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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE MEDIATOR-ARBITRATOR

In the Matter of the Petition of DODGELAND EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between Said Petitioner and DODGELAND SCHOOL DISTRICT	Case No. 11 No. 35748 MED/ARB-3523 Decision No. 23378-B

Appearances:

Mr. Armin Blaufuss, Executive Director, Winnebagoland UniServ Unit-South, appearing on behalf of the Association.
Mr. David R. Friedman, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD:

On March 25, 1986, the undersigned was appointed Mediator-Arbitrator by the Wisconsin Employment Relations Commission, pursuant to the provisions of Section 111.70 (4)(cm) 6. b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Dodgeland Education Association, referred to herein as the Association, and Dodgeland School District, referred to herein as the Employer, with respect to certain issues as specified below. Pursuant to the statutory responsibilities, the undersigned conducted mediation efforts between the parties on June 17, 1986, at Juneau, Wisconsin, at which time the parties were present, however, all efforts at mediating a voluntary resolution of the dispute failed. Thereafter, on June 17, 1986, the parties executed a written waiver of the statutory provisions of MERA, which require the Mediator-Arbitrator to advise the parties in writing of his intent to arbitrate, and to establish a time frame within which either party may withdraw its final offer.

Immediately subsequent to mediation efforts, arbitration hearing was opened, and the parties were given full opportunity to present written and oral evidence, and to make oral argument. The proceedings were not transcribed, however, briefs were filed in the matter, which were exchanged by the Arbitrator on July 25, 1986.

THE ISSUES:

There are 8 issues disputed between the parties. They include the following:

1. Extra-curricular pay;
2. Pay for volleyball coach;
3. Credit reimbursement;
4. Long term disability coverage;
5. Language concerning insurance policies;
6. Language concerning access to teacher files;
7. Duration of Agreement;
8. Salary

Each of the foregoing issues will be fully set forth in the discussion section of this Award.

In addition to the foregoing issues, there is a fundamental dispute between the parties as to which group of comparables constitutes the appropriate set of comparables for determining measurement of the adequacy of the parties' final offers.

DISCUSSION:

The statute directs the Arbitrator to apply the criteria found at MERA, Section 111.70 (4)(cm) 7 in order to determine which party's final offer should be adopted into their collective bargaining agreement. The criteria is fully set forth in that section of the statute at subparagraphs a through h. It will be upon this criteria that the Arbitrator will base his Award, focusing on the criteria to which the parties adduced evidence and made argument in these proceedings.

Prior to determining the propriety of the individual disputed issues that are contained within the final offers, the undersigned necessarily will have to make the determination as to which group of comparables controls in the instant dispute. The question of comparables between these parties has been addressed in two prior interest arbitration awards, wherein, the interest arbitrators, in their opinions, made determinations as to what surrounding school districts established the comparables for the purposes of comparing wages, hours and conditions of employment. The parties are now involved in their third interest arbitration, and to a large extent it would appear that the outcome of the instant dispute will be controlled by a determination of which set of comparables is the more appropriate.

Entered into evidence are the two prior awards of Arbitrators Milo Flaten and Jay Grenig, which speak to the comparables that should be considered when considering the propriety of the parties' final offers in this dispute. The Association, here, urges that the undersigned find that the comparables which Flaten established should be adopted, whereas, the Employer concludes that the Grenig comparables are the ones which should be preferred.

The undersigned has carefully read the opinions of both Mediator-Arbitrators Grenig and Flaten with respect to the comparables, and without question, the comparables which Grenig relied on were distinct and separate from those which Flaten relied on in his earlier award.

The undersigned has long been of the opinion that there should be consistency with respect to the determination of comparables for parties to a dispute, so that in successive rounds of bargaining the parties may have the benefit of prior determinations as to where the comparables reside as an aid in the bargaining process. Here, the parties to this dispute have not had the benefit of a clear set of comparables in that two separate sets of comparables were relied on by two separate arbitrators in arriving at their decisions when the parties have resorted to mediation-arbitration for resolution of their disputes in the past. Undoubtedly, the fact that the comparables relied on by the two prior arbitrators are different is a significant reason why the parties to this dispute have been unable to reach a satisfactory resolution of their dispute on a voluntary basis, and have resorted to the arbitration process for a third time.

It is with all of the foregoing in view that the undersigned reviews the arbitration awards of both Arbitrators Grenig and Flaten in an effort to establish a set of comparables for the benefit of the parties as a guidance to their future rounds of bargaining, and to resolve the instant dispute.

