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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Arbitration Between

CLINTONVILLE SCHOOL DISTRICT

and

CLINTONVILLE PUBLIC SCHOOLS - EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

Case 18
No. 35379
Dec. No. 23061-A
MED/ARB-3399

OPINION AND AWARD

Appearances:

For the Employer: Joseph A. Rice, Esq., Green Bay.

For the Association: Joan M. Haag, WEAC Field Representative, Neenah.

BACKGROUND

On July 23, 1985, the Clintonville School District (referred to as the Employer or School District) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate mediation-arbitration pursuant to Section 111.70(4)(cm)(6) of the Municipal Employment Relations Act (MERA) to resolve a collective bargaining impasse between the Employer and the Clintonville Public Schools - Educational Support Personnel Association (referred to as the Association) concerning a successor to the parties' collective bargaining agreement which expired on June 30, 1985.

On November 15, 1985, the WERC found that an impasse existed within the meaning of Section 111.70(4)(cm). On December 2, 1985, after the parties notified the WERC that they had selected the undersigned, the WERC appointed her to serve as mediator-arbitrator to resolve the impasse pursuant to Section 111.70(40(cm)(6)(b-g). No citizens' petition pursuant to Section 111.70(4)(cm)(6)(b) was filed with the WERC.

On February 25, 1986, the mediator-arbitrator met with the parties to mediate the impasse dispute. When the impasse remained unresolved, by prior agreement with the parties the undersigned proceeded to hold an arbitration hearing on the same date. At the hearing, the parties were given a full opportunity to present evidence and oral arguments. Post hearing briefs were submitted by both parties.

ISSUES IN DISPUTE

There are six issues in dispute: duration of the successor agreement, wages for 1985-86, health insurance language, vacation schedule for twelve (12) month employees, holidays for twelve (12) month and school year employees, and definition of "temporary employee." The Employer's final offer is annexed hereto as Annex "A" and the Association's final offer is annexed hereto as Annex "B."

STATUTORY CRITERIA

Under Section 111.70(4)(cm)(7), the mediator-arbitrator is required to give weight to the following factors:

(a) The lawful authority of the municipal employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

(d) Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost-of-living.

(f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.

(h) Such other factors, not confined to the foregoing, which are normally or traduitionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwide between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The Employer

Before addressing the merits of either party's final offer, the Employer notes that the parties seriously disagree about the important threshold question of what constitutes appropriate comparables. The School Board's choice of contiguous districts, Bonduel, Manawa, Marion, New London, Shawano and Shiocton, as the appropriate pool of comparables for this unit of non-certified school employees is justified by citing arbitral opinions which conclude that secretaries and custodians are less mobile than professionals. In addition, the majority of unit members live in the City of Clintonville with only one unit employee living outside the Employer's comparable pool. The Employer rejects the Association's comparables, generally the school districts within the Bay Athletic Conference, where they are not contiguous nor within the Employer's labor market. The Employer further argues that its comparables are appropriate based upon school cost per pupil,full value tax rates, average pupil membership, state aid per pupil and equalized value per member while the same is not true of the Association's comparables (with the exception of New London and Shawano).

Turning next to the specifics of its final offer, the School District argues that its proposal for a multi-year agreement (with wage and insurance reopener in the second year) maintains the status quo since the now expired agreement was also a multi-year contract. It also contends that its reopener provision goes a long way to address Association concerns and that a multi-year agreement makes particular sense in view of the late date of this arbitration proceeding.

As for its position on health insurance, again the Employer emphasizes that its proposal is to maintain the status quo by specifically stating the Board's increased dollar contribution. This is in contrast to the Association's position which places a dollar cap on the employee's contribution for a family premium. The Employer notes that its 1984-85 and 1985-86 contributions toward health insurance premiums are above average among its comparables; this is particularly true when the Employer's contribution to dental insurance is also considered. Since the Employer is proposing an insurance reopener and because the Association has failed to demonstrate a need for change, the Employer concludes that its offer on health insurance is more reasonable.

