

AUG 06 1986

WISCONSIN EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE MEDIATOR-ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

----- )  
 In the Matter of the Arbitration Between )  
 SCHOOL DISTRICT OF RANDOM LAKE )  
 and )  
 RANDOM LAKE EDUCATION ASSOCIATION )  
 ----- )

Case 12  
No. 35415  
Dec. No. 23095-A  
MED/ARB-3409

Appearances: For the Employer, Michael J. Spector, Esq., Milwaukee.

For the Association, Dennis Eisenberg (mediation) and  
John Weigelt (arbitration), Cedar Lake United  
Educators, West Bend.

BACKGROUND

On July 26, 1985, the School District of Random Lake (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 Random Lake Education Association (referred to as the Association) concerning a successor to the parties' collective bargaining agreement which expired on June 30, 1985.

On December 5, 1985, the WERC found that an impasse existed within the meaning of Section 111.70(4)(cm). On January 16, 1986, 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(4)(cm)(6)(b-g). A citizens' petition pursuant to Section 111.70(4)(cm)(6)(b) was filed with the WERC.

On March 11, 1986, the undersigned held a public hearing in Random Lake, Wisconsin, at which time the parties explained their positions in this proceeding to the members of the public present and various members of the public stated their views on this proceeding. In addition to oral comments by members of the public, various written and printed documents were submitted to the undersigned at the public hearing. Following the conclusion of the public hearing, the undersigned met with the parties to mediate the impasse. When she determined that the parties were unable to voluntarily settle this dispute, the arbitrator informed the parties and set April 15, 1986 as the date for the arbitration hearing. On that date, an arbitration hearing was held in Random Lake, Wisconsin. The parties were given a full opportunity to present evidence and oral arguments. Post hearing briefs were submitted by both parties.

ISSUES IN DISPUTE

The parties were able to agree upon all issues in dispute except for 1985-86 salaries and the Employer's proposal for Preadmission Hospital Review (PHR). A copy of the Employer's final salary offer is annexed as Annex A; a copy of the Association's final salary offer is annexed 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 proceedings 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 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 pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment."

POSITIONS OF THE PARTIES

The Employer

For the School Board, the first issue that must be resolved in this proceeding concerns the identification of the appropriate comparable school districts. Based upon well accepted criteria of geographic proximity, size (pupil enrollment and full time staff equivalency), athletic conference membership, per pupil operating costs, and full value tax rate/equalized value, the Employer contends that the following thirteen school districts are the appropriate pool of comparables: Campbellsport, Cedar Grove-Belguim, Chilton, Elkhart Lake-Glenbeulah, Howards Grove, Kewaskum, Kiel, Kohler, New Holstein, Northern Ozaukee (Fredonia), Oostburg, Plymouth and Sheboygan Falls. It argues that the Association's selection of comparables is arbitrary and distorts proper comparisons because of the inclusion of larger school districts and those influenced by the higher wages paid in the Milwaukee metropolitan area. It further notes that while some of the Association's comparables, Cedarburg, Grafton, Port Washington and West Bend, may be comparable to one another in the judgment of various arbitrators, they are not comparable to Random Lake.

The Employer next turns to an analysis of the parties' final salary offers which reflect a cost difference of approximately \$20,500 considering wages alone or a cost difference of approximately \$25,700 considering total compensation. Looking at the rank order of the Employer's final offer and the Association's final offer for 1985-86 in comparison to Random Lake's rank order for 1984-85, the Employer notes that the School Board's offer improves Random Lake's already high rankings in several of the benchmark positions and retains its rankings in the others. Since the School District ranks seventh in pupil population, the Employer argues that such high ranks are particularly supportive of the Employer's final offer.

The Employer also compares its final salary offer at the benchmarks with the average 1985-86 salaries in the settled benchmarks as well making a comparison of the dollar and percentage increases of its offer with the average of the settled comparables at the benchmarks and concludes that such analysis supports its final offer. Lastly, it computes the average dollar and percentage increases in Random Lake for the past four years (back to 1981-82) at the benchmarks, compares those figures with the average of the comparables and concludes that historically teachers in Random Lake have been well treated when the comparables are considered.

