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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of	
NEW HOLSTEIN SCHOOL DISTRICT	
To Initiate Mediation-Arbitration Between Said Petitioner and	Case 11 No. 35059 MED/ARB-3288 Decision No. 22898-A
NEW HOLSTEIN EDUCATION ASSOCIATION	

APPEARANCES

William Bracken on behalf of the District

Richard Terry on behalf of the Association

On September 26, 1985 the Wisconsin Employment Relations Commssion appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70(4)(cm)6b. of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned conducted a public hearing and a mediation proceeding between the parties on November 11, 1985. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on November 14, 1985 for final and binding determination. Post hearing exhibits and briefs were filed by the parties, which were exchanged through the undersigned by February 3, 1986. Based upon a review of the evidence and arguments, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

ISSUES

This dispute is over the District's 1985-1986 salary schedule and the duration of the parties' agreement.

The Board is proposing a BA base of $15,100 on the existing salary schedule structure. The Union is proposing a BA base of $15,400 on the existing structure. There is no fundamental difference between the two offers as to the structure of the salary schedule as it pertains to experience increments or educational lane increments.

The Association's offer amounts to a $2,045 salary only increase for each returning teacher. This amounts to a 9.2% or $2,787 per teacher total package increase.

The Board has proposed a salary increase of $1,580 per returning teacher, or 6.9%, which results in a 7.3% or $2,207 per teach total package increase.

The total difference between the parties is $56,777 or $580 per teacher.

The Association proposes a one-year agreement while the District proposes a two-year agreement with a reopener for the 1986-87 salary schedule (the District's final offer mistakenly referred to the 1985-86 salary schedule in this regard) and on the dollar amounts on dental insurance.

The parties also disagree upon the extent to which settlements in the area, but outside the District's Athletic Conference and statewide settlements should be relied upon as comparables; the Association arguing that they should and the District arguing that they should not.

ASSOCIATION POSITION

The appropriate comparables are the districts which make up the Athletic Conference: Kewaskum, Kiel, New Holstein, Plymouth, Sheboygan Falls, and Two Rivers. However because of the scarcity of relevant settlements among these schools (only Two Rivers has a one-year settlement for 1985-86), other settlements in the area should be looked at, including settlements in the following districts: Fond du Lac, Hilbert, Kohler, LTI, Menasha, Neenah, Sheboygan and Valders. Furthermore, a comparison of statewide settlements would also be useful in this instance.

The Association offer is more reasonable when viewed in light of the pattern of settlements among these comparable districts. In this regard the Two Rivers settlements -- 9.04% of a $1,999 average increase -- clearly supports the Association's position herein. Similarly, other area settlements -- 8.29 average % increase and $2,076 average $ increase -- also supports the Association position. The same is true when statewide settlements are compared. These settlements reflect an average increase of $1,975 on a weighted basis and $1,933 on a non-weighted basis.

The Board's offer deviates significantly from all of the above patterns.

The District's argument for a settlement pattern based upon the settlements achieved in Kiel and Plymouth is misplaced. While the settlement in Kiel favors the District's offer (7.74% total package and $1,468/FTE), the Plymouth settlement (9.48% and $2,163/FTE) favors the Association. However, both of these settlements represent the second year of a two-year agreement. In this regard it is well established that a pattern of settlements should be reflected by the level of settlement that evolves during the period under consideration. 1/

The District should not be allowed to utilize the national cost of living index as an excuse for paying its employees poorly and at a rate far below the prevailing wage rate among the comparable districts within the same county.

In this regard it is significant that other communities in the same geographic area with the same or greater farming popultions pay their teachers better.

Relatedly, the Association's offer will also hault the decline in rankings and the erosion of teachers' salaries away from their historic levels which has occurred in the District in the recent past.

In response to some of the Distict's contentions, the Association submits that the amount of protection against inflation which should be afforded the District's teachers should be determined by the rate set among the District's comparables. 2/

Secondly, while the maximum longevity amount received by the District's teachers does add to their accumulative earnings, it falls far short of correcting the dispartiy which exists between the District and comparable districts.

Importantly, in this regard it is significant that teachers in the District must wait 13 years to achieve any equalizing resulting from longevity.

1/ Citations omitted.

2/ Citations omitted.

And lastly, by emphasizing the severance pay plan in the District, the Board ignores all other benefits available to comparable employees. To pick out and rely upon only one such benefit is patently illogical.

With respect to the duration issue, the District's duration proposal unfairly restricts bargaining for a successor agreement. The parties are currently completing a two-year agreement with a limited reopener. For the last two years the only items which were negotiable were the salary schedule, the dollar amounts on dental insurance, credit reimbursement figures, mileage, pay for extra classes, and pay for attending inservice meetings, and workshops on non-school days. Prohibiting employees from making proposals in other crucial areas for four years would restrict rather than enhance the negotiations process.

