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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of WAUKESHA SCHOOL DISTRICT EMPLOYEES, LOCAL 2485, AFSCME, AFL-CIO to Initiate Mediation-Arbitration between Said Petitioner and WAUKESHA SCHOOL DISTRICT	Case 31 No. 34113 MED/ARB-3036 Decision No. 22331-A

APPEARANCES:

For the District: Bruce K. Patterson, Employee Relations Consultant

For the Union: Richard W. Abelson, Staff Representative

I. BACKGROUND

The Union has been, and is the exclusive collective bargaining representative, of certain employees of the District, in a collective bargaining unit consisting of all regular full-time and regular part-time employees classified in teacher aide classifications. Additionally, the Union and the District have been parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees.

On June 29, 1984, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on June 30, 1984. Thereafter, the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On November 9, 1984, the Union filed the instant petition requesting that the Commission initiate Mediation-Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On January 24, 1985, a member of the Commissions's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations. Subsequently, the Parties submitted to the Investigator their final offers, as well as a stipulation on matters agreed upon. The Investigator then notified the Parties that the investigation was closed, and advised the Commission that the Parties remain at impasse.

Next, the Commission ordered the Parties to select a Mediator/Arbitrator to assist them in resolving the dispute. The Parties selected the undersigned and he was advised of his appointment in a letter from the Commission on March 4, 1985.

The Parties met for the purposes of Mediation and Arbitration, if necessary on June 4, 1985. No agreement was reached and it was necessary to meet again on July 15, 1985 for Arbitration. Post-hearing briefs were due August 14, 1985. The District's brief was received by that time. Telephone contacts concerning receipt of the Union's brief were unsuccessful. On October 1, 1985, the Union was asked in a letter to contact the Arbitrator regarding the whereabouts of its brief. On October 23, 1985, no communication had been received from

the Union and the Arbitrator wrote advising that if the brief was not received by October 31, 1985, the record would be closed. A brief was received before that date. The briefs were then exchanged and the Parties were advised that reply briefs were due by November 15. The District submitted their reply brief by the deadline. The Union did not submit a reply brief. It is based on the relevant statute, the evidence and the arguments of the Parties, that the Arbitrator renders the following award.

II. FINAL OFFER AND ISSUES

The District's offer addresses only two issues: (1) wages, and (2) duration. They propose a one-year contract and propose to increase all wage rates by 5.93 percent.

The Union, in its final offer, also proposes a one-year contract. In addition, their proposal contains seven other points. They are as follows:

"1. Amend Section 2.01, Recognition and Bargaining Unit, to add the following sentence:

'Employees who work in the lunch room, as lunch room aides, who are otherwise eligible for representation under the labor agreement shall have the hours worked in the lunch room added to their hours for the purpose of computing contractual benefits.'

"2. Amend all pertinent provisions of Section 11.01 (B); Section 13.01; and Section 19.05, to delete reference to 'more than four (4) hours' or 'four (4) hours or less', and replace with 'four (4) hours or more' or 'less than four (4) hours.'

"3. Add Memorial Day to the list of paid holidays in Section 12.01.

"4. Re-classify the Library Aide classification from Range II to Range III.

"5. Create a new pay range for the Exceptional Education Aides as follows (1983-84 rates):

Start	After One (1) Year	After Two (2) Years
$6.01	$6.23	$6.45

"6. Increase all wage rates by seven percent (7%) across-the-board on July 1, 1984.

"7. The District shall not decrease the hours of work bargaining unit employees in a manner that would offset negotiated wage increases."

III. ARGUMENTS OF THE PARTIES

A. The District

The District proposes that all rates be raised by 5.93 percent, whereas the Union proposes a 7.00 percent across-the-board increase.

The District presents a number of arguments in support of their wage offer. First, they state that their offer is internally consistent with voluntarily negotiated contracts between the District and two other certified bargaining units --

also represented by the same AFSCME Local Union. For instance, the annualized average of the two cited settlements is just over 6 percent. They suggest this more closely approximates the District's final offer than the Union's total package, which they cost at over 13 percent.[1] For support of their position concerning internal comparables, they cite a number of decisions which state that voluntary internal settlements deserve great weight in Mediation/Arbitration proceedings.