Turning first to the Flaten award, Arbitrator Flaten issued an arbitration award to these same parties on August 3, 1983. Contained within his findings and conclusions were findings that dealt with the comparables. Arbitrator Flaten determined that the Association proposed comparables which involved schools within the CESA district in Dodge County, and rejected the School District's position that the Eastern Suburban Conference Athletic League should be the appropriate set of comparables. In so doing, Flaten opined as follows:

> This observer is inclined to agree with the Union that the Wisconsin Interscholastic Athletic Association should not be the entity to determine a school district's comparables. Additionally, the Eastern Suburban Conference, the employer's comparison basis, has districts which are geographically dispersed in contrast to the geographical proximity of the Dodge County districts. Furthermore, Dodgeland has only recently been divorced from the Flyway Conference and placed into the Eastern Suburban Conference. The only other Dodge County school district in the Eastern Suburban Conference is Hustisford.

Thus, it is apparent that the most reasonable comparison standard to be used by an outside observer would be the one proffered by the Union. This is because Dodge County has the most homologous economic and sociological characteristics.

Based on the foregoing determination, Arbitrator Flaten found for the Association as it pertains to its salary proposal, however, because there were a significant number of other issues involved, all of which Arbitrator Flaten found for the Employer, the last best offer of the Employer was selected in that proceeding on August 3, 1983.

On April 8, 1985, Mediator-Arbitrator Jay Grenig decided the dispute between these two parties, and in so doing, established a different set of comparables than those used by Arbitrator Flaten. In setting forth the Employer position in that matter, Grenig states that the Employer contends that Flaten's reliance on only certain schools in Dodge County is not logical. It says that limiting the comparables to school districts solely within Dodge County excludes districts that are partially in the county. The Employer in that proceeding further relied on the holdings of Arbitrator Haferbecker in School District of Horicon (1985), wherein Haferbecker rejected an argument that only Dodge County schools should be used as comparables in determining wage levels in the Horicon School District; and holding that the athletic conference schools should be used for comparability purposes. Employer further argued in that matter that Mediator-Arbitrator Hutchison (1982) gave greater weight to the districts in the athletic conference in Lomira School District because the Association there had not provided data with respect to the size of the districts within a 25 mile radius of Lomira.

In making his determination as to the comparables, Arbitrator Grenig at page 4 of his Award states:

> While considerable deference should be given to determinations of comparable districts in a prior award in order to avoid 'comparability shopping', a prior decision should not preclude an arbitrator from considering whether additional comparables should be used.
>
> In this instance, it is appropriate to compare districts in addition to those found to be comparable by Arbitrator Flaten. Only four of the districts in Dodge County have reached voluntary settlements. Since interest arbitration is an attempt to determine where the parties would have settled had they settled voluntarily, voluntary settlements provide a more meaningful basis for comparison than arbitration awards. Comparisons with only three voluntary settlements is a questionable satistical reliability.

From the foregoing, it is clear to the undersigned that one of the reasons why Arbitrator Grenig departed from the comparables which had previously been established by Arbitrator Flaten was due to the fact that there were only three voluntary settlements available at the time of his decision among the Flaten comparables. From the foregoing, the undersigned concludes that the expanded comparables relied on by Grenig were due, in part, to the lack of settlement data available to him for the purposes of comparison.

Notwithstanding all of the above, the undersigned now concludes, from a review of all of the data, that all of the Dodge County districts relied on by the Association as well as the athletic conference relied on by Grenig in his award should be integrated into one set of comparables for the purpose of determining the appropriate salary levels and benefits payable to teachers in this district. The Employer argument that Dodge County schools are not comparable pales for several reasons. Initially, as the undersigned has concluded above, the comparability determinations of Arbitrator Flaten in selecting the Dodge County school districts as comparable are based on his reasoning which the undersigned has found acceptable. Additionally, the undersigned notes that Dodgeland School District is located in Juneau, Wisconsin, the county seat of Dodge County. It is inconceivable to the undersigned that a school district located in the county seat of a county can disclaim any comparability to the other communities located in that same county. It is the opinion of the undersigned that the county seat of the county is the hub of the county's activities and, therefore, the county seat is properly comparable to the outlying communities within that county.

Therefore, for all of the foregoing reasons, the undersigned, for the purposes of this arbitation, will consider a combination of all of the comparables relied on by Arbitrators Flaten and Grenig in their two prior arbitration awards.

