

RECEIVED

MAY 30 1986

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

LENDALE EDUCATION ASSOCIATION

CASE 10

NO 35605

To Initiate Mediation-Arbitration
Between Said Petitioner and

MED/ARB-3475

Decision No 23112-A

LENDALE-RIVER HILLS
SCHOOL DISTRICT

APPEARANCES:

Mark F. Vetter, Davis & Kuelthau, S.C. on behalf of the District

Patrick A. Connolly, North Shore United Educators, on behalf of the Association

On January 6, 1986 the Wisconsin Employment Relations Commission appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70(4)(cm) of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned engaged in mediation with the parties on March 6, 1986 which did not result in resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on the same date for final and binding determination. Post hearing exhibits and briefs were filed by the parties, which were exchanged by April 21, 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 involves the duration of the collective bargaining agreement which shall succeed the parties' 1984-1985 Agreement, and of primary importance to both of the parties is the salary schedule to be contained therein.

With respect to the duration of the proposed agreement the District proposes a two year agreement while the Association proposes a one year agreement

On the salary schedule issue, the Association proposes that the salary schedule structure which was established in the 1984-1985 bargain be maintained and that a 5.75% wage increase per step be applied to the transition schedule that was agreed to on May 8 1984. The Board proposes increasing the BA and MA base salaries from the 1984-1985 transition schedule by 6.10% and 3.67%, respectively, and then applying the index numbers from that schedule to the rest of its proposed schedule, however, it also proposes reducing the length of the schedule by eliminating steps 1.0 and 1.5 in the BA and MA lanes, and at the same time it proposes utilizing the salary amounts from step 1.0 as multipliers when generating the proposed adding a longevity payment of \$506, which amounts to a 5.16 % increase, for teachers who were at MA Step 14 on the 1984-1985 schedule

For 1986-1987 the District proposes increasing the BA lane salaries by 3.4% and increasing the MA lane salaries by 4.8% and applying the 1985-1986 index to the rest of the schedule. It also proposes increasing the longevity payment to individuals at the MA 14 step in 1985-1986 to \$617.

The Association's proposal would result in an average wage increase of \$2,508 (8.94%) per teacher for 1985-1986. The Board's final offer would result in an average wage increase of \$2,200 (7.85%) per teacher in 1985-1986 and \$2,100 (6.94%) in 1986-1987.

The Board has also proposed a 1986-1987 calendar and it has also proposed increases in the extra pay schedule for that year amounting to approximately 5%.

The parties also disagree on what districts should be deemed comparables for purposes of this proceeding. Although both parties agree that Nicolet High School and its three elementary feeder school districts, which include the District, Maple Dale-Indian Hill, and Fox Point-Bayside districts are comparable, they disagree as to whether Shorewood and Whitefish Bay should also be utilized as comparables. In this regard the District submits that they should be and the Association contends that they should not.

ASSOCIATION POSITION

The Association's proposed comparables are supported by the fact that they have been utilized by other arbitrators in similar proceedings, and therefore they should be utilized herein.¹

With respect to the salary schedule, particularly under the circumstances present herein, the structure of the schedule should remain unchanged in 1985-1986. Particularly relevant to this conclusion is the fact that during the last round of negotiations for the 1984-1985 Agreement the parties mutually agreed to a restructured schedule. Said schedule was shortened from ten steps to nine on the BA lane and from 16 steps to 14 on the MA lane. Both lanes were re-indexed, and the longevity payment on the MA lane was eliminated. In order to effectuate the agreed upon structural changes in 1985-1986 the Association agreed to a District proposal that teachers would only advance one half step in 1984-1985 so that the costs of the transition to the new schedule could be controlled. The effect of this agreement was that it would take teachers who were already employed by the District an additional year to reach the maximum salaries. This was a significant concession by the Association which was made in order to achieve agreement on the restructured schedule.

Thus, the restructured 1985-1986 salary schedule which was negotiated between the parties has never really been implemented, and if the District's final offer is selected in this matter, it never will be.