DISTRICT POSITION

Athletic Conference schools should be utilized as comparables in this proceeding. This is so since the parties have agreed that these schools are the best comparables to utilize. Relatedly, stability in the collective bargaining relationship will be jeopardized if the arbitrator seeks out different school districts just because they are settled. Settlement is not a factor which should be utilized in determining comparability.

The overwhelming majority of interest arbitrators have recognized the logic of using the athletic conference as being the best measure of comparability. 3/

The instant Conference is bounded by larger, more urban districts to the east. All of the districts in the Conference draw from the same labor market.

Of the seven schools in the Athletic Conference, three have settled for 1985-86: Kiel, Two Rivers and Plymouth.

The Kiel and Plymouth settlements can properly be considered in this proceeding even though said settlements are the second year of a two-year agreement since the economic environment in which these settlements were reached has not appreciably changed. In this regard, multi-year settlements have been discounted primarily because of changes which have occurred in the economy, which is not the case herein.

On balance the District's salaries compare quite favorably with other schools in the Conference. When looking at the District's rank on the benchmarks, the District ranks near the middle of the pack.

It is important to include longevity when analyzing the salary maximums that are paid in comparable districts. In this regard, it is noteworthy that the District has one of the best longevity programs in the Conference.

The only points on the salary schedule where the District is somewhat weak is at the BA and MA beginning salaries. This is so because the District's schedule has more lanes than any other district in the Conference. Furthermore, the District's schedule is built on an index system, so that the base cannot be raised without affecting all salary costs, where in most instances the District already is competitive.

The District's average 1984-85 salary was $23,484, or $964 above the Conference average of $22,520.

The District's final offer still ranks second only to Two Rivers as the highest 1985-86 salary. In fact, it beats the

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3/ Citations omitted.

Association final offers in Chilton and Sheboygan Falls, and is higher than the two settlements of Kiel and Plymouth.

For the foregoing reaons, other districts in the Conference can setttle at higher percentage and dollar amounts in order to catch up with the District.

The Association has failed to introduce any objective evidence supporting the use of other comparables and has failed to meet its burden of proof in that regard.

Some of the comparable districts proposed by the Association are much larger than the District. In addition, they are more urban, located in different labor markets, different geographical regions, and they do not share any social, economic, or political ties with the District.

In fact, the Association is seeking to skew the comparisons by emphasizing salaries in some of the largest districts in the area and the entire State.

The Association's proposed comparables also run counter to many arbitration awards involving these same schools. 4/

It is significant that the Association's list of comparables includes districts with non-traditional salary schedules which makes salary benchmark comparisons impossible. Because of the increasing use of these non-traditional schedules, which sever the strict relationship between teachers' education and experience and their placement on a salary schedule, a benchmark salary analysis is no longer dependable. This represents a very real problem in analyzing statewide salary settlements. Instead, the best measure of settlements today is the total package dollar and percent increase, coupled with an analysis of average teacher salaries.

Settlements with other employee groups in the District also support the reasonableness of the Board's final offer.

Since few comparable districts are currently settled, private sector and other public sector settlements take on additional importance. In this regard it is noteworthy that no other employee group in the area, state or the country is obtaining settlements of the magnitude of 9.2% total package increase.

If there are too few settlements in the Conference to rely upon, comparables should not be expanded, but instead, other statutory criteria should be relied upon.

The interest and welfare of the public are best reflected in the Board's final offer. In this regard it is significant that the District's cost rank near the top of the Conference schools, yet it has the second lowest pupil/teacher ratio. It also has the highest percent of families and persons below the poverty line.

Since the District is primarily rural, it is dependent upon the farmers to supply a majority of its operating budget. Given the current disinflationary environment and the current economic turmoil faced by farmers, the Association's proposed 9.2% proposal is just not reasonable.

Because of the dire economic conditions affecting farmers, taxpayers in the District have rejected the Board's proposed budget on two separate occasions. Given this political and economic environment, the Board has no choice but to propose a final offer representing a modest increase in salaries and benefits.

4/ Citations omitted.

The Board's offer, particularly in an economy with an inflation rate of a negligible 3.8% over the relevant time period, clearly strikes a responsible and fair balance between the public interest and the needs of the District's employees.

The increased state aid the District recieved this year was earmarked for property tax relief. There will not be any relief if the state aid ends up in the teachers' pockets.

The Statute directs the Aribtrator to consider the overall increase as well as salary only.

The total package settlement trend is closer to 8% than the Association's proposed 9.2% package. The Association's own data demonstrates that the Board and the Association are equidistant from the average settlement trend in that both are about 1% off the average. In such a case, what tips the scale in the Board's favor is the poor economy, high average teacher salary, internal and private sector settlements, and excellent fringe benefits.

