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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Arbitration Between RICE LAKE AREA SCHOOL DISTRICT and NORTHWEST UNITED EDUCATORS	Case 32 No. 35119 MED/ARB-3306 Decision No. 23126-A OPINION AND AWARD

Appearances:

For the Employer: Stephen L. Weld, Esq., Eau Claire.

For Northwest United Educators: Robert E. West, Executive Director, Rice Lake.

BACKGROUND

On June 6, 1985, the Rice Lake Area 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 Northwest United Educators (referred to as NUE or the Association) concerning a successor to the parties' collective bargaining agreement which expired on June 30, 1985.

On December 16, 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). No citizens petition pursuant to Section 111.70(4)(cm)(6)(b) was filed with the WERC.

On March 5, 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 March 5, 1986. At the hearing, the parties were given a full opportunity to present evidence and oral arguments. Post hearing briefs and reply briefs were submitted by both parties.

ISSUE IN DISPUTE

The sole unresolved issue in dispute for the parties' 1985-86 agreement concerns the salary schedule. The Employer's final offer is annexed hereto as Annex "A" and the Association's final offer is annexed hereto as Annex "B". The parties' final offers and total packages are approximately 1 1/2% apart.

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 prives 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 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 private employment.

POSITIONS OF THE PARTIES

The Employer

To support its final salary offer, the Employer begins by emphasizing that its offer is more responsive to the interests and welfare of the public than is the offer of the NUE. It points to the serious economic problems facing the District's taxpayers, particularly the faltering farm economy, the adverse effect upon other businesses dependent upon the farm economy, and cutbacks, both present and anticipated, in state aids. It notes that some view even the Employer's final offer as generous when viewed in the context of present economic conditions.

The School Board then points out that its offer exceeds increases in the cost of living both over the past year and when historical comparisons are made going back to 1977-78. Thus, Rice Lake teachers have more than kept pace with the rate of inflation; they have made significant strides in increasing their real income.

Turning to comparisons with other School District employees and other public employees in the City of Rice Lake and the counties of Barron, Rusk and Washburn, the Board argues that its offer provides equitable increases. Indeed, under the Employer's final offer, Rice Lake teachers will have increases which exceed these settlements. As for comparisons with private sector employees, the Employer notes that its offer exceeds predicted increases for 1986. It specifically points to reports that one third of employees covered by national settlement pattems for unionized employees received wage freezes or pay decreases averaging 8.8%.

Finally, the Employer addresses the issue of salaries received by teachers in comparable school district. The Employer believes that the comparables selected by Arbitrator James Stern in a 1978 decision involving these same parties (WERC Dec. No. 16242-B)("Rice Lake I") continues to be the appropriate pool of comparables. These districts are: Amery, Barron, Bloomer, Chetek, Cumberland, Hayward, Ladysmith, Maple, Osceola, St. Croix Falls, Spooner and Unity. The Employer rejects the Association's choice of comparables based upon a second arbitration award by Arbitrator Byron Yaffe (WERC Dec. No. 19977-A)("Rice Lake II") in 1983 when the pool of comparables was expanded because reliable compara-

tive data from the Stern comparables was not available. Since data is available for most of the Stern comparables for 1985-86 and since the Employer believes that there is no rationale for the Association's new set of comparable districts (which are different from the Association's position in Rice Lake II), the School Board concludes that its use of the traditional comparables based upon established standards of comparability (staff size, student population, school cost, state aid, tax rates and equalized values) is correct. In reaching this conclusion, the Employer specifically disputes the Association's inclusion of Eau Claire and Chippewa Falls, two urbanized districts which have been insulated from the poor farm economy because of diversified businesses, in the Employer's judgement.

In justifying its own offer, the School Board notes that it provides substantial increases ranging from 8.3% to 9.9% for those teachers eligible to receive a step increment (in contrast to increases ranging from 9.9% to 11.4% under the Association's final offer). Moreover, the School Board argues that historical wage comparisons with the Heart O' North Athletic Conference and the Stern comparable pool (which includes the Athletic Conference) demonstrates that, since 1980-81, the Rice Lake ranking at the salary schedule benchmarks will have improved significantly under either party's final offer. Also, the Board's final offer more closely approximates benchmark increases in the Athletic Conference from 1984-85 to 1985-86. In making its comparisons, the Employer has made adjustments in salary figures to reflect delayed implementation dates in a number of the comparable school districts.

