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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Petition of FLORENCE EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between Said Petitioner and SCHOOL DISTRICT OF FLORENCE COUNTY	Case 7 No. 33064 MED/ARB-2689 Decision No. 22362-A

Appearances:

Mr. R. A. Arends, Executive Director, WEAC UniServ Council 21, appearing on behalf of Association.

Mulcahy & Wherry, S. C., Attorneys at Law, by Messrs. James W. Freeman and Joseph A. Rice, appearing on behalf of Employer.

ARBITRATION AWARD:

On March 4, 1985, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4) (cm) 6. b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Florence Education Association, referred to herein as the Association, and School District of Florence County, referred to herein as the Employer, with respect to certain issues as specified below. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings between the Association and the Employer on June 13, 1985. Prior to the commencement of the mediation proceedings, public hearing was held pursuant to the petition of six citizens and taxpayers of Florence County, Wisconsin, which was timely filed with the Wisconsin Employment Relations Commission.

The mediation proceedings of June 13, 1985, failed to resolve the issues disputed between the parties, and at the conclusion of said proceedings the parties waived the statutory requirements found at 111.70 (4) (cm) 6. c., which require the Mediator-Arbitrator to provide written notification of his intent to arbitrate, and to establish a time frame within which the parties may withdraw their final offers. Furthermore, the parties waived hearing and agreed to a stipulated submission of exhibits pursuant to an established schedule. The exhibits and rebuttal exhibits were received by the Arbitrator, and initial briefs and reply briefs were filed by the parties. Final briefs were exchanged by the undersigned on October 9, 1985.

THE ISSUES:

The final offers of the parties are attached hereto as Appendix A and Appendix B. The issues framed by the final offers are:

1. Whether the term of the Agreement should be two years as proposed by the Association, or three years as proposed by the Employer.

2. Whether the salary schedules proposed by the Association or whether the salary schedules proposed by the Employer should be adopted.

DISCUSSION:

The statute directs that the Mediator-Arbitrator, in considering which party's final offer should be adopted, should give weight to factors found at 111.70, (4) (cm) 7, a through h. The undersigned, in evaluating the parties' offers, will consider the offers in light of the foregoing statutory criteria, based on

the evidence submitted by the parties and the arguments advanced by the parties in their briefs.

There are two issues involved in this matter, salary schedules and term of contract. The undersigned will consider each of the issues serially.

DURATION OF CONTRACT

Here, the Employer proposes a three year Contract, which becomes effective August 15, 1983, and remains in effect through August 14, 1986. The Association proposes that the Agreement become effective August 15, 1983, and remain in effect through August 14, 1985.

The undersigned has considered all of the arguments advanced by the parties, and the cases cited with respect thereto. In the considered judgment of the undersigned, a three year term of agreement is clearly favored. In the instant matter, final briefs were not exchanged until several months after the expiration date of the Agreement proposed by the Association. By contrast, the Employer proposal of three years permits the parties to enjoy a Collective Bargaining Agreement which covers two years retrospectively, and the school year 1985-86 at least partially prospectively. Based on the foregoing, the undersigned concludes the purposes of collective bargaining are better served where duration of a contract being arbitrated goes beyond the period of time that the parties took to submit their evidence and make their argument, and beyond the period of time the date of the Award becomes effective. Consequently, the undersigned concludes that the three year term of agreement proposed by the Employer is clearly superior to the two year term proposed by the Association. Therefore, on this issue alone the Arbitrator finds for the Employer final offer.

THE SALARY DISPUTE

There are a number of considerations that the undersigned must determine in order to decide the salary matter. The parties dispute the proper set of comparables for the purpose of selection of the appropriate salary schedules. Furthermore, these proceedings are set against a backdrop where the prior two year Collective Bargaining Agreement was set by Mediator-Arbitrator Rothstein (Case V, No. 28775, Med/Arb-1426, Decision No. 19382-A), wherein Arbitrator Rothstein selected the Association final offer, however, in doing so, included dicta to the effect that the award to the Association was more than he would have preferred. Consequently, the undersigned must necessarily determine what impact, if any, the foregoing dicta and the prior award of Rothstein should bear on the outcome of this matter. Finally, the undersigned must necessarily consider the traditional comparisons at benchmark points to determine which final offer more nearly reflects appropriate pay levels at said benchmarks.

