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WISCONSIN EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE MEDIATOR-ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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| GREEN BAY SUBSTITUTE TEACHERS ASSOCIATION | ) | Case LXXIII          |
|   | ) | No. 32652            |
| and                                       | ) | Decision No. 21321-A |
|   | ) | MED/ARB-2568         |
| GREEN BAY JOINT SCHOOL DISTRICT NO. 1     | ) | OPINION AND AWARD    |
|   | ) |                      |

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Appearances:

For the Association: Dale H. Vollrath, Green Bay.

For the Employer: Thomas E. Kwiatkowski, Esq., Staff Attorney,  
Green Bay Area Public School District,  
Green Bay.

BACKGROUND

On December 20, 1983, the Green Bay Substitute 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 Green Bay Joint School District No. 1 (referred to as the Employer) concerning a successor agreement to the parties' collective bargaining agreement which expired August 14, 1983.

On January 17, 1984, the WERC found that an impasse existed within the meaning of Section 111.70 (4) (cm). On February 6, 1984, after the parties notified the WERC that they had selected the undersigned, the WERC appointed her to serve as mediator-arbitrator to resolve the impasses 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 Green Bay, Wisconsin, on March 22, 1984 to mediate the above impasse. An arbitration hearing was held in Green Bay, Wisconsin, on April 27, 1984 at which time the parties had full opportunity to present evidence and arguments. A transcript was taken of the hearing. Post hearing briefs were exchanged and filed with the arbitrator.

ISSUE AT IMPASSE

The sole issue at impasse is the per diem rate of pay for substitute teachers for five or less consecutive days. The Association's final offer is \$53.35 per diem. The Employer's final offer is \$52.00 per diem. (The 1982-83 per diem rate was \$49.95.)

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.
- (b) Stipulations 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 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 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, not 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.

#### POSITIONS OF THE PARTIES

##### The Association

The Association begins its arguments by stating that little consideration should be given to comparable wages in non-unionized school districts, whether nearby or far away, and cites several arbitration awards which the Association believes supports this position. In addition, the Association objects to consideration of the smaller contiguous school districts because of their considerable difference in size to Green Bay, the fourth largest Wisconsin school district. The Association summarizes this argument by observing that giving primary weight to these comparables "would be akin to claiming Monona, Waunakee, Lodi, Verona, Marshall, and Middleton as the most appropriate comparables to Madison."

For the Association, the most appropriate external comparables are Milwaukee, Madison and Kenosha because they are unionized and, like Green Bay, are metropolitan school districts. According to Association calculations, the average increase in these comparables falls between the Board's final offer and the Association's final offer herein and thus, are inconclusive. Although the Association also notes that certain private sector employees' wage rates should be considered (such as longshoremen who also perform "on call" work) and certain public sector employees (such as hourly teachers at the Northeast Wisconsin Technical Institute, a VTAE located in Green Bay), the Association's arguments generally treat all external comparables as non-determinative.

For the Association, the determinative comparables are within the Green Bay School District. The Association's calculations places internal wage only settlements as midway between the parties' final offers. Looking at wage increases in terms of cents per hour, however, for electricians, sheet metal workers, carpenters, teachers (hourly student supervision) and long term substitutes, the hourly wage increases ranges from 50 cents to 59 cents per hour. These hourly wage increase rates more closely approximate the Association's offer which the Association calculates to be 45 cents than is true of the Board's offer calculated as 27 cents.

Even more pertinent, according to the Association, is the fact that this dispute involves employees who do not receive any fringe benefits while other District employees do. The final offers, therefore, should be compared to total compensation increases already agreed to for other Green Bay school employees. Particularly relevant to the Association are agreed to increases for teachers who received a 7.9% total package increase, teacher aides who received a total package increase of 6.8%, and, to a lesser extent, certain administrative employees who received an average of 6.7% exclusive of fringe benefits. The Association also notes that part time employees such as cooks and monitors not only received an increase in excess of the Employer's offer herein, these employees receive certain fringe benefits too.