The School District justifies its salary schedule offer which compresses the salary schedule by removing a step and freezing each teacher at his or her 1984-85 step by noting that this follows the parties' voluntary settlement for 1984-85, that the Association itself made proposals during 1985-86 bargaining which involved greater salary compression, that its proposal produces a ratio between the salary schedule minimum and maximum that is consistent with the comparables, and that is consistent with the growing national consensus that beginning teachers' salaries must be raised significantly to attract new teachers to the profession.

It also generally justifies its position in this proceeding by emphasizing the farm crisis which directly affects the School District's taxpayers, including declining income, farm values, and other economic pressures leading to farm bankruptcies and interest in the federal "buyout" program. It also points to very modest improvements, if any, in the area for private and public sector employees, noting that in the case of one private sector employer (Gilson Brothers Co.) there was a substantial reduction or give back for the portion of the workforce that was called back after a layoff. Accordingly, it concludes that its final offer which totals 7.3%, particularly when it is compared to a cost of living increase of approximately 3%, represents a reasonable and generous balance between the public interest and the needs of bargaining unit members.

Finally, the Employer argues that its proposal for preadmission hospital review is reasonable because it reduces health care costs (but not quality of care). This is particularly important since Random Lake premiums are in excess of the average premiums in comparable school districts. Moreover, it merely requires a simple phone call prior to non-emergency inpatient treatment and, thus, is not burdensome for employees.

For all these reasons, the Employer concludes that its offer strikes a sensible balance which takes into account the legitimate interests of the Random Lake teachers, salaries and total compensation in the comparable school districts, and the realities of "a harsh local economic climate."

### The Association

Like the Employer, the Association first addresses the issue of selection of comparable school districts. Its selection includes: Cedarburg, Cedar Grove, Northern Ozaukee (Fredonia), Grafton, Kewaskum, Oostburg, Port Washington, and West Bend. The Association justifies its selection of these comparables on the basis that Random Lake and its teachers are directly affected by the Milwaukee metropolitan area's influence. Thus the school districts which are geographically close, particularly to the south of Random Lake are appropriate comparables. This is particularly so because Random Lake is located at the junction of Sheboygan, Washington, and Ozaukee counties. The Association rejects the Employer's approach to comparables since it emphasizes school districts to the north, northwest, and west of Random Lake and ignores the "radiating influence" of Milwaukee County. The Association further supports its comparables by noting the membership of the Cedar Lake United Educators to which the Random Lake Education Association belongs. Finally, the Association notes that both parties have referred to many or most of the Association's designated comparables as appropriate during negotiations.

To support its position, the Random Lake Education Association conducted a survey concerning the geographical spending habits of its members. While the survey admittedly lacks sophistication and statistical reliability, yet the Association believes that it supports its position on comparables in this proceeding by emphasizing the importance of the Milwaukee metropolitan area and, to a lesser extent, Ozaukee and Washington counties. In contrast, the Association contends that the Employer's comparables ignore reality and include school districts of extreme size differences and distant geographical proximity to Random Lake.

Turning to the merits of the salary dispute between the parties, the Association first notes that there is no Employer argument that it cannot afford to pay for the Association's final offer. Further, the Association believes that it is appropriate to emphasize a costing approach which uses the "returning teacher" method. Under its calculations, the Association's final offer provides an average salary increase per FTE of \$2062 while the School District's final offer provides an average salary increase of \$1751. More than that, the Association emphasizes that the Employer's final offer modifies the previously agreed upon 1984-85 salary schedule by reducing the number of steps in the schedule and thus reducing the ratio between the maximum salary and the minimum salary. As the Association points out, this adversely affects those at the top of the salary schedule although providing temporary benefits for new, inexperienced teachers. Although the Association appreciates the importance of increasing new teacher salaries, it strongly argues that it is critical to also increase the rest of the pay scale to retain teachers.

One of the main arguments relied upon by the Association is the well-known and accepted rule that any modification or variance in the structure of a salary schedule places a burden of persuasion upon the party proposing such a change; moreover, that burden is a substantial one to overcome. Since the Association believes that the Employer has failed to sustain its burden on this point, it believes that, for this reason alone, the undersigned should select the Association's final offer.