The District also argues that their offer is externally consistent with the pattern of settlement for 1984-85 with districts employing teacher aides in Waukesha County. This, in their opinion, is a valid basis of comparability since all of the districts located in Waukesha County employ teacher aides, and the majority of the Districts are contiguous to the Waukesha District. In addition, they note that Waukesha County constitutes the labor market from which the employees in this unit are drawn, and is the only area the District recruits to fill vacancies. Given their comparability, the District notes that the pattern of settlement for the nine comparable Districts is just 6.37 percent at year end. The District's offer is 5.93 percent, and is within 0.4 of one percent of the pattern. The Union's demand is virtually double the pattern on wages alone. In addition, the District suggests that the Union's selection of comparables is so widely dispersed and selective that it cannot be considered relevant.

The next issue addressed by the District is Item 7 of the Union's offer. While the District believes the 13 percent increase under the Union's final offer could be rejected, just on the basis of being an excessive economic demand, it believes Item 7 of the Union's final offer alone is sufficient for the Arbitrator to reject it and award for the District. As an unusual and restrictive demand the District suggests that it is the Union's burden to show that this type of provision has either wide acceptance or that the negotiators, as reasonable parties, should have agreed to it. Neither, in their estimation, has been demonstrated.

They acknowledge that the Union points to similar language in other district's in support of their position. However, that language contains several elements that the Union's proposal does not. First, it limits its applicability to the present contract term and it contains a recognition of the employer's right to reduce the work force by layoff. Without at least that much of a qualifier, the District firmly believes that if Item 7 is placed in the contract, it would constitute an undue restriction on its ability to reduce the size of its work force.

The District also argues that their wage offer is supported by the cost of living criteria. With respect to the former, they note that District Exhibit 1 shows the growth in the CPI for the period preceding the negotiations for this 1984-85 contract to be more closely approximated by the District's offer than the Union's offer. In addition, employees in this group who desire to participate in health insurance coverage enjoy protection from the rapid cost excalation of medical services.

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1. This costing, according to the District's exhibits, is accounted for as follows: 7% ($86,046) wages, 3.78% reclassification ($43,102), 0.55% ($7,550) holiday, the rest is attributable to their estimate of the cost impact of the language items on lunch room ($8,440), lower benefits hour standard ($14,350) and the health insurance increases ($2,817). Their estimate of the total cost of the Union's package is an increase of $167,634 or 13.13%.

Regarding the proposal to reclassify, the District does not believe that there have been any changes in the jobs which would justify the Union's proposal. To support this, they ask the Arbitrator to compare the testimony of Union witnesses and the job descriptions for these positions. It is their assessment that the job descriptions clearly show that the work character set forth in the descriptions is consistent with duties as described by Union witnesses at the hearing. There was no substantiation of change in the nature of tasks offered in testimony. Rather, the "change" referred to a specific task or tasks that employees may perform. Hence, they argue that the requests for reclassification are not supported by the record.

With respect to the other proposals, they argue that when they are considered in the aggregate, and along with the other proposals, the Union's offer constitutes an excessive offer which is not justified on any basis.

B. The Union

The Union takes the position that, based on the statutory criteria, the wage offer of the Union is clearly more justified than the Board's offer. They first distinguish the custodial-maintenance units 5 percent settlement, since it did not involve a "catch-up" issue. There was a "catch-up" issue in the clerical contract and they received an increase totaling over 11.5 percent for the 18 month duration of their contract. Based on the need for catch-up -- which they contend is demonstrated by their exhibits -- the Union asserts that their 7 percent demand is justified. Even then, the Union's offer on wages will not make dramatic inroads on the catch-up issue, but the offer of the Union will help bring the Waukesha aides closer to their counterparts in the comparable school districts. On the other hand, the Board's offer makes no effort to facilitate the bringing of pay for Waukesha aides up to the levels of the comparable districts. Accordingly, the Union believes that this failure to deal with the issue of catch-up is a fatal flaw in the District's final offer.

The next issue on the Union's proposal is to provide for the hours that teacher aides work in the lunch room be counted towards their overall seniority. The Union argues that this is a proposal that is justified on the basis of common sense and equity. The hours an aide spends working in the lunch room should count toward the accrual of bargaining unit hours. These hours are critical for the eligibility and receipt of contractual benefits, as well as the accrual of seniority for job posting rights, layoff and recall. They note that the only argument raised against this by the District is cost. However, the Union argues that the additional expenditures of money that may result does not mitigate against the Union's proposal. The inequity of not counting certain teacher aide work toward overall bargaining unit hours is ridiculous on its face. To bring compliance with the stated intent of the contract is far and away the overriding concern, which is designed to be equitable. Even so, they contend that the Board's estimate of the cost of this item is grossly exaggerated.

