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VOLUNTARY LABOR ARBITRATION
OPINION AND AWARD

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Mediation/Arbitration
between
BERLIN EDUCATION ASSOCIATION
and
BERLIN AREA SCHOOL DISTRICT

CASE 13
NO. 35928
MED/ARB - 3605
Decision No. 23363-A

Hearing Held

June 13, 1986
Lamberton Elementary
259 E. Marquette
Berlin, WI

Appearances

For the Board:

William G. Bracken
Director of Employee Relations
Wisconsin Association of
School Boards
Box 160
Winneconne, WI 54986

Arbitrator

Steven Briggs
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For the Association:

James M. Yoder
Executive Director
South Central United Educators
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BACKGROUND

The undersigned was notified by a March 20, 1986, letter from the Wisconsin Employment Relations Commission of his selection as Mediator/Arbitrator in an interest dispute between the Berlin Area School District (Board) and the Berlin Education Association (Association). The dispute concerns salaries and the layoff notification date to be included in the parties' 1985-1986 collective bargaining agreement covering all certified teaching personnel including classroom teachers, special teachers, guidance counselors, librarians, part-time teachers, and teaching principals.

Pursuant to statutory responsibilities, a public hearing was held by the undersigned on Wednesday evening, May 21, 1986. Mediation was conducted that same night. It did not result in settlement. An arbitration hearing was held on Friday, June 13, 1986, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions on the issues. Both parties filed timely Posthearing Briefs, and the record was declared closed on September 7, 1986. Based upon a detailed consideration of the record, and relying upon the criteria set forth in Section 111.70 (4)(cm), Wisconsin Statutes, the Arbitrator has formulated this Award.

ISSUES

There are but two issues submitted to arbitration, with the more important being teacher salaries. The Board's salary offer reflects a total cost increase, including benefit adjustments, of 9.1%; the Association's salary offer reflects a total increase of 12.6%. With regard to salary structure, the Board's offer would reduce each lane by three steps; the Association's offer would add two lanes and reduce the first three BA lanes by four steps and the last four lanes by five steps.

The second issue concerns the date by which the Board must notify bargaining unit employees of a layoff. The Association proposes substitution of the phrase, "no later than May 15th" for the phrase, "30 days prior to layoff."

DISCUSSION

Comparability Pool

Association Position. The Association believes that the East Central Athletic Conference (hereinafter Conference) should be considered the primary comparables group. As a secondary comparability pool, the Association sets forth those school districts within a 30-mile radius of Berlin and argues that since they function in the same economic climate they should be included for comparison purposes.

Board Position. The Board maintains that the East Central Athletic Conference should be the only comparison pool used. It notes that in an interest arbitration for the previous labor agreement, both parties advanced those districts as the appropriate comparables pool, and the arbitrator in that case agreed.

Analysis. Generally speaking, when a given set of comparables has been used by an arbitrator in a prior case involving the same parties, a subsequent interest arbitrator should not deviate from that set. Such deviation would encourage the parties to fashion a priori comparison pools on an ad hoc basis, including only those districts which made their own final offers beg for adoption by the arbitrator. Unpredictable orbits of comparison could result, thereby undermining the stability of the collective bargaining process. That does not mean that subsequent interest arbitrators are "locked in" by the first arbitral embrace of a comparability set in a given district. But in the opinion of the undersigned interest arbitrators should generally adhere to comparison pools previously adopted in the arbitration forum, especially in cases such as this where both parties agreed in the earlier proceeding on the composition of the appropriate comparability group.

The Arbitrator also notes that the geographic location of districts in the Association's secondary group was the only dimension used for their selection. This singular criterion ignores such commonly employed measures as average daily membership, full-time teacher equivalency, pupil/teacher ratio, cost per member, and equalized valuation. The undersigned is therefore unwilling to utilize such a group for comparison purposes.

In adopting the following list of districts as the comparability group, the undersigned notes that half of them have settlements for 1985-1986 which are included in this record.

COMPARABLE SCHOOL DISTRICTS
(EAST CENTRAL ATHLETIC CONFERENCE)

Berlin
Hortonville
Little Chute
Omro
Ripon
Waupaca
Wautoma
Winneconne

Teacher Salaries

Association Position. The Association argues that comparison of benchmark salaries is a more appropriate analytical tool than a comparison of percentage salary increases. It also notes that in a 1984-1985 interest arbitration proceeding the third-party expressed concern that the Berlin salary structure could not be juxtaposed against those in other Conference districts, "... particularly in terms of the number of vertical steps it takes to get through the schedule.." Thus, the Association argues, its proposed structure was designed to be more parallel to salary structures in the remainder of the Conference.