Turning to the pattern of settlements for 1985-86 among the Association's comparables, the Association points out that its final offer is \$11 above the average increase while the Employer's final offer is \$300 below the average. The Association believes that this analysis of patterns of settlements should be given priority over other factors such as cost of living increases and cites arbitral precedents for this position. In addition, the Association points to historical rankings of the benchmarks over a five year period to support its final offer. This analysis also illustrates, in the view of the Association, the harm caused by the Employer's change in the salary schedule structure for 1985-86.

As for the Employer's arguments concerning the economic plight of Random Lake, the Association contends that the evidence is too general and unrelated to Random Lake specifically. The Association concludes its arguments by noting that the School District has received a 31% increase in state aid and, therefore, there will be no trouble in funding the Association's offer.

On the remaining issue of PHR, the Association points out that school districts which have negotiated this provision have provided substantial salary increases to their teachers.

The Association's final point is a more general one and concerns the issues addressed in the national report which has come to be known as the "Nation at Risk" report as well as other scholarly works, governmental reports and publications of organizations such as the Wisconsin Association of School Boards and the Rand Corporation, all of which point to the need to attract highly qualified individuals to public education and to retain highly qualified teachers. The Association believes that its final offer is one way to provide for quality education for the children of the Random Lake

School District.

Accordingly, the Association believes that its final offer should be selected because it meets the criteria established by state law, particularly the general interest of the public.

DISCUSSION

This impasse involves two unresolved issues, the 1985-86 salary schedule and the pre-admission hospital review clause which the Employer seeks to add to the School District's health insurance policy. In order to resolve which final offer is more in accord with the statutory factors, there are a number of points raised by the parties which must be addressed. These include the selection of the appropriate comparables, the Employer's proposed change in the structure of the salary schedule, the impact of the economy, and the expressed concern to increase the quality of education by making substantial improvements to the teachers' salary schedule. The first two listed issues have arisen in a number of impasse disputes since the inception of the mediation-arbitration law while the remaining two issues have been raised in an increasing number of arbitration proceedings which have taken place (and are taking place) more recently.

In this proceeding, both parties have selected comparables which support their respective final offers. The Employer has looked to the north and west while the Association has looked to the south towards Milwaukee. The Employer points out that the Association's comparables include substantially larger school districts such as Grafton, Port Washington, and West Bend while the Association notes that the Employer's comparables include remote, substantially smaller school districts. From the great diversity of comparability data presented in this proceeding, some facts stand out. Both parties agree that four of the contiguous school districts are appropriate comparables. These are Cedar Grove-Belgium, Kewaskum, Northern Ozaukee, and Oostburg. Of the three remaining contiguous school districts (adopted by the Employer as comparables), there is data from only Plymouth. At the time of the arbitration hearing in this proceeding, Campbellsport had not yet settled (and no further information was supplied by either party) and Sheboygan Falls was in arbitration. Information is thus available about five contiguous school districts which are generally similar in size and economic characteristics to Random Lake and, moreover, the parties agree that four of the five are appropriate comparables. Accordingly, the undersigned believes there is no need to consider other members of the Athletic Conference (the Employer's comparables of Kohler, Howards Grove, and Elkhart Lake) or the more distant comparables selected by the Employer (Chilton, Kiel, and New Holstein) or the more distant comparables selected by the Association (Cedarberg, Grafton, Port Washington, and West Bend). In the selection of appropriate comparables, she has given no consideration to membership in the Cedar Lake United Educators Council since she does not believe that this is a relevant factor under the statute.

Focusing upon the school districts which have been selected as the appropriate comparables by the undersigned, the following data have been supplied for total package costs for 1985-86: Kewaskum - 9.01% (adjusted to reflect the delayed implementation of the salary schedule by 9.5 days); Northern Ozaukee - 8.4%; Oostburg - 7.48%; and Plymouth - 7.3%. For Cedar Grove-Belgium, the only information covers salary only which is 7.77%. (The salary only figures for Kewaskum is 8.49%; for Oostburg, it is 8.18%; for Northern Ozaukee, it is 8.1%; and for Plymouth, it is 6.5%.) In this proceeding, the Employer's final offer represents a 7.36% total package and the Association's final offer represents an 8.61% total package. From the total package figures, it is clear that two school districts, Oostburg and Plymouth, support the Employer's final offer and two school districts, Kewaskum and Northern Ozaukee, support the Association's final offer. Since no total package information is available for Cedar Grove-Belgium,

it is not possible to make an informed judgment as to which final offer is supported by the Cedar Grove-Belgium settlement. Looking at the wages only settlement at Cedar Grove-Belgium (7.77%) and the wages only position of the parties in this proceeding (Employer - 7.3%; Association - 8.6%), one must conclude that Cedar Grove-Belgium is more supportive of the Employer's position than the Association's position.

