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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of SPENCER EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between the Petitioner and SPENCER SCHOOL DISTRICT	Case 7 No. 35892 Med/Arb #3593 Decision No. 23595-A

APPEARANCES:

Mary Virginia Quarles, Executive Director, Central Wisconsin UniServ Council - West, on behalf of the Petitioner

Karl L. Monson, Consultant, Wisconsin Association of School Boards, on behalf of the District

INTRODUCTION

On June 4, 1986, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.70(4) (cm) 6b of the Municipal Employment Relations Act (MERA) in the dispute existing between the Spencer Education Association (hereinafter the "Union" or "Association") and the Spencer School District (hereinafter the "Employer" or "District" or "Board"). On August 19, 1986, mediation proceedings were held between the parties pursuant to statutory requirements. Mediation failed to produce a voluntary resolution of the dispute. Accordingly, an Arbitration hearing was held August 20, 1986, and the parties agreed to submit briefs and reply briefs. Briefing was completed on October 13, 1986. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.74(4) (cm), Wis. Stats. (1983).

ISSUES

1. Should the contract be amended to reflect the Association's language relating to Dental Insurance?

2. Should the salary structure contained in the contract reflect the final offer of the District or that of the Association?

3. Should the contract be amended to reflect the District's language relating to work assignment?

COMPARABLES

THE DISTRICT'S POSITION

The District asks the Arbitrator to include two contiguous school districts in the list of comparables. Although it would not exclude any Marawood Conference Schools, it believes that adding the districts of Colby and Loyal would create a more complete, thorough and appropriate comparable group.

THE ASSOCIATION'S POSITION

The Association would limit the comparable list to the members of the athletic conference. Citing earlier decisions supporting this position, the Union finds that the member schools of the Marawood Conference are sufficient.

DISCUSSION

It is customary to limit comparables to the member schools unless a strong showing is made by the moving party. Lack of settlements, changes in the conference during the contract year, unusual geographic conditions or bargaining issues unique to the subject district are among the valid reasons for expanding the comparable list or dispensing with the member schools in whole or in part.

The burden is on the moving party to offer reasons for altering the usual practice. In this case, it appears that a list of ten school districts, eight of which have settled their contracts for the 1985-86 school year is adequate to provide a comparable pool.

The members of the Marawood Athletic Conference will be the comparables used in this award.

DENTAL INSURANCE

THE ASSOCIATION'S POSITION

The Union seeks only to alter the contract language regarding the Board's contribution to the premium cost of single dental insurance. Presently the District pays up to $12.28 per month toward that coverage. Because the top-dollar contribution for family average exceeds the premium cost, adoption of the Association's language would have the practical effect of making teachers equal under both coverages.

Most comparable districts contribute 100% of the single dental rate. Every other district pays more than the 78% of premium contributed by the Spencer School District.

It could be argued that Spencer's over-all dental contribution is in line with other districts. If the Union's language is adopted, the District's contribution would be in excess of the conference's average.

Yet, the total health/dental cost to the District is well below the conference average and the Board's final offer would further exacerbate the situation. Adoption of the Union's offer would not alter the fact that the total health/dental cost would remain below average. The Association's offer is the more reasonable of the two because it would prevent a bad situation from becoming worse.

THE DISTRICT'S POSITION

The Board feels the dental insurance issue is being raised in this proceeding for the purpose of obtaining an advantage in future bargaining.

The language in the present agreement results in 100% coverage of teacher's health, dental, life, disability and retirement costs. Since this is true, there is no compelling reason to alter the contract language.

DISCUSSION

The costs of dental insurance, like the salary schedule, is basically an economic issue and will not be dealt with separately. It does appear that adoption of the Union's proposed language, in itself, will not have a fundamental impact upon the cost of the contract. Thus, the issue can properly be set aside at this point in the analysis of the final offers.

THE SALARY SCHEDULE

THE DISTRICT'S POSITION

The District makes no technical ability to pay argument here. Rather, it attacks the Association's offer as unreasonable in light of the economic conditions prevalent in the Spencer District and in light of wage settlements obtained in comparable school districts.

In a way, the Board argues that a lower-cost offer is inherently the more reasonalbe because of the economic difficulties being faced by the taxpayers of the district. When farm incomes are down, unemployment up and non-farm income adversely affected as a result, the District would be derelict in its duty to the taxpayers if it were to offer more than it did.

Yet, its offer has exceeded the cost of living increase in the past year. The Spencer teachers are getting a more generous slice of the economic pie than many, if not most, of the District's tax payers.

The Board further argues that its offer is reasonable when held up to another comparable standard, i.e. the relative position of its teachers when compared with the salary schedules in other school districts.