In addressing the wage proposals, the School District notes that there are three distinct parts: the hiring (and ceiling) rates, the additional stipend for the Bear Creek custodian, and the across-the-board increase. The Employer first objects to the Association's restructuring of the hiring rates; it characterizes it as radical, particularly since no evidence was presented to demonstrate that the Employer had difficulty hiring for unit jobs and the new hiring rates would be in excess of wages currently being paid to eight unit members. The Employer also objects to the Association's proposed ceiling rates for various job classifications, particularly the unexplained, drastic $2 per hour increase for Aide I position. It further questions the need for an additional stipend to be given to the Bear Creek custodian since there was no evidence to support an additional amount; according to the Employer's evidence, the Bear Creek Custodian performs the same duties as the other two head custodians and, therefore, should receive the same wages.

In regard to the wage issue generally, the Employer emphasizes a total compensation approach rather than a wages only comparison. It believes that a total compensation approach is justified not only by arbitral precedents but because of the Employer's generous insurance and pension benefits which are available to unit employees, including school year, part-time employees. The Employer's total compensation analysis demonstrates that, for each classification, Clintonville employees, both 12 month and school year, enjoy a position that is far above the comparables.

The Employer also rejects the reasonableness of the Association's additional vacation and paid holiday demands. Combining 12 month employees' holiday and vacation days, the Employer believes that the comparable data supports its status quo position. As for holiday pay for school year employees, the School District views the Association's demand for two paid holidays, Labor Day and Thanksgiving Day, as the equivalent of a demand for additional pay rates. Based upon its total compensation comparable analysis, it concludes that this demand too is unjustified.

On the remaining issue, the Association's proposed change in the definition of temporary employee, the Employer again notes that the burden is upon the party proposing a change to offer affirmative evidence on the need for change. It rejects the Association's position in the absence of demonstrated need.

More generally, the Employer concludes by turning to the statutory factor of interests and welfare of the public to support further its position in this arbitration. It notes in some detail the faltering farm economy upon which the School District depends to fund its operation. Noting a number of arbitral precedents which acknowledge the need to take current economic conditions into consideration, the Employer concludes that its total compensation offer amounts to an increase of 6.53%, an amount that is fair and equitable. For these reasons as well as its prior comparability analysis and the desireability to maintain the status quo absent a demonstration of need for change, the Employer believes that its final offer should be selected.

The Association

The Association first addresses the issue relating to the definition of temporary employee and points out that it introduced evidence at the hearing that in some cases the Employer has employed an individual for a 59-60 day period, then releases the individual for 2-5 days, followed by reemployment for the same project for another 59-60 day period, thus abusing the language existing in the parties' collective bargaining agreement. Its proposed language is designed to eliminate such abuses.

Next addressing the merits of its holidays proposal, the Association believes that comparable data supports its proposed additional one and one-half days for twelve month employees and two paid holidays for school year employees. A major difference

arises between the parties as to what are the appropriate comparables. The Association uses the Bay Athletic Conference school districts and finds support for its holiday proposals within that group. It also notes that there is some support for its proposal for school year employee holidays within the Employer's six comparable school districts.

As for its demand to extend current vacation benefits, the Association recalls that it has been an extremely important topic during the past two rounds of negotiations. It acknowledges that its proposal is not supported by comparability data, yet it notes some support because other districts offer other benefits such as longevity pay, employer paid dental insurance and long term disability insurance. Particularly since the extension of benefits will benefit a small number of employees even as years go on, the Association believes that it is an appropriate "earned" reward for employees with long years of service to the Employer.