Finally, the Association notes that no argument has been made that the additional \$10,709 (the Employer's calculation of the difference in cost between the Association's final offer and the Employer's final offer) presents the Employer with any special economic difficulties or burdens. Further, while cost of living figures may appear to favor the Employer's offer, the

"pattern of settlement" approach is a more appropriate measure for cost of living increases and this approach favors the Association's position.

For all these reasons, the Association believes that its offer is more reasonable and must be selected.

### The Employer

The Employer begins by pointing to comparable wages of substitute teachers in the school districts contiguous to Green Bay<sup>1</sup> and concludes that these comparables are the main reason to support its final wage offer herein because this group is the "natural market area" for substitute teachers employed by the Green Bay School District. The Employer believes that its 4.1% (or 4.3% if rates for "long term" substitutes are included) final offer is consistent with the average increase of 4.3% among all contiguous comparables. It underscores the reasonableness of its choice of external comparables by noting that during 1982-83 negotiations, the Association sought a change in the early morning contact system so that bargaining unit members would be called early enough by the Green Bay Schools and thus they could choose to work in the Green Bay schools rather than accepting offers from other (lower paying) area school districts.

As a secondary group of external comparables, the Employer points to wage rates for short term per diem substitute teachers in the ten largest urban school districts. Measured against these figures, the Employer maintains that its offer maintains Green Bay's comparable position.

The Employer next turns toward internal comparables to justify its final offer. The Employer calculates that voluntary increases for District employees average 5% (or 5.3% if Head Start non certified employees are included)<sup>2</sup> which more nearly approximates the Employer's final offer than it does the Association's offer. Further, the Employer believes that already agreed to wage rates for long term per diem substitutes must be considered in determining the outcome of this proceeding. The agreed upon daily rate for long term substitute teachers (calculated on the base rate of the teachers' salary schedule, as it has customarily been done) is \$78.95.<sup>3</sup> Also, the Employer notes that this rate begins on the sixth day of consecutive employment in contrast to many other urban metropolitan comparables which use a later day before a substitute teacher is eligible for the higher long term rate. Thus a Green Bay substitute teacher will receive a better rate for a stated interim period of time than counterparts in the top ranking school districts such as Milwaukee and Madison. In Green Bay, these long term substitute teacher rates are not insignificant. They constitute approximately 15% of all substitute teacher days.

As for fringe benefits, the Employer notes that "limited" substitutes generally do not receive fringe benefits, that the Association has failed to demonstrate how to value such benefits or even a practice among the comparables of factoring in the value of fringe benefits in determining wage rates for substitute teachers. Accordingly, the Employer concludes that it would be improper for the arbitrator to consider fringe benefits as relevant in any way in this proceeding.

Finally, the Employer argues that CPI and Brown County area unemployment data further support its final offer, particularly since this group of employees "can accept or refuse assignments at their discretion."

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1. These are Ashwaubenon, Howard-Suamico, DePere, West DePere, Pulaski, Denmark and Luxemburg-Casco School Districts.

2. The Employer believes that these Head Start employees should not be included because federal funding requires a special Personnel Committee outside the direction of the Employer and the higher than 5% wage increase was recommended by this Committee.

3. Substitute teachers receive the higher rate after five consecutive days in the same assignment. After twenty days in the same assignment, a substitute teacher receives fringe benefits under the teachers' collective bargaining agreement.

For all the above reasons, the Employer requests that its final offer be selected.

#### DISCUSSION

Although this is a "simple", single issue wage impasse, there are several subsidiary issues or disputes which must be resolved in order to determine which final offer is more reasonable under the statutory criteria. First, there is a dispute about what school districts form the appropriate pool of external comparables. There is also a dispute as to whether wage rates in non-unionized school districts should be considered. Next there is an issue as to whether the already agreed to per diem wage increase for "long term" substitute teachers (calculated on the basis of the salary for starting "regular" teachers) must be considered in this proceeding. Most important, in the judgment of this arbitrator, is the issue of whether the final offers herein should only be compared to wage increases of other employees of the Employer or whether the total packages (including fringe benefits) should be considered.

The issue of determining appropriate external comparability for per diem substitute teachers is not easy to resolve. For "regular" full-time teachers employed in large urban areas, it is well accepted that wages and working conditions in other large urban school districts within the state are given more weight than wages and working conditions in considerably smaller, local area school districts. For other school district employees in blue and white collar bargaining units, this is not true. Substitute teachers usually have credentials that are indistinguishable from those required of "regular" teachers. They assume the job duties and responsibilities of "regular" teachers. It is usually assumed, nevertheless, that short term substitute teachers lack the job mobility of "regular" teachers and for a variety of reasons are more closely tied to a particular geographic area. Accordingly, it is reasonable to conclude that the most appropriate pool of external comparables for Green Bay substitute teachers is the one composed of the contiguous school districts and that little weight should be given to other metropolitan school districts. Further, although the arbitrator appreciates the difference between wages set by collective bargaining and those set by unilateral administrative or Board action and is aware of differing arbitral authority, she believes that to exclude consideration of non-union wages is not appropriate under Wisconsin's MERA. Thus, if external comparables were to be the sole factor to be considered, the undersigned would conclude that the Employer's offer while somewhat low is to be preferred over the Association's offer, based upon the external comparability evidence presented and determined most relevant.

In this dispute, however, both parties have primarily emphasized internal comparability and equity. As to this factor, the Association has a compelling argument. If wage increases of other employee groups were to be considered alone, the Employer's offer appears closer to wage increases for other School District employees either by voluntary settlement or unilateral action (although it should be noted that the Employer's final offer is almost a full percentage point below most support staff wage increases and well below the teachers' unit wage increase). Notwithstanding that, the undersigned believes that the Association is correct in its argument that since this bargaining unit receives no fringe benefits, it is appropriate to compare wage increases for this bargaining unit with total package increases received by other employees of the Employer. As has been well recognized in numerous arbitration awards, an Employer's economic costs include not only direct wages but all the other indirect and associated costs which are required to make up a total compensation package. All these costs are properly attributable to the bargaining unit involved or to the affected unrepresented employees. The "true" costs of all other settlements and voluntary increases for teacher aides, monitors, cooks, blue collar workers, teachers and administrators clearly favor the Association's wage offer. This factor should be weighed heavily generally and particularly in this proceeding because both parties addressed the issue at length and were in agreement that internal equity is a key goal for the Employer's wage policies.

The conclusion that internal comparability favors the Association's final offer is reenforced by one remaining argument noted but not yet discussed. The Employer contends that already agreed upon wages for "long term"

substitutes should be considered in this proceeding. The undersigned agrees with this Employer argument although consideration of this point leads her to a different conclusion from that presented by the Employer. Because of a long standing agreed upon practice, wage increases for members of this bargaining unit when they serve beyond five days in the same assignment and become "long term" substitutes are not in dispute. The change in "long term" substitute teacher rates has been agreed to. Bargaining unit members working for approximately 15% of the total annual substitute days will receive a wage increase of approximately 6% based upon the change in the beginning teacher salary schedule negotiated by the teachers' unit. Agreed upon wage increases for "long term" substitute teachers should, of course, be considered, as the Employer argues, when calculating the "value" of the package for this unit. Equally important, these increases also support the primary rationale for the Association's claim that "short term" substitute teacher wages should be treated equitably in relationship to other increases already agreed upon or given to other School District employees. The parties' agreement on wage increases for "long term" substitutes thus provides an additional reason to select the Association's final offer.

#### AWARD

Based upon the evidence and arguments presented by the parties, the statutory criteria of Section 111.70 (4) (cm) (7), and for the reasons discussed above, the arbitrator selects the Final Offer of the Association and directs that it be incorporated, along with all other items already agreed upon, in a collective bargaining agreement.

Madison, Wisconsin  
August 3, 1984

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June Miller Weisberger  
Mediator-Arbitrator