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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	*	
	*	
BARABOO EDUCATION ASSOCIATION	*	Case 26
	*	No. 36063
To Initiate Mediation-Arbitration	*	Med/Arb #3661
Between Said Petitioner and	*	Decision No. 23346-A
	*	
BARABOO SCHOOL DISTRICT	*	
	*	

APPEARANCES:

Jermitt Krage, UniServ Director, South Central United
Educators, on behalf of the Association

Kenneth Cole, Assistant Executive Director, Wisconsin
Association of School Boards, on behalf
of the District

BACKGROUND

On November 27, 1985 the Baraboo Education Association (hereinafter "the Association") and the Baraboo School District (hereinafter "the Board") filed a stipulation with the Wisconsin Employment Relations Commission (WERC) alleging that an impasse existed between them in their collective bargaining concerning a successor to the parties' collective bargaining agreement which expired on June 30, 1985, and further requesting the WERC to initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA).

On March 7, 1986, the WERC found that an impasse existed within the meaning of Section 111.70(4)(cm)6 of MERA. On April 2, 1986, after the parties notified the WERC that they had selected the undersigned, the WERC appointed him 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 June 9, 1986, mediation proceedings were held between the parties pursuant to statutory requirements, but mediation failed to produce a voluntary resolution of the dispute.

Accordingly, on June 20, 1986, the undersigned met with the parties to arbitrate the impasse dispute. At the arbitration hearing, the parties were given a full opportunity to present

evidence and oral arguments. Post hearing briefs were submitted by both parties.

This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the statutory criteria set forth in Section 111.74(4)(cm)(7).

ISSUES

The issues respecting the successor agreement to the 1984-85 Collective Bargaining Agreement between the parties which have not been resolved voluntarily by the parties, and which have been placed before the arbitrator, are as follows:

1. Payment Schedule and Option Provision. Should the successor agreement incorporate a new provision proposed by the Association under which teachers would receive their salaries in twenty-four (24) equal installments on the 1st and 15th of each month, and would be entitled to receive their summer checks on the first pay day after school is out provided they request this in writing to the District Administrator by May 1st?
2. Teacher Job Assignment. Should the successor agreement incorporate new language proposed by the Association providing that "No teacher shall be assigned outside their area of DPI certification"?
3. Salary. Should the successor agreement incorporate the salary and salary structure proposed in the final offer of the Board (about a 7% salary increase) or that of the Association (about a 9.9% salary increase)?

I. PAYMENT SCHEDULE AND OPTION Association Position

The Association argues that its provision for twenty-four salary payments, replacing the Board's present practice of monthly payments (the 1984-85 Agreement does not provide a payment schedule) would be more comparable to the payment schedule practices under the Collective Bargaining Agreements of most of the other Districts of the South Central Athletic Conference (hereinafter "the Conference"), of which the Baraboo School District is a part, and is more reasonable than the Board's present practice in this respect.

The Association argues also that its provision which would provide the teachers with the option when to receive their summer checks would also be more comparable with provisions in most of the other Districts in the Conference, would be more humane, would be more in line with good business practices, and would

avoid the possibility of unfair and arbitrary administration, which in its view is present under the Board's current policy.

Board Position

The Board opposes the addition of the proposed provision in the successor agreement on the grounds that the present policy has worked satisfactorily, that the Association has failed to demonstrate persuasive reasons or a compelling need for the pay option proposal, and that the proposal will result in a substantial increase in the District's operating costs, and possibly a loss of income or even a need for short-term borrowing to meet summer payments.

Discussion

The Association presents persuasive evidence that the Board's practice regarding both the scheduling of payment and summer payments is less favorable than the practice in most other school districts in the South Central Athletic Conference. I accept the Conference as the basis of comparability for this purpose. Almost all of these other schools provide, or permit the option of, bimonthly rather than monthly payments and of early summer payment.

With regard to the summer pay option program, it is not clear from the evidence whether there has in fact been unfairness or arbitrariness in the Board's administration of its present policy. However, there is an apparent perception of potential unfairness and arbitrariness by the Association, which the Association's provision would remove.

The provision for bimonthly instead of monthly payment could result in some increased expense to the Board, and the summer pay option, if widely used, could conceivably produce some short-term budgetary problems. However, I am not persuaded that any potential costs to the Board of incorporation of the Association's proposal in a successor agreement are likely in practice to be either so substantial or unmanageable as to outweigh the argument that the Association's proposal would bring the agreement into conformity with practice in most of the other districts in the Conference.

While the outcome of this issue is clearly of relatively minor importance as compared with the salary issue, I conclude on this issue that the Association's proposal is the more reasonable.

II. TEACHER JOB ASSIGNMENT Association Position

The Association argues that its proposed provision on teacher job assignment would reinforce current certification standards and provide accountability. It suggests that most of the Agreements of other districts in the Conference have language relating to job assignment. It believes that if the Board chooses to assign a teacher outside his/her area of certification, they should also have the express contractual responsibility to request an emergency or special license from the Department of Public Instruction (DPI), as required by the DPI, at the appropriate time.

Board Position

The Board opposes the addition of the proposed provision in the successor agreement on the grounds that the evidence with respect to comparable school districts does not support the Association's position, the Board is in any case obligated to abide by DPI requirements concerning certification, that such a limitation on the Board's flexibility in making assignments is not necessary and the language is unclear and possibly too restrictive, and that the Association has demonstrated no persuasive reasons for such a change.

Discussion

I find persuasive the Board's arguments that the Association's proposal is not necessary, could unduly restrict the Board's flexibility in assignment, and could conflict with DPI certification practice. While it is true that agreements in some other districts in the Conference have express provisions on assignment, most of these are less restrictive than the language proposed by the Association. Indeed, as the Board suggests, the precise reach of the Association's provision is not entirely clear.

The Association presented evidence of one instance in which difficulties arose with respect to temporary certification, although the facts involved were not made entirely clear and in that case reassignment was apparently made available to save the person's job. Otherwise, there was little evidence that problems had arisen or were likely to arise under the Board's current practice, or that the Board had acted arbitrarily or abused its authority with respect to certification.

Consequently, while the outcome of this issue is clearly again of relatively minor importance as compared with the salary issue, I conclude on this issue that the Board's proposal is the more reasonable.

III. THE SALARY SCHEDULE The Association's Position

The Association argues, as a threshold issue, that while under ordinary circumstances, the South Central Athletic Conference is considered by the parties to constitute the primary comparable group, insufficient salary settlements among the Conference schools at the time of this arbitration make it appropriate for the arbitrator to consider as comparables also (1) 1985-86 average salary settlements statewide and (2) 1985-86 settlements in other districts which have a pupil count approximating that of Baraboo. It points out that, as of the time of hearing, only one school (Nekoosa) out of the nine schools in the Conference has reached a settlement, although seven of the eight remaining schools have certified final offers.

The Association goes on to argue that the Arbitrator should accept its salary proposal (providing for an approximately 9.9% increase) rather than the Board's proposal (providing for an approximately 7% increase) because:

1. A comparison of benchmark salaries and final offers among the Conference School Districts supports its wage proposal. The Association presents tables which it argues shows that, when comparing the 1985-86 Board's final offer to the 1985-86 final offers of both parties in the remaining unsettled conference school districts and the settlement in Nekoosa, Baraboo's historic relative ranking for 1984-85 is reduced in every benchmark category. Indeed, depending on the outcome of the other conference settlements, Baraboo could potentially end up at the bottom of four of the seven benchmarks if the Board's final offer prevails, whereas if the Association's final offer prevails, the schedule ranking would remain the same except in these categories. The Association argues that a comparison of proposed dollar and percent increases at various benchmarks from 1984-85 to 1985-86 under the final offers within the conference also places the Board's proposal on or near the bottom of nearly every category. In contrast, the Association's proposed dollar increase would rank from second to eighth in various benchmark categories and, in terms of percentage increase, would also be more in line with the proposed increases under the final offers outstanding for the other conference schools.

2. As indicated, in the absence of a settlement pattern in the conference itself, it is appropriate for the arbitrator to use as comparables the prevailing pattern of dollar and percent increases statewide and in districts of similar size, and these support the Association's proposal rather than the Board's. The Association argues that a comparison with only one other settlement in the conference is not meaningful; that comparisons with teacher's salaries and settlements outweigh county employee or other municipal wage settlements as viable criteria; and that the pattern of teachers settlements also outweighs the use of average increase in the consumer price index. While the

Association does not specifically address the pattern of settlements statewide or in other districts in its brief, it presented evidence at the hearing indicating the 1985-86 settlements in a group of schools which it argues are comparable to Baraboo in size -- Franklin, Milton, New London, Shawano, Waupun and Whitefish Bay, as well as the general pattern of 1985-86 settlements in school districts statewide.

3. The Association's proposal maintains an internal equitable pay environment which is consistent with other Conference schools as well as other districts in Wisconsin. In contrast, the Board's proposal would establish a two-tier schedule, apparently intended to attract new teachers, which would make a major change in the existing salary structure and be inconsistent with prevailing practice. While agreeing with the objective of adjusting salaries, including minimum salaries upwards, the Association argues that its proposal will better accomplish this than will the Board's, and without harming teachers currently employed. The Association argues strongly that the structural changes embodied in the Board's proposal should not be incorporated in the successor agreement unless bargained.

The Association argues, further, that the Board's proposal is inequitable to the intent of the tentative agreements on extracurricular salaries which were part of the certified final offers, and is inequitable when comparing continuing teachers salaries to those of new teachers. The Association presents a detailed analysis of what it claims would be the impact of the Board's salary proposal on new and continuing staff salaries, concluding that it believes the Board's proposal is a guise to retard the salaries of all continuing teachers and in effect have continuing teachers low salaries offset the inflated salaries of new teachers. The Association proposes to retain the basic salary structure with a monetary modification only in the master's line designed to maintain Baraboo's competitive position at that level and recognize the additional effort required to achieve a master's degree.

4. Finally, the Association argues that its proposal is in the interest and welfare of the public and well within the District's ability to meet the cost. The Association contends that teachers are generally conceded to be underpaid and that it is in the best interest and welfare of the people of district to have competitive salaries which attract and retain the best possible teachers. It argues further that, under the State Equalization Aid Formula, the district has received an increase in state aid which was intended not only to provide property tax relief but to encourage local school districts to upgrade teacher's salaries in order to retain and attract well-qualified teachers. Moreover, in its view, the District has the ability to pay the amounts involved under the Association's proposal, as indicated by the absence of citizen protest regarding taxes, the large budget carry-over in 1984-85 and the substantial

Equalizations Aid and School Aid Credit the District will receive. Finally, the Association argues that the data presented by the Board to suggest difficult economic conditions in the district, particularly in the farm economy, is incomplete and irrelevant to the issue here involved. It suggests, in particular, that agriculture provided for only a relatively small percent of the District's employment and that the agricultural economy in the District is healthy.

The Board's Position

The Board argues, as a threshold issue, that the comparable group for this arbitration should be the school districts within the Conference and that using districts outside the Conference will damage the bargaining relationship. It points out that the Association has utilized the Conference for comparability purposes for both the certification and pay practice issues in this arbitration. It argues that arbitrators have consistently rejected comparisons with state-wide average salary data or school districts selected from across the state.

It goes on to argue that the Arbitrator should accept its salary proposal (approximately 7%) rather than the Association's (approximately 9.9%) because:

1. Consumer prices have not risen substantially since the last agreement. The national series has risen approximately 3%, the small metropolitan index less than 2%, and the nonmetropolitan urban index less than 1.5%. Thus, by any measure of inflation, the Union offer of almost 10% should be rejected.

2. The general public interest and welfare dictate acceptance of the Board's offer since its proposal more reasonably balances the public and employee interest. The Association urges that, particularly since there is not as yet any definitive settlement pattern in the Conference, the Arbitrator should place emphasis on local economic conditions and the public's ability to pay. The Board points to what it claims is a large decline in farm incomes over the past several years and the economic difficulties faced by the taxpaying public in the district. Moreover, while the increased state aid was intended to provide property tax relief, acceptance of the Association's proposal would more than absorb this increase and result in no tax relief. The Board cites various evidence of the difficult economic conditions in rural communities such as the district, including declining agricultural prices, delinquent property taxes and unemployment figures, and refers to various recent arbitral decisions which have given substantial weight to depressed local economic conditions.

3. In the Board's view, other salary and other relevant data support acceptance of the Board's proposal rather than the Association's. The Board points to evidence that the increases for other public professional employees has been less than 4%;

that the salary increases granted in the prior year were substantial, especially at the highest levels; that the Baraboo school district has the highest "mean total compensation" in the athletic conference; and that its absolute pay levels rank very high in the athletic conference. It argues, in particular, that one Conference school, Nekoosa, has reached agreement for 1985-86 at an increase of 6.23% and that the contiguous school district of Lodi has settled for 1985-86 at a 7% level. Finally, the Board argues that, while there is an interest in maintaining the competitive position of the district with respect to attracting, holding and rewarding teachers, what is appropriate to this end is already reflected in the statutory criteria.

Discussion

As the Association points out in its brief, in the majority of interest arbitrations the final offer selected has turned on comparability. Both parties agree that the primary comparable group in this case should be school districts comprising the South Central Athletic Conference -- Baraboo, Reedsburg, Portage, Tomah, Mauston, Wisconsin Dells, Adams-Friendship, Sparta and Nekoosa. But as of the time of the closing of the record in this arbitration, none of these districts had reached a salary settlement for the 1985-86 school year, with the exception of Nekoosa which has reached agreement at an increase of 6.23% in the second year of a two year contract. Consequently, it is impossible to assess the offers in the light of what has happened in other schools in the conference, for almost nothing yet has happened. Someone has to go first.

Faced with this difficulty as to comparables, the parties suggest different approaches. The Board argues that, absent comparability data from other school districts in the conference, the arbitrator has no choice but to base his decision primarily on other statutory criteria, such as increases in the cost of living and the general interest and welfare of the public, though it would draw the arbitrator's attention not only to Nekoosa's settlement at a 6.23% increase for the 1985-86 school year but also to the recent 7% settlement in the contiguous school district of Lodi, which is not in the Conference. The Association, on its part, urges that the Arbitrator, first, do the best he can on the basis of the final offers certified by the various boards and associations in seven of the eight other school districts in the conference (Sparta has not yet certified final offers); and, second, look beyond the conference to 1985-86 settlements in a group of schools of a size similar to Baraboo in other parts of the state -- specifically Franklin, Milton, New London, Shawano, Waupun and Whitefish Bay, as well as 1985-86 average settlements statewide.

I am reluctant, in the quest for comparables, to range much outside the bounds of the schools in the conference for, in the words of the medieval maps, "here lie dragons!" The parties

themselves think of the other Conference schools as their comparable group, and base their negotiations on this expectation. The Association has given few facts, other than a rough similarity of pupil count, on which to judge the comparability of the particular schools it offers with the situation in Baraboo. Similarly, without more evidence as to the comparison of the Baraboo School District with other districts statewide, I am inclined to give little weight to statewide 1985-86 average dollar or percent increase figures. For what it is worth, however, the Association's evidence indicates that both Baraboo's pay scale and the District's offer are somewhat below those of schools in the alternative comparable group it would offer. On the other hand, the Association's evidence seems to indicate that most of the settlements in the Association's suggested comparable group are for salary increases not exceeding 8%, and that average settlements statewide (as indicated, for example in the DPI Audit Report, Assn. Ex. 68, p.13), have been in the range of about 8.2%.

Nor does an examination of the final offers of other schools in the South Central Athletic Conference offer much help. Clearly, it is impossible at this time to predict which offers will be accepted or what pattern will eventually emerge. The Association argues, however, that, even assuming acceptance of the district offers in some or all of the other districts in the Conference, acceptance of the Board's offer could have the effect of lowering Baraboo's historical relative salary standing among the schools in the conference in a number of benchmark categories. The figures do suggest that the Board's dollar offers in some categories are somewhat below those of some of the other districts, and that acceptance of the Board's offer could in a "worst case" analysis result in a drop of ranking in certain categories, although in other categories (particularly at the higher MA levels) Baraboo's rank would be retained. However, conversely, it would appear that acceptance of the Association's offer could conceivably (if the lowest offers were eventually selected in all the other districts) result in a rise in Baraboo's relative ranking in the Conference. Moreover, while the statute mandates the general standard of comparability, it does not mandate the preservation of any exact relative salary rank within a particular comparable group. Also, it would appear from the evidence that the level of compensation in the Baraboo School District is relatively high within the Conference -- the Board claims the highest "mean total compensation" in the conference. A further consideration is that Baraboo's 1984-85 settlement gave higher increases at higher education and experience levels than it did at lower levels, whereas, as will be discussed, the Board's present offer is deliberately intended at attracting and keeping newer teachers. For these reasons, the final offers of other districts seem also to provide no clear guidance with respect to the statutory criterion of teacher salary comparability.

If anything, the evidence on teacher salary comparability -- Nekoosa's 6.23% settlement, Lodi's 7% settlement, an average of statewide settlements thus far which seem to be at least below 8 1/2% -- suggests that the Association's proposal is rather high. But this evidence alone is insufficient to point to any clear choice between the parties' offers and it seems necessary to pass on to an examination of other statutory criteria.