THE SALARY ISSUE

Having determined the comparables, it remains to be determined whether those comparables in this dispute support the Association's offer or the Employer's offer. Before doing so, however, a preliminary question must necessarily be answered. The Association asks this Arbitrator to look at the history of bargaining and the effect of the increases in wages compared to wage increases in other districts over the span of time covered by the Grenig Award, as well as the final offers which are at issue here. The Employer opposes consideration of anything but the final offers in the instant matter. The undersigned rejects the Employer argument that only the final offers of the parties this year should be looked to in determining which party's final offer is preferred. The record evidence in this matter establishes that in the prior round of bargaining which resulted in the Grenig Award, Grenig selected the Employer's offer, notwithstanding his observations found at Tables 1-8, all of which indicated that the Employer offer was less than the median percentage increase and the average percent increase at the BA base, the BA+7 level, the BA max, the MA base, the MA+10, the MA max, the schedule max, and the percentage of salary increase and the total package increase. The evidence establishes that in making his selection, Grenig was aware that the Employer offer was deficient compared to the average percentage increase among the comparables at the BA base of 1.6%; at the BA+7 level of 1.7%; at the BA max level of 1%; at the MA base level of 1.5%; at the MA+10 level of 2.1%; at the schedule max level of 2.7%. Furthermore, Table 8 indicates that the Employer offer which Grenig selected was .62% below the average total package increase of those comparables, and was .67% below the salary only increase average when compared to the average of the comparables. Because this is final offer arbitration, and because Grenig concluded that the Employer offer was closer to the comparables than that of the Association, he selected the Employer offer when it would appear that if he had the discretion to do so he would have awarded at either the average or the median. Because he was unable to do so, the Employer achieved a more favorable settlement than he would have otherwise achieved, either through the course of a voluntary settlement or through an arbitration award, if the Arbitrator had wide open discretion. For these reasons, the undersigned believes it is appropriate, under these circumstances, where the parties have resorted to arbitration on two consecutive years, to combine the amount of increases for the years in question.

Board Exhibit Nos. 10 through 14 establish the amounts of increase at the various levels, BA base, BA max, MA base, MA max and schedule max in the final offers for the years 1985-86 compared to the average and median increases among the comparable districts. Association Exhibit No. 14 establishes the amount of increases that Grenig awarded for 1984-85 compared to the average increase among the comparables. From the foregoing exhibits, the undersigned constructs the comparison of the parties' final offers with those of average increases in the district at BA base, BA max, MA base, MA max and schedule max for the purpose of determining which party's final offer is the more appropriate in this matter.

The following table is constructed from Employer Exhibits 10-14 and Association Exhibit No. 14:

INCREASE FROM 1984-85 to 1985-86

	Comparables-Average Increase	Dodgeland		Difference	
		Board	Association	Board	Association
BA Minimum	$ 2,071	$ 1,750.00	$ 2,000.00	$ (321.00)	$ (71.00)
BA Max	2,850.00	2,539.00	2,902.00	(311.00)	52.00
MA Minimum	2,469.00	1,965.00	2,245.00	(504.00)	(224.00)
MA Max	3,728.00	2,985.00	3,412.00	(743.00)	(316.00)
Schedule Max	4,107.00	3,170.00	3,622.00	(937.00)	(485.00)

From the foregoing table, it is obvious that when comparing the amounts of increases at the designated areas, both parties' increases are less than the average increases of the adopted comparables, except for the Association's proposal at the BA max,

which exceeds the average of the increases among the comparables by $52.00. Since the Association proposal for the period of time from the 1983-84 school year to the 1985-86 school year results in salary increases at the BA min, BA max, MA min, MA max and schedule max closer to the average increases among the comparables; and since the Employer's offer at the same points in the schedule is significantly farther removed from the average increases among those comparables; it follows that the Association's salary proposal is the superior proposal when considering these factors.

From Table No. 8 of the Grenig Award and Employer Exhibit No. 15, it is possible to approximate the total percentage increases, salary only, as well as package, for the time span of the 1983-84 school year to the 1985-86 school year, comparing the Employer's offer and the Association's offer in the instant matter. The average comparable, salary only, for this span of time approximates 16.42%, and for package increase approximates 16.57%. If one were to adopt the Employer offer in the instant matter, the approximate percentage increase, salary only, over this span of time would approximate 14.7%, whereas, the Association's final offer, if it were adopted, would approximate 16.46%. Similarly, on a package basis, if the Employer's offer were adopted it would approximate 14.77%, compared to an adoption of the Association offer, which would result in approximately 16.35%. It is clear from the foregoing, that the Association final offer in this matter more nearly approximates the two year increases among the average of the comparables than that of the Employer. Consequently, this data confirms the earlier conclusions that the Association's offer on salary should be adopted.