It is unfortunate that the total compensation comparability analysis does not provide a clearcut "winner" (although it does mildly favor the Employer's position) since the undersigned believes that a total compensation approach is the one that merits greatest weight. While the Association argues for an approach which utilizes the average increase paid to returning teachers (not including lane changes) and the Employer argues for an approach which utilizes relative dollar standings and rankings at the benchmarks of the schedule, the undersigned believes that these two very different approaches may provide distortions. In the case of the former, as used in this proceeding, it fails to take into account other economic costs in addition to salaries; in the case of the latter, it fails to take into account the distribution of teachers at the various points on the salary schedule as well as fringe benefit costs.

Because the total package of the Employer is mildly favored by the chosen comparability analysis, a further issue must be resolved. Since the Employer's salary offer compresses the schedule by removing one step and freezing each teacher at his or her 1984-85 step for 1985-86, is this a fatal flaw, as the Association argues? The Association correctly notes that the party changing the status quo has the burden of persuasion to justify the change. In this case, the Employer notes that in 1984-85 the parties voluntarily agreed to a similar compression and freeze and, during 1985-86 negotiations, the Association itself made various proposals to change the salary schedule structure. In view of this bargaining history for the past two years, the Employer has correctly concluded that it is not attempting to gain in arbitration anything which the parties did not seriously consider (and in 1984-85 agree to) in negotiations. Accordingly, while the Employer's salary schedule contains some structural changes, these types of changes have antecedents in negotiations and in the "dynamic" status quo. Accordingly, the mere fact that the Employer's final offer contains various structural changes to the salary schedule is no reason in this proceeding to reject it. This conclusion is further supported by the Employer's rationale that the changes are designed to bring Random Lake's schedule more into line with those of the comparables.

One element of the School District's offer has not yet been addressed. The Employer's final offer includes adding a preadmission hospital review requirement for all non-emergency inpatient treatment. Since the proposed review only requires a simple but timely phone call prior to hospitalization, it is apparent that the main objection to this proposal is that the Employer has not provided a sufficient salary increase or other economic incentive to secure voluntary Association agreement. Particularly since this cost-containment (but not health care quality reduction) feature has already been adopted in some of the comparables, its inclusion in the Employer's final offer is not a negative point in this proceeding.

The remaining issues to be discussed relate to the two arguments which have become common in recent times in school district interest arbitrations. The Employer and several citizens at the public hearing held on March 11, 1986 have presented various facts relating to the faltering farm economy and present economic circumstances which adversely affect taxpayers in the School District, surrounding rural areas, and the state generally. The Employer cites two recent arbitration awards, one by Arbitrator Rice in Cadott Community School District (3/86) and one by Arbitrator Yaffe in New Holstein School District (3/86), as examples of cases where interest arbitrators have given due consideration to the economic circumstances of local taxpayers. On the other side, the Association has presented documents and arguments relating to the "Nation at Risk" and stressing the importance of quality education provided by appropriately compensa-

ted teachers who are attracted to and retained by the profession.

It is difficult not to recognize the merits of both these points. Given the immediacy of the economic problems facing a substantial number of local taxpayers, however, and the need for a long-range strategy and policy to upgrade significantly the compensation and status of teachers vis-a-vis other professionals and workers, it is apparent that the interest arbitration process is not the appropriate forum to make substantial inroads upon this serious national problem.

As the earlier comparability analysis concluded, when the salary schedule of Cedar Grove-Belgium is considered, the Employer's final offer is slightly preferred. It is further supported in this proceeding where the appropriate level of total compensation for School District teachers appears to be somewhat higher than the Employer's final offer and somewhat lower than the Association's final offer by the objective economic reality facing a number of local taxpayers. When the difficult choice must be made under the mediation-arbitration statute, the undersigned cannot ignore the economic facts facing many District taxpayers even though she acknowledges that selection of the Employer's final offer provides one of the lowest total package increases among the comparables. The alternative of selecting the Association's final offer which provides one of the highest total package increases among the comparables is not a viable one in 1986 for a school district such as Random Lake. Future negotiations will provide the Association with an opportunity to seek additional economic adjustments within the context of comparability. Unfortunately, this case is a classic example of the difficulties inherent in final offer arbitration.

