>	<u>\$ Increase</u>
	<u>\$</u>		<u>\$</u>		
Saylesville	13,350		14,275	6.9	925
Richfield	13,613		14,585	7.1	972
Erin	12,798		14,208	11.0	1,410
Neosho	13,080		14,170	8.3	1,090
Plat	14,090		15,172	7.7	1,082
Average	13,386		14,482	8.2	1,096
Herman	12,775	B	13,400	4.9	625
		A	13,712	7.3	937
+/- Average	- 611	B	-1,082	-3.3	- 471
		A	- 770	- .9	- 159
Rank Among 6	6	B	6		
		A	6		

MA 10th

	<u>81-82</u>		<u>82-83</u>	<u>% Increase</u>	<u>\$ Increase</u>
	<u>\$</u>		<u>\$</u>		
Saylesville	18,300		19,900	8.7	1,600
Richfield #2	19,058		20,419	7.1	1,361
Erin	18,216		20,222	11.0	2,006
Neosho	18,480		20,020	8.3	1,540
Richfield #7-Plat	19,726		21,240	7.7	1,514
Average	18,756		20,360	8.6	1,604
Herman	18,175	B	18,800	3.4	625
		A	19,321	6.3	1,146
+/- Average	- 581	B	-1,560	-5.2	- 979
		A	-1,039	-2.3	- 458
Rank Among 6	6	B	6		
		A	6		

MA MAXIMUM

	<u>81-82</u>		<u>82-83</u>	<u>% Increase</u>	<u>\$ Increase</u>
	<u>\$</u>		<u>\$</u>		
Saylesville	21,050		23,025	9.4	1,975
Richfield #2	22,083		23,661	7.1	1,578
Erin	22,162		24,602	11.0	2,440
Neosho	20,280		21,970	8.3	1,690
Richfield #7-Plat	22,858		24,612	7.7	1,754
Average	21,687		23,574	8.7	1,887
Herman	20,575	B	21,200	3.0	625
		A	21,814	6.0	1,239
+/- Average	-1,112	B	-2,374	-5.7	-1,262
		A	-1,760	-2.2	- 648
Rank Among 6	5	B	6		
		A	6		

SCHEDULE: MAXIMUM

	<u>81-82</u> <u>\$</u>	<u>82-83</u> <u>\$</u>	<u>% Increase</u>	<u>\$ Increase</u>
Saylesville	21,550	23,575	9.4	2,025
Richfield	22,990	24,633	7.1	1,643
Erin	22,162	24,602	11.0	2,440
Neosho	21,360	23,140	8.3	1,780
Richfield #7-Plat	23,797	25,623	7.7	1,826
 Average	 22,372	 24,315	 8.7	 1,943
 Herman	 20,975	B 21,600 A 22,437	3.0 7.0	625 1,462
 +/- Average	 -1,397	B -2,715 A -1,878	-5.7 -1.7	-1,318 - 481
 Rank Among 6	 6	B 6 A 6		

The foregoing charts clearly indicate that but for the BA minimum step, the Association's proposal is much more in line with comparable settlements than is the District's, in terms of actual salaries, as well as in terms of the size of the proposed increases.

The critical issue which must be addressed in this proceeding is whether the District's economic circumstances are sufficiently distressed to justify adoption of its significantly less comparable proposal.

On this issue the undersigned believes it is significant that the District has had to make significant cutbacks in its educational program because of considerations related to budget and enrollment; that the District has significantly higher per pupil costs than any of the other comparable districts; and that its levy rate is also substantially higher than the rates in comparable districts. Under such circumstances, the undersigned believes that the District has persuasively demonstrated that it cannot afford a teacher salary schedule that is literally comparable with other comparable districts in the area. The question then arises as to how much disparity between the District's salary schedule and the schedules in comparable districts is justified by the circumstances present herein. In this regard, in the undersigned's opinion, the foregoing comparability analysis supports the reasonableness of the Association's proposal. This conclusion is based upon the following rationale.

In 1981-82 the District's salaries were at or near the bottom of the comparables. In 1982-83 the District's proposal would result in significant increases in the disparity between the District's salaries and those of comparable districts, in many instances more than doubling the difference between the District's salaries and the comparable averages. Although a persuasive argument might be made that the District cannot afford to catch up with its comparables at this time, there is no persuasive evidence in this record which justifies the substantially exacerbated relative salary position of the District that would result from adoption of its salary proposal. On the other hand, the Association's proposal, with a singular exception, gives recognition to the District's financial plight, while at the same time it has proposed increases which will not result in significant increases in the disparity which exists between the District's salaries and those which exist in comparable districts. In this regard it is noteworthy that at all salary benchmarks but one the District's salaries under the Association's proposal will be the lowest among all of the comparables. In addition, at all benchmarks the Association's proposal will generate increases which are smaller, both in percentages and dollar terms, than the average of the increases granted in comparable districts. In further support of the conclusion that the Association's proposal is the more reasonable of the two submitted herein, it is



noteworthy that at five of the seven salary benchmarks analyzed, the disparity between the salaries resulting therefrom and the comparable averages will be greater than that which existed in 1981-82. The one exception to the foregoing analysis is the Association's proposed BA maximum increase which appears to be somewhat excessive under the economic circumstances present herein. However, even with respect to that benchmark, although the Association's proposal is unreasonably excessive, the District's proposal is even more unreasonable in terms of the disparity that would result from its adoption.

Based upon these considerations, the undersigned concludes that although the District has demonstrated that its current economic position requires a conservative settlement which may not be "comparable" as that term is traditionally understood, the Association's proposal by and large meets that definition by maintaining the District's relatively low salary position without significantly exacerbating the problem, which would be the case if the District's proposal were adopted.

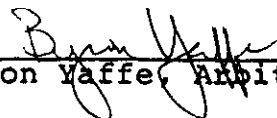
While the undersigned concedes that funding the Association's proposal may prove to be a problem for the District, there is only so much sacrifice that may reasonably be expected of teachers under such circumstances, and the Association's proposal more fairly balances the interests of both the District and the teachers in this regard.

Based upon all of the foregoing considerations, the undersigned hereby renders the following:

#### ARBITRATION AWARD

The final offer of the Association submitted herein shall be incorporated into the parties' 1982-1983 collective bargaining agreement.

Dated this 12<sup>th</sup> day of June, 1984 at Madison, Wisconsin.

  
Byron Yaffe, Arbitrator

BEFORE THE ARBITRATOR

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John Weigelt, Cedar Lake United Educators, on behalf of the Association

Kenneth Cole, Wisconsin Association of School Boards, on behalf of the District

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Association Position

The primary group of comparables which should be considered in this arbitration are those which were used by Arbitrator R. U. Miller in the Plat arbitration. This list would include Hartford High School, Hartford Elementary, Saylesville, Plat, Richfield and Neosho. In addition, secondary comparables that should be considered include the Hartland area schools of Lakeside, Swallow, Arrowhead High School, Bark River, Stone Bank, Merton, Richmond, Nashotah, North Lake and Hartland Elementary.

While the District argues that it is only comparable to the other K-8 school districts which feed into Hartford High School, where