Item 2 relates to health insurance, sick leave and job postings. Only employees who work more than four hours per day are eligible to participate in the health insurance plan, or accrue sick leave. Additionally, jobs of four hours or less are subject to job posting. The thrust of the Union's proposal is that the cut-off of employees working exactly four (4) hours is a capricious and arbitrary standard. This cuts a large number of people (47) out of benefits. Last, they believe that the District has again overstated the cost. They do not believe that the cost of these items is significant.

Regarding the holiday proposal, the Union notes that Memorial Day is the only paid holiday that regular employees of the District receive, when school is in session, that is not extended to the teacher aide employees. The other school year employee holidays are Good Friday, Labor Day, Thanksgiving, and the Friday after Thanksgiving. All other holidays fall within the school vacation periods that are unpaid for teacher aide employees. The addition of this one holiday will bring the teacher aide employees up to the level of fringe benefits (on a pro-rated basis with other District employees.)

The next item discussed by the Union is the reclassification of the Library aide. This would provide a 0.22$ per hour raise at 1983-84 rates. They believe that the evidence shows that the Library aide classification is inappropriately grouped with the classifications in Range II of the salary schedule. Their justification is that the Library aide classification is a highly skilled and technical position, requiring the Library aides to work independently, without other Librarians and teachers present, a major portion of their workday.

The last issue is the pay upgrading of the exceptional education aides. This is a most significant issue to the Union. They believe their proposal to create a new Range IV and provide increases over and above the current Range III of 0.75$ per hour at each step of the schedule is justified, based on: (1) the nature and importance of their duties to the District, and (2) a comparison of wages for exceptional education aides in other Districts. The District's proposal of $6.04 is the lowest of any district. The pay range goes from a range of $6.10 to a high of $8.07. Thus, the Union asserts that for the Waukesha exceptional education aides to remain the lowest paid aides of their type from among the comparables, is clearly not justified in light of the range of complexity and expertise they bring to their positions. This is particularly unjustified when it is compared to the background of the Waukesha School District having the lowest annual cost per student of all comparable districts.

V. DISCUSSION AND OPINION

The Arbitrator is faced at the outset with a disagreement as to the appropriate set of comparables. The District utilizes the schools (a total of nine) in Waukesha County.[2] The Union uses a selected group of schools in Waukesha, Milwaukee, Washington and Ozaukee Counties (a total of 19).[3]

Even if there was agreement on which schools were comparable, meaningful comparisons of individual positions or position classifications based on this record, are very difficult, if not impossible. For instance, the Waukesha District has

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2. They are: Arrowhead, Elmbrook, Hamilton, Kettle Moraine, Menomonee Falls, Mukwonago, Muskego-Norway, New Berlin, and Oconomowoc.

3. They are: Waukesha, West Allis/West Milwaukee, Elmbrook, Wauwatosa, West Bend, New Berlin, Mukwonago, Oconomowoc, Menomonee Falls, Oak Creek/Franklin, Muskego/Norway, Kettle Moraine, Mequon/Theinsville, Greenfield, Cudahy, South Milwaukee, Greendale, Hamilton, and Germantown.

three pay ranges covering 15 different job titles.[4] However, many schools in both comparable groups have only one range covering all aides. Others have different job titles and some classifications at other schools are undefined in this record. Thus, the Arbitrator is left in a position only to make the most general of comparisons, since in most cases the record does not bear out what types of aides are employed in other districts.

On the issue of the general wage increase, even if the Arbitrator accepts the District's comparable group and their pairing of positions for comparison purposes, it appears that the Union's offer is more reasonable. The District's data shows that the average wage rates in the three ranges were as follows:

	Average	Board	Union
Range I	6.29	5.57	6.63
Range II	6.42	5.81	5.86
Range III	6.61	6.04	6.10

It can be seen that the difference in the offers, concerning the matter of a general increase is slight, but because the District does appear to be significantly behind the pack, the Union's offer is most reasonable because it addresses the need for generally higher wage levels. Moreover, the significant disparity in the external comparable would tend to outweigh any preference for the internal pattern to the extent it exists.

