

MAR 24 1986

Mediation/Arbitration *
of *
BOWLER SCHOOL DISTRICT *
and *
BOWLER EDUCATION ASSOCIATION *
re *
WERC Case 10, No. 35418 *
MED/ARB-3411 *
* * * * *

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION AWARD

Decision No. 23023-A

INTRODUCTION

Initial proposals for a new agreement were exchanged on May 13, 1985 by the Bowler School District, hereinafter called the Board, and the Bowler Education Association, hereinafter called the Association. Failing to reach agreement after two negotiating sessions, the Board filed a petition for mediation/arbitration on July 30, 1985. WERC staff member, Daniel Nielsen investigated the matter and, finding that the parties were deadlocked, received final offers on October 9, 1985. In an order dated November 1, 1985, the WERC initiated mediation/arbitration and furnished the parties with a panel of mediator/arbitrators. The parties selected the undersigned as mediator/arbitrator and the WERC appointed him in an order dated November 12, 1985.

Mediation was attempted by the mediator/arbitrator on January 30, 1986. He was unsuccessful in resolving the dispute through mediation and, after both parties declined to withdraw their final offers, conducted the arbitration hearing immediately following the mediation session. Briefs were received by the arbitrator by March 11, 1986.

ISSUE

The sole issue to be arbitrated is the salary increase. The Board proposes that the BA Base be increased by \$800 to \$15,200 (and a 5.6% cell increase) while the Association proposes that the BA Base be increased to \$1,075 to \$15,475 (and a 7.5% cell increase).

DISCUSSION

Both parties are to be complimented on the quantity and quality of the evidence submitted. Material bearing upon the factors in Section 111.70 (4) (cm) (7) was presented at the arbitration hearing and extensive argument on various points is raised in each brief. Although the arbitrator carefully considered the evidence about each factor, he does not plan to discuss each point raised and to comment on each argument. If he did so, this discussion would be interminable. Instead he will focus upon the items that were crucial to his decision.

First of all, it should be noted that both parties acknowledged the primacy of the athletic conference as a source of comparables. The Association stated that "The use of the athletic conference as a comparability grouping has been widely accepted by the arbitrators as the most relevant comparable." (Association Brief, p. 2). The Board stated that it "is prepared to 'live or die' with the athletic conference schools because it firmly believes this to be the most appropriate set of schools that have historically influenced bargaining." (Board brief, p. 3).

This arbitrator makes no finding about the general use of the athletic conference but will accept it in this instance as the controlling comparable. In so doing, the arbitrator recognizes that he is giving no weight to the other comparable relied upon by the Association--the settled schools throughout the state of a similar size to Bowler.

The arbitrator gives no weight to the settlements in these other schools because of the lack of evidence showing that they are relevant to the settlement in Bowler. For example, if it were shown that the labor market for teachers included the schools that had settled throughout the state and that Bowler competed with them in obtaining new teachers, then the arbitrator would have found this evidence relevant and given it considerable weight.

The next argument to be resolved is whether the arbitrator will rely mainly on benchmarks or whether he will give some weight to changes in overall compensation and in average salaries. Although the arbitrator examined the material on this point, he decided in this instance to accept the Association position rejecting the use of "unverified total package and/or dollar increase" for much the same reasons given by Arbitrator Kerkman quoted in the Association brief (P. 7, Madison School District Case, Voluntary Impasse Procedure, 5/21/82).

The Board emphasized the sorry economic plight of farmers in the Bowler area and argued that "this criterion (in factor "c," financial ability of the unit of government) must receive more weight than the comparability criterion." (Board brief, p. 27). Although farmers throughout the state face economic difficulties, there was no evidence provided to show that farmers in the Bowler district were facing significantly greater problems than farmers in the other districts in the athletic conference. Absent this type of evidence, the argument is insufficient to outweigh the comparability criterion.

