

AUG 29 1986

BEFORE FREDERICK P. KESSLER
ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF THE
FINAL AND BINDING ARBITRATION BETWEEN

PARKVIEW SCHOOL DISTRICT EMPLOYEE'S
LOCAL 523, AFSCME, AFL-CIO

Case No. 21 / 35196
MED/ARB-3337
Decision No. 23184-A

and

PARKVIEW SCHOOL DISTRICT

DECISION

I. HEARING

A hearing was held in the above entitled Mediation/Arbitration dispute on Monday, April 7, 1986 at 11:00 AM in the Parkview High School Building in Orfordville, Wisconsin. Prior to that day, on February 12, 1986, a mediation session had been held at the same location.

II. APPEARANCES

Appearing on behalf of the Parkview School District at the hearing were:

James K. Ruhly, Melli, Walker, Pease and Ruhly, Attorney-at-Law
William Bobbe, Superintendent of Schools
Robert H. Anderson, Vice President, Parkview School Board
John Kaston, Secretary and Negotiation Chairman, Parkview
School Board
Eleanore McLeish, Member, Parkview School Board

Appearing on behalf of the Union at this hearing:

Richard Abelson, Staff Representative, District Council 40 AFSCME
Tom Larsen, Staff Representative, District Council 40, AFSCME
John Terpkera
Sandra Nass

III. NATURE OF THE PROCEEDINGS

This is a final and binding arbitration proceeding between the above-named parties brought under Section 111.70(4)(cm) Wis.Stats., the Municipal Employment Relations Act.

On January 27, 1986, this Arbitrator was selected by the parties after it appeared that an impasse had occurred in the collective bargaining between the District and Local 523 AFSCME. An effort to mediate the dispute was scheduled for February 12, 1986 at 2:00 PM. The mediation efforts were not successful. The hearing to receive evidence in the interest of arbitration was held on April 8, 1986 at 11:00 AM. Briefs were sent to the Arbitrator by the District by letter dated May 19, 1986 and from the Union which was received on May 23, 1986.

IV. THE OFFERS

A. The Union Offer

It appears that the final offer was received, then withdrawn and re-submitted in an amended form. The Union's final offer as amended on December 5, 1985 is as follows:

- (1) Section 10.01: Add "New Year's Eve Day"
- (2) Section 10.02: Add "New Year's Day"
- (3) a. Maximum of thirteen (13) sick days accumulated in 1985-86.
b. Maximum of twelve (12) sick days accumulated in 1986-87.
- (4) Increase all wages by four per cent (4%) across the board July 1, 1985. Increase all wages by two per cent (2%) across the board January 1, 1986.
- (5) Tool Allowance: Seventy Five Dollars (\$75) to Maintenance-Custodian III, payable in first pay period in July, Fifty Dollars (\$50) each year thereafter.
- (6) Duration: July 1, 1985 through June 30, 1987. Wage reopener for second year of agreement.
- (7) Tentative agreement.
- (8) All other provisions of existing agreement, except as noted here.

The Union made the following revisions to its final offer concerning the addition of the newly accredited members of the bargaining unit:

Bus Drivers

Rosemarie Alt	\$7.15
Judith Clossey	7.15
Ellen Draves	7.15
Margaret Feierer	7.15
Mary Meyers	7.15
Audry Olson	7.15
Kay Peck	7.15
Sandra Uber	5.94
Debra Schultz	5.72
Judith Welch	5.72
Kathy Tremain	5.29
Diane Daniels	5.29

Clerical Accounting

Marion Keller	\$8.75
Fern Terrill	7.76

B. The District's Offer

The District's final offer reads as follows:

- (1) Amend Section 12.01 as follows:

12:01 Sick Leave for each year of employment will be granted as follows for the 1985-86 school year:

First year of employment: 10 days
 Second year of employment: 11 days
 Third year of employment: 12 days
 Fourth and each subsequent year of employment: 13 days.