The next major issue to be addressed is the Union's proposal to create a new and higher paid classification for exceptional educational aides. There also appears to be some justification for this proposal as well, since some districts do have separate classifications for exceptional educational aides, and where they do, their wage is calculated at $6.85 per hour - slightly less than the Union's offer of $6.90.[5] Even where schools do not have a special distinction, there are several schools which pay more than $6.90 for all aides.[6] The justification is underlined by the fact that the District utilizes this classification to a greater extent than other districts.

4.

Range I - General Aides	Range II
Reading Aides	Counselor Aides
Kindergarten Aides	Library Aides
Large Class Aides	Media Center Aides
Bilingual Aides	
Title I Aides	Range III Supervisory Aides
Art Department Aides	
Foreign Language Aides	Cafeteria Aides
Science Aides	Exceptional Education Aides
	Hall Aides
	Study Hall Aides

5. This includes: West Allis ($7.26), Oakcreek/Franklin ($6.51), Muskego/Norway ($6.31), Mequon ($6.87), Greenfield ($7.80), Cudahy ($6.97), and Germantown ($6.21).

6. From the board comparables, this includes: New Berlin ($7.97), Oconomowoc ($7.65), and from the Union Exhibits: Greendale ($8.07).

On the two most significant economic issues, the Union's offer appears to have some justification. However, when this portion of their offer is added to their other demands, particularly Item 7, their proposal as a whole is so excessive that it must be deemed more unreasonable than the District's offer.

The Arbitrator can accept a general wage increase slightly more than the internal increases, and he can accept some justified catch-up reclassification for exceptional education aides, but he cannot accept these proposals when combined with (A) a costly holiday proposal which clearly has no justification in the comparables; (B) a proposal to effectively expand the scope of the bargaining unit with no particular support in the comparables; (C) a costly proposal to alter the benefits standard which also has no support in the comparables; (D) only marginal arguments for Library aide reclassification; and (E) a provision which equates to a total job security/no-layoff clause (Item 7).

Such broad sweeping and fundamental changes are totally unsupported in the comparables. Although support in the comparables is not absolutely necessary to support proposed changes -- if it can be demonstrated that a final offer is so inherently reasonable, or equitable, that it should have been accepted at the bargaining table. There is no such demonstration here. It simply is not realistic to say that objectivity compells the adoption of this excessive package. A contract that grants big catch-up/reclassification increases and total job security, while at the same time granting significant, if not dramatic, gains in benefits, qualifiers, holidays and the scope of the bargaining unit, should not ordinarily be granted by Arbitrators, and should only be accomplished in bargaining.

Even without the holiday, scope, benefits standard and Library aide reclassification proposals, it would be difficult to accept the Union's proposals for catch-up and reclassification in the face of Item 7. In fact, it is a fatal flaw for a combination of reasons. First, it has no support in the comparables. The Union did point to the Germantown contract in support of its Item 7. However, the language there, while ambiguous, does state the employer's right to layoff is not negated. There is no such proviso in the Union's language here, and as written, a reduction in hours which would include layoffs, could be said in an aggregate sense to offset wage increases. Thus, it must, for the purposes of this Arbitration, be construed as effectively a no-layoff clause, wholly distinguished from the Germantown contract.

Second, Item 7 is a fatal flaw because large catch-up increases and no layoff clauses are generally unheard of, and specifically unsupported in this record. In this respect, without compelling reasons, the Union seeks to alter a basic tenet of collective bargaining by suggesting that their substantial demands should be insulated from the possilibity of a wage/employment trade-off. It is not unusual to expect the

justification for a proposal which would not only grant substantial catch-up, while at the same time, totally handcuffing the employer from instituting any layoff for any reason.

On the other hand, there is no doubt the District's offer is unreasonable because it fails to address an apparent need for some significant wage adjustments. However, it is less unreasonable and less unrealistic than the Union's offer, which is simply a matter of overreaching.

AWARD

The July 1, 1984 to June 30, 1985 contract between the Parties shall include the Final Offer of the Employer and the stipulations of agreement.

Gil Vernon, Mediator/Arbitrator

Dated this 25th day of February, 1986, at Eau Claire, Wisconsin.