The District provides its teachers with severance pay that is based on a teacher's salary and experience. The value of the severance pay benefit over the last three years amounts to over $20,000 or about one-third of the dollar difference between the parties in this dispute. Very few districts provide their employees with this valuable fringe benefit (three Conference school districts provide a similar but less generous benefit), and this factor should be considered under the statutory criterion of "overall compensation".

The District also pays significantly higher premiums for dental insurance and it provides a better life insurance benefit than is the norm.

Because the fringe benefits in the District are significantly better than its comparables, it is not unreasonable for the Board to expect the teachers to accept slightly lower salaries.

Given the fact that the District ranks in the middle to upper levels on all of the benchmarks, has the second highest average teacher salary, has the best longevity program in the Conference, and has the best severance pay plan in the Conference, a 7.3% increase is fair and equitable.

The Board's offer exceeds the CPI increase by a full 3.5%. The Association's final offer exceeds it by a staggering 5.4%. Since the Board's offer is well above the CPI it guarantees that teachers will not suffer reduction in spending power and will actually gain in very real terms. The Association's offer on the other hand exceeds the CPI by over twice the relevant rate, which is both unreasonable and excessive.

Relatedly, the Board should not be held accountable for what other employer and employee groups have settled at. The inflation rate must stand alone as a criterion in the Statute. It should not be diluted by the comparability factor. In fact, where, as here, there are so few settlements in the Conference, the cost of living criterion takes on additional weight.

Lastly, the Board's proposed duration clause should also prevail since it is a logical extension of the status quo. The Board is simply seeking to preserve the two-year agreement with economic reopeners which has been voluntarily agreed to by the parties in the past. The Association has provided no persuasive reason to change this aspect of the relationship. In addition, the limited time available to bargain pending receipt of the Arbitrator's award dictates that few items should be bargained in the next round.

Relatedly, it is significant that all major fringe benefits and retirement are stated in percentage terms, and thus the District will have to maintain the contribution level which it has in the past.

The same concept applies to the extracurricular schedule, which is also based upon a percentage index system.

DISCUSSION

The instant proceeding is relatively unusual for the undersigned in that there is very limited, useful comparability data available in the record which can be utilized to determine the relative reasonableness of the parties' positions. That data indicates that among the districts which both parties agree are comparable, only one has concluded a settlement for 1985-86 this year. Although that settlement is in line with the Association's offer, it falls far short of a "pattern of settlements" which is often utilized to ascertain the relative reasonableness of parties' positions in proceedings such as this.

Two other comparable districts have also settled for 1985-86; however these settlements were the second year of two-year agreements, and therefore, they must be given less weight as relevant comparables. This is so because often in multi-year agreements the parties have more discretion in determining how to distribute improvements in wages and benefits over a multi-year period, and therefore, any given improvement contained in such an agreement must be viewed in the context of the full multi-year bargain. Furthermore, such agreements entail much more risk-taking by the parties, and because they are entered into without current economic information, parties negotiating current agreements should not have their decisions governed by the decisions made by others, at other times when current relevant economic information was not available.

Furthermore, and relatedly, even if these multi-year agreements were to be given consideration, since one supports the reasonableness of the Association's offer and the other supports the District's offer, these agreements do not contribute meaningfully to a settlement pattern which can reasonably be utilized in resolving this dispute.

While other district settlements in the general area have also been proposed by the Association, because of the disparity of size among said districts, the undersigned has instead sought to obtain from the record settlements in the northeast quadrant of the State (in CESA's 6, 7, and 8) in districts of relative similar size (75 - 125 FTEs). That search revealed only five settlements in addition to those previously mentioned, and among those five, several are in districts which fall within relatively urban metropolitan areas which are not readily comparable with the instant District, the majority of which is rural or agriculatural. For these reasons the undersigned has concluded that a useful and relevant geographic settlement pattern does not exist at this time, and although preliminary settlement data which is available does come closer to the Association's offer than the District's, such data is not sufficient in either quantity and/or relevance to dictate what the outcome of this dispute should be.

Similarly, although the statewide data in the record indicates that an emerging settlement pattern is more in line with the Association's proposal than the District's, that data reflects less than one-sixth 5/ of the statewide districts (when average dollar increases per returning teacher are analyzed), and

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5/ Sixty out of 414 districts.

includes many districts which are significantly distinguishable from the District in size as well as in their urban versus rural characteristics, which again makes the value of reliance on such comparability data extremely limited, particularly when the dollar value of increases are utilized as the basis of comparison.

Based upon all of the foregoing considerations it is the undersigned's opinion that relevant settlement patterns do not exist at this time which are very useful in resolving the instant dispute, and accordingly, other statutory criteria will have to be relied upon.