The final offer submitted by the Association also changes the composition of lanes in the existing salary structure, adding BA+8 and MA+8 lanes, changing the BA+15 lane to BA+16 and the MA+15 to MA+16. Noting that the Conference average is 6.43 lanes, the Association argues that its 7-lane offer is nearer the average than is the Board's offer of a 5-lane structure. Moreover, the Association points to the \$120 per credit cost of graduate education in support of its position that teachers need the accelerated income provided by the new lanes just to cover the costs of incremental education. Overall, the Association believes its salary offer more nearly meets the prevailing pattern of salary structures across the comparables group.

With regard to benchmark salaries, the Association believes its offer is preferable to that of the Board, noting that the latter provides the lowest or next to lowest salary increase at each of the following cells: BA minimum, BA 7th step, BA maximum, MA minimum, MA 10th step, MA maximum, and schedule maximum. Moreover, from a 5-year historical perspective Berlin teachers have lost their relative Conference ranking at each of the seven benchmarks. The Association argues that only by salary increases larger than the Conference average can Berlin teachers achieve equity with other Conference teachers.

Board Position. The Board argues that the structural changes proposed by the Association are too severe to be imposed through arbitration and should be negotiated by the parties themselves. Besides a \$570 increment for the vertical steps, the Association's offer provides for a \$570 lane differential. There is simply no basis to equate the two, and no other Conference salary schedule does so. Moreover, under the Association's structure teachers would receive \$570 for each eight additional college credits completed. That amount is out of line with educational attainment payments in every other Conference district.

The Board also argues that given the economic distress of the local farm economy and the 3.8% inflation rate over the relevant time period, it would be unconscionable to adopt the Association's 12.6% package increase.

With regard to benchmark comparison, the Board maintains that it ranks competitively with other Conference districts. Its offer is closer to benchmark dollar and percentage increases among the four settled Conference districts than is the Association's. Moreover, the Board notes that its offer raises the vertical increment 26% to 29% or \$113 to \$127 per step. Such increases were intended to be a first step toward raising salaries in the middle of the salary schedule.

The Board also argues that no other employee group in the area, state, or even the country is obtaining a settlement amounting to a 12.6% compensation increase. It adds that last year brought Berlin teachers an 8.3% total package increase and asks why, in these more difficult economic times, the Association should win through arbitration a package increase 52% above what Berlin teachers received just a year ago.

Analysis. Juxtaposition of the parties' salary offers on commonly accepted benchmark levels against settlements and outstanding offers in the Conference was accomplished through construction of Tables 1-7 below:

TABLE 1
EAST CENTRAL ATHLETIC CONFERENCE
BA BASE

District	84-85	85-86	\$incr.	%incr.
Hortonville*	14300	15300	1000	7.0
Little Chute*	15100	16138	1038	6.9
Omro*	14400	15300	900	6.3
Winneconne*	14600	15525	925	6.3
Ripon	14675	15639(B)	964	6.6
		15890(U)	1215	8.3
Waupaca	13865	14750(B)	885	6.4
		14930(U)	1065	7.7
Wautoma	14225	15200(B)	975	6.9
		15480(U)	1255	8.8
Berlin	14450	15275(B)	825	5.7
		15635(U)	1185	8.2

* = Settled for 1985-86.

From Table 1, the BA Base proposed by the Board reduces its position in the Conference at that benchmark from fourth of eight to last. And in both percentage and absolute terms, the Board's proposed increase is the lowest as well. But the Association's offer at the BA Base is significantly higher than any of the settlements in the Conference. Thus, neither of the parties' offers is clearly preferable on this dimension.

TABLE 2
EAST CENTRAL ATHLETIC CONFERENCE
BA 6TH STEP

District	84-85	85-86	\$incr.	%incr.
Hortonville*	17510	18660	1150	6.6
Little Chute*	19026	20334	1308	6.9
Omro*	18720	19890	1170	6.3
Winneconne*	18104	19251	1147	6.3
Ripon	17880	19138(B) 19380(U)	1258 1500	7.0 8.4
Waupaca	17609	18734(B) 18962(U)	1125 1353	6.4 7.7
Wautoma	17639	18848(B) 19194(U)	1209 1555	6.9 8.8
Berlin	17030	18175(B) 19055(U)	1145 2025	6.7 11.9

* = Settled for 1985-1986

Table 2 sheds more favorable light on the Board's offer than it does on the Association's. In both dollar and percentage terms, the Board's proposed increase is within the settlement range. In contrast, the Association's offer is way out of line. It is about 90% higher than any of the Conference settlements, and several percentage points above the offers advanced by teacher groups in non-settled Conference districts.