Spencer has traditionally held a competitive position in relation to comparable districts. Although its precise ranking in some benchmarks has varied from year to year, it has generally paid its teachers in the mid to upper range of salaries. Adoption of the District's proposed salary schedule would maintain this general position. No great loss of relative position would occur were the arbitrator to select it.

THE ASSOCIATION'S POSITION

The Union has submitted a final salary offer calling for an increase of approximately 6.7% in every salary cell. It argues that this offer is more reasonable than the District's because it comes closer to salary increases in the comparable school districts. The Board has offered increases that range from 6.7% in the BA Minimum benchmark to a low of 5.8% in the MA Maximum and Schedule Maximum benchmarks.

This flies directly against the settlements in other districts, which range from a low of 6.6% in the BA Minimum to a high of 7.8% in the Schedule Maximum and 8.6% in the BA Maximum benchmarks. The Association therefor argues that while other comparable districts are rewarding experienced professional teachers, the District is going in the opposite direction.

The Association also rejects the Consumer Price Index or Cost of Living arguments set forth by the Board. The standard to be examined is salaries granted to teachers in comparable districts in comparable benchmarks, not some un-related standard. In this case, the final offer of the Union is reasonable in comparison to salaries paid in other districts, especially in benchmarks where recognition is given to experience and educational progress.

DISCUSSION

In this dispute, it is remarkable that the total cost in dispute is relatively minor. No matter which costing of the total package is accurate, the net cost to the District would be within $10,000, a minor variation in a salary-cost package that totals more than a million dollars. Therefore adoption of eith final offer would have a relatively minor impact upon the District's taxpayers.

Both final offers preserve the fixed step and lane dollar relationships, rather than a fixed percentage differential. The Union's offer is $10.00 higher per increment and $9.00 higher per lane except in the MS increment where the offers are $55.00 apart. The Board's offer would increase the increment by $25.00 over 1984-85 and the lane by $10.00, leaving the MS increment the same. The Association would increase the step increment by $35.00, the lane difference by $19.00 and the MS lane by $55.00 over 1984-85. Thus, the final offers are only 1.82% apart in step increments and 3% in the lanes. Because the Board is offering no increase in the MS land, The Union's offer is 6.7% higher.

It thus appears that neither final offer is unreasonable as to cost, makes a fundamental alteration in the salary schedule, or unduly favors one part of the work force at the expense of another.

WORK SCHEDULE

BACKGROUND

The controversy surrounding the work schedule involves teachers in the Junior and Senior High Schools only. No change is contemplated in the division of the school day into eight equal periods.

Presently, teachers are required to meet five classes each day. All teachers receive two preparation periods each day. Some teachers meet a study hall in the eighth hour. If a teacher is assigned a sixth academic class, the teacher receives additional compensation for it. Four teachers were assigned a sixth class during the 1985-86 school year and received additional compensation.

Additional duties and supervision are assigned on a rotation or equitable basis.

Many teachers also have extracurricular duties as coaches, advisors, etc. and are separately compensated for them under the agreement.

The District has proposed to change the provisions of Section 7.5 of the agreement to increase the basic work assignment from five hours to six class meetings or five class meetings plus a study hall. Teachers who are assigned over six class periods per day will receive additional compensation. The additional compensation rate has been increased from $6.32 per class hour to $7.50 per class hour, an increase of 18.7%.

The Association has resisted this proposal with vigor.

THE DISTRICT'S POSITION

The District has offered this language in response to three needs.

Primary among those needs is the State's mandate requiring additional classroom work from high school students. This has resulted in a two-year study of curriculum changes which resulted in a more varied offering of classes to students.

As a result of this, students are spending more time in academic work and proportionately less in study halls in order to fulfill the requirements for post-high school education.

In addition to the justifications described above, the District points out that comparable schools are already requiring six class assignments from its staff, and many require a teacher to meet with a study hall too. No district provides two preparation periods as Spencer does presently and will continue to provide if the Board's offer is accepted.

The District also equates meeting a study hall with an academic class period because it requires face-to-face student contact on the part of the teacher.

THE ASSOCIATION'S POSITION

The District supports its offer strongly. The Association opposes it no less vigorously. Most of the testimony offered by the Union at the arbitration hearing dealt with its objections to increasing the basic work load.

The teachers' testimony centered upon the witnesses disapproval of the scheduling and class assignment policies of a relatively new school administration. One bargaining team member who had a sixth academic assignment for 1984-85 testified that in her opinion the sixth class caused stress, disproportionately increased her preparation time and generally made her a less effective instructor to all the students she met in a school day. That is, the impact of the sixth hour was felt not only by the students in that class, but by those in the five other classes as well.