Finally, the undersigned considers the distinctions of the salary schedule itself in the instant district, compared with the salary schedules which exist among the comparable districts. The salary schedule of this district, irrespective of which party's final offer is adopted, will result in a schedule with fewer lanes than those of other schedules among the comparables. Here, the schedule provides only for a BA, a half master's, a master's and a master's + 12 lane. Thus, there are only four vertical lanes to the instant schedule. This compares to other schedules among the comparables which provide for additional earnings by reason of additional credits of eight lanes in Beaver Dam; seven lanes at Horicon; eight lanes at Hustisford; nine lanes at Lomira; seven lanes at Mayville; eight lanes at Cambridge; ten lanes at Deerfield; nine lanes at Lake Mills; seven lanes at Marshall. It is the opinion of the undersigned that the additional lanes available in the salary schedules of the comparable school districts provide greater earning opportunities in those districts than does the salary schedule of the instant Employer. Therefore, by reason of the foregoing, the salary proposal of the Association is also preferred.

THE DURATION ISSUE

The Employer proposes a two year agreement with a wage reopener in the second year. The Association proposes a one year agreement with the entire contract opened at the expiration date. The Employer argues it would be to the advantage of both parties to get away from bargaining for a period of time and, therefore, the longer contract would be preferred. The Employer argument with respect to duration is appealing, however, the undersigned rejects the Employer's two year proposal. Adoption of the two year duration provision of the Employer, however, does not result in a cessation of bargaining for a two year period of time, because the Employer proposes a wage reopener. Since the parties are returning to the table to bargain wages, there is no respite from the bargaining process as the Employer argues. Consequently, the undersigned finds that the two year duration proposal of the Employer is unpersuasive.

Furthermore, the Employer in its final offer indicates the Contract should expire on June 30, 1988. While the Employer makes it clear in its brief, and in its testimony at hearing, that it was the Employer's intention that the Contract should expire on the last day of June, 1987; and while the undersigned accepts the fact that the Employer would establish the Contract term as expiring on the date its brief argues; nonetheless, the final offer of the Employer does provide for a Contract expiration date of June, 1988, and if the Employer's final offer is awarded, the Employer could stand on an expiration date of June, 1988, with no provision to bargain wages for the 1987-88 school year. In the opinion of the undersigned, this should be avoided, even though it is unlikely that the award of the Employer's duration would result in a three year contract in view of the statements made by the Employer and in its brief.

Consequently, the undersigned concludes that the Association offer of a one year agreement is slightly favored over that of the Employer.

EXTRA CURRICULAR AND COACHING PAY ISSUE

The final offers of the parties indicate that the Association proposes a 10% increase to the extra duty activities, and a pay increase for girls' volleyball coach. The Employer proposes each of the activities in the extra duties activities be improved by $1.00, and proposes no increase in the volleyball coach's rate of pay.

With respect to the proposals of the parties dealing with extra duty activities, the $1.00 proposed by the Employer constitutes approximately the equivalent of 10% increase. It is merely the distinction, then, between applying 10% to the existing rates as opposed to a flat dollar increase of $1.00. Since the equivalent worth of the parties' offers for extra duty activities is approximately equal; and because there is no evidence in this record which would support either a preference for the flat dollar increase to the schedule or the percentage increase to the schedule; the undersigned has no preference with respect to the parties' final offer for extra duty activities.

With respect to the proposed increase for the volleyball coach, it would appear from a review of all of the coaching pay schedules contained in the coach's pay appendix that the proposal of the Association for volleyball coaching duties coincides with coach's pay for other sports. Consequently, the Association proposal for volleyball coach is preferred.

THE CREDIT REIMBURSEMENT ISSUE

The Employer here proposes an increase of credit reimbursement for credits teachers are required to take from $55.00 to $65.00 and from $330.00 to $360.00. The Association proposes that credit for reimbursement should be improved from $55 to $80 and from $330 to $480. The Association argues that the credit reimbursement should be increased significantly because the teachers are required under the terms of the Collective Bargaining Agreement to return to school for additional credits. The undersigned has considered that argument, as well as the argument of the Association that their proposed credit reimbursement comes to less than the full amount of the cost of credits at universities at the present time. The undersigned feels there is a flaw in the Association argument, in that the Agreement requires teachers to gain six credits every five years for those teachers holding less than a master's degree, and six credits every seven years for those holding a master's degree or more. If the Association had proposed the increase of the magnitude it is now proposing only for those credits which are required by the Contract, rather than for all credits that the teacher elected to take on his/her own motion, the undersigned may have been persuaded to grant the significantly sized increase the Association is now seeking. Since there is no limit of the tuition payment to those credits which are mandated by the Employer; and because the undersigned considers the magnitude of the increase to be excessive, the undersigned finds for the Employer's offer on credit reimbursement.