THE COMPARABLES

Association here proposes that the comparables be established so as to include all of the school districts contained in CESA District No. 8, arguing that Mediator-Arbitrator Rothstein adopted what was then CESA District No. 3 as an appropriate set of comparables. The evidence shows that CESA District No. 3 reflected the school districts contained therein at the time of the Rothstein award. The evidence further shows that since the date of said Award, the CESA districts have been restructured, and the instant Employer is presently a member of CESA District No. 8, and that CESA District No. 8 includes those districts which were formerly in the old CESA District No. 3, as well as the addition of certain districts beyond the former boundaries of former CESA District No. 3. The newly included districts, which were not heretofore contained within the former CESA District No. 3, are Bowler, Wittenberg-Birnamwood, Tigerton, Marion and Clintonville. In support of its proposition that CESA District No. 8 constitutes a proper set of comparables, Association cites School District of Crandon, Decision No. 30742, Med/Arb-2030, 6/2/83, (Arbitrator Haferbecker); School District of Florence County, (supra); School District of Wausaukee, Decision No. 33374, Med-Arb-2763, 7/29/85 (Arbitrator Michelstetter).

Association further argues that a proper set of comparables is the average salary paid to all teachers in the State of Wisconsin, because it provides a larger statistical sampling resulting in more valid comparisons; and because the state fiscal policies very directly affect schools; and because the "trickle down" effect will continue to operate.

Employer argues that the proper set of comparables are the districts contained within the Northern Great Lakes Athletic Conference as follows: Crandon, Elcho, Goodman, Laona, Pembine, Phelps, Three Lakes, Wabeno and White Lake. All of the conference schools relied on by the Employer reside within the present boundary of CESA District No. 8, except for Three Lakes, Elcho and Phelps, which are not within the confines of the CESA district. In support of its position that the athletic conference be determined a valid comparable pool for the purpose of measuring wages, hours and conditions of employment, the Employer cites the following cases: School District of Princeton, Dec. No. 22015 (4/85); Columbus School District, Dec. No. 16644-A (4/79); Joint School District NO. 2, City of Sun Prairie, Dec. No. 16780-A (7/79); Appleton Area School District, Dec. No. 17202-A (1/80); Kaukauna Area School District, Dec. No. 18093 (2/81); School District of Grantsburg, Dec. No. 19170-A (6/82); Sheboygan Area School District, Dec. No. 18505-A (10/81); Oconto Unified School District, Dec. No. 19895-A; School District of Kohler, Dec. No. 19674 (11/82); School District of Cashton, Dec. No. 19791 (2/83); Reedsburg School District, Dec. No. 17228 (4/80); School District of Shullsburg, Dec. No. 17167 (2/80); School District of Marshfield, Dec. No. 18111 (5/81); School District of Spooner, Dec. No. 19986 (5/83).

The undersigned has considered all of the demographics with respect to the appropriate set of comparables in this matter, and concludes that the weight of arbitral authority favors the adoption of the athletic conference as the primary set of comparables. The undersigned has considered specifically the holdings of Mediator-Arbitrator Rothstein, when he concluded in his decision that the appropriate set of comparables should be what was then CESA District No. 3, and has since become CESA District No. 8. In so holding, Rothstein concluded that: "CESA boundaries tend to be well established because they are a governmental creation." The Employer persuasively argues that the underlying rationale of Rothstein's decision, that CESA boundaries tend to be well established, has been undermined by reason of the reduction of the number of CESA districts from 19 to 12 in September, 1984. The undersigned accepts the argument of the Employer with respect thereto, particularly, in light of the weight of arbitral authority supporting the proposition that the athletic conference constitutes an appropriate set of comparables. Consequently, the undersigned will review the parties' salary schedule offers, making comparisons to the schools contained within the foregoing athletic conference as argued by the Employer.

The undersigned has considered the other cases cited by the Association in support of its argument that CESA District No. 8 constitutes an appropriate set of comparables. The undersigned has already concluded that the Rothstein holdings are inapposite in the instant matter. The undersigned has further considered Arbitrator Michelstetter's conclusions in School District of Wausaukee (supra), wherein he adopted the comparisons of CESA District No. 8 for the purposes of determining which final offer to award there. It is especially noted by the undersigned that at page 3 of his Award, Arbitrator Michelstetter found: "The parties have agreed upon the M and O Athletic Conference which shall be used as the primary set of comparables. Because there is a substantial similarity of the wage rates in the M and O Conference and CESA 8, CESA 8 is also used as a secondary set of comparables." From the foregoing, it is clear that Michelstetter considered the athletic conference to be the primary set of comparables, and included all of CESA 8 by reasosn of the similarity of wage rates within CESA in his opinion. The undersigned has reviewed wage rates within CESA 8, and concludes that the similarity of wage rates in CESA 8, compared to the wage rates paid among the instant athletic conference (Northern Great Lakes Athletic Conference), and notes that the similarity which Michelstetter found in Wausaukee is absent in making the same comparison here. Consequently, the holdings of Michelstetter in Wausaukee are inapposite.