On the major issue of wages, the Association supports its split offer wage proposal by first noting that it amounts to a 6.5% increase (including the additional custodian stipend) while the Employer's offer equals a 4.5% wage offer. Using the Employer's comparables and looking at the data, classification by classification, the Association concludes that its offer has greater support from the comparables than does the Employer's offer. This conclusion is reenforced by an analysis of Bay Athletic Conference settlement wage increases and by an analysis of total wage compensation (not total compensation). Although the Association believes that the Athletic Conference is the appropriate pool for comparables, it does not challenge the Employer's use of a modified list of comparables which reflect contiguous districts only. The Association also presents data from the comparables selected by Arbitrator Richard U. Miller in a 1983 Clintonville teachers arbitration decision.

The Association supports that part of its wage offer relating to the Bear Creek custodian by pointing out that his position is unique and that this custodian performs many maintenance jobs in addition to his regular custodial responsibilities. It expresses concern that only the November 1985 job description for Custodian I was introduced by the Employer while the Employer's chief witness on this point was unable to testify as to changes, if any, between this new job description and a previous one. Since it believes that the Bear Creek custodian is performing many additional maintenance duties, the Association concludes that its proposed stipend for this position is fair and reasonable.

In discussing its health insurance proposal, the Association believes that past history concerning this benefit is relevant. During the prior round of negotiations, the parties agreed that the Employer would pay $161.46 per month for family coverage. This amount represented 100% of the premium; no premium increases were projected for the two year period of the agreement. There was, however, an increase during the second year, 1984-85, which resulted in a premium increase of 16% which was paid by employees. This was also the year when the employees' wage increase was only 25¢ per hour. Thus, according to the Association, its present offer merely makes up for the harm caused in 1984-85.

Lastly, as to the Association's proposal of a one year agreement instead of the Board's two year proposal with a limited reopener for wages and health insurance, the Association contends that the Association would be at a disadvantage under the Board's proposal. It would be unable to negotiate language and retirement changes under the reopener. Thus, it concludes equality in bargaining power supports its duration proposal.

The Association concludes generally by rejecting the Employer's economic and farm outlook ("gloom and doom forecasts"). Since other similarly situated rural districts have been able to support wage increases significantly in excess of the Clintonville School District, the Association finds it difficult to believe that

Clintonville farmers are more hard pressed and cannot support wage increases at the levels negotiated in comparable districts.

For all these reasons, the Association believes that its final offer is more reasonable and equitable and should be chosen.

DISCUSSION

This impasse involves six unresolved bargaining demands. In addition, the parties disagree about several related matters. During the arbitration hearing, it appeared that there was a serious dispute about what school districts constitute the appropriate pool of comparables. The Association then emphasized the Bay Athletic Conference school districts or the modified list of comparables determined by Arbitrator Richard U. Miller in a 1983 Clintonville teachers' arbitration case. The Employer argued that the appropriate comparables were the six contiguous school districts, particularly since all but one of the unit members resided either in Clintonville or in one of the Employer's comparables.(For the Employer, existing residency demonstrated the appropriate labor market) In its brief, however, the Association has muted this dispute by making many of its comparability arguments using the School District's comparables. Since it is well established that comparable districts for teacher arbitration cases may be significantly different from appropriate comparables for non-certified school employees and in view of the data presented concerning the six contiguous school districts, the undersigned believes that the Employer's approach (no longer challenged by the Association) is a reasonable one.

Having determined with little controversy what constitutes the appropriate pool of comparables, the undersigned must note immediately that there is another, more hotly contested disagreement between the parties in utilizing comparative data. The Employer emphasizes comparative total compensation information while the Association points to wage only data from the comparables. This controversy will be discussed further below when the parties' differing wage demands are reviewed. Before addressing the wage issue, however, the undersigned needs to comment upon the other outstanding issues in dispute.

The parties disagree about the duration of the agreement which will succeed their now expired two year contract. In view of the parties' own prior pattern, the lateness of this arbitration proceeding, and the reopener for wages and insurance proposed by the Employer, there is a mild preference for the Employer's position. There is additional, but not decisive, support for a two year contract approach in recent legislative amendments to MERA. This issue is not determinative of the outcome of this proceeding, however.