For the 1986-87 school year:

First year of employment: 10 days
 Second year of employment: 11 days
 Third and each subsequent year of employment: 12 days.

Any unused sick leave earned will be allowed to accumulate to a maximum of 130 days subject to Section 12.16 (balance of 12.01 unchanged).

(2) Amend Section 12.13 as follows:

12.13 Loss of Pay. If the employee has used up all accumulated sick and emergency leave, the loss of pay for an absence which would otherwise qualify as sick or emergency leave will be determined as follows:

Number of hours absent multiplied by the hourly wage stated in the employees' contract. This will not preclude appropriate disciplinary action under Article XIX where the reason for the absence is unauthorized or is misrepresented by the employee.

(3) Wages. Increase all wages by four per cent (4%) across the board July 1, 1985.

(4) Amend Section 21.01 as follows:

21.01 The salary schedule (appendix A) and the provisions carried forward from the prior agreement shall be effective as of July 1, 1985.

All other provisions shall be effective as the date of a successor agreement. All provisions of the agreement shall be in effect through June 30, 1987, except the wages and holidays shall be subject to reopen negotiations for the 1986-87 school year provided written notice of the desire to so negotiate is given to the other party by May 1, 1986.

V. STATUTORY CRITERIA

Section 111.70(4)(cm) Wis.Stats. provide that an arbitrator must consider the following in an interest arbitration matter.

111.70(4)(cm)(7) Factors considered. In making any decision under the arbitration procedure authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulation of the parties.
- c. Interest and welfare of the public and the financial ability of the unit of government to meet the cost proposed in the settlement.
- d. Comparison of wages, hours, conditions of employment of municipal employees involved in arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services and with employees generally in public employment in the same community and in comparable communities.
- e. The average consumer price for goods and services, commonly known the cost of living.
- f. The overall compensation presently received by municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance, pensions, medical, hospitalization benefits, and the continuity and stability of employment and all other benefits received.
- g. Changes in any of the forgoing circumstances during the pendency of the arbitration proceedings.

- h. Such other factors, not confined to the forgoing, which are normally and traditionally taken into consideration and 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.

VI. DETERMINATION OF COMPARABLE DISTRICTS

The selection of comparables was difficult because only one other district in the Athletic Conference was organized by unions and engaged in the collective bargaining process for its clerical, custodial, food service, and classroom aid positions. The Union urged the inclusion of the Beloit and Janesville School Districts in the list because both were districts in geographical proximity to Parkview and both were organized and represented by unions. However, because they both are urban and both have a greater enrollment and population base than does Parkview, they are not truly comparable.

Despite its deficiencies, the appropriate set of comparables is the Athletic Conference because it has traditionally been the group from which comparisons have been drawn. Evidence was not presented which would have shown wage patterns from other rural districts of similar size which were organized by unions. Those would have been preferred by this Arbitrator.

VII. ISSUES IN DISPUTE OF THE FINAL OFFERS

There are major differences on five points between the final offer of the Parkview School District and the final offer of Local 523 AFSCME.

1. Extra Holidays: The Union proposal would provide for the inclusion of two holidays, New Year's Eve Day and New Year's Day, in the contract. The Board's final offer makes no change for the 1985-86 school year, however, under its proposed final offer, the holidays are subject to bargaining under a clause providing for a reopening of the contract for the 1986-87 school year.
2. Tool Allowance: The Union proposes that Custodian III receive a tool allowance. The allowance would be \$75 for the first year and \$50 for each year thereafter. There is no such provision in the current contract and the Board has made no offer in this area.
3. The inclusion of newly credited clerical and bus drivers in the bargaining unit. The Union's final offer provides for a pay increase for two new clerical and twelve school bus drivers in the unit. The final offer of the District makes no provision for pay increases for those members.
4. Loss of Pay Provision: The District proposes an amendment to the existing language of the contract that deletes a portion of a sentence that they contend clarifies a limitation of the number of days available to the employee for sick leave or emergency leave. Additional sentences added to that portion of the contract provide that an employee absent without authorization, or through misrepresentation, is not precluded from being further disciplined because of the loss of pay provision. The Union, in its final offer, has no provision dealing with this issue.
5. Wages: The Union in its final offer proposes a 4% across the board pay increase effective July 1, 1985 and 2% across the board wage increase effective January 1, 1986. The District in its final offer proposed a 4% across the board pay increase effective July 1, 1985.