The District's salary rates should increase in 1985-1986 by roughly the same percent as have the salaries of teachers in the other three Nicolet area school districts, and in this regard the Association's proposal is much more in line with the settlement pattern than is the District's. The same result would occur even if the District's proposed comparables are utilized.

The District's argument that average dollar increases including the value of increments should be compared improperly treats the degree and experience placement of teachers on salary schedules in different districts as though they were identical. It also incorrectly assumes that the same proportion of teachers are paid identically for identical degrees, identical credits and identical experience on identical steps from district to district. Thus the District's contention makes no sense because obviously salary schedules and teacher placements among districts are not proportionately identical.

¹Citations omitted

In sum, the gist of the District's case is that it does not want to bear the comparatively high increment cost of the salary schedule it has previously agreed to. As a result, the District is proposing significantly below average increases in salaries based upon degree and experience in order to offset the high increment costs.

In this regard it is noteworthy that the Association's proposal is clearly the more comparable of the two when maximum salary benchmarks are compared, and this is particularly true when MA maximums are looked at.

Furthermore, the District's proposed structural modifications of the salary schedule are unworkable.

In this regard it is relevant that no comparable district has longevity steps on its salary schedule. Furthermore, the parties agreed to eliminate longevity when they agreed upon a restructured salary schedule in the negotiations for 1984-1985. There is also no precedent within the District for the addition of a non indexed step to the schedule, which would in effect create a partially indexed schedule. Finally, there is a trend among comparable districts and elsewhere which supports the shortening rather than the lengthening of salary schedules, and the District's proposal clearly does not conform to this trend.

The District's proposal to eliminate steps 1.0 and 1.5 while at the same time retaining the step 1.0 dollar amounts as multipliers for the index would create a new and unorthodox schedule for which there exists no precedent either in the District or among comparable districts. All of the comparable districts have shortened their schedules while maintaining the base salary as an integral part of the schedule. Furthermore, the District's proposal to remove the first two steps of the schedule is only cosmetic since it has the right to hire beginning teachers at any step it chooses.

In making structural changes to salary schedules, both parties' needs must be addressed, and thus, significant changes in schedules should be negotiated rather than awarded. This is especially true in this case since the parties negotiated a restructured schedule in 1984-1985 which has not yet even been fully implemented. The parties ought to be given a chance to implement the schedule which they agreed to in the 1984-1985 bargain and to be given the opportunity to bargain any further structural problems which can thereafter be identified. A one year agreement will allow the parties an opportunity to begin that task immediately. Relatedly, it is relevant

that the last two agreements in the District have been one year agreements, which further supports the reasonableness of the Association's position.

Relatedly, no precedent exists in the District for applying different percent increases to the BA and MA lanes on the indexed schedule. In fact, over the years, the District has given more value to those teachers who have greater experience and training, especially, those who hold masters degrees. Yet the District's current offer reverses that long standing practice. The concessions the District is asking those teachers, who incidentally constitute 70% of the bargaining unit, to make is particularly unjustified in light of the concessions the Association made last year to achieve the restructured schedule. Relatedly, the lower increases proposed for MA teachers cannot be viewed as a reasonable incentive for teachers to continue their graduate training.

The District's 1986-1987 salary proposal continues the same structural problems created by its 1985-1986 proposal.

Furthermore, the District has produced no evidence to justify its 1986-1987 extra pay proposal.

It is also relevant that the District is the only district among its comparables which requires teachers to pay one half of their health insurance premium for the first three years of their employment.

Both final offers reflect the fact that neither party used the Consumer Price Index as a standard for framing its salary proposal. Instead, in this regard, one must look at the % increase comparable districts have granted their teachers over the same period of time.

In sum, the Board's offer is a tortuous alteration of a salary schedule which was structured in order to achieve some modicum of comparability at the minimums and maximums while at the same time offering patently low increases to the experienced teachers holding MA degrees in the District. To adopt the District's proposal would undo the building of a salary schedule which the parties have bargained over the years, and for this reason alone, the District's proposal should be rejected.