The Association has proposed changes in the contract language regarding temporary employees. It has justified its new language by presenting evidence that there have been some Employer actions which appear to be attempts at circumventing the intent of the prior language. Accordingly, the Association's position on this issue is to be preferred, particularly since the Employer has not argued that it will be unduly restricted if the Association's language is accepted. Like the issue of contract duration, this issue is not determinative because of the importance of economic issues.

On the issue of health insurance, the dispute between the parties has no known present economic implications. The Employer wants its contribution to be expressed in dollar terms while the Association argues that the contract language should set a cap on an employee's contribution (for family coverage). Each party's position would put the risk of increased premiums upon the other and would establish the status quo for the next round of bargaining on the issue of insurance for 1986-87 (and beyond). As for 1985-86, however, there appears to be no practical consequences. The Employer's position because it continues the prior practice of stating the Employer's contribution in dollar terms is to be preferred. The

Association's position, while understandable, is not supported by compelling need. While it is true that unit employees during 1984-85 were required to pay an unanticipated increase in family health insurance premiums while at the same time receiving a "mere" 25¢ an hour increase in wages, it is reasonable to assume, absent evidence in the record, that the large premiums for Clintonville employees in both 1984-85 and 1985-86 have some relationship to a higher than average rate of usage. While the allocation of financial responsibility for the payment of health insurance premiums, particularly when insurance costs are so high, remains a highly sensitive topic for negotiations, in this proceeding the Employer's position continuing a prior pattern for 1985-86 has been selected. Negotiations for 1986-87 - or arbitration - will provide another opportunity for this issue to be explored. Its resolution in this proceeding, like the resolution of the issues of contract duration and temporary employees, is not determinative, in the undersigned's view.

Next to wages, the Association viewed its demands on holidays and vacations as very important to bargaining unit members. The Employer's position continued the status quo with no improvements in either benefits while the Association demands would extend holiday benefits (2 days) to school year employees, increase the number of paid holidays for twelve month employees by one and one-half days, and increase vacation benefits for senior twelve month employees. As for the Association's vacation proposal, it acknowledges that it cannot be supported by comparable data. The Employer argues that the same is true when the Association's vacation and holiday proposals for twelve month employees are combined. Looking at the holiday pay issue alone, it is evident that each party can demonstrate some support among the comparables for its position since there is no well defined pattern evident. Accordingly, the Employer's vacation status quo position is to be preferred, if there were only one item unresolved, while the comparable data by itself is not helpful in resolving the holiday pay issue. In the context of this multiple issue dispute, however, it is unrealistic to view these two disputes in isolation. Both parties correctly argue that they need to be considered in connection with the related wage and other fringe benefits data.

Although several of the issues already discussed were hotly contested by the parties, their main disagreement centered around their differing wage proposals. One portion of the Association's wage demand proposed an additional stipend for the Bear Creek custodian. The Employer disagreed about the need for such additional compensation. While it may be true that the Bear Creek custodian performs certain maintenance duties above and beyond those performed by the other custodian Is, those duties are not part of his job description and responsibilities, according to the Employer. Unless he is required to perform these additional duties, there is no justification for the additional compensation. The more general disagreement between the parties relates to the structural and dollar increases included in the Association's wage proposal. It is at this point that it is critical to resolve the parties dispute mentioned earlier about whether a total compensation approach or a wages only approach merits greater weight. According to the Association, using a wages only analysis, the comparables yield the following average wage data for 1985-86 compared to 1984-85: Bonduel - 7.8%, Manawa - 5.7%, Marion - 6.22%, Shawano - 5.16% and Shiocton - 6.61%. New London is a special case with increases ranging from 0-7% (mostly at 6%). The Association costs its wage offer at 6.7%. Unlike the Employer, the Association believes that the cost of its holiday pay proposal should not be included in calculating the cost of its wage proposal; it is part of fringe benefit costing. The Association also disagrees with the Employer about the effect of its proposed new hire rates upon eight current employees who would be receiving lower rates than the Association's new hire rates. While the Employer believes that the Association's final offer requires that these employees receive wage increases to conform to the Association's new hire rates, the Association rejects the Employer's conclusion and states that this will be

a matter for 1986-87 negotiations and that the Association will not file a grievance on this matter during 1985-86. The Association concludes, therefore, that because the Employer's wage only increase is 4.5%, the comparability data support its final offer.