THE LTD COVERAGE ISSUE

With respect to LTD coverage, the Employer proposes that the language of the predecessor Agreement be maintained, which provides for long term disability coverage in the amount of 67% of salary. The Association proposes an improvement in the long term disability coverage level to 90% of salary. A review of the evidence establishes that the comparable districts of Beaver Dam, Horicon, Hustisford, Lomira, Mayville, Cambridge, Deerfield, Lake Mills all provide for coverage at the 90% level. Only Marshall of the comparable districts provides for the 67% level. Because the Association argument that the tax law now treats long term disability payments as income is persuasive; and because the comparables overwhelmingly support 90% reimbursement coverage levels on long term disability; the undersigned concludes that the record supports the Association's proposal with respect to long term disability insurance.

INSURANCE STANDARDS ISSUE

The Association proposes: "The coverages and benefits of the insurance plans contained in this Article shall be equal to or better than the coverage and benefits of the insurance plans currently in effect." The Employer proposes: "The Board retains the right to select the insurance carriers provided the direct economic coverages and benefits of the insurance plan contained in this Article shall be equal to or better than the direct economic coverages and benefits of the insurance plans currently in effect." The distinctions between the Employer and Association offers reside primarily in the words selected by the Employer in its offer - "direct economic coverages and benefits". The Employer, in its testimony and argument, establishes that it wishes to limit a comparison of plans in the event it changes carriers to the actual benefits paid from the plan and that such things such as administrative considerations of the plan itself are not to be considered. Specifically, the Employer speaks to things such as whether there is a toll free number to make inquiry regarding claims; and whether the facility or rapidity with which claims are paid should be taken into consideration when comparing the levels of benefits. The Association, in its testimony, establishes that such things as toll free numbers are not part of its focus when it proposes only that the coverages and benefits of insurance plans currently in effect be maintained if a change of carriers is made. The undersigned is of the opinion that this issue should not be arbitrated. Furthermore, the undersigned believes that the parties have displayed a certain degree of paranoia in not being able to come to an agreement on this issue. Consequently, the undersigned finds no preference for either party's proposed language with respect to insurance standards.

THE TEACHER FILES ISSUE

The present language dealing with the right to inspect teacher files provides that the teachers have a right to review their personnel file twice per school year. The Association proposal would modify the foregoing language of the Agreement to provide for an exception which would give the teacher an unlimited right to inspect his/her file where the teacher is being disciplined pursuant to the terms and provisions of Article VI of the Agreement. The District proposal would continue the limitation of twice per year for inspection of files, except that the right should be unlimited in situations where the teacher is being discharged or non-renewed.

The undersigned has reviewed all of the evidence and argument with respect to this issue, and finds the Employer argument persuasive, wherein he argues that the teacher has adequate protection where he or she is given unlimited rights to inspection of his/her file at the time of discharge or non-renewal, since the teacher is informed of all matters and information which are placed in his/her file at the time those entries are made. Since the teachers are informed of everything placed in their file; and because they already have the right of two inspections per year; and because under the Employer's modification that right is expanded to an unlimited right in the event of discharge or non-renewal matters; the undersigned concludes the Employer's offer is preferred with respect to this issue.

SUMMARY AND CONCLUSIONS:

The undersigned has found on each of the individual issues that the Association's proposal is preferred with respect to salary, duration, long term disability coverage and volleyball coaching. The undersigned has found no preference with respect to the issue dealing with extra duty pay and insurance standards. The undersigned has found that the Employer's proposal with respect to credit reimbursement and inspection of teacher files is preferred. A review of the issues involved in this matter now causes the undersigned to conclude that those issues in which the Association has prevailed are the more weighty in this dispute, particularly the duration and the salary issues. Therefore, the undersigned concludes that the Association offer should be adopted in its entirety, since the Mediator-Arbitrator has no authority to award anything other than the final offer of one party or that of the other.

Therefore, based on the record in its entirety and the discussion set forth above, and after considering all of the arguments of the parties and the statutory criteria, the undersigned makes the following: