

AUG 22 1986

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Mediation/Arbitration

between

APPLETON AREA SCHOOL DISTRICT

and

APPLETON EDUCATION ASSOCIATION

CASE 53
No. 35927
MED/ARB-3604
Decision No. 23343

Appearances

For the District: Dr. Kenneth Johnston
Assistant Superintendent/Personnel
Appleton Area School District
P.O. Box 2019
Appleton, WI 54913

For the Association: Henry V. Krokosky, Jr.
Executive Director
Winnebago Land Educational Staff
Council
550 East Shady Lane
Neenah, WI 54956

BACKGROUND

Under the terms of the parties' own voluntary impasse resolution procedure, the undersigned was mutually selected to serve as mediator/arbitrator in the resolution of a 1985-1986 reopener to their 1983-1986 collective bargaining agreement.

The reopener under dispute is quoted below:

In the event that the Consumer Price Index (CPI - Urban Wage Earners and Clerical Workers - Revised, All Cities) increases less than five percent (5%) or more than eight percent (8%) during the twelve (12) month period, August 1, 1984 through July 31, 1985, the salary schedule shall be reopened for the purpose of negotiating changes in the 1985-1986 bachelor's degree base. The BOARD may request reopening if the increase is less than five percent (5%) and the ASSOCIATION if the increase is more than eight percent (8%). The bargaining shall be limited to the salary schedule base itself. All other provisions of the Agreement shall continue pending such negotiations.

Either party shall have until September 30, 1985 to notify the other party of its intent to reopen the salary schedule as provided in the preceding paragraph. If no notice of intent to reopen is given on or before September 30, 1985, the salary schedule for 1985-1986 contained in this Agreement shall apply for the remaining term of the Agreement.

During the relevant 12-month period, the Consumer Price Index increased less than five percent, and the Board filed timely notice to reopen the Agreement. Subsequent

negotiations between the parties did not result in settlement.

Each party submitted its certified final offer to the undersigned during a mediation session conducted on May 8, 1986. The mediation effort was unsuccessful. An arbitration hearing was conducted later that same day, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions on the issue. No verbatim transcript was taken. Both parties filed timely posthearing briefs and the record was declared closed on June 10, 1986.

POSITION OF THE PARTIES

Board Position

The Board's final offer is quoted below:

Reduce the printed base schedule by \$75.00 for the \$17,500.00 figure to a figure of \$17,425.00. The calculation of the remainder of the schedule will be according to the current index.

Its principal arguments in support of its position may be summarized as follows:

1. The intent of the reopener was for the Association to expect an increase in the salary schedule base if the CPI exceeded 8%, and for the Board to expect a decrease in the salary schedule base if the CPI were less than 5%.
2. There are only two factors to be considered: the CPI and the bachelor's base salary. The CPI rose just 3.8% in the relevant period, and has remained below 4% since then. Thus, there is substantial support for lowering the salary schedule base from the approximately 6.5% figure negotiated at a time when there were no other 1985-1986 settlements against which to compare.
3. It is appropriate to use both the Fox Valley Association Conference and Wisconsin's ten largest school districts for comparison purposes. Under the District's offer, Appleton would retain its relative ranking on the base salary in either comparison group.
4. Benchmark salaries used for comparison purposes in the past are no longer valid, due to various manipulations within district salary schedules. A more accurate measure of comparability in this case would be the average teacher salaries. And on this dimension Appleton retains a relatively high position in both comparison pools under the District's offer.
5. The internal comparables support adoption of the Board's offer.
6. Comparison with the salary increases enjoyed by City of Appleton employees for calendar 1986 and for 1985-1986 is also supportive of the Board's offer.
7. Appleton currently pays its teachers among the highest salaries across the comparable districts, so it is not appropriate to consider percentage increases alone.
8. The final offer of the Board should be adopted.

Association Position

The Association's final offer is quoted below:

Set the salary schedule base (Class I - Step 1), effective August 1, 1985, at \$17,525 and calculate the remainder of the schedule according to the current index.

Its principal arguments in support of its position may be summarized as follows:

1. The Fox Valley Athletic Conference is the only appropriate group of comparable districts. The parties have only proceeded to interest arbitration once before, and in that case the Mediator/Arbitrator used the athletic conference as the comparables pool (Case XXVIII, No. 24838, MED/ARB - 461, Decision No. 17202-A).

2. Fox Valley Athletic Conference schools are geographically proximate, and while it is the largest school in the conference, there has not been a significant change in its size viv-a-vis other Conference schools since 1979-1980, when the prior interest arbitration award was rendered. Moreover, per pupil operating costs and tax levy rates are comparable across the Conference.

3. Settlement data on other public sector employees and on private sector employees should be given no weight, since there is adequate evidence in the record concerning teachers.

4. The Association's final offer merely seeks to maintain Appleton's wage leadership position in the Conference, not to expand it. The District's offer diminishes Appleton's position in the Conference, both in terms of raw ranking and relative wages.

5. The third year of the parties 1983-1986 Agreement was a compromise based upon the District's concern over the tax rate and the Association's for maintaining wage leadership in the Athletic Conference. The \$17,500 figure was used as the BA base for the third year because the Association felt it would maintain its wage leadership position. The reopener clause was added because neither party at the time could envision economic developments for 1985-1986. In any event, the key to ratification of the three year pact by the Association membership was the monetary provision for the third year.

6. The Board's use of average salary for comparison purposes is flawed in two respects. First, it did not provide scattergrams for verification purposes. Second, average salaries do not effectively differentiate between teacher experience/education levels across districts.

7. Higher teacher salaries are in the public interest, in the sense that Appleton must compete with other districts to attract and retain competent, qualified teachers.

8. The pattern of settlements among comparable districts is a more accurate indicator of the cost of living than is the Consumer Price Index.

9. The final offer of the Association should be adopted.

DISCUSSION

The Comparables

Both parties agree that the Fox Valley Athletic Conference is an appropriate group of comparables. It consists of the following districts:

Appleton
Kaukauna
Kimberly
Menasha
Neenah
Oshkosh

Since there is no disagreement as to the appropriateness of this group as comparables, extensive evaluation of member districts' size, equalized valuation, aid/member, etc. is not necessary. As illustrated in Table 1, Appleton is the largest of the six Conference districts:

Table 1
Fox Valley Athletic Conference
Size/Cost Data Comparison

District	Enrollment 1984-1985	Teachers (FTE) 1984-1985	Cost Per Member 1983-1984
Appleton	10,841	571.31	3178.38
Kaukauna	2,902	154.21	3191.55
Kimberly	1,593	101.70	3366.90
Menasha	3,105	164.50	3453.39
Neenah	5,580	289.80	3672.16
Oshkosh	8,139	445.30	3389.07

Source: Association Exhibit 28, taken from Basic Facts About Wisconsin Elementary and Secondary Schools, 1984-1985.

The District argues that since Appleton is larger than all of the other Fox Valley Conference districts, it is also appropriate to use Wisconsin's nine largest districts (excluding Appleton) for comparison purposes. Those districts are listed below:

Eau Claire
Green Bay
Janesville
Kenosha
Madison
Milwaukee
Racine
Sheboygan
Waukesha

With the exception of Green Bay, all of those districts are so geographically removed from the greater Appleton area so as to effectively remove them from the labor market in which the Appleton School District competes for teachers.

Moreover, the Board did not present sufficient evidence to justify expansion of the comparables pool to districts outside of the Fox Valley Conference. Accordingly, and in concert with the conclusion reached by another Mediator/Arbitrator in a previous interest arbitration between these same parties, the Fox Valley Athletic Conference is adopted by the undersigned as the appropriate comparables pool.

Intent of the Reopener

Both parties presented arguments with regard to their mutual intent in negotiating the language of the reopener clause. The Board maintains that the parties contemplated either a salary increase if the CPI grew more than 8% for the relevant period or a salary decrease if it did not reach a 5% growth. The Association argues that neither party really expected to use the reopener, and that it was just added due to their mutual uncertainty as to future economic conditions. The undersigned is not persuaded by either of the parties' arguments.

The best evidence of the parties' intent in negotiating the reopener clause is the language of the clause itself. It is clear from the language that both parties wished to provide for a reopener, and nothing in this record has convinced the undersigned that they had some sort of understanding that it would not be used. There is also nothing in this record to support the Board's argument that a base salary decrease was an intended foregone conclusion if the CPI increased less than 5% over the relevant twelve months.

The Statutory Criteria

There is no evidence in the record to suggest that adoption of either final offer would cause the employer to exceed its lawful authority, nor are there any relevant stipulations between the parties which would be included with such adoption. The only substantive issue under consideration is the BA base salary amount to be included as the basis upon which the remainder of the 1985-1986 salary schedule is to be calculated.

Evaluation Against the Comparables. The Association's final offer maintains Appleton's historical ranking in the Fox Valley Conference; the Board's offer does not, since it would cause Appleton teachers to fall from first to second place at the BA Min and MA-10th steps (Assn. Exhibit 62). Moreover, while all Conference districts provide longevity pay, all but Appleton provide either two or three longevity steps. Appleton teachers have only one.

Another reflection of Appleton's historical relationship to Fox Valley Conference districts on the salary dimension is comparison of the Appleton salary at given steps to the average conference salary historically paid at those steps. Table 2 has been constructed for that purpose.

Table 2
Ratio of Appleton Salary to
Fox Valley Conference Averages

Step	77-78	79-80	82-83	83-84	Assn.	Board
BA-Mn	101.67	101.60	102.57	101.79	101.45	100.87
BA-7	104.89	104.41	105.23	103.63	103.69	103.10
BA-Mx	105.16	104.08	104.51	104.03	104.42	103.82
MA-Mn	104.00	103.17	103.57	102.68	102.09	101.50
MA-10	107.09	106.15	106.33	104.64	104.28	103.69
MA-Mx	104.30	103.39	103.32	102.28	103.15	102.56
Sch Mx	102.21	100.99	100.79	99.21	99.96	99.39
Comp*	104.19	103.40	103.76	102.61	102.72	102.13

* = Composite, all steps

Source: Association Exhibits 57, 87

As reflected in the table, Appleton teachers at the steps indicated have been paid at levels higher than the Conference average in all years shown except for the schedule maximum in 1983-1984 when they dropped to 99.21% of the average. At four steps (BA-Min, MA-Min, MA-10 & Sch. Max.), the Association's offer would actually lessen Appleton's relative position compared to any of the years illustrated. At the BA-Max and MA-Max steps, the Association's offer raises Appleton teachers to a slightly higher salary position vis-a-vis other Conference teachers than the one they enjoyed in 1983-1984. Still, at those steps the Association's offer puts Appleton teachers behind the position they enjoyed in the Conference in earlier years.

In contrast, the Board's offer reduces the relative position of Appleton teachers compared to every historical level illustrated in the Table except for the 83-84 MA-Max and Schedule Max Steps.

It is not generally appropriate for a third party to adopt a salary offer which deviates from a pattern established through free collective bargaining. And the Association's offer more closely adheres to the salary position historically inhabited by Appleton teachers in the Fox Valley Athletic Conference. Accordingly, the undersigned has concluded that the Association's offer is the more reasonable of the two when they are viewed against past bargains fashioned by the parties voluntarily.

In terms of percentage increases, the impact of the Association's offer when considered in the context of the 1983-1986 Agreement is modest when compared against average Conference increases for the same period. The Association's offer would give Appleton teachers a three-year increase of 19.4% when compared against 1982-1983 salaries; the Board's would give them 18.7% for the same period. Both of these percentage figures are below the 1983-1986 Conference average increases for the same steps illustrated in Table 2.

The Board presented evidence showing settlements that City of Appleton employees received recent salary increases lower in percentage terms than either of the final offers under consideration. It also noted that adoption of either one would give Appleton teachers a higher percentage increase than those received by Appleton Aides, Secretaries and Custodians for the same period. While such comparisons were considered by the undersigned, it must be recognized that the most valid comparison is teachers against teachers, not teachers against other occupational categories.

Overall, the Association's final offer appears to be the more reasonable on the comparability criterion.

The Cost of Living. Adoption of either final offer will provide Appleton teachers with a 1985-1986 salary increase which is greater than the cost of living as measured by the Consumer Price Index (CPI). At best, though, the CPI is a rough estimate of the increase in living costs. And there is considerable arbitral authority to support the conclusion that the regional pattern of settlements is a far more accurate measure of the local cost of living than is the CPI. The settlement pattern generally reflects what both employers and unions consider a fair increase in view of the cost of living and other relevant factors. In contrast, the CPI merely measures increases in the prices of selected consumer items. Accordingly, the undersigned attaches much more weight to the salary settlement pattern in the Fox Valley Athletic Conference than that given to the Consumer Price Index.

Overall Compensation. There is not enough evidence in the record to consider other aspects of the teacher compensation package as between Appleton and comparable school districts.

The Public Interest. In the opinion of the undersigned, the public interest would not be damaged by adoption of either of the parties' offers. That is, the Association's offer would not result in grossly overpaid teachers, nor would the Board's cause them to be severely undercompensated.

Other Criteria. The undersigned is unaware of any changes during the pendency of these proceedings with regard to the circumstances discussed above which would alter the decision rendered below. Moreover, consideration of the factors normally taken into account in the determination of wages through free collective bargaining does not render either of the parties' offers unreasonable.

Summary

After careful consideration of the statutory criteria, the Arbitrator has concluded that the Association's final offer is slightly more reasonable than is the Board's.

AWARD

The Association's final offer shall be incorporated into the parties' 1983-1986 collective bargaining agreement.

Signed by me at Milwaukee, Wisconsin this 20th day of August, 1986.

Steven Briggs