In addition to making wage only comparisons, the Employer also looks to total compensation comparisons. The Board believes that evidence presented demonstrates that fringe benefits provided to Rice Lake teachers are comparable to benefits provided to teachers in the comparable school districts. When total compensation is considered, the Employer's offer amounts to 7.4% while the Association's amounts to 8.8%. The average total compensation increase for the Athletic Conference districts is 7.6% and for the Stern comparable pool (including the Athletic Conference) is 7.7%.

Based upon all the multiple factors discussed, the Employer concludes its arguments by stating that its offer is more reasonable than the offer of the Association.

NUE

The Association begins by noting that certain relevant changes have occurred since the issuance of the arbitration awards of Arbitrator Stern and Arbitrator Yaffe, Rice Lake I and Rice Lake II. The most important one is the reassignment of Rice Lake to the Big Rivers Athletic Conference for varsity football participation effective 1986-87. The new Conference includes La Crosse, Eau Claire, Menomonie and Chippewa Falls. Hudson will join the Big Rivers Athletic Conference at the same time as Rice Lake. In the Heart O' North Athletic Conference, Rice Lake is the only Class A school district. NUE believes that Eau Claire, Chippewa Falls and Menomonie are particularly appropriate comparables. Indeed, as to Menomonie, NUE notes that in a recent arbitration involving that school district, the arbitrator included Rice Lake as an appropriate comparable. Also, the Association points out that the Rice Lake School District Business Manager himself compared Rice Lake with Menomonie in reported remarks about the Rice Lake budget. In addition, the Association comments that these three districts are closer geographically to Rice Lake than Maple, a member of the Heart O' North Athletic Conference. Thus, for the Association, the appropriate primary comparables are those with settled contracts for 1985-86 which either are members of the Big Rivers Athletic Conference, the Stern comparables, or comparables selected by Arbitrator Gundermann in his recent Menomonie arbitration

award. These are: Menomonie, Chippewa Falls, Osceola, St. Croix Falls, Maple, Ladysmith, Spooner, Barron, Hayward, and Chetek. NUE also contends that the general settlement pattern in the northern region and the state should serve as secondary comparables. As for the primary comparables, the Association asserts that Menomonie and Chippewa Falls should be given special weight.

Based upon the above, the Association points to a benchmark analysis and rankings of its comparables. This leads the Association to conclude that Rice Lake teachers do not enjoy a favorable ranking for 1984-85 benchmark salaries. This is particularly unfortunate, in the view of the Association, because it interprets Arbitrator Stern's comments in Rice Lake I to mean that Rice Lake should have the leading salaries among the CESA #4 school districts since it is largest in size. The Association believes that a benchmark analysis should be given great weight since both parties submitted information based upon a benchmarch approach. It rejects the Employer's total compensation evidence characterizing it as incomplete, not subject to verification at the hearing, and, therefore, of limited value. NUE concludes that its benchmark analysis both in terms of percentages and actual dollars supports its final offer and not the Board's final offer.

In preparing its benchmark data, the Association ignored delayed or deferred implementation dates. The Association believes that this approach is justified because the parties utilizing such deferred dates have agreed to bargain successor agreements from the 1985-86 rates as if the salary had been in effect for the entire school year and there is arbitral precedent for NUE's approach. It also argues that its benchmark analysis relating to its primary comparables is supported by a similar analysis relating to its secondary and state-wide comparables.

For the Association, comparability with other teachers is the most significant statutory factor to be considered. Moreover, in this proceeding, salary comparability is more significant than total compensation comparability because there is no evidence that the School District makes a higher than average contribution for employee fringe benefits. In the Association's view, there is some evidence to indicate that the Employer's contribution is less than average.

Turning to other types of comparables, the Association argues that Rice Lake teachers should be compared with teachers at the Rice Lake campus of the Indianhead Vocational Technical District and with the professional administrative staff of the School District, including the Superintendent of Schools. Both these comparisons support its final offer, according to the Association. NUE rejects Employer arguments based on the cost of living and the poor economy. It believes that patterns of settlements in comparables already take those factors into account and cites numerous arbitral decisions to support this position. It further believes that the Rice Lake School District is in excellent financial condition with a low cost per pupil, a low tax rate, a cooperative school staff, and strong public support.

For all the above reasons, the Association concludes that its final offer should be selected.

