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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Arbitration Between RANDOLPH TEACHERS ASSOCIATION and RANDOLPH SCHOOL DISTRICT	Case XI No. 31709 Decision No. 21013-A MED/ARB-2302 OPINION AND AWARD

Appearances:

For the Association: Arden Shumaker, UniServ Director, South Central United Educators, Portage.

For the Employer: David R. Friedman, Staff Counsel W.A.S.B., Madison.

BACKGROUND

On June 10, 1983, the Randolph Teachers Association (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate mediation-arbitration pursuant to Section 111.70 (4) (cm) (6) of the Municipal Employment Relations Act (MERA) to resolve a collective bargaining impasse between the Association and the Randolph School District (referred to as the Employer) concerning a reopener to the parties' collective bargaining agreement which will expire June 30, 1984.

On September 28, 1983, the WERC found that an impasse existed within the meaning of Section 111.70 (4) (cm). On October 17, 1983, after the parties notified the WERC that they had selected the undersigned, the WERC appointed her to serve as mediator-arbitrator to resolve the impasse pursuant to Section 111.70 (4) (cm) (b-g). No citizens' petition pursuant to Section 111.70 (4) (cm) (6) (b) was filed with the WERC.

By agreement, the mediator-arbitrator met with the parties in Randolph, Wisconsin, on December 7, 1983 to mediate the above impasse. An arbitration hearing was held in Randolph, Wisconsin, on January 11, 1984. At the hearing, both parties were given a full opportunity to present evidence and arguments. Post hearing briefs were filed by both parties.

ISSUES IN DISPUTE

The parties were able to resolve all issues in dispute except the 1983-84 salary schedule (including longevity payments) and the length of the school calendar.[1] The parties' final salary offers are annexed hereto as Annex "A". As to the school calendar issue, the District proposes an additional "floating" inservice day "for use in working on curriculum -- 7 1/2 hours to be scheduled by principal". The Association is opposed to the floating inservice day.

STATUTORY CRITERIA

Under Sec. 111.70 (4) (cm) (7) the mediator-arbitrator is required to give weight to the following factors:

A. The lawful authority of the municipal employer.

1. Although there were differences in the parties' final offers as to compensation for 1983-84 extra-curricular duties, the parties chose not to present evidence or arguments on this issue.

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits received.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

H. Such other factors, not confined in 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.

POSITIONS OF THE PARTIES

The Association

The Association supports its salary offer by puttung forth three sets of comparables: all Wisconsin school districts, excluding Milwaukee, which have reached agreement on their 1983-84 contracts, the Dual County Athletic Conference, and the contiguous districts to Randolph. The Association believes that its proposal "at best" barely maintains current below average wage rates in contrast to the District's proposal which reduces this deplorably low wage level even further. Using a detailed traditional benchmark analysis, the Association believes that its offer is more reasonable. Moreover, the Association believes that CPI data applied to the benchmarks starting with 1978-79 further supports the Association's wage offer.

As for District arguments that the status of the farm economy is a major factor in determining teachers' wages in Randolph, the Employer believes that the Board's public policy and supporting exhibits are inappropriate and inadequate to justify the Board's "below standard" offer.

Turning to the calendar issue, the Association first notes that it agrees with the Employer about the importance of curriculum work. It objects, however, to the contents of the Employer's proposal, particularly because it was made in the context of a low wage proposal, because methods exist already to make additional time available for teacher curriculum work (including extended contracts and a later start to the instructional day on selected days), and because the unlimited discretion to schedule curriculum hours by the principal may cause undue hardships.

The Association rejects the Employer's reliance upon the "tentative agreement" reached by the parties stating that there was no real meeting of the minds, that the parties used the term rather loosely, and that the only thing that the Association spokesperson agreed to was to take back the package for a teachers' vote, a common practice in this unit's bargaining history. Even if there had been such an agreement, the Association argues that it should not be given much weight since such consideration in an arbitration hearing would seriously impair the bargaining process.

For all these reasons, the Association concludes that its offer should be selected.

The Employer

The Employer first notes that in this case, as in many others, there is a dispute as to which school districts are appropriate comparables. For the Employer, the school districts comprising the Dual County Athletic Conference constitute the appropriate comparables. The Employer rejects the Association's additional contiguous comparables because of dissimilarities in size. Only when there is a lack of athletic conference school district information does the Employer believe that other comparables should be considered. In that situation, the Employer would add only the Markesan School District to the list of comparables.