DISTRICT POSITION:

With respect to the comparability issue, it is important to note that during the negotiations which preceded this proceeding, both parties consistently referred to the settlements in the districts proposed by the Board as

comparables. It is also relevant that each of the Board's proposed districts is in close geographic proximity to the District. In fact, all of said districts are commonly known as "North Shore" school districts since they are located immediately north of the City of Milwaukee, along Lake Michigan and adjacent to one another. In addition, due to their geographic proximity, these districts often participate in common programs and share services.

Regarding the duration of the proposed agreement, there are no comparable settlements which support the Association's proposal for a one year agreement. In fact, all comparable districts are operating under multi-year agreements, three having two year agreements and two having three year agreements. Furthermore, all of these agreements, except Shorewood, commenced during the 1985-1986 school year. In the case of Shorewood, a two year agreement was reached in May 1985 for the 1984-1985 and 1985-1986 school years.

In addition, the concept of a two year agreement is not foreign to the District in that two of the parties' last four agreements have been for two year durations.

The Board's two year duration proposal would also foster a sound labor relations policy and would permit the parties to focus their primary efforts on the education of the children in the District's schools.

Regarding the salary schedule issues, the Board submits that actual average dollar increases should be analyzed and considered rather than percentage increases. If this is done, a comparative analysis will indicate that the Board's offer is equal to the highest average increase among the comparables, and is \$53 above the average of all of the comparable increases. On the other hand, the Association's offer would exceed the average by \$361, and it would be \$308 above the highest settlement.

During the second year of the proposed agreement the Board's offer is almost identical to two out of three other settlements.

When the Board's two year salary proposal is averaged, which amounts to an average yearly increase of \$2150, that amount equals the settlements in two other comparable districts. It is also \$13 per year above the two year average increase in comparable districts.

The Board's two year annual average salary increase would be 4.75% in the DA lane and 4.24% in the MA lane. The .5% average differential per year is clearly justified based upon the relatively poor comparative position of the

district in the BA lane. The differential is also relatively minimal and will not create any hardship on the teachers in the MA lane, nor will it significantly affect their comparative position. This is particularly true in view of the longevity increases which will affect half or more of the teachers in the MA lane during each year of the agreement.

The foregoing clearly indicates that the Board's salary proposal is more comparable than the Association's. The Board's proposal will also continue to keep the District's salaries competitive with the salaries received by teachers in comparable districts. In this regard it is noteworthy that if the Board's proposal is accepted, the BA base salary will be the lowest of the comparable districts. However, it will only be \$102 below the next lowest BA base salary rather than the \$1,002 below that figure which would be the case if the Association's proposal is accepted. At the BA Maximum, in 1984-1985 the District ranked 5th among comparable districts. If the Board's proposal is accepted the District's ranking will move to 4th. If the Association's proposal is accepted the District's ranking will remain 5th. At the MA base the Board's proposed increase is significantly more in line with comparable increases than the Association's. In addition, if the Board's proposal is accepted, the District's ranking at this benchmark will drop from 2nd to 3rd, while if the Association's proposal is accepted, the District's ranking will drop to 5th. And lastly, at the MA maximum, the Board's proposal would provide for the same salary at this benchmark as two other comparable districts whereas the Association's proposal would exceed that amount by \$198.

In preparing its proposal the Board sought to develop a schedule which would place it in a more competitive position at the base salaries and in the BA lane while still providing comparable increases to teachers in the MA lane. In contrast, the Association's proposal fails to recognize the inadequacies of the existing schedule, and thus it either perpetuates or exacerbates them.

Relatedly, it defies logic to see why the Association is criticizing the elimination of steps 1.0 and 1.5 on the schedule. The elimination of those steps will not have any negative effect on currently employed teachers and it will provide a definite benefit for newly hired teachers. It will also not have any effect on the previously negotiated index or the remainder of the salary schedule structure. By the Association's own admission, the modification meets a significant need. No further justification should be required.