Reply Briefs

Both parties filed extensive reply briefs which highlighted the major disagreements. The Employer's reply brief emphasized the multiple statutory factors which the legislation requires the undersigned to consider, particularly cost of living, internal comparables, private sector employees, and other public employees in the same geographical area. The Employer underscores that in this case, there is disharmony between the general interest of the public and the interest of the employees. It rejects NUE's new comparables, particularly Eau Claire and Chippewa Falls, and NUE's secondary comparables. As for Menomonie, the Employer dis-

tinguishes its "generous" offer in this proceeding from the offer of the Menomonie School District which was rejected by Arbitrator Gundermann. The Employer emphatically rejects what it believes to be the Association's bottom line, the best or highest salary schedule in the Heart O' North Athletic Conference, based upon the fact that Rice Lake is the largest District in that Conference. The School District objects to this because it is inconsistent with historical voluntary settlement patterns and because in current hard economic times, there is no justification for ranking improvements. Finally, the Employer emphasizes the need to adjust salary schedule figures when there is a delayed implementation date. While the School District acknowledges that the settled salary schedule figures will provide a higher base for 1986-87 negotiations, that is significant for next year's negotiations, not for this arbitration proceeding for 1985-86.

In the NUE's reply brief, the Association faults the Employer for emphasizing Heart O' North Athletic Conference comparables rather than the Stern comparables and for ignoring Eau Claire, Chippewa Falls and Monomonie, members of the Big Rivers Athletic Conference with which the School District is "now" associated. NUE reiterates its objections to the Employer's arguments based upon a generally poor economy. To the Association, the school district is in "outstanding financial condition" considering its very low tax levy and reduced 1985-86 school property taxes. The Association also faults the Employer for relying upon non-teacher comparables and for failing to take into account the School District's more generous treatment of its administrative staff through an improved early retirement plan, credit reimbursement benefits, and greater dollars produced when percentage increases are applied to higher administrative staff salaries, benefits not offered to this bargaining unit. The Association further objects to the use of 1980-81 as a starting point for the Employer's historical analysis since it ignores improvements in rankings brought about by Arbitrator Yaffe's 1983 arbitration award and by two years of voluntary settlements. Similarly it objects to the Employer's use of total compensation comparisons because it believes there is no proof that Rice Lake fringe benefits are any better than elsewhere. (In fact there is some evidence that the Employer's health insurance costs are lower than average.) Finally, the Association defends its use of secondary comparables as being within the intent of Rice Lake II, justifies the use of the negotiated rates, where there is deferred implementation, as taking into account the value of the higher starting place for 1986-87 negotiations, notes that the reduction in aids is limited to 1986-87 and thereafter, and emphasizes the need to consider Menomonie as a comparable particularly in light of the voluntary comparison made already between these two similarly sized school districts by the Employer's Business Manager.

DISCUSSION

Although there is only a single issue in dispute before the mediator-arbitrator, the 1985-86 salary schedule, there are a number of sub-issues which seriously separate the parties. These range from a disagreement about what are the appropriate comparables and which statutory factors are most relevant to the appropriate consideration of voluntary salary schedules which have deferred or delayed implementation dates. In order to resolve the salary schedule dispute, these related disputes must be first analyzed and resolved.

One of the most central of the sub-issues concerns what are the appropriate comparables, an issue that is certainly not unique to this proceeding. The Employer emphasizes the Heart O' North Athletic Conference and the Stern comparables while the NUE argues for the Stern comparables augmented by members of the Big Rivers Athletic Conference, particularly Menomonie and Chippewa Falls, since commencing 1986-87 Rice Lake will join this Conference for varsity football and since Rice Lake is by far the largest school district in the Heart O' North Athletic Conference. There is no

dispute between the parties generally about the appropriateness of the Stern comparables. The major question is whether that primary comparable pool should be expanded to include Chippewa Falls and Menomonie School Districts. Overall, there are stronger reasons to support the inclusion of Menomonie in this proceeding than Chippewa Falls. The Employer's Business Manager made a voluntary quoted comparison between Rice Lake and Menomonie School Districts and the Menomonie School Board argued successfully before Arbitrator Gundermann for the inclusion of Rice Lake as one of its appropriate comparables. These same arguments do not apply to Chippewa Falls which is a substantially larger school district located close to Eau Claire. Moreover, while even limited membership of the Rice Lake School District in the Big Rivers Athletic Conference may be relevant in the future to determine appropriate comparables, it appears premature to make that determination in this proceeding which covers 1985-86 salaries. Thus, for purposes of this proceeding, the appropriate pool of primary comparables is the Stern comparables where there are existing settlements plus Menomonie. There is no need to consider which districts constitute an appropriate pool of secondary comparables in this proceeding given the significant number of primary comparables which are available.

