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STATE OF WISCONSIN

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

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 In the matter of the impasse between: *
 *
 MANITOWOC COUNTY EDUCATION *
 ASSOCIATION *
 *
 and *
 *
 MANITOWOC COUNTY HANDICAPPED *
 CHILDREN'S EDUCATION BOARD *
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Case IV
 No. 33612, MED/ARB-2868
 Decision No. 22006-A
 Michael R. Monfils
 Mediator/Arbitrator

APPEARANCES:

Mr. Richard Terry, Executive Director, Kettle Moraine Uniserv Council, representing the Association; and

Mr. John M. Spindler, Attorney at Law, Nash, Spindler, Dean & Grimstad, representing the Board.

BACKGROUND AND APPOINTMENT

The Manitowoc County Education Association, hereinafter referred to as the "Association," filed a petition on July 20, 1984, with the Wisconsin Employment Relations Commission requesting the initiation of mediation/arbitration of the impasse in settling the 1984-1985 contract between the Association and the Manitowoc County Handicapped Children's Education Board, hereinafter referred as the "Board," pursuant to Sec. 111.70 (4) (cm) 6 ff of the Wisconsin Statutes. After investigating the impasse the Commission declared a deadlock according to those same statutes and on October 17, 1984, appointed the undersigned as mediator/arbitrator to finally resolve the impasse.

Pursuant to the statutory requirements, a mediation session was conducted between the parties commencing at 4:00 PM, November 19, 1984, at the Riverview School Site in Manitowoc, Wisconsin. Noone petitioned for a public hearing on the impasse and none was held. Reaching no resolution to the impasse, the undersigned declared the parties at deadlock and ordered an arbitration hearing for 4:00 PM, December 17, 1984, at the Riverview School Site, Manitowoc, Wisconsin. The arbitration hearing was held at which time the parties were afforded the opportunity to present testimony, exhibits, relevant information, and make argument supporting their positions. The hearing was adjourned, and the parties exchanged final posthearing briefs on January 18, 1985, thus completing the record.

THE FINAL OFFERS OF THE PARTIES

Both final offers include all tentative agreements as certified to the Wisconsin Employment Relations Commission, those items in the prior agreement which have remained unchanged, the same entry level salary of \$16,000, the same first 6 salary levels as shown in the final offers below, plus the

following changes:

THE ASSOCIATION

Section 3.1 Wages and Compensation - increase all remaining levels by 7%;

Section 5.8 (Addition) Workday - employees assigned to participating districts shall be governed by that district's workday except that the employee workday shall not exceed the workday set forth below.

Employees of Riverview Staff have a work day equivalent to 8:00 AM to 4:00 PM. All employees may be granted flex time to be used for medical, dental appointments (i. e., if an employee wishes to leave at 3:45 PM, the employee will report for work at 7:45 AM). On Fridays & days prior to scheduled recess periods, employees are permitted to leave twenty (20) minutes after student dismissal.

THE BOARD

3.1 Wages and Compensation - increase all remaining salaries by \$900 except for teachers who are less than one full time equivalent position (FTE) whose salary shall be increased on a prorata proportion of \$900.

DISPLAY OF THE SALARY PORTION OF THE FINAL OFFERS

<u>F.T.E.</u>	<u>1983-84</u>	<u>MCEA 1984-1985</u>	<u>MCHCE 1984-1985</u>
0	12260	16000	16000
1	12950	16250	16250
1	13041	16250	16250
1	14014	16250	16250
3	14818	16750	16750
1	15383	16750	16750
3	15541	16750	16750
2	16698	17867	17589
2	16988	18177	17888
2	17422	18642	18322
4	18143	19413	19043
2	18866	20187	19766
5	19589	20960	20489
2	20311	21733	21211
2	20456	21888	21356
1	21319	22811	22219
3	21903	23436	22803
3	22192	23745	23092
2	22769	24363	23669
1	24503	26218	25403
1	24793	26529	25693
2	25371	27147	26271
1	26266	28105	27166
1	27251	29159	28151
2	28538	30536	29438
1 X .6	14701	15730	15241
1 X .6	11320	12112	11860
1 X .5	10622	11408	11112
1 X .5	9794	10480	10244
1 X .5	9433	10093	9883
1 X .5	8815	9432	9220
1 X .4	8415	9002	8773