TABLE 3
EAST CENTRAL ATHLETIC CONFERENCE
BA MAXIMUM

District	84-85	85-86	\$incr.	%incr.
Hortonville*	22860	24260	1400	6.1
Little Chute*	22650	24208	1558	6.9
Omro*	21600	22950	1350	6.3
Winneconne*	20440	21735	1295	6.3
Ripon	20320	21774(B) 22040(U)	1454 1720	7.2 8.5
Waupaca	21353	22718(B) 22994(U)	1365 1641	6.4 7.7
Wautoma	20484	21888(B) 22289(U)	1404 18.5	6.9 8.8
Berlin	21880	22975(B) 23045(U)	1095 1165	5.0 5.3

* = Settled for 1985-1986

On the BA Maximum benchmark, the parties' positions are both beneath the Conference settlement range in dollar and percentage terms. Moreover, since they are quite close to each other, this particular benchmark offers little impetus toward selecting the overall salary package of one party or the other.

TABLE 4
EAST CENTRAL ATHLETIC CONFERENCE
MA BASE

District	84-85	85-86	\$incr.	%incr.
Hortonville*	15100	16100	1000	6.6
Little Chute*	16912	18075	1163	6.9
Omro*	15600	16500	900	5.8
Winneconne*	15620	16545	925	5.9
Ripon	15865	16829(B) 17190(U)	964 1325	6.1 8.4
Waupaca	14952	15837(B) 16098(U)	885 1146	5.9 7.7
Wautoma	15400	16488(B) 16791(U)	1088 1391	7.1 9.0
Berlin	16100	16575(B) 17915(U)	475 1815	3.0 11.3

* = Settled for 85-86.

Both parties' offers seem "out of the ball park" on the MA Base benchmark. The Conference settlement average is 6.3% (\$997), with the Board being 3.3% (\$522) below the average. The Association's offer, however, exceeds the conference settlement average by a much more significant amount (\$818) and percentage (5%). And it is well above teacher group offers in the non-settled Conference districts.

TABLE 5
EAST CENTRAL ATHLETIC CONFERENCE
MA 9TH STEP

District	84-85	85-86	\$incr.	%incr.
Hortonville*	20185	21410	1225	6.1
Little Chute*	23338	24944	1606	6.9
Omro*	22620	23925	1305	5.8
Winneconne*	21245	22503	1258	5.9
Ripon	21674	23079(B) 23530(U)	1405 1856	6.5 8.6
Waupaca	21009	22254(B) 22614(U)	1245 1605	5.9 7.6
Wautoma	20944	22428(B) 22838(U)	1484 1895	7.1 9.0
Berlin	19970	21175(B) 23045(U)	1205 3075	6.0 15.4

* = Settled for 85-86.

It is abundantly clear from Table 5 that the Association's offer on the MA 9th Step greatly exceeds anything contemplated by any single party in the entire Conference. It is more than twice the amount reached in any of the settled districts.

TABLE 6
EAST CENTRAL ATHLETIC CONFERENCE
MA MAXIMUM

District	84-85	85-86	\$incr.	%incr.
Hortonville*	24140	25540	1400	5.8
Little Chute*	25368	27113	1745	6.9
Omro*	24960	26400	1440	5.8
Winneconne*	24995	26475	1480	5.9
Ripon	24827	26440(B)	1613	6.5
		26960(U)	2133	8.6
Waupaca	25720	27245(B)	1525	5.9
		27682(U)	1962	7.6
Wautoma	24024	25728(B)	1704	7.1
		26199(U)	2175	9.1
Berlin	24390	25575(B)	1185	4.9
		25895(U)	1505	6.2

* = Settled for 85-86.

On the MA Maximum benchmark, the Association's offer appears slightly more appropriate when the parties' offers are compared against Conference settlements. Even though it would be higher than any of them in percentage terms, by that same measure it is lower than two of the employer offers in the three other non-settled districts. Moreover, in absolute dollars the Association's offer is less than any of the outstanding offers in the Conference.

TABLE 7
EAST CENTRAL ATHLETIC CONFERENCE
SCHEDULE MAXIMUM

District	84-85	85-86	\$incr.	%incr.
Hortonville*	24465	25865	1400	5.7
Little Chute*	26727	28565	1838	6.9
Omro*	25600	27040	1440	5.6
Winneconne*	25505	26985	1480	5.8
Ripon	26186	27852(B)	1666	6.4
		28450(U)	2264	8.6
Waupaca	26184	27709(B)	1525	5.8
		28199(U)	2015	7.7
Wautoma	24760	26566(B)	1806	7.3
		27061(U)	2301	9.3
Berlin	24940	26275(B)	1335	5.4
		27035(U)	2095	8.4

* = Settled for 85-86.

Table 7 is supportive of the Board's position. The average Schedule Maximum increase for the four settled districts was 6% (\$1539). Thus, in both percentage and absolute terms the Board's 5.4% (\$1335) offer is much closer to the average than is the Association's proposal of 8.4% (\$2095).

TABLE 8
EAST CENTRAL CONFERENCE
AVERAGE SALARY

District	84-85	85-86	\$incr.	%incr.
Hortonville*	19112	20843	1731	9.1
Little Chute*	22536	24542	2006	8.9
Omro*	21463	23111	1648	7.7
Winneconne*	21667	23321	1654	7.6
Ripon	20723	22422(B)	1699	8.2
		22794(U)	2071	10.0
Waupaca	20979	22713(B)	1734	8.3
		23039(U)	2060	9.6
Wautoma	19794	21490(B)	1696	8.6
		21892(U)	2098	10.6
Berlin	20530	22230(B)	1700	8.3
		23021(U)	2491	12.1

* = Settled for 85-86.

Table 8 reflects average salaries across the Conference. It was constructed by dividing total scheduled salary cost by full time equivalency, excluding longevity. Across the settled districts, the average overall percentage increase on the salary schedule has been 8.3% (\$1760). The Board's offer here is identical in percentage terms, and only \$60 lower in absolute terms. Standing in marked contrast is the Association's offer, which is 3.8 percentage points and \$731 higher than the average. The "average" computed in Table 8 is merely a general guideline, since it does not take into account the overall actual costs to a given district, but it does strongly suggest the Board's offer is the more appropriate when comparison is made to other Conference districts.

The Arbitrator is aware that compared to the previous four years the Board's 1985-1986 offer reduces the relative ranking of Berlin teachers at certain benchmarks. However, a comparison of the absolute dollar differential between the various ranks is a more meaningful analysis. Such a comparison reveals that in many cases the Board's offer is just a few dollars below the district ranked immediately above, while the Association's is markedly above the district ranked immediately below it.

Salary Structure. Both parties' offers delete steps from each lane of the current salary structure, thereby accelerating teacher experience progression to the lane maxima. The Association's proposal adds two educational achievement lanes and changes two others to achieve an eight credit deviation from the previous lane; the Board's offer retains the status quo on that dimension of the salary structure.

The undersigned is generally reluctant to adopt an offer that deviates from the status quo unless it is abundantly clear that such a change is wholly appropriate. In the instant case, the Association's 7-lane offer departs significantly from the 5-lane existing schedule. The Association notes, however, that the average across the Conference is 6.43 lanes. But the 10-lane structure in Little Chute skews the average upward. Removing Little Chute from the calculation reduces the average to 5.8.

In terms of dollars per college credit paid to teachers on the various Conference salary schedules, Little Chute's 10-lane structure provides \$54, making it the highest in the Conference. In other Conference districts the comparable figure runs between \$25 and about \$45. The Board's offer here would provide about \$36 per credit; the Association's would pay teachers \$71.25 for each additional credit earned. Even with the high costs of college tuition, there is no compelling basis to jump to a figure almost double that provided by comparable districts.

The Public Interest. In view of the rural nature of the area served by the Berlin School District, and the hard economic times faced by the farm community in and around Berlin, it would not be in the public interest for the undersigned to select the Association's final offer. As mentioned, it amounts to a total compensation increase of over 12%, as compared to the Board's offer of just over 9%. There is nothing in the record to suggest that a double digit increase is needed to attract competent teachers, or to retain the competent teachers already on staff. It can therefore be assumed that Berlin is competing rather well with other Conference districts in recruiting and retaining good teachers under the current salary structure.

The Cost of Living. It is clear from the record that the Board's salary offer is the more appropriate when viewed against cost-of-living increases over the relevant period.

Overall Compensation. Neither party argued that benefit levels in Berlin are significantly different from those across comparable districts, so it is assumed that the most important element of overall compensation is salary.

Other Settlements. When the parties' offers are compared against other public sector settlements and those in the private sector for the relevant period, the Board's offer seems preferable. In the Berlin area, private sector employers and other public sector employers reported wage changes ranging from reductions (concessions) to increases of about 5%.

Layoff Notification Date

The salary issue is, by far, the more significant of the two before the Arbitrator, so an exhaustive analysis of this issue is unnecessary. The Board maintains that the current 30-day notice is appropriate, and that there are too many critical and unknown factors as late in the school year as May 15 for it to predict layoffs in an informed way.

The Association argues that the 30-day notice is atypical in the Conference, and that a teacher receiving such notice at other than the traditional recruiting time for teachers might be deprived of employment opportunities for the balance of the school year. The undersigned finds no evidence in the record, though, to indicate that this problem has ever occurred. And recognizing that the Board's proposal retains the status quo, the Arbitrator finds no compelling reason to adopt the Association's position on this issue.