#### AWARD

Based upon the statutory criteria contained in §111.70(4)(cm) (7), the evidence and arguments of the parties, 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 parties' collective bargaining agreement for 1985-86.

Madison, Wisconsin  
August 4, 1986

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June Miller Weisberger  
Mediator-Arbitrator

ANDOM LAKE BOARD Delete 1st Step and Renumber 1985-86 Schedule #

step	B.A.	BA+B	BA+16	BA+24	M.A.	MA+B	MA+16	MA+24	MA+30
0	16,678	17,303	17,929	18,554	19,180	19,805	20,431	21,056	21,681
1	16,678	17,303	17,929	18,554	19,180	19,805	20,431	21,056	21,681
2	17,512	18,137	18,763	19,388	20,014	20,639	21,264	21,890	22,515
3	18,346	18,971	19,597	20,222	20,848	21,473	22,098	22,724	23,349
4	19,180	19,805	20,431	21,056	21,681	22,307	22,932	23,558	24,183
5	20,014	20,639	21,264	21,890	22,515	23,141	23,766	24,392	25,017
6	20,848	21,473	22,098	22,724	23,349	23,975	24,600	25,225	25,851
7	21,681	22,307	22,932	23,558	24,183	24,809	25,434	26,059	26,685
8	22,515	23,141	23,766	24,392	25,017	25,642	26,268	26,893	27,519
9	23,349	23,975	24,600	25,225	25,851	26,476	27,102	27,727	28,353
10	24,183	24,809	25,434	26,059	26,685	27,310	27,936	28,561	29,187
11	25,017	25,642	26,268	26,893	27,519	28,144	28,770	29,395	30,020
12	25,851	26,476	27,102	27,727	28,353	28,978	29,603	30,229	30,854
13	26,685	27,310	27,936	28,561	29,187	29,812	30,437	31,063	31,688
14					30,020	30,646	31,271	31,897	32,522

985-86	B A S E	Salary =>	\$16,678.00
	Total Cost	=>	\$1,685,405.71
	Average Salary	=>	\$25,731.38
65.500	<=FTE	Ave. Increase=>	\$1,750.66

Health Insurance: ADD PREADMISSION HOSPITAL REVIEW

Annex A



RANDOM LAKE EDUCATION ASSOCIATION 1985-86 Salary Schedule FINAL Offer

	B.A.	BA+8	BA+16	BA+24	M.A.	MA+8	MA+16	MA+24	MA+30
1	16,350	16,963	17,576	18,189	18,803	19,416	20,029	20,642	21,255
2	17,168	17,781	18,394	19,007	19,620	20,233	20,846	21,459	22,073
3	17,985	18,598	19,211	19,824	20,438	21,051	21,664	22,277	22,890
4	18,803	19,416	20,029	20,642	21,255	21,868	22,481	23,094	23,708
5	19,620	20,233	20,846	21,459	22,073	22,686	23,299	23,912	24,525
6	20,438	21,051	21,664	22,277	22,890	23,503	24,116	24,729	25,343
7	21,255	21,868	22,481	23,094	23,708	24,321	24,934	25,547	26,160
8	22,073	22,686	23,299	23,912	24,525	25,138	25,751	26,364	26,978
9	22,890	23,503	24,116	24,729	25,343	25,956	26,569	27,182	27,795
10	23,708	24,321	24,934	25,547	26,160	26,773	27,386	27,999	28,613
11	24,525	25,138	25,751	26,364	26,978	27,591	28,204	28,817	29,430
12	25,343	25,956	26,569	27,182	27,795	28,408	29,021	29,634	30,248
13	26,160	26,773	27,386	27,999	28,613	29,226	29,839	30,452	31,065
14	26,978	27,591	28,204	28,817	29,430	30,043	30,656	31,269	31,883
15					30,248	30,861	31,474	32,087	32,700

1985-86 B A S E Salary => \$16,350.00  
 Total Cost => \$1,705,805.72  
 Average Salary => \$26,042.84  
 65.500 (=FTE Ave. Increase=> \$2,062.11

Annex B