FINDING OF FACT

1. Besides those instances specified in the final offers in which the parties are obviously in agreement, they have stipulated:

a. That the Manitowoc Handicapped Children's Education District (District) has the ability to pay for a settlement;

b. To change the wording in the prior agreement to include extending the response time for the teachers to apply to a posting, to extend the insurance plan to include spouses and independents, to allow extended leaves for as many as 2 members at one time (was 2%), to allow the salary of the teacher(s) on extended leave to commence upon return at the level at which the teacher would have been paid in the first year of leave, to allow release time for teachers coaching in a district with approval, to increase the items for which payroll deductions may be made, to increase summer work pay to \$250, and other such wording as stipulated to the Commission with the final offers;

c. That there is no dispute as to the lawful authority of the employer;

d. That there are 51.55 FTE's in the District;

e. That the teachers received a pay increase of 3.5% effective January 1, 1983, and an additional 5% in September, 1983.

2. The Association Final Offer would constitute an average increase of 7.9% with the lowest salaried teacher receiving 25% (\$12,950 to \$16,250) and the highest paid teacher receiving 7%. The Board Final Offer constitutes an average 5.5% increase with the same salaries and percentages for the first seven positions as has the Association and 3.15% increases to the teachers at the top.

3. Manitowoc County has been designated a "labor surplus area" by the U. S. Department of Labor. This was prompted to a great extent by an unemployment of was 11.8% in March, 1984. That unemployment rate has only improved to 8.8% in November. The State average for the same period is 7% and the surrounding three counties range from 6.1% to 6.8%. Whereas Manitowoc County had an average of 38,608 people employed in 1983, there were only 34,470 employed during the first ten months of 1984. Mr. Thomas E. Oelhafen, Employment Assistance Supervisor for the Manitowoc Area, attributes much of the improvement in the unemployment percentage from 11.8% to 8.8% to the failure of people to report for unemployment rather than to any general improvement in the Manitowoc economy. Most clearly, Manitowoc is an economically depressed area. See Board Exhibits 5, 6, 7, 8, 9, 10, 11 and refer to the testimony of Mr. Joe Schmitt, President of the Chamber of Commerce, on the record.

4. According to the Association Exhibit 19 entitled "Employment Review" of the Wisconsin Job Service for the month of August, 1984, indicates:

a. That the average weekly earnings for production workers rose from \$317 to \$337 over the prior year. That is an increase of 6.3%;

b. That the average weekly hours worked for those same people rose

from 38.7 to 39.2;

c. And, that the average hourly wage for the same workers rose from \$8.17 to \$8.59 or 5.14% with overtime. The last 12-month figure that shows an increase of straight time salary without overtime was June, 1983, to June, 1984. Average salaries went from \$8.37 to \$8.70, a 4% increase.

Note: The second largest Manitowoc employer, Mirro Corporation does not report to Job Service and is thus not included in the Manitowoc statistics according to the testimony of Mr. A. A. Drobka, General Manager, Employee Relations, of that company. Mr. W. D. Kuether, Executive Vice President of The Manitowoc Company, could not state whether his company reported to Job Service. It is possible that the statistics reported may be skewed in as much as these two companies constitute 25% of the employment in the county.

5. The county tax collection arrears rose from .0127 to .0230 of the total since 1980.

6. The Consumer Price Index of the Bureau of Labor Statistics, U. S. Department of Labor for the period ending October 31, 1985, increased over the prior year by 4.2% for All Urban Consumers and 3.6% for All Urban Wage Earners.

7. Without dealing with each individual category, the benefit package is typical of a school district and no evidence was submitted indicating that it was either more or less than a Wisconsin teacher might expect.

8. The following are rates of increase for units other than schools in the Manitowoc area (see Board Exhibits 1, 1A, 2, 3, 4, 4A):

City of Manitowoc for 1985, two year contract,	3%
Manitowoc County for 1984, includes a Compensation adjustment	6.5%
Manitowoc County for 1985, estimated based on a two year contract	3.3%
Mirro Corporation, 1984	5%
Mirro Corporation, 1985	4%
The Manitowoc Company, 1983	-10%
The Manitowoc Company, 1984 restore the 10%	10%
The Manitowoc Company, 1985	6%
(Note: This constitutes a gross increase of 6% over the past three years)	
Clem Becker, 1984 (No information for 1985)	0%
Brillion Iron Works, current year	4.9%
Eggers Industries, 1985	5.3%
Stoelting, current, 3.3% plus COLA	6.9%
Wisconsin Electric Power	4.8%
Wisconsin Fuel and Light	3.5%

Mr. Schmitt testified that the increases among commercial and industrial employers in Manitowoc County were in the 4% to 5% for the coming

year. This seems to match the pattern listed above.