This teacher has long acted as an advisor and participant in extra-curricular student activities. She testified her effectiveness and enjoyment of this work fell off markedly when she took on the burden of a sixth academic class.

The Association raised eight arguments against the District's proposal in its briefs and exhibits. Some of these are economic. The teachers who presently meet six academic classes will receive less pay for the same work they are performing. The District will be able to reduce its teaching staff by requiring a 20% increase in the work load of the teachers.

Thus, the Association argues that the real reason for the Board's offer is economic, not educational. The Board's attempt to cloak its offer in educational benefits is a smoke screen for language that would be inequitable and unfair.

DISCUSSION

The contract negotiations in Spencer have proceded to arbitration because of the work schedule issues. It is not conceivable that the other items at issue would not have been agreed to had the Board not insisted upon its final offer language.

It is an issue that the District insists has been forced upon it by two outside forces, the State of Wisconsin by its mandates, and the pupils enrolled in the Spencer School District who are demanding an expanded High School curriculum.

Arbitrators have been reluctant to impose fundamental changes in contract language in arbitration, preferring that they be settled by the parties through bargaining. This arbitrator subscribes to that rule unless the moving party can make certain showings to justify such a change.

The moving party must show that a compelling need exists. It must show that the present language is unworkable in fulfilling that need and that the new language will not

impose an inequitable or unfair burden upon the opposing party. In this case, that burden must be assumed by the Spencer School District.

The Board devotes a good portion of its briefs and exhibits to establish a need for an expanded curriculum. The Superintendent's testimony at the hearing also emphasized the existence of such a need.

And, the Association has not really disputed that need, although there were indications in testimony that the school administration had proceeded too far too fast.

So, a need exists and the next question to be answered is whether adoption of the District's language is the only manner in which that need can be fulfilled.

It appears the District is proceeding to implement an expanded schedule regardless of the outcome of these proceedings. Association Exhibits 58, 59 and 60 would indicate that while the number of teachers shown on the class schedules have gone down, the number of subjects offered has increased by almost 12% and the total class hours scheduled has increased by just over 6%, when the Fall of 1985-86 school year is compared with the Spring of the 1986-87 school year.

Semester	Number of Teachers on Schedule	Total Subjects Offered *	Total Hours on Schedule **
Fall, 1985-86	23	59	98.2
Spring, 1985-86	24	63	98.6
Fall, 1986-87	22	60	101.2
Spring, 1986-87	22	66	104.2

* Does not include Junior High or Study Hall.
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The Board feels the issue of fairness is two-edged and applies as much to the Union as to it. It argues that the Spencer teachers have a duty to support the administration's effort to expand the curriculum in response to the pressures that call for expansion. Sound educational policy demands it, and the teachers are as responsible for implimenting educational policy as the Board.

As the labor agreement stands, the Spencer teachers have an unfair work schedule when compared to other comparable districts. They have two preparation hours when most have one, and they meet fewer classes and study halls. The District believes that fairness requires an increase in the class meeting schedule, and points out that it is not asking for a reduction in preparation hours. If accepted, the Association members would meet no more classes than teachers in comparable districts and would still have more preparation hours than most, if not all districts.

For its part, the Union rejects the Board's quality of education argument. The way to achieve increased course offerings is to have more teachers teaching more classes, not fewer teachers teaching more classes. If the District does not want to increase its staff, it should buy the cost either by increasing all teacher salaries or by paying individual teachers for carrying an increased course load. Further, the Union argues that meeting a study hall cannot be equated to meeting a class and that the contract terms offered by the District are therefore inherently inequitable.

It is clear from the chart above that the same number of teachers in Spencer High School will be teaching 12% more subjects and working 6% more hours with what amounts to a reduction in pay. The District has the right to expand its subject offering under the present contract language. Its proposed language would indicate an unwillingness on the part of the Board to pay the cost of expansion. Absent a showing that teachers in comparable districts have similar course and classroom burdens, the issue comes back to what is fair to the Spencer teachers. It would appear the District's offer is not fair or equitable.

It was stated before that the burden rests upon the moving party to show that its proposed language would reasonably fulfill a need in an equitable manner. Failure to do so must cause the offered language to fail. The Spencer School District has not met that burden.

As stated above, this arbitration revolves around the work-schedule issue. Because the District has not succeeded in carrying its burden of persuasion on that issue, its final contract language must be rejected and that of the Spencer Education Association accepted.

ARBITRATION AWARD

The Spencer Education Association's final offer shall be incorporated into the parties' 1985-1986 collective bargaining agreement.

Dated this 18th day of November, 1986, at Madison, Wisconsin.

ROBERT L. REYNOLDS, JR., Arbitrator