The undersigned has further considered the holdings of Arbitrator Haferbecker

in School District of Crandon (supra), and concludes that in view of the weight of arbitral authority opposing such holdings, the athletic conference is the appropriate measure of comparability in this matter.

The Association has further proposed another set of comparables be the state average salary paid. The undersigned agrees with arbitral authority cited by the Employer that the state average is not an appropriate set of comparables for the purpose of determining whether a final offer should be adopted, merely on the basis of determining whether the offers of the parties measure up to the state-wide average. Such a conclusion would fly in the face of traditional considerations, which include labor market area and geographic wage differentials, among other things. Notwithstanding the foregoing, the undersigned has previously held, and continues to believe, that it is appropriate to consider whether the salaries paid in a given school district have eroded from the state-wide averages, providing that sufficient evidentiary data is contained within the record to make a comparison over a number of years as to whether the average salary paid in a particular school district has continued to slip away from the level of the average salary paid across the state. The undersigned considers such an erosion from the average state salary to be a significant item in dermining which party's final offer to accept, if it is proven.

THE SALARY SCHEDULE DISPUTE

It is significant, in the opinion of the undersigned, to consider background in which the instant proceedings are set. Specifically, the instant proceedings follow on the heels of a prior mediation/arbitration award issued by Arbitrator Rothstein. It is clear from a thorough reading of the Rothstein award that Arbitrator Rothstein awarded for the Association, primarily because the Employer offer in that matter created an erosion of wages paid to the teachers. It is equally clear that Arbitrator Rothstein considered the teacher final offer to be higher than he would have awarded had he had jurisdiction to fashion an award which he would have considered equitable. Rothstein specifically states at page 17 of his Award: "While it is true that the Association's proposal creates improvements which, from an historical perspective, may not be warranted, there is clearly no showing that an erosion in terms of actual dollars earned or percent increases enjoyed by Florence teachers is justified." Consequently, the undersigned concludes it is appropriate to look outside the term of this Agreement as to where the appropriate level of settlement should fall. The foregoing conclusion is supported by the dicta of the Mickelstetter Award in Wausaukee, where at page 8 of his Award he opines: "It is clear in this case that neither offer of the parties is particularly appropriate. . . I note that in the succeeding contract a less than comparable total package might be appropriate, because the Association will have a windfall under this award." The undersigned, in analyzing the parties' respective final offers therefor will take into consideration any windfalls which the Association might have received by reason of the Rothstein Award.

Having concluded that the athletic conference is the appropriate set of comparables, the undersigned looks to the evidence in order to compare the rank order among the athletic conference, as well as a comparison to average salaries paid at the benchmark positions. The following table sets forth a rank order comparison comparing 1982-83 to 1983-84 to 1984-85, based on the Board's and Association's final offer.

Rank Order Comparison

	1982-83	1983-84		1984-85	
		Bd.	Assn.	Bd.	Assn.
BA Minimum	1	2	2	2	2
BA Step 7	1	2	1	2	1
BA Maximum	1	2	1	2	1
MA Minimum	1	1	1	1	1
MA Step 10	1	1	1	1	1
MA Maximum	1	1	1	1	1
Schedule Maximum	1	1	1	1	1

In addition, the undersigned has considered the following table in comparing the impact of the final offers for 1983-84 and 1984-85 with the average salaries paid among conference schools:

	1983-84			1984-85		
	Average	Bd.	Assn.	Average	Bd.	Assn.
BA Minimum	12,761	13,451	13,496	13,625	14,205	14,256
BA Step 7	16,509	17,405	17,698	17,675	18,381	18,828
BA Maximum	19,992	21,359	21,900	21,335	22,557	23,400
MA Minimum	14,296	15,334	15,330	15,255	16,193	16,190
MA Step 10	20,186	22,597	22,837	21,693	23,861	24,327
MA Maximum	22,137	25,018	25,339	23,723	26,417	27,039
Schedule Maximum	23,182	27,038	27,209	24,939	28,547	29,009

From the foregoing, it is clear to the undersigned that the Employer final offer measures well when compared to what has been determined to be the comparables. Consequently, based on these criteria the undersigned concludes the Employer final offer should be adopted for 1983-84 and 1984-85.

The undersigned now considers the Employer final offer for 1985-86 where there are no comparisons available in the data. The undersigned notes that the Employer offer will generate an average teacher increase of $1631 per teacher for the 1985-86 school year. While there is no measure in this record to compare said average teacher increase with the settlements that have occurred, in view of the Rothstein Award which generated superior salary schedules than he otherwise would have awarded had he had such jurisdiction, the undersigned concludes the Employer offer is acceptable for 1985-86 for that reason.

The undersigned has reviewed the record in order to make a determination as to the impact of the final offers here as it affects the relationship to the average teacher salary paid in the state. The undersigned is satisfied that there is insufficient evidence to show whether or not an erosion has taken place with respect thereto. There is nothing in this record to establish the relative relationship of the average salaries paid in the instant district compared to the state-wide averages over a number of years. The foregoing information would be essential in making a determination as to whether erosion has taken place, or would take place under the final offers of the parties. Consequently, the undersigned is unable to make a finding and, therefore, makes none with respect to said comparison.

Therefore, the undersigned concludes that the salary offer of the Employer is preferred.

SUMMARY AND CONCLUSION:

The undersigned has concluded that a three year Contract should be awarded, and the undersigned has further concluded that the salary offer of the Employer should be awarded. Therefore, the Employer offer is adopted in its entirety.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering the arguments of the parties, and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which remain unchanged through the bargaining process, are to be incorporated into the written Collective Bargaining Agreement of the parties.

Dated at Fond du Lac, Wisconsin, this 18th day of February, 1986.

JBK:rr

Jos. B. Kerkman, Mediator-Arbitrator

January 27, 1985

APPENDIX A

FINAL OFFER

OF THE

FLORENCE EDUCATION ASSOCIATION

FOR THE

1983-84 AND 1984-85

COLLECTIVE BARGAINING AGREEMENT

Issue #1 - 1983-84 Salary Schedule - See Attached.

Issue #2 - 1984-85 Salary Schedule - See Attached.

Issue #3 - Article XXV - Term of Agreement.

Revise as follows:

This agreement shall be in effect August 15, 1983 and shall remain in effect for two (2) years or until negotiations on a new contract are concluded.

This contract was awarded through Last Best Offer Mediation-Arbitration on the ____ day of _____, 1985.

2/1/85

1/10/85

APPENDIX A

1983-84 & 1984-85 SALARY SCHEDULE

Steps 83-84	Steps 84-85	B	B+6	B+12	B+18	B+24	B+30	B+36	M	M+6	M12B42	M18B48	M+24	M+30
1		13496	13758	14020	14282	14544	14806	15068	15330	15715	16101	16486	16872	17257
	1	14256	14532	14809	15085	15361	15637	15914	16190	16597	17004	17411	17818	18225
2		14196	14460	14724	14988	15253	15517	15781	16164	16549	16933	17317	17702	18086
	2	15018	15299	15580	15860	16141	16422	16703	17094	17500	17906	18312	18718	19124
3		14897	15163	15429	15695	15961	16227	16493	16998	17382	17765	18149	18532	18916
	3	15780	16065	16351	16636	16921	17207	17492	17998	18403	18808	19213	19618	20022
4		15597	15865	16133	16401	16670	16938	17206	17832	18215	18597	18980	19362	19745
	4	16542	16832	17122	17412	17702	17992	18282	18902	19306	19710	20114	20517	20921
5		16297	16568	16838	17108	17378	17648	17919	18666	19048	19430	19811	20193	20574
	5	17304	17598	17893	18187	18482	18776	19071	19806	20209	20612	21014	21417	21820
6		16998	17270	17542	17814	18087	18359	18631	19500	19881	20262	20642	21023	21404
	6	18066	18365	18664	18963	19262	19561	19860	20710	21112	21514	21915	22317	22718
7		17698	17972	18247	18521	18795	19069	19344	20334	20714	21094	21474	21853	22233
	7	18828	19132	19435	19739	20042	20346	20649	21614	22015	22416	22816	23217	23617
8		18398	18675	18951	19227	19504	19780	20056	21169	21547	21926	22305	22684	23062
	8	19590	19898	20206	20514	20822	21130	21439	22519	22918	23317	23717	24116	24516
9		19099	19377	19655	19934	20212	20491	20769	22003	22380	22758	23136	23514	23892
	9	20352	20665	20977	21290	21603	21915	22228	23423	23821	24219	24618	25016	25414
10		19799	20079	20360	20640	20921	21201	21482	22837	23214	23590	23967	24344	24721
	10	21114	21431	21748	22066	22383	22700	23017	24327	24724	25121	25519	25916	26313
11		20499	20782	21064	21347	21629	21912	22194	23671	24047	24423	24799	25174	25550
	11	21876	22198	22519	22841	23163	23485	23806	25231	25627	26023	26419	26816	27212
12		21200	21484	21769	22053	22338	22622	22907	24505	24880	25255	25630	26005	26380
	12	22638	22964	23291	23617	23943	24269	24596	26135	26530	26925	27320	27715	28110
13		21900	22187	22473	22760	23046	23333	23619	25339	25713	26087	26461	26835	27209
	13	23400	23731	24062	24392	24723	25054	25385	27039	27433	27827	28221	28615	29009