VIII. EXTRA HOLIDAYS

The Union contends that currently no other employees in the District are required to work on New Year's Eve Day or on New Year's Day. Fairness therefore requires that the custodial, food service, and secretarial employees be treated in the same way. At the hearing, the District Superintendent testified that he was unaware that members of the Unit were required to work there two days.

The District contends that this is an inappropriate time to expand the paid holidays because of the uncertainty over the impact of the new state holiday honoring Dr. Martin Luther King. Other schools in the Athletic Conference have an average of nine paid holidays for each employee. The holidays in each Athletic Conference District are as follows:

Rock Valley Conference	
<u>Paid Holidays</u>	
Beloit Turner	10
Big Foot	7.5
Brodhead	8
Clinton	9
Edgerton	10
Evansville	<u>9</u>
Average	9
Parkview:	
- Union	10
- District	9

A provision such as this, which expands the number of holidays, is more appropriate to be dealt with at the bargaining table between the parties rather than through a Mediation/Arbitration proceeding. Therefore, the District's offer, which keeps the current provision intact, is the more reasonable and is preferable as to this issue.

IX. TOOL ALLOWANCE

The Union has made a proposal for a tool allowance of \$75 the first year and \$50 each year thereafter to be paid by the District. The District makes no proposal in this subject area. The Union points out that approximately three years earlier, the District ceased authorizing employees to purchase, at District expense, certain small hand tools.

No evidence has been received which indicates any of the comparable School Districts have a provision in their contracts which provide for District-paid tools for other custodial employees. This provision does restore a past practice in which tools were provided by the District for employees.

The District argues that the Union has not presented evidence that shows a need for a tool allowance. The District objects to this proposal claiming it is too broad because it does not limit tools purchased solely for District work. Abuse is feared because nothing requires reimbursement by the employee in the event that the tool is lost. As the employee is not required to purchase the lowest cost, more reasonable tool, it is not fiscally prudent. Finally, the District sees this as poor policy since it does not provide a mechanism for employee accountability for use of the funds.

The Union contends that the tool allowance proposal is reasonable. Since the employees must rely on such tools, it would provide a sense of ownership and responsibility.

On this issue, the proposal by the District is the preferred provision. Arbitrators should be reluctant to include in the Mediation/Arbitration award a provision not relating to wages which should be bargained by the parties. Therefore, as to the tool allowance, the District's final offer is preferred.

X. INCLUSION OF NEW CLERICAL EMPLOYEES AND BUS DRIVERS IN THE FINAL OFFER

This provision in the Union's offer is particularly controversial because the initial final offer made by the Union did not include this pay increase for new clerical employees and bus drivers. In fact, the District argues these employees were not even a part of the bargaining unit until after bargaining with the other Local 523 employees had ceased. The new clerical personnel and bus drivers came into the bargaining unit as a result of an election that occurred on November 6, 1985, after the bargaining between the Union and District reached an impasse and final offers were exchanged. In June 1985, these employees all received a wage increase independent of contract negotiations with the Union.

The initial final offer did not contain this provision; therefore, an amended final offer which included wage increases for all these employees was proposed by the Union.

The Union argues that the District was aware of the Union's efforts to include these employees in the bargaining unit, but chose not to request a meeting to bargain about their inclusion in the contract; in effect, they seek to impose a waiver on the District because it failed to earlier object. This position is without merit. Inclusion of a new group of employees in a contract should have been the subject of negotiations initiated by the party seeking the inclusion, in this instance the Union. The converse would create the absurd rule that a party must initiate negotiations to preclude the occurrence of an event which has not, in fact, occurred.

The Union contends that it is necessary to give the bus drivers a wage increase in order to make sure they are paid competitively with other employees. The facts presented do not make an overwhelming case for the Union's position and are sufficient to overcome the Arbitrator's reluctance to include something in the contract that has never been the subject of discussion by the parties.

It would be fundamentally unfair to include a provision in a contract that had never been discussed by the parties. This subject clearly had not been discussed; consequently, the District's proposed final offer which does not include this issue, is the preferable contract provision.

XI. THE LOSS OF PAY PROVISION

The District proposes what it describes as a clarification in the contract provisions of Section 12.13 relating to Loss of Pay. It proposes both additions to and deletions from the existing language. One part of its proposal allows the employer to impose discipline, other than loss of pay, for employees who take unauthorized absences or who misrepresent the reason for their absence. In addition, it proposes a method of computing sick leave. The District describes these provisions as mere clarifications of the existing contract which, in the District's view, currently has sloppy or imprecise language which might mislead employees. They seek the clarification so as to not preclude the employer from imposing discipline in a fashion other than by a pay deduction and hope thereby to avoid unnecessary grievances and the creation of strife and hard feelings should the District discipline its employees. The District argues that the Union has never stated its objections to this projection and thus should not now be permitted to oppose it. The Union responds by claiming that the District has failed to establish any reasons for making this change.

This "clarification" change has not been the subject of negotiations and should be dealt with at the bargaining table. Like the non-negotiated change sought by the Union for clerical employees and bus drivers, this seeks to include new matter in the contract which has not been subject to the give and take of good-faith bargaining. Therefore, as to this proposed provision, the proposal of the Union is more appropriate to include in the contract. Provisions of substance should not be imposed by arbitration when they have not previously been tested by the parties at the bargaining table.

XI. WAGES

The most significant dispute in this Mediation/Arbitration is the question of what wages are to be paid for the 1985-86 contract year. Both parties have proposed a 4% pay increase effective July 1, 1985. The Union, however, has asked for an additional 2% wage increase effective January 1, 1986. In support of the additional increase, the Union relies on the wages offered other employees within the District. Sandy Nass, the President and Chief Negotiator for the Parkview Education Association, which represents the teachers in the District, testified regarding the last offer the District made to the teachers for that same time period. A 8.63% increase on wages was offered, but included an increase in work days, which made it actually an offer equal to a 6.49% increase. The Union points out that the 4% plus 2% really amounts to a proposed 6.3% increase.

Internal comparables, although helpful, are not as significant as information showing comparable wages for those in the same occupation groups in the surrounding area. The statutes reflect a preference for comparing employees doing similar jobs in other districts. Internal increases for certain jobs may be the result of a "catch-up" factors or other items unique to the particular job involved.

A better way to evaluate the proposal is to look at the current salaries paid to employees in similar jobs in each of the districts in the Rock Valley Athletic Conference, of which Parkview is a member. Preparation of a valid set of comparable jobs is very difficult because each district may prescribe different duties for similarly titled jobs. An analysis of the positions (using the lowest classification when more than one is possible) reflects the following:

	Custodian I		Cook		Secretary I		Aide	
	Min	Max	Min	Max	Min	Max	Min	Max
Beloit Turner	\$5.50	\$8.52	\$4.20	\$5.78	\$4.20	\$4.78	\$4.55	\$4.80
Big Foot	6.31	6.31	7.63	7.63	5.13	6.48	-	-
Brodhead	-	-	4.55	5.30	4.35	5.10	-	-
Clinton	5.45	5.70	4.65	4.85	5.20	5.45	4.95	5.20
Edgerton	-	-	-	-	-	-	-	-
Evansville	-	-	5.40	5.40	4.76	5.13	4.28	4.66
Average	5.75	6.84	5.29	5.79	4.73	5.39	4.59	4.89
Parkview:								
- Union	4.76	5.63	4.64	5.49	4.57	5.41	4.57	5.41
- District	4.76	5.52	4.64	5.38	4.57	5.30	4.57	5.30

The District, in support of its final offer, argues that in its brief that its final offer that salary costs would increase in the District by 5.16%. This percentage is viewed with skepticism because it is not based upon the average ~~teacher's~~ salary but instead is based on the total cost to the Board of wage increases.

Employees

The fact that under the District's reasoning the Union's offer would cost the Board 7.54% more, would not translate that percentage increase to each employee.

The District's proposed pay rates are far below average for all categories except for the aide positions. The Union's proposal would result in the employees being in the middle or bottom range for all categories, except the maximum available for aides.

Analysis of the percentage of increase proposed is helpful. When the proposed increases by the District and the Board are analyzed as to the percentage increase and compared with percentage increases in other conference districts, the results are as follows:

	<u>Custodian I</u>	<u>Secretary I</u>	<u>Aide</u>
Beloit Turner	5.1%	5.1%	5.1%
Big Foot	7	7	7
Brodhead	2	7.7	8.2
Clinton	N/A	N/A	N/A
Edgerton	5.5*	5.5	4. & 4
Evansville	5	5.5	5.5
Average	4.92	6.16	5.96
Parkview:			
- Union	(4 7/1/85	(4 7/1/85	(4 7/1/85
- District	(2 1/1/86	(2 1/1/86	(2 1/1/86
	4	4	4

The percentage wage increases also show that the Union's final offer is more in line with the increases granted in comparable districts. The Consumer Price Index rose at a 3.7% rate during the 1984-85 school year, the year immediately before the contract in question. The 4% rate offered by the District more nearly reflects this rate than does the Union's final offer.

When all the appropriate criteria for evaluation of the wage proposals are examined, this Arbitrator concludes that the proposal by the Union is more comparable to wages paid to similarly situated employees in other school districts in the Athletic Conference. Therefore, the final offer of the Union relating to wages more accurately reflects the statutory criteria.

XI. SUMMARY

On the question of the extra holiday, the position of the District is more comparable to the provisions in other contracts negotiated and therefore meets the statutory criteria.

The District's proposal regarding the tool allowance is more appropriate than that of the Union, because this is a topic that ought to be the subject of future negotiations.

The newly accredited employees who are mentioned for the first time in the Union's second final offer were never the subject of negotiations. It would be inappropriate to impose a contract term that has never been negotiated. Therefore, the final offer of the District on this item is more appropriate.

The District's failure to negotiate the loss of pay provision makes it equally inappropriate for imposition in the contract. Therefore, the Union's final offer regarding this provision is more appropriate.

The final offer of the Union regarding wages is the more comparable to the wages paid by other schools in the Athletic Conference, and is, therefore the more appropriate.

The wage issue is the most significant issue in this dispute. If it were the sole issue, that Union's final offer would be adopted without hesitation. However, their proposal includes three other items, one of which had never been subject to bargaining. The amendment of the final offer to include a new set of employees, the bus drivers and clerical employees, who received a raise just days in advance of their addition to this dispute, causes this Arbitrator some concern. All three of the Union's other issues: the new employees, the tool allowance, and the holiday dispute, are more appropriately determined by bargaining. The impact of the newly accredited employees on this contract and their inclusion in it at this late date is so substantial that this Arbitrator feels it tilts the equities, which are otherwise in the Union's favor, to the District. This Arbitrator and many others have held consistently that the inclusion of major contract changes in the final offer by a party, weakens that party's position when offered opposite a simple, wage only, final offer. Non-wage contractual provisions should be bargained and not the subject of an Arbitrator's ruling. Therefore, considering all the relevant factors involved, the District's offer is the more reasonable and is more in line with statutory criteria.

XIV. AWARD

For the above-stated reasons, the final offer of the District shall be incorporated in the 1985-86 contract.

Issue this 26th day of August, 1986



Frederick P. Kessler
Arbitrator