Turning to the merits of the salary dispute, the Employer notes that the parties' positions are very close, less than $6000 separates the two total packages (the salary difference alone totals slightly under $5000) or under 1%. The Employer concludes, therefore, that since neither offer significantly changes the comparative ranking of the District for 1983-84, the determinative issue in this proceeding should be the calendar issue.

The Board supports its addition to the calendar, one day or 7 1/2 hours spread over the existing 188 days, as critical for curriculum development and improvement. More specifically, the District points to the state testing program that the District is participating in which includes curriculum development and implementation and the close connections between the District and the Cambria-Friesland School District where such a floating inservice day already exists. In connection with the latter point, the Employer notes that its District Administrator is also the Administator for Cambria-Friesland and that the two districts already share many common programs. The Employer further supports its calendar proposal by noting that the average number of contract days in the athletic conference schools is 188.5 and by concluding that its proposal of "at most" 189 days is not out of line with that pattern.

Finally, the Employer supports its overall position herein on the basis that its final offer embodies the provisions of a tentative agreement which the Board believes was previously reached by the bargaining committees but was then rejected by the Association's membership. In supporting its argument that a tentative agreement was so reached, the Employer relies upon testimony of the Association's chief negotiator and several Board members serving on the Board's negotiating committee at the Arbitration hearing, a written communication to the Board's president by the Association's President, and the bargaining notes made by the District Administrator. The Employer cites various arbitral precedent in support of its argument that the terms of a tentative agreement should be given weight for public policy reasons, particularly the opinions of Arbitrator Joseph Kerkman in Kenosha Unified School District (4/80) and Arbitrator David B. Johnson in Green County (1/81).

For all the above reasons, but particularly because of the tentative agreement reached by the parties which has become the Employer's final offer the Employer believes that its position herein is more reasonable.

DISCUSSION

As in many other arbitration proceedings under Section 111.70(4)(cm) of MERA, the parties disagree as to the appropriate comparables. The Employer urges the Athletic Conference school districts while the Association would also require consideration of other contiguous school districts. For the undersigned, based primarily upon size, the Athletic Conference school districts as a group constitute an appropriate set of comparables under the statute. Only if this primary group failed to provide sufficient data would it be appropriate to look for secondary comparables, in this arbitrator's judgment. Although it is true, as the Employer notes, that neither offer significantly restructures the generally low historical benchmark rankings that the District has had in the Athletic Conference, the Association's offer is to be preferred on the combined salary schedule and longevity issue, in the judgment of the undersigned, because it makes a small contribution toward the demonstrated need to make improvements.

The Employer emphasizes, however, that the calendar issue should be determinative in this proceeding both because of the meritoriousness of the Employer's curriculum improvement goal and also because the Employer's "floating" inservice day for curriculum work was part of an earlier tentative agreement between the parties' negotiating committees (which was subsequently

turned down by the Association's membership).

There is no dispute herein that curriculum review and development by teachers are very important, indeed necessary tasks. The Association notes, however, that there are many existing ways to accomplish the District's goals in this area. These include extended contracts for curriculum work beyond the normal calendar year at the rate stated in the contract and starting the instructional day later on selected days for the purpose of using the "saved" time for curriculum work (a practice already being implemented). The Association particularly objects to the requirement of the additional floating time when it is combined with a comparatively low salary offer and when the proposal, as worded, gives unlimited discretion to the principal to assign the additional seven and one-half hours. These Association arguments appear meritorious. The Employer's calendar addition proposal must be considered in conjunction with the District's very modest salary proposal. Also, the exclusive discretion given to the principal to schedule hours seems to be unnecessarily broad. Finally, it is relevant that the Employer has already implemented changes to permit curriculum work to take place within the existing calendar. Accordingly, in the judgment of this arbitrator, since the existing length of the school year is well within the range found in the comparable school districts and for the reasons already noted, the Employer has failed to justify in this contract reopener arbitration proceeding its proposed addition to the school calendar.