1/29/85

In order to qualify for interim step advancement, a teacher must successfully

APPENDIX B

FINAL OFFER OF THE SCHOOL DISTRICT OF FLORENCE COUNTY
FOR THE 1983-84 THRU 1985-86 COLLECTIVE BARGAINING AGREEMENT

ISSUE NO. 1 - 1983-84 Salary Schedule (See attached.)

ISSUE NO. 2 - 1984-85 Salary Schedule (See attached.)

ISSUE NO. 3 - 1985-86 Salary Schedule (See attached.)

ISSUE NO. 4 - ARTICLE XXV - TERM OF AGREEMENT, revise to read as follows:

This Agreement shall be in effect August 15, 1983, and shall remain in effect for three (3) years or until negotiations for a new contract are concluded.

FOR THE SCHOOL DISTRICT OF
FLORENCE COUNTY

By: James W. Freeman
James W. Freeman

MULCAHY & WHERRY, S. C.
Post Office Box 1103
Green Bay, WI 54305-1103

(414)435-4471

January 30, 1985

2/1/85

APPENDIX B

SALARY SCHEDULE

ST EP	1	2	3	4	5	6	7	8	9	10	11	12	13
	13451	13720	13989	14258	14527	14796	15065	15334	15738	16142	16546	16950	17354
	14110	14379	14648	14917	15186	15455	15724	16141	16545	16949	17353	17757	18161
	14789	15038	15307	15576	15845	16114	16383	16948	17352	17756	18160	18564	18968
	15428	15697	15966	16235	16504	16773	17042	17755	18159	18563	18967	19371	19775
	16087	16356	16625	16894	17163	17432	17701	18562	18966	19370	19774	20178	20582
	16746	17015	17284	17553	17822	18091	18360	19369	19773	20177	20581	20985	21389
	17405	17674	17943	18212	18481	18750	19019	20176	20580	20984	21388	21792	22196
8	18064	18333	18602	18871	19140	19409	19678	20983	21387	21791	22195	22599	23003
9	18723	18992	19261	19530	19799	20068	20337	21790	22194	22598	23002	23406	23810
10	19382	19651	19920	20189	20458	20727	20996	22597	23001	23405	23809	24213	24617
11	20041	20310	20579	20848	21117	21386	21655	23404	23808	24212	24616	25020	25424
12	20700	20969	21238	21507	21776	22045	22314	24211	24615	25019	25423	25827	26231
13	21359	21628	21897	22166	22435	22704	22973	25018	25422	25826	26230	26634	27038

2/1/85

JW7 12/06/84

APPENDIX B

SALARY SCHEDULE

ANE TEP	1	2	3	4	5	6	7	8	9	10	11	12	13
1	14205	14489	14773	15057	15341	15625	15909	16193	16619	17045	17471	17897	18323
2	14901	15185	15469	15753	16037	16321	16605	17045	17471	17897	18323	18749	19175
3	15597	15881	16165	16449	16733	17017	17301	17897	18323	18749	19175	19601	20027
4	16293	16577	16861	17145	17429	17713	17997	18749	19175	19601	20027	20453	20879
5	16989	17273	17557	17841	18125	18409	18693	19601	20027	20453	20879	21305	21731
6	17685	17969	18253	18537	18821	19105	19389	20453	20879	21305	21731	22157	22583
7	18381	18665	18949	19233	19517	19801	20085	21305	21731	22157	22583	23009	23435
8	19077	19361	19645	19929	20213	20497	20781	22157	22583	23009	23435	23861	24287
9	19773	20057	20341	20625	20909	21193	21477	23009	23435	23861	24287	24713	25139
10	20469	20753	21037	21321	21605	21889	22173	23861	24287	24713	25139	25565	25991
11	21165	21449	21733	22017	22301	22585	22869	24713	25139	25565	25991	26417	26843
12	21861	22145	22429	22713	22997	23281	23565	25565	25991	26417	26843	27269	27695
13	22557	22841	23125	23409	23693	23977	24261	26417	26843	27269	27695	28121	28547

2/1/85

JW 12/06/84