With respect to the statutory factor of comparison of wages with those of other employees generally in public employment, the Board notes that the 1985-86 salary increase for the Sauk County municipal employees was 3.3% and that the increase of the Portage Columbia Courthouse employees was 3.6%. While the situation of degree-holding professional teachers is not directly comparable, it is of some relevance that such other public employee increases have tended to be moderate.

With respect to the statutory factor of cost-of-living, the Board notes that, over the period here in question, the National Price Index has risen approximately 3%, the small Metropolitan Index less than 2%, and the Nonmetropolitan Urban Index less than 1.5%. While comparability is normally a more significant factor, and there are, as the Association points out, good reasons not to rely exclusively or too heavily on the cost-of-living factor in public school interest arbitrations, I consider the fact that the increase in the cost-of-living has been less than 4% as of some relevance in suggesting again that the Association's proposal is on the high side.

The Board places considerable stress on its argument that the factor of "the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement" supports acceptance of its salary proposal rather than that of the Association. It points to the substantial decline in farm incomes over the past several years and to what it alleges are depressed economic conditions faced by the taxpaying public in the Baraboo district. It argues further that acceptance of the Association's proposal would result in absorption of increased state aid intended to provide property tax relief rather than simply higher teacher salaries. On its part, the Association argues that the Board has exaggerated the economic difficulties of the district, particularly since agriculture is not the major component of the district's economy; that state aid is intended in part to improve teacher's salaries; and that the district has the financial ability to pay the costs of the Association's proposal without any undue impact on taxpayers. The Association points in particular to wide recognition that teachers are underpaid and that it is in the public interest to encourage qualified teachers to enter and remain in teaching.

As the Association suggests, the Board's evidence as to economic conditions in the District is incomplete and general. In particular, it does not establish that the situation in

Baraboo is significantly worse than in the other districts in the conference. However, the evidence does seem to buttress the common awareness that these are not good times for farmers or for communities such as Baraboo in which agriculture plays a significant part. It is also the case that the legislature and taxpayers expect that state aid will produce at least some tax relief for taxpayers who see themselves as hard pressed. The fact that acceptance of a lower rather than higher salary schedule will cause less pressure on the taxpayers of an economy that is at least somewhat depressed is a consideration which I believe I must take into account.

The Board's proposal includes a special feature to which the Association strongly objects. The Board would use the "0" step of the traditional schedule only for purposes of calculating the interscholastic activity schedule amounts and the salary schedule increments, but in all other instances would use the first half-step. The Association argues that this in effect establishes a higher base salary for new teachers which is actually step 0.5 of the lower salary schedule and represents a figure 1.75% higher than the base used to calculate all other salaries on the Board's last salary schedule offer. The Board states that the purpose of this change is to improve the salaries of teachers at the lower end of the salary schedule in order to attract new teachers, particularly since teachers' salaries at the upper end of the schedule were improved last year, and that this should not affect continuing teachers. The Association, however, believes otherwise and claims that the Board's two-tiered, dual-base salary proposal, apparently submitted just before the final offers were certified, is procedurally improper and inequitable.

While it is of course appropriate for the Board to seek to improve entry-level salaries in order to attract new teachers, I believe there is reason for the Association's concern. The introduction, late in the bargaining, of a two-tiered salary structure does appear to represent a significant structural change in the salary schedule of the agreement, which is best bargained rather than decided by arbitration. Moreover, the Association has presented a detailed and complex analysis suggesting that over time this structure could produce inequities with respect to presently continuing as contrasted with currently newly hired teachers. Consequently, I regard the Board's two-tier schedule as a factor weighing against acceptance of its proposal.

However, in summary, while I have reservations about the Board's two-tier salary structure, the balance of statutory factors and other considerations involved, and in particular local economic conditions and the general interest of the public, seem to me to favor acceptance of the Board's rather than the Association's salary proposal. I therefore conclude that the Board's salary offer is the more reasonable.

IV. CONCLUSION

I have concluded that the Board's proposals are the more reasonable with respect to the salary and job assignment issues, and that the Association's proposal is the more reasonable as to the payments schedule and option issue. Since the salary issue is clearly the most important, I find that, overall, the Board's final offer is the more reasonable.

AWARD

Based upon the statutory criteria contained in Section 111.70(4)(cm)(7), the evidence and arguments of the parties, and for the reasons discussed above, the mediator-arbitrator selects the final offer of the Board, and directs that it, along with all already agreed upon items, be incorporated into the parties 1985-86 collective bargaining agreement.

Richard B. Bilder

Madison, Wisconsin
August 18, 1986

Richard B. Bilder
Mediator-Arbitrator