Having decided in this dispute that the primary consideration in his selection of final offers will be benchmark comparisons within the athletic conference, the arbitrator must then determine whether any conference schools should be excluded from the comparisons. The Association argues that Almond/Bancroft and Iola/Scandinavia should be excluded because of the absence of formal salary schedules. The arbitrator agrees with the Association and will exclude those schools. The Board has done a yeoman job in securing the individual salaries of teachers in those districts and estimating benchmarks based on existing personal salaries. The arbitrator does not find, however, that these are benchmarks as the term is understood generally.

The Board argues that "Gresham" should be excluded because it is a part of Shawano. Although Shawano-Gresham is one school district and is in the athletic conference, it contains duplicate K-12 schools, a large one, Shawano, which competes athletically in another conference and Gresham, a smaller one, which competes in the same conference as Bowler but has the same salary schedule as Shawano. The arbitrator believes it appropriate, therefore, to exclude Shawano-Gresham from the comparisons.

In passing, the arbitrator notes that the exclusion of these districts really does not change matters because two of them would rank below Bowler in '84-'85 and below either the Board or Association final offers for '85-'86 while the third would rank above Bowler in '84-'85 and above both the Board and Association offers in '85-'86.

If the arbitrator were to proceed on the basis of the "settled" schools in the athletic conference, his comparisons would be confined to Bonduel, Marion, Manawa, Wild Rose, Menominee Indian and Tri-County. Although the comparisons could have been limited to those six schools, it seemed best to the arbitrator to augment this group. Manawa increased its salary schedule by a flat \$1300 across the board. This makes it high at the BA base and low at the BA maximum. Wild Rose compressed its structure reducing the BA lane from 19 to 14 steps. Depending on how individuals were treated, this might make the Wild Rose benchmarks less reliable than otherwise would be the case.

The arbitrator decided therefore to include the other schools in the athletic conference which had not settled but for which final offers were available. This information was included among the Board exhibits although neither the Board nor the Association included these schools in the analyses in their briefs. These schools are included in the analysis in Table 1. They are: Tigerton, Wittenberg-Birnamwood, Shiocton, Rosholt and Weyauwega-Fremont.

In order to include these schools in the "rankings" it was necessary for the arbitrator either to average the board and association final offers in each instance or to select the offer which he believes will prevail. The underlined offer is the one that this arbitrator believes will be selected.

It is important to recognize, however, that even if this estimation procedure is open to error, the errors in most instances will not affect the Bowler ranking because both the board and association offers in most of the other districts are either above or below both the Bowler Board and Association offers. For example, whether the arbitrator in the Tigerton dispute chooses the board offer or the association offer is immaterial to the rankings in this dispute because Tigerton will continue to be ahead of both the Board and Association Bowler final offers at the BA bench marks.

Table 1 shows the standing of Bowler in '84-'85 and in '85-'86 at the BA minimum, BA 6 (seventh step if BA base is "0") and BA maximum. The arbitrator recognizes that the same analysis could have been extended to the MA bench marks but since 24 of the 37.133 FTEs at Bowler are in the BA lane and nine of these are at the BA maximum, the arbitrator concluded that the comparisons at the three BA bench marks were sufficient in this instance.

Finally, before turning to an examination of Table 1, it should be noted that both the Board and the Association contend that Bowler's place in the middle of the pack should be maintained. Neither is contending that Bowler should be elevated or depressed and both parties presented evidence showing that adoption of its offer would maintain Bowler's position. The question then becomes, which offer more closely maintains Bowler's position based on the data that the arbitrator has selected for the purpose of making this determination.

TABLE 1

BA MINIMUM
(12 of 16 Schools in Conference)

| 84-85 <u>Ranking</u> | 1984-85 | <u>B.F.O.</u> | 1985-86 | <u>U.F.O.</u> |
|-------------------------|---------|---------------|---------|---------------|
| 1 Tigerton | 14,875 | <u>15,700</u> | ----- | 16,000 |
| 2 Bonduel | 14,600 | | 15,470 | |
| 3 Wittenberg-Birnamwood | 14,575 | <u>15,400</u> | ----- | 15,625 |
| 4 Marion | 14,500 | | 15,400 | |
| 5 Bowler | 14,400 | 15,200 | ----- | 15,475 |
| 6 Shiocton | 14,350 | <u>15,250</u> | ----- | 15,400 |
| 7 Rosholt | 14,305 | <u>15,050</u> | ----- | <u>15,435</u> |
| 8 Weyauwega-Fremont | 14,200 | <u>15,100</u> | ----- | <u>15,385</u> |
| 9 Manawa | 14,020 | | 15,320 | |
| 10 Wild Rose | 14,000 | | 14,600 | |
| 11 Menominee Indian | 13,925 | | 14,975 | |
| 12 Tri-County | 13,850 | | 14,700 | |

BA 6 (7th Step)

| | | | | |
|-------------------------|--------|---------------|--------|---------------|
| 1 Wittenberg-Birnamwood | 18,427 | <u>19,468</u> | ----- | 19,753 |
| 2 Tigerton | 18,338 | <u>19,355</u> | ----- | 19,725 |
| 3 Bonduel | 18,104 | | 19,183 | |
| 4 Shiocton | 18,009 | <u>19,137</u> | ----- | 19,327 |
| 5 Bowler | 17,856 | 18,848 | ----- | 19,189 |
| 6 Menominee Indian | 17,824 | | 19,168 | |
| 7 Rosholt | 17,587 | 18,482 | | <u>18,975</u> |
| 8 Marion | 17,405 | | 18,305 | |
| 9 Weyauwega-Fremont | 17,324 | <u>18,400</u> | ----- | 18,770 |
| 10 Tri-County | 17,174 | | 18,228 | |
| 11 Manawa | 16,600 | | 17,900 | |
| 12 Wild Rose | 16,190 | | 17,480 | |

(continued)

BA MAXIMUM
(12 of 16 Schools in Conference)

| '84-'85 Ranking | | <u>1984-85</u> | <u>B.F.O.</u> | <u>1985-'86</u> | <u>U.F.O.</u> |
|--------------------|-----------------------|----------------|-----------------|-----------------|---------------|
| 1 | Tri-County | \$22,991 | | \$24,402 | |
| 2 | Wittenberg-Birnamwood | 22,279 | <u>23,536</u> | ----- | 23,881 |
| 3 | Menominee Indian | 21,862 | | 23,510 | |
| 4 | Tigerton | 21,801 | <u>23,009</u> | ----- | 23,449 |
| 5 | Bonduel | 21,608 | | 22,896 | |
| 6 | Bowler | 21,312 | 22,496 | ----- | 22,903 |
| 7 | Weyauwega-Fremont | 21,016 | <u>21,650**</u> | ----- | 22,703 |
| 8 | Marion | 20,545 | | 21,465 | |
| 9 | Shiocton | 20,449 | <u>21,731</u> | ----- | 21,945 |
| 10 | Rosholt | 20,322 | 21,342 | ----- | <u>21,925</u> |
| 11 | Wild Rose | 19,338* | | 21,320 | |
| 12 | Manawa | 19,180 | | 20,480 | |

*Because Wild Rose compressed its schedule from 19 to 14 steps, the 1984-85 14th step salary for '84-'85 is used in this analysis.

**The Board offer is based on a BA Lane topping at the 11th step while the '84-'85 schedule and the Union offer attain the maximum step in 12 years.

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In 1984-85 Bowler ranked 5th at the BA minimum of the 12 schools listed in Table 1. If the arbitrator were to accept the Board offer, Bowler would drop to 8th place; if he accepted the Association offer, Bowler would jump to 2nd place. In each case Bowler would move up or down by three places. If the arbitrator's assumption that the Board offer would be selected in the Wittenberg-Birnamwood dispute and that the Union offer would be selected in the Rosholt dispute are both wrong, then the Board final offer at Bowler would drop Bowler's ranking only to 7th place and the Association's final offer would raise it only to 3rd place. This would mean either a loss of two places or a gain of two places, rather than the three place shift estimated by this arbitrator.

In any event, in so far as the acceptability of the Board and Association offers at the BA minimum are concerned, it is apparent that there is not much to choose between them. Each would disturb the relative rankings by the same amount.

The arbitrator turns next to the impact of the final offers on rankings at the BA 6 step. In 1984-85, Bowler ranked 5th of the twelve schools listed in Table 1. If the Association offer is chosen, Bowler will move to 3rd; if the Board offer is chosen, Bowler will move down to 7th. In both cases, there would be a two place shift in ranking. If this arbitrator's estimate of which party would prevail in Rosholt and Shiocton is incorrect and the Board wins in Rosholt and the Union wins in Shiocton, Bowler would rank fourth under the Association offer and 6th under the Board offer. Again, this would represent an equal shifting of rankings and as such does not provide clear guidance as to which offer is preferable.

At the BA maximum, Bowler ranked 6th in 1984-85. Under the Board offer it would continue to rank 6th in '85-'86, while under the Association offer Bowler would move up to 5th place. If the arbitrator is wrong in his estimate of which offer would be chosen in the Weyauwega-Fremont dispute and the Union offer is chosen, Bowler would continue at the 5th place under the Association offer but would drop to 7th place under the Board offer.

In so far as the final offers of the Board and the Association are concerned at the BA maximum, this arbitrator finds the Board offer to more closely maintain Bowler's ranking than the Association offer. Because this is a close call, the arbitrator conducted a further analysis of the situation at the BA maximum step. In order to calculate the average dollar increase at the BA maximum step, the arbitrator averaged the two final offers in each of the five situations in which a settlement was dependent on which offer would be chosen by an arbitrator.

Table 2 shows that the average increase in salary at the BA maximum step in '85-'86 was \$1,347. This is \$163 more than the Bowler teachers would receive at the maximum step of the BA lane under the Board offer and is \$244 less than they would receive under the Association offer. Since the Board offer is closer to the average gain than the Association offer, it again seems slightly more equitable than the Association offer. It should be noted that the use of the average of the board and association offers in each dispute eliminates the uncertainty of the estimation method used in determining the rankings.

TABLE 2
'85-'86 INCREASE AT BA MAXIMUM

| | <u>Board Final Offer</u> | <u>Settlement or Average</u> | <u>Union Final Offer</u> |
|-----------------------|------------------------------|----------------------------------|------------------------------|
| Tri-County | | \$1411 | |
| Wittenberg-Birnamwood | (1257) | 1430 av. | (1602) |
| Menominee Indian | | 1648 | |
| Tigerton | (1208) | 1428 av. | (1648) |
| Bonduel | | 1288 | |
| Bowler | (1184) | ---- | (1591) |
| Marion | | 920 | |
| Shiocton | (1282) | 1389 av. | (1496) |
| Rosholt | (1020) | 1312 av. | (1603) |
| Manawa | | <u>1300</u> | |
| | | Average \$1347 | |

Note: Weyauwega-Fremont and Wild Rose are not included in Table 2 because Wild Rose made changes in the salary structure and the Board offer in Weyauwega-Fremont reduced the maximum of the BA lane by one step while the Union offer did not. Therefore, the arbitrator was not sure how to calculate the increases accurately in those two situations.

Based on his analysis of the data in Tables 1 and 2, the arbitrator will select the offer of the Board. It should be noted that the decision is a close one. The arbitrator is not saying that a 5.6% increase is fair; he is only saying that it is slightly closer to the figure that would maintain the position of Bowler in its athletic conference than the 7.5% offer of the Association.

AWARD

After full consideration of the exhibits and briefs of the Board and the Association, and in light of the statutory criteria, the arbitrator selects the final offer of the Board.

3/20/86
March 20, 1986

Arbitrator