Perhaps it should be noted before discussing such other criteria that in a case such as this, where available comparability data involves a large number of districts, often geographically dispersed, and where the parties have limited information about the settlements upon which they are relying, a traditional benchmark analysis is of increasing limited utility in view of the significant number of instances in which such benchmarks do not correlate with the experience levels of many of the teachers in such districts. Because of this problem, it is becoming evident that a benchmark analysis, though preferable in its precision to average dollar and percentage increases, can only be utilized when the record clearly indicates that the benchmarks utilized do in fact correlate with the placement of teachers on the schedule based upon their teaching experience. Absent assurance that such is the case, it would appear, at least at this time, that a comparison of average salaries, percentage increases, and dollar increases for returning teachers might have to suffice as the most reliable basis for making relevant comparisons. The undersigned is not comfortable with this method of determining comparability since such comparisons do not effectively portray many significant effects that structural differences in salary schedules have; however, until reliable methods of making such comparisons are developed, the undersigned must concede that a traditional benchmark analysis appears to be of increasingly limited utility.

The fact that a pattern of relevant teacher settlements does not exist in this case does not nullify the comparability factor as a criterion which should be utilized in this case. In this regard the record indicates that settlements with other employees in the District clearly support the reasonableness of the District's position herein. Similarly, the record indicates that settlements elsewhere in the public sector, both at the local and State level, as well as settlements in the private sector also support the reasonableness of the District's position. Thus, based upon the comparability criterion, at least at this point in time, when a pattern of teacher settlements for 1985-86 is just beginning to emerge, and when other settlement patterns clearly support the District's position herein, no strong support can be found for either party's position based upon this criterion

to assess the reasonableness of the parties' positions herein.

Among such factors is cost of living, and in this regard, the District's proposal, which almost doubles the relevant cost of living increase and which will result in meaningful gains in real income for the District's teachers, is clearly the more reasonable of the two.

The welfare and interst of the public is also a factor which the Statute indicates should be considered in proceedings such as this. Based upon the totality of the record evidence the undersigned is of the opinion that the District's offer is more in accord with said criterion than is the Association's. In this regard the undersigned believes that the District's position, which is not demonstrably unfair or unreasonable when cost of living and comparability factors are taken into consideration, will also contribute to the District's ability to control costs, thereby allowing it to attempt to restrain local tax levies, which are relatively high among the District's comparables. This objective cannot realistically be ignored in a predominantly rural district at a time when the citizens in the District who are dependent upon the farm economy are experiencing such difficult economic times. That is not to say that the District should not be expected to support its educational programs in a fashion which is similar to other predominantly rural districts which are also experiencing the same problems. However, the instant record does not indicate that if the District's offer were selected, the District would necessarily become less competitive in this regard. Instead, the record indicates that the District is, and may very well continue to be, very competitive in this regard.

Still other support for the District's position may be found in the fact that in 1984-85, under relatively similar economic circumstances, this District, as well as many of its comparable districts, settled for increased salaries which were more in line (in terms of value of the increases) with the District's offer this year than the Association's. In this regard, no persuasive reason has been proffered as to why that settlement pattern needs to be significantly enhanced this year under similar economic circumstances.

Based upon all of the foregoing considerations, the undersigned is persuaded that the District's salary offer, though perhaps slightly below what the emerging teacher settlement pattern in the area and across the State might justify, is the more reasonable of the two at issue herein utilizing the statutory criteria referred to above.

One other issue needs to be discussed however before the undersigned can select either party's total final offer, and that pertains to the parties' dispute over the duration of their next agreement. On this issue the undersigned is of the opinion that where, as here, the parties are coming off of an agreement with a limited economic reopener, one party should not be foreclosed from negotiating non-economic issues in a successor collective bargaining agreement. For this reason the undersigned is of the opinion that the Association's duration proposal is much more reasonable than the District's in that the District's proposal will have an unreasonably restrictive impact on the voluntary collective bargaining process which this process, as well as the Statute which provides for it, is designed to encourage.

The undersigned is thus left with the difficult task of selecting between final offers, one of which has an unreasonably restrictive impact on the collective bargaining process, and the other of which appears to be unjustifiably excessive based upon current economic conditions. In balancing these competing problems, the undersigned deems the salary issue to be the more significant of the two because of its impact

on the parties as well as the community they serve. Therefore, based upon this consideration the undersigned must conclude that the District's total final offer is the more reasonable of the two at issue herein.

Based upon these considerations the undersigned hereby renders the following:

ARBITRATION AWARD

The District's final offer shall be incorporated into the parties' 1985-1987 collective bargaining agreement.

Dated this 18th day of March, 1986 at Madison, Wisconsin.

Byron Yaffe, Arbitrator