The Employer rejects a wages only analysis. It argues for a total compensation approach which would appropriately recognize the high insurance and retirement benefits provided by the School District to both its twelve month and school year employees.[1] Under the School Board's total compensation analysis of the maximum rates for 1985-86 for its clerical employees, custodians, food service workers and aides, the Employer's final offer far exceeds the average rates in the comparables (by 7% to 41%). Under this type of analysis, the Association's final offer provides increases which exceed the comparables by 9.5% to 44.7%. It is apparent that using a total compensation approach favors the Employer's final offer while a wages only approach favors the Association's offer. Since both approaches are justified by the statutory criteria, which one is to be preferred? Resolving this difference between the parties, moreover, will be determinative of the outcome of this entire proceeding in view of the critical nature of the wage dispute.

In prior arbitration awards, the undersigned has indicated the special importance of total compensation data, when available. A total compensation approach addresses more appropriately and realistically the economic costs to an employer and the income, broadly defined, received by an employee. Allocation of employer funds for employee fringe benefits is like allocation of employer funds for wages (except that the former is usually not part of the employee's taxable income). Whether funds are allocated to fringe benefits or wages is an important policy choice which should be understood by employers, unions, and employees alike. Accordingly, when there is a conflict as to result using a wages only approach versus a total compensation approach, the undersigned believes that the latter should be given greater weight. Accordingly, she concludes that the Employer's economic package amounting to 6.5% is more in accord with the statutory factors than the Association's economic package of 8.7%, as costed by the Association, or 8.9% as costed by the Employer (without any adjustment for the eight employees whose situation has been mentioned above). Although the Employer's economic package may provide less than hoped for wage improvements for unit members, Employer provided insurance and retirement benefits must be considered. Under the Employer's final offer, the comparative standing for Clintonville unit members remains far above average in most instances as far as economic benefits are concerned.

Having concluded that the Employer's wage offer is more reasonable than the Association's offer based upon a total compensation approach, the undersigned also concludes that overall the Employer's final offer package is to be preferred because of the special significance in this proceeding of economic issues.

AWARD

Based upon the statutory criteria in Section 111.70(4)(cm)(7), the evidence and arguments presented by the parties in this proceeding, and for the reasons discussed above, the mediator-arbitrator selects the final offer of the Employer and directs that it, along with all already agreed upon items, be incorporated into the parrties' 1985-87 collective bargaining agreement.

Chilmark, Massachusetts
May 31, 1986

June Miller Weisberger
Mediator-Arbitrator

1. The Employer's "total" compensation comparative data only in-include d health insurance, dental insurance and retirement employer contributions in addition to wages. Unfortunately, the data presented did not include other fringe benefits such as paid holidays and leaves.

Employer's Final Offer

1. ARTICLE XXX - DURATION

Modify paragraph A to read as follows:

A. Term: This Agreement shall become effective July 1, 1985 and shall remain in full force and effect through 30 June, 1987. Effective July 1, 1986 this contract shall reopen for the purpose of negotiating adjustments in wages and health insurance only for the second year of this Agreement.

2. ARTICLE XXII - WAGES

Modify the contract language to read:

Pursuant to Appendix "A", herewith attached, effective July 1, 1985.

(Wage adjustment offer - see attachment)

3. ARTICLE XXIII - HEALTH INSURANCE

Revise paragraph B to read:

The District will continue to pay the full premium on the single health policy and up to one hundred ninety-four dollars and seventy-eight cents ($194.78) on the family health policy per month.