9. There are five districts which feed the MCHCE System. Along with the two final offers, are listed the average dollar increase and average percentage increase of these districts for the 1984-1985 school year:

DISTRICT	DOLLARS	PERCENTAGE
Manitowoc	\$1,072	4.4%
Mishicot	1,901	9.5
Reedsville	1,610	8.9
Two Rivers	1,603	6.35
Valders	1,700	9.1
Association Offer	1,567	7.9
Board Offer	1,104	5.5

Note: Manitowoc is an arbitrated award. Two Rivers is in the second year of a two-year agreement.

10. Association Exhibit 24 shows 26 of 34 member districts reporting in CESA #7 to have given an average increase per teacher of \$1,920. It also shows average entry level salaries at \$15,199 and average schedule maximum at \$28,344.

11. With 156 of 304 districts reporting, all having less than 100 FTE's, the average increase was \$1,684 for this year. Association Exhibit 25 with this table also shows an entry level salary average of \$14,584 and a schedule maximum average of \$26,542.

12. With 229 districts reporting throughout the State of Wisconsin, the average increase is 6.5% with a non-weighted entry level salary average of \$14,736 and an average schedule maximum of \$27,288. The two benchmarks averaged in a weighted fashion are \$15,311 and \$29,676. In Association Exhibit 13 giving these figures, the Association has computed an average percentage increase of 8.6% by adding an average increment of 2.1% to the average benchmark increase of 6.5%. It is not clear how the 2.1% was derived nor how extensive this increment is applied. It is not clear from the exhibit whether the increment of 2.1% is the average increment where there are increments or whether it is a gross average including districts like Manitowoc City and Manitowoc County that have no increment and districts that have settled with a percentage increase but no incremental advancement.

13. Mishicot, Two Rivers, and Valders have the workday specified in the contract. Those workdays are:

Two Rivers - 433 minutes
Mishicot - 7:45 AM to 4:00 PM
Valders - 7:45 AM to 4:00 PM.
Reedsville - 7:45 AM to 3:45 PM

DISCUSSION AND CONCLUSIONS OF LAW

As in mediating a settlement, it might be better to begin resolving this impasse by discussing the support issue first, the matter of the workday. The Association is asking that the contract include a workday beginning at 8:00 AM and ending at 4:00 PM at Riverside and the equivalent amount of hours per day in the outlying districts. The Board wants nothing to do with this proposal.

In making the case, the Association states that three of the member districts have a stated workday in their contract. The practice of specifying a workday is common not only to school districts but also to private industry according to the Association. Adding this item to the contract would bring the contract in line with the typical contract and with the bulk of the contracts supporting the District. Even in the outlying districts served, the question of when the day begins or ends is left to the individual district as long as the equivalent amount of hours are scheduled. The Association offers numerous citations suggesting that the inclusion of such provision is generally supported by arbitral decisions while the removal of such provisions is not similarly supported as show in pages 25 through 29 of their brief.

The Board argues that the workday at Riverview is established by policy in a consistent manner. The administration allows release time for such things a dental and doctor appointments that cannot be otherwise scheduled. There is nothing in the record to show that the workday policy isn't working to the benefit of the teachers just exactly as it is now implemented. The hours are generally consistent with the support districts. There is no real need for the flex time for medical and emergency events since they are already allowed by the administration. Other uses of flex time would be frivolous. In testifying for the Board, Mr. Donatell said that there would be some trouble in implementing the proposal of the Association. Two of the support districts did have a longer day by 15 minutes. That by definition is not "equivalent." One district has different hours but not longer hours. The relationship of the proposed workday rule to Two Rivers' "433" minutes could be anything.

The new language could certainly cause some stress in implementation in the outlying schools especially where the school day is longer. Equally important, the teachers who work the two schools with longer hours could conceivably be entitled to overtime of 15 minutes a day for all days worked between the first day of school and the presentation of this award. That does constitute a potential cash benefit not calculated into the costs of the final offers and one that the Board would have had no opportunity to offset in their planning. When that is added to the record which establishes the desire of the Association for this provision but is weak on the need or ultimate benefit to the teachers, it would be difficult to award this issue to the Association as worded were it the sole issue in this arbitration.