Having concluded that the Association's final salary (including longevity) offer combined with the Association's status quo school calendar position is more reasonable, the undersigned has one remaining argument to consider. The Employer has placed great weight upon an argument that its final offer should prevail because the offer embodies the negotiation committees' tentative agreement thereafter rejected by the Association. The undersigned acknowledges that tentative agreement should not be placed in the same category which includes offers of compromise or evidence of mediation behavior. That latter category merits absolute protection to encourage parties to explore freely various settlement possibilites without penalty of any sort. Tentative agreements in public sector bargaining, however, take on public aspects, particularly since ratification on behalf of the public employer must take place at a public meeting. Nevertheless, giving determinative weight to a prior tentative agreement reached between the parties has certain pitfalls such as those articulated by Arbitrator Joseph Kerkman in his Kenosha School District decision quoted in the Employer's brief:

> In addition to all of the foregoing, the undersigned, has serious concerns about finding for either party's offer solely on the basis that a prior tentative agreement had been reached between the parties. If arbitrators accepted the principle that once a tentative agreement were entered into that agreement should be enforced; the result would undoubtedly have a chilling effect on the bargaining process. Parties would be reluctant to enter into tentative agreements to take back either to the membership or the board for ratification, and that result should be avoided because it is the parties' responsibilities to effectuate an agreement voluntarily. Any suggestion that an arbitrator later would enforce a tentative agreement, which was rejected by either party which might reduce the possibilities of entering into tenative agreements, therefore, should be viewed with caution.

Caution is particularly appropriate in this case where the statutory factors favor the Association's final offer for reasons already discussed. In reaching this conclusion, the undersigned has given little weight to the Association's argument that no tentative agreement had in fact been reached prior to the commencement of this proceeding. Not only did the Employer's bargaining committee offer sworn testimony and evidence as to their good faith belief that a tentative agreement had been reached, the Association President himself referred to the offer voted down by the Association as a tentative agreement and the Association's negotiations spokesperson said that he would try to "sell the package." While the members of the Association's bargaining committee may have had some serious reservations as to the acceptability of "the package" for their teacher constituents, they failed to make it clear to the Employer's bargaining committee that by agreeing to take "the package"

back for a vote by the teachers, there still was no "tentative agreement." This failure by the Association to provide a clear signal to the other side may have been an unfortunate factor in the extension of this bargaining impasse. There is no evidence, however, that it had a manipulative or improper purpose.

AWARD

Based upon the statutory factors set forth in Section 111.70(4)(cm)(7) of MERA, the evidence and arguments of the parties, and for the reasons discussed above, the arbitrator selects the final offer of the Association and directs that it be incorporated along with already agreed upon items into the parties collective bargaining agreement.

Madison, Wisconsin
April 4, 1984

June Miller Weisberger
Mediator-Arbitrator

Salary Schedule
1983-84

Association final Offer – Aug 16, 1983
Keith Lundblad

Step		B.S.	$300	B.S. + 12	$300	B.S. + 24	$350	M.S.	
0	($325)	13600		13900		14200		14550	($400)
1		13925		14225		14525		14950	
2		14250		14550		14850		15350	
3		14575		14875		15175		15750	
4		14900		15200		15500		16150	
5		15225		15525		15825		16550	
6		15550		15850		16150		16950	
7	($350)	15900		16200		16500		17350	
8		16250		16550		16850		17750	
9		16600		16900		17200		18150	
10		16950		17250		17550		18550	
11		17300		17600		17900		18950	
12	($375)	17675		17975		18275		19350	
13		18050		18350		18650		19750	
14								20150	

All teachers who reach the top of the scale shall receive 2% of the base each year in lieu of any more increments.

Randolph Teachers Association

Annex "A"

Randolph School District

Salary Schedule
1983-84

Step	B.S. $300	B.S. + 12 $300	B.S. + 24 $350	M.S.
0 ($325)	13400	13700	14000	14350 ($40(
1	13725	14025	14325	14750
2	14050	14350	14650	15150
3	14375	14675	14975	15550
4	14700	15000	15300	15950
5	15025	15325	15625	16350
6	15350	15650	15950	16750
7 ($350)	15700	16000	16300	17150
8	16050	16350	16650	17550
9	16400	16700	17000	17950
10	16750	17050	17350	18350
11	17100	17400	17700	18750
12 ($375)	17475	17775	18075	19150
13	17850	18150	18450	19550
14				19950
	18,315	18,619	18,919	20,419

All teachers who reach the top of the scale shall receive 3½% of the base each year in lieu of anymore increments.

Annex "A"