Having determined what is the appropriate pool of primary comparables, the undersigned still has to deal with the appropriate weight to be given to two of the primary comparables where there are special circumstances. One is Amery where significant structural changes have been implemented for 1985-86 as a result of a consent award. The Association does not include Amery in its analysis because of its uniqueness and the Employer recognizes arguments for Amery's exclusion (although the Employer notes that the average teacher's wage increase in Amery is closer to the Employer's final offer than that of the NUE). Exclusion of Amery, therefore, is not controversial. As for Menomonie, however, the parties vigorously disagree. For the Association, the arbitrator's selection of the Association's offer in the Menomonie arbitration is particularly significant because both Association offers increase all salary schedule rates by 7%. For the Employer, the Menomonie arbitration award selecting the Association's final offer should be viewed with caution and is distinguishable because in that case the employer's final offer was substantially inferior to that of the Employer in this proceeding and the parties confronted the arbitrator with "a devil's alternative" given the structural changes to the salary schedule included in the Menomonie School District's final offer and the omission of the additional one percent retirement contribution from the employer's final offer. In view of these special circumstances, the undersigned believes that the Menomonie arbitration award should be considered but given lesser weight than the existing settlements in the primary comparable pool.

In considering the primary comparable pool, the parties have raised the issue of the appropriate treatment of voluntarily salary schedules with a delayed or deferred implementation date. The Association argues that the stated salary schedule is the correct basis for comparisons while the Employer argues that these figures must be adjusted to take the deferred implementation date into account. As to this controversy, the undersigned believes that the Employer has presented the stronger case. From an economic point of view for 1985-86, the stated salary schedule does not accurately reflect costs to the employer or income to the employee when there is delayed implementation. While it will be significant in 1986-87 that some parties have agreed to commence their negotiations as if the salary schedule had been in place for the entire 1985-86 period, it appears unreasonable to ignore completely the savings to employers resulting from delayed implementation dates, as the Association has argued. This is particularly true in this case when most of the comparable districts have settled with delayed implementation dates.

Finally, in connection with the comparable pool data, it is necessary to determine whether historical comparisons going back to 1980-81 are appropriate, as urged by the Employer, or

whether the Association is correct in objecting to such comparisons because they fail to take into account improvements resulting from Rice Lake II and the two voluntary settlements which followed. On this issue, the undersigned believes that the Association has the better argument, particularly since the Employer failed to advance any rationale to justify its choice of 1980-81 as a suitable point for historical analysis.

Based upon the above, the arbitrator has concluded that the most relevant comparable data are the Stern comparables, where available, excluding Amery (because of its newly structured, unique salary schedule), with some consideration to be given to Menomonie's arbitration award. This comparable data must be adjusted to reflect deferred implementation dates and is to be restricted to comparisons from 1984-85 to 1985-86. If no adjustments were to be made for deferred implementation dates or if Amery was included in the calculations, it is clear that the comparable data supports the Association's final offer. However, when the appropriate adjustments and exclusion are made, the comparable data is more supportive of the Employer's final offer than that of the Association. Even when some consideration is given to the Menomonie arbitration award, the outcome, while closer, still favors the Employer's final offer.

There is little need to scrutinize closely the other statutory factors although some comments are in order. While the undersigned believes that comparisons of total compensation are key amongthe statutory factors, in this case there is nothing in the record to indicate that total compensation comparisons would yield a different result from salary schedule comparisons. As for comparisons with other public employees and private sector employees, the record was generally sparse except for internal comparisons. This is not surprising since in teacher salary disputes, arbitral precedents have given greater weight to comparable teacher salary data than to non-teacher salary data, although the statutory factors do not explicitly distinguish between teacher arbitration cases and other arbitrations. It should be noted, however, that one of the factors which intensified this dispute was what the Association perceived as more favorable treatment of the School District's administrative staff. Specifically, the large dollar increases which administrators received together with an improved early retirement plan and credit reimbursement benefits were serious roadblocks to a voluntary settlement of this dispute.

Finally, some mention should be made about two factors not yet discussed, cost of living and the interests and welfare of the public. There is little doubt that in recent years, the cost of living factor considered independently favors generally the position of employers when the employer's final offer at least parallels increases in the cost of living. This is true in this proceeding although it is also important to note that changes in the cost of living presumably constitute a factor which has been incorporated in the wage determinations of the comparables. Similarly, the comparables are undergoing the type of economic stress described by the Employer in this proceeding and their voluntary settlements, whether they favor the Employer's final offer or the Association's final offer, reflect this factor too. Except for a very close case, it is difficult to think of a situation where a significant, current pool of comparables would favor one party's position while the state of the economy would favor the other party's position. It should also be noted that the interests and welfare of the public does not necessarily translate into the lowest possible tax rate. While the outcome of this proceeding will be less expensive for School District taxpayers since the Association's final offer was not chosen, this merely continues the pattern established by the parties in the past two years through voluntary settlements. Taxpayers need to be alerted to the special pressures that the next round of bargaining will bring, particularly since the School District must face the reality of its comparables bargaining from higher 1985-86 salary schedules than were considered as actual 1985-86 salaries in this proceeding. Planning to deal constructively with these pressures is important for both parties and the public they serve if quality education is to be continued in Rice Lake.

AWARD

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

Chilmark, Massachusetts
May 29, 1986

June Miller Weisberger
Mediator-Arbitrator

APPENDIX A

SALARY SCHEDULE
1985-86 School Year

LANE STEP	BA	BA+8	BA+16	BA+24	BA+32	MA	MA+8	MA+16	MA+24	MA+32
0	16010	16156	16301	16445	16592	17173	17320	17464	17610	17757
1	16675	16826	16977	17129	17281	17886	18038	18190	18341	18492
2	17338	17497	17654	17813	17970	18598	18757	18914	19070	19229
3	18004	18167	18330	18493	18657	19313	19476	19640	19801	19967
4	18668	18839	19007	19178	19346	20025	20194	20365	20535	20703
5	19333	19507	19683	19858	20036	20739	20914	21087	21265	21440
6	19995	20178	20360	20542	20723	21450	21632	21813	21996	22178
7	20661	20849	21038	21224	21412	22162	22350	22539	22726	22914
8	21324	21519	21712	21907	22101	22877	23071	23264	23457	23650
9	21990	22190	22388	22589	22790	23589	23789	23938	24188	24387
10	22654	22861	23065	23273	23478	24307	24507	24712	24919	25125
11	23319	23530	23742	23953	24166	25014	25225	25439	25649	25861
12		24201	24418	24636	24855	25725	25945	26163	26380	26599
13				25319	25543	26439	26664	26888	27111	27336
14						27153	27383	27611	27843	28071
15							28101	28335	28573	28811

Annex "A"

ATTACHMENT A

Annex "B"

RICE LAKE 7% PER CELL 1985-86

STEP	BA	BA+8	BA+16	BA+24	BA+32	MA	MA+8	MA+16	MA+24	MA+32
0	16237	16386	16533	16679	16828	17417	17566	17713	17860	18009
1	16912	17065	17218	17373	17527	18141	18295	18449	18602	18755
2	17584	17746	17905	18066	18225	18862	19024	19183	19341	19503
3	18260	18425	18590	18756	18922	19587	19753	19919	20083	20251
4	18934	19107	19277	19450	19621	20310	20481	20654	20826	20998
5	19608	19784	19963	20141	20320	21034	21212	21387	21567	21745
6	20280	20465	20650	20834	21019	21755	21939	22123	22308	22494
7	20955	21145	21337	21526	21717	22477	22668	22859	23049	23239
8	21627	21825	22021	22219	22415	23202	23399	23595	23790	23986
9	22303	22505	22706	22910	23114	23924	24127	24329	24532	24734
10	22976	23186	23393	23604	23812	24653	24855	25064	25273	25482
11	23650	23864	24079	24293	24509	25370	25584	25801	26014	26229
12	---	24545	24765	24987	25208	26091	26313	26535	26755	26977
13	---	---	---	25679	25906	26815	27043	27270	27497	27725
14	---	---	---	---	---	27539	27772	28004	28238	28471
15	---	---	---	---	---	---	28501	28738	28979	29221