The resolution of the impasse in the instant matter regarding the award of salaries to the teachers does not lend itself to the normal comparisons and evaluations that are used in the bulk of teacher settlements and arbitrations.

The principle of comparability in labor negotiations, and it follows in arbitrations, should lead two negotiators to pay any given teacher the same salary as any other teacher with the same experience and education working under similar conditions with similar benefits under the same economic influences. Regardless of CPI's, percentages of increase, dollar increases, and whatever, the interests of labor equity are served if those two teachers are paid the same when the smoke clears. One has the luxury of using benchmarks to check one group of teachers against the model.

The instant matter escapes the above model. Except for the entry level salary, the first steps, and the highest salary (not even a schedule maximum in the classic sense), there is really nothing to compare. Where one or the other exhibit does include an entry level salary and a schedule maximum, the inclusion of those figures was made incidental to other information offered by the party entering the exhibit.

Instead, the two parties to this arbitration support their positions by citing comparisons that would normally be more accidental than essential to the model arbitral decision. The Association offers a case throughout the exhibits and the brief that says that other "average" teachers are receiving as much or more in dollar and percentage increases than the Association is requesting their final offer. The Board argues that they are offering the teachers more than anyone else in the City of Manitowoc is getting in terms of increase and that they are doing it under adverse economic conditions. In capsule form, the parties are respectively arguing that no one in Manitowoc itself can expect more than the Board offers, and no teacher outside of Manitowoc would be saddled with less of an increase than the Association proposes - inside the city versus outside the city.

The strength of the Association case rests on comparisons with other school systems and the raises given the average teacher in those systems. The five support systems gave raises averaging \$1,577 per teacher with an unweighted average (an average of the averages) of 7.65%. In selected area schools displayed in Association Exhibits 15, 14, 12, and 6 the average increase is 8.52% or \$1,830 per teacher. The statewide average for all schools settled is \$1,802 at 8.6%. In CESA #7 the pattern is similar to the state pattern with an average increase of \$1,820. In systems of less than 100 FTE's the pattern is \$1,684.

Similarly, while the Teachers at Manitowoc received only 4.4% or an average increase of \$1,072, Manitowoc has traditionally been the one district comparable to the County Handicapped System. The schedule base for Manitowoc is \$17,000 while the highest teacher is paid \$30,624. Even the Association offer would not bring the District in line with Manitowoc Schools. Yet, for the 15 years before they formed an association, the teachers in the District always received the highest level of benefits and salary paid by the feeder school districts.

Even the manufacturing employees in a depressed economy like Manitowoc are

getting an average increase in weekly pay of 6.3% (Association Exhibit 18). No matter what the Consumer Price Index is, all salary increases seem to point to the Association offer.

While the evidence of average increases cited by the Association tends to overwhelm, there are some weaknesses in the Association case that mitigate much of the presentation. The Board in its brief points out one of the weaknesses in their brief when they say that "...the low pupil cost motivated these three (Valders, Reedsville, and Mishicot) small districts to concede and settle in the area of 9%." The same exhibits that array the percentages and increases cited above, Association Exhibits 13, 24, and 25, show entry level salaries of \$15,311, \$15,199, and \$14,584. With either final offer the entry level salary for the District will be \$16,000. The same is true for the schedule maximums on those same exhibits - \$27,288, \$28,344, and \$26,542. While we cannot be sure where the highest paid teachers would fall on another schedule, it is safe to assume that they would not exceed the schedule maximum by definition. Thus the Board offer of \$29,438 is closer to and exceeds in two cases the schedule maximums offered. The Association offer which is \$1,000 higher exceeds those maximums in every case and by a great deal. The Association repeats in brief that the Board offer would erode the position enjoyed by the teachers in the District. The facts seem to point to just the opposite. The teachers may already be in a position that is more than the average even with the Board offer. It appears as if the rest of the state is attempting to catch up to the Manitowoc City and Manitowoc County Teachers.

Secondly, the comparison with Manitowoc has certain weaknesses. It is not possible to tell for sure how the interior of the schedules nor even the pay of the two most senior teachers in the City Schools and the County System compare. There is nothing on the record to tell one that they are at the same level of experience and education. For some reason not stated on the record, the parity testified to by Mr. Donatell was severed before 1982. The evidence that is on the record, Association Exhibit 20, shows that the County Teachers are consistently \$1,200 to \$1,700 behind the City.

The Board, on the other hand, presents a case based almost solely on the conditions within Manitowoc County. Under extremely depressed conditions, the teachers received 8.5% increases in 1983. The Board offering 5.5% this year with a CPI that is only 3.6%. The private and public sector employers in the area are bargaining raises from 0% to 6% with the average at about 3.5%. Even Association Exhibit 19 shows an average increase of 4% in regular hourly wages. The hourly average in June, 1983, was \$8.37 and in the same month of 1984, \$8.70, about 4% more. The Association uses the weekly wage on Association Exhibits 18 and 19 while ignoring that the average hours per week and the overtime hours are increasing. The comparison with weekly wages in industry would be better served if the County Teachers were being asked to also increase their work time. Most importantly, Manitowoc is a depressed county with high unemployment and a bleak outlook for the near future. See Facts 3, 4, 5, 7, and 8 above. As the Board points out in their brief, those who are paid may be receiving more money, but, there are fewer of them

working. The Board keeps asking how they can justify a 5.5% increase under these conditions let alone 7.9% asked for by the Association.

Similarly, if one uses Two Rivers as the key settlement, then the ideal is 6.35% per Arbitrator Kerkman's discovery in the Manitowoc School District Arbitration, page 10 of the award dated 13 June 1984. Under those conditions, Arbitrator Kerkman awarded 4.4% rather than 8.9% asked for by the Association.

The Board's position has certain weaknesses also. Teacher's salaries do not historically follow the CPI. While it may serve as a beacon in some negotiations, arbitrators and negotiators have tended to downplay its value in teacher settlements. On that issue, the undersigned has no quarrel with Arbitrators Imes and Mueller cited in the Association brief. Nor is the arbitrated selection of the lower of two final offers serve as an acceptable comparable - Manitowoc City Schools. Arbitrator Kerkman said of his own award in that matter, "The undersigned is unable to award what he considers to be the appropriate settlement in this matter by reason of the jurisdiction the parties have conferred upon him."

To take the Association offer would award salary increases consistent with those given to teachers everywhere else. But, it would do so inspite of the fact that both union members and management in Manitowoc have found themselves to be compelled to established much lower levels of increase for their own occupations. It would do so inspite of the favorable position that is already held by the teachers when contrasted with the starting pay and highest pay given in comparable systems. It would also create a problem in scheduling teachers into at least two the support schools, a problem the solution of which is beyond the scope of these proceedings.

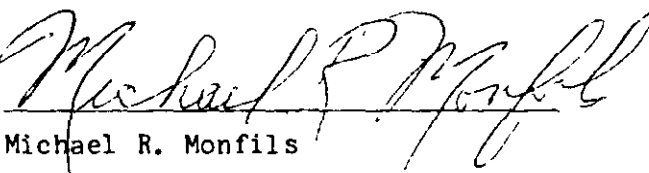
If the Board offer is chosen, the problem of the work day is postponed until a proposal can be put forth that avoids the dilemma caused by the support schools hours. Although the evidence is thin, it does not put the teachers in the District in an unfavorable position with regard to the salary paid those in other districts as least as far as the entry level salary goes and as far as the schedule maximum goes. And, it does more closely parallel the decision of Arbitrator Kerkman in the Manitowoc City Schools. None of this even takes into consideration the fact that the Board has already conceded some dozen changes in the other wording of the contract all of which favor the Association and some of which create a potential for additional cost to the District.

The undersigned knows that accepting the final offer of the Board will not answer the honest expectations of those teachers on the high end of the pay schedule. To do that would demand an overall award far more generous than can be justified in the instant case. Sadly, final offer arbitration sometimes creates just that kind of inequity. Being unable to right every injustice in the instant matter, the undersigned nevertheless makes the following:

AWARD

The final offer of the Board along with all changes agreed to during the negotiations and along with those portions of the predecessor agreement which remain unchanged are hereby included in the labor agreement for the 1984-1985 school year and where applicable are retroactive to the commencement of the school year.

Dated this 23rd day of January, 1985, at Green Bay, Wisconsin.

BY: 
Michael R. Monfils
Arbitrator