The salary schedules in comparable districts make it pellucidly clear that some form of adjustment is necessary to make the salaries in the District's

BA lane more comparable. However the Association has failed to address the problem, and in fact, its proposal exacerbates the District's problem in this regard.

It is also important to note that the 70% of the teachers in the District on the MA lane will receive larger increases than the 30% of the teachers on the BA lane in 1986-1987 to offset the relatively smaller increases they will receive in comparison with the % increases the BA teachers will receive in 1985-1986 under the Board's proposal.

The purpose of the longevity step the Board has proposed is to provide teachers at the top of the MA lane with a salary which is the same as the MA maximum salary paid teachers in Fox Point-Bayside and Nicolet, which is the second highest MA maximum salary among the comparables. Since 22 teachers (approximately 25% of the unit) would be affected by this adjustment in 1985-1986, the Board concluded that there were strong and persuasive reasons for such a payment.

Assuming *arguendo* that the longevity step is a true step, the proposed number of steps in the MA lane is still in line with comparable schedules.

Even in percentage terms, the Board's offer is more comparable than the Association's in terms of average percentage increase in salary.

In response to the Association's contention that only the increases in salary schedule wage rates should be compared for purposes of this proceeding, there is substantial arbitral authority supporting the Board's position that the value of increments must also be considered in proceedings such as this.² What appears to be the case is that the Association is not willing to accept the consequences of the new salary schedule index and structure which it voluntarily agreed to. The Board has never agreed that the increments contained therein would not be considered part of the average salary.

²Citations omitted

increase. In fact, the increment has consistently been included by the parties in determining annual average salary increases.

Also relevant in this regard is the fact that although increments vary in comparable districts, the average dollar wage increases in those districts are all relatively the same.

The Board's salary proposal should also be accepted because it is more responsive to the increases in the CPI.

Also relevant to the reasonableness of the Board's position is the fact that in contrast to all comparable districts which have either front end or major medical deductible health insurance plans which do not provide for any reimbursement by the districts, in the District, deductibles are completely reimbursed by the Board. Also significantly, the deductibles in the comparable districts were all negotiated for the first time this year, and as a result of these changes, the teachers in those districts will be required to expend a portion of their salary increases to satisfy the insurance deductibles. Thus, they will receive less of a salary increase in spendable earnings than will the teachers in the District.

DISCUSSION:

Although there appears to be arbitral precedent supporting the use of the Association's proposed comparables, the undersigned finds no persuasive justification for deleting the Shorewood and Whitefish Bay Districts from the list of comparables to be utilized in this proceeding, particularly in view of the unrefuted assertion that the parties relied upon the Board's proposed comparables during the negotiations which preceded this proceeding, and in view of the fact that all of the Board's proposed comparables are geographically proximate and are engaged in some sharing of programs and services.

With respect to the duration issue, the undersigned also believes that the Board's proposal is more reasonable than the Association's, based upon several considerations, including the fact that it will comport with the settlement pattern in the area and it will foster a more stable and predictable labor relations climate between the parties. Also relevant in this regard is the fact that most of the District's comparables have concluded their agreements for 1986-1987, and therefore the parties herein will not have to be guessing what the settlement pattern among the District's comparables will be for that year.

With respect to the salary schedule issue, several factors must be considered in determining the relative reasonableness of the parties' proposals.

Perhaps initially it should be noted that based upon the parties' May 8, 1984 agreement regarding the "transition schedule", the parties' proposals, in terms of the dollar and percentage value of proposed increases, must be based upon the salary schedule contained in the parties' 1984-1985 Agreement. This is so since the parties clearly indicated in their agreement that increment costs would be calculated based on the 1984-1985 schedule. Relatedly, in the undersigned's opinion no persuasive case has been made why the costs of such increments should not be considered herein in determining the value of the increases which are contained in the parties' final offers. This is particularly true where, as here, the parties have agreed to a relatively unique increment structure. Also relevant in this regard is the fact that it is well established in proceedings such as this that new monies in teacher salary disputes include the costs of increments. With that in mind it would appear that the parties' salary proposals can best be characterized in the following manner:

When considering the value of the increases actually received by teachers in the District, including the value of increments, it becomes clear that the average salary increases proposed by the Association are substantially out of line, both in terms of dollars and percentages, with the average salary increases which have been granted in comparable districts for 1985-1986. Furthermore, it also becomes apparent that the Board's proposed average increase, both in terms of dollars and percentages, is in line with comparable settlements for 1985-1986, 1986-1987, and for the combined two year period.

Also relevant to any determination regarding the reasonableness of the parties' salary proposals are the following facts: At the BA minimum, the District's relative ranking amongst its comparables clearly justifies the Board's proposal at this end of the salary schedule. This is so even though the District apparently has discretion to hire above the minimums, since the Association's proposal would leave the District unnecessarily and unjustifiably out of line in this regard. At the BA maximum, there does not appear to be justification for the Board's unusually high proposed increase since the District's salary at this benchmark, even under the Association's proposal, is not at all out of line with the comparables. At the MA minimum since there is wide disparity between the increases granted in comparable districts, no clear settlement pattern appears to exist. Relatedly, although the Board's proposal is closer to the comparable average salary at this

benchmark the Association's proposal is not out of line at this benchmark. And lastly, at the MA maximum, the Association's proposal is more in line with the increases granted in comparable districts, both in terms of its dollar and percentage value; however, the Board's proposal is not out of line at this benchmark in terms of the comparability of the salary resulting therefrom or in terms of the dollar value of its proposed increase at this benchmark.

Also relevant to the concerns expressed by the Association regarding the fairness of the Board's proposal, the record does not indicate that the bargain struck between the parties in 1984-1985 reflected a concession by the Association in the sense that it constituted a smaller settlement than the settlements which were achieved by teachers' associations in comparable districts, nor does it indicate that the Association had any reason to believe that successor settlements would no longer be comparable in their total value because of the unique increment structure the parties agreed to at that time.

With respect to the impact that the Board's salary proposal will have on MA teachers, the record does not indicate that said proposal will result in salaries which are out of line with MA salaries in comparable districts either in 1985-1986, 1986-1987, or over the two year period. While it would appear that the size of salary cell increases proposed by the Board for MA teachers are somewhat smaller than increases which have been granted to similarly situated teachers in comparable districts, when said increases are combined with the District's rather generous increments, it cannot be said that the District's MA teachers will be substantially disadvantaged under the Board's proposal. In fact, the record indicates that at the MA minimum and maximum benchmarks, teachers in the District will be receiving very close to the average salary received by similarly situated teachers in comparable districts.

Based upon all of the foregoing considerations, particularly in view of the fact that the parties only recently restructured the District's salary schedule and have not yet fully implemented said restructuring, there appears to be little persuasive justification for the further restructuring of the schedule the Board proposes herein, with the exception of the District's clearly established need to improve its salaries for newly hired teachers, particularly in the BA lane. However, in spite of the fact that the Board's proposed salary structure changes do not appear to be necessary, nor in some cases justified, in view of the fact that the Association's proposal is substantially out of line, in terms of the dollar and percentage value of the average increases which would be received by the District's teachers, when viewed in the context of comparable settlements, and in further view of the fact that the Board's

proposal is in line with comparable settlements in that regard as well as in terms of the actual salaries that will be received by the District's teachers thereunder, it must be concluded that the Board's salary schedule proposal is less unreasonable than the Association's.

When the foregoing conclusion is viewed in the context of the Board's two year duration proposal, which the undersigned has already indicated is the more reasonable of the two proposals in that regard, and whereas no persuasive arguments have been presented as to why the Board's second year proposals regarding the calendar and extra pay are either unworkable, unreasonable, or inequitable, the undersigned must conclude that the Board's total final offer is the more reasonable of the two at issue herein.

Therefore, based upon all of the foregoing considerations, the undersigned hereby renders the following:

ARBITRATION AWARD

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

Dated this 28th day of May, 1986 at Madison, Wisconsin


Byron Gaffe

Arbitrator