4. All other provisions of the 1983-85 labor agreement between the parties to be incorporated into the successor agreement except as proposed for modification as set forth herein above by the District's Final Offer or as modified by stipulations of the parties.

CPS - ESP Wage Rates

Classification	Hire Rate	Ceiling Rate
CLERICAL I	$4.50 - $5.75	$8.50
CLERICAL II	$3.50 - $4.80	$7.50
FOOD SERVICE I	$3.90 - $4.65	$7.50
FOOD SERVICE II	$3.50 - $4.25	$6.50
MAINTENANCE MECHANIC	$6.25 - $7.35	$9.85
CUSTODIAN I	$5.90 - $6.45	$9.50
CUSTODIAN II	$4.00 - $5.05	$7.50
AIDE I	$3.85 - $4.55	$7.20
AIDE II	$3.50 - $4.40	$6.50

Annex "A"

CPS-ESP ASSOCIATION
FINAL OFFER
9/14/85

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ARTICLE VII - EMPLOYMENT STATUS

D. Temporary Employee Shall include those employees hired for a specific project or need (not to exceed sixty (60) calendar days; in any one calendar year) and who shall be separated from the payroll at the end of such project or period. The Association shall be informed in writing whenever a temporary employee is being utilized by the District. Such employees shall not be considered members of the bargaining unit.

ARTICLE XIX - HOLIDAYS

A. All full-time and part-time twelve (12) month employees shall be granted the following holidays off with pay:

Memorial Day, Independence Day, Labor Day,
Thanksgiving Day, Day after Thanksgiving,
Christmas Eve Day, Christmas Day, New Year's
Eve Day, and Good Friday and New Years Day

All school year employees shall be granted the following holidays with pay:

Labor Day and Thanksgiving Day

B. Eligibility In order for employees to receive pay for any of the above named holidays, the employee must be on pay status for the pay period during which the holiday falls. The employee must be in attendance on their scheduled work day immediately preceding and following the holiday to be eligible for holiday pay, except when an employee is on a scheduled vacation or approved sick leave.

Should the holiday designated in Paragraph "A" fall on a Saturday, the preceding full work day shall be given as the holiday from work. Should the above holiday occur on Sunday, the following Monday shall be given as the holiday from work.

ARTICLE XX - VACATIONS

A. All regular full-time and part-time twelve (12) month employees in the bargaining unit shall receive the following vacation with pay.

5 days after one year
10 days after two years
15 days after eight years
20 days after fifteen years
1 additional day per year after 15 years to a maximum of 25 days

B. Retain remainder of current language. (Drop our request for school year employees vacation.

ARTICLE XXIII-HEALTH INSURANCE

A. The District shall provide health insurance for all calendar year full-time employees and school year full-time employees; part-time employees will be prorated (as current practice) on a twelve (12) month basis.

B. The District will continue to pay the full premium on the single health plan and the employees covered under the family plan will contribute fifteen ($15.00) dollars toward their premium.

Annex "B"

ARTICLE XXII WAGES

(The Association's final offer incorporates a split wage increase: twenty-five cents ($.25) an hour increase July 1, 1985 and an additional twenty cents ($.20) an hour increase January 1, 1986.)

Pursuant to Appendix "A", herewith attached, effective July 1, 1985.

Classification	Hire Rate	Ceiling Rate
Clerical I	$6.25	$8.50
Clerical II	$5.25	$7.50
Maintenance Mechanic	$8.25	$9.50
Custodian I	$7.00	$9.50
Custodian II	$5.25	$7.50
Aide I	$5.00	$9.20
Aide II	$4.75	$6.50
Food Service I	$5.00	$7.00
Food Service II	$4.25	$6.50

In addition to Appendix "A", the Bear Creek Custodian (Don Pringnitz) who does all of the maintenance and repair work in addition to his regular head custodian duties shall receive an additional $.25 per hour.

TERM OF AGREEMENT/DURATION

A. This Agreement shall becme effective July 1, 1985 and shall remain in full force and effect through June 30, 1986.