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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
INTEREST ARBITRATION

IN THE MATTER OF MEDIATION-ARBITRATION)

between)

Eleva-Strum School District)

-and-)

Eleva-Strum Education Association)

))

Case 8 No. 36060
MED/ARB - 3659
Decision No. 23779-A

December 12, 1986

APPEARANCES

On Behalf of Eleva-Strum School District
Stephen L. Weld, Attorney, Mulcahy & Wherry, S.C., Eau Claire,
Wisconsin

On Behalf of Eleva-Strum Education Association
James C. Bertram, Executive Director, Coulee Region United
Educators, LaCrosse, Wisconsin

JURISDICTION OF MEDIATOR-ARBITRATOR

On July 2, 1985, the Parties, Eleva-Strum School District (hereinafter referred to as the "School District" or "School Board") and the Eleva-Strum Education Association (hereinafter referred to as the "Association") exchanged initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on June 30, 1985; that thereafter the Parties met on seven occasions in efforts to reach an accord on a new collective bargaining agreement; that on November 22, 1985, the Association filed an instant petition requesting that the Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Act; that on February 18, 1986, Daniel L. Bernstone, a member of the Wisconsin Employment Relations Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by May 19, 1986, the Parties submitted to said Investigator their final offers, as well as a stipulation on matters agreed upon, and thereupon the Investigator notified the Parties that the investigation was closed; and that the said Investigator has advised the Commission that the Parties remain at impasse.

The Commission having, on June 20, 1986, issued an Order requiring that mediation-arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between the Parties on matters affecting wages, hours and conditions of employment of all regular full and part-time teaching personnel, including guidance counselors, librarians and nurse; and on the same date the Commission having furnished the Parties a panel of mediator-arbitrators for the purpose of selecting a single mediator-arbitrator to resolve said impasse; and the Commission having, on July 18, 1986, been advised that the Parties had selected Richard John Miller, New Hope, Minnesota as the mediator-arbitrator.

A mediation session was held on Tuesday, September 30, 1986, at 4:00 p.m. at the high school building on Highway 10 between the villages of Eleva and Strum, Wisconsin. Mediation proved to be unsuccessful. Thereafter, the arbitration proceeding convened. Following receipt of evidence and argument, the Parties filed post

hearing briefs which were received on November 10, 1986. The Parties elected to file reply briefs which were received on November 28, 1986, after which the hearing was considered closed.

POSITIONS OF THE PARTIES

This arbitration has three issues remaining for the settlement of a 1985-86 collective bargaining agreement between the Parties. The issues involve the salary schedule, health and dental insurance premium payment and language on extended personal leave.

The Parties dramatically differ in their approach to salary schedule changes as shown in their final offers. (Association Exhibits #1, #2; School District Exhibits #2, #3). Basically, the Association increased the BA base by \$967, from \$13,811 to \$14,778, increased the educational lane increment by \$50 between BA lanes and MA lanes, while decreasing the increment between the BA+30 and MA lanes by \$137. The Association increased the vertical step increments by anywhere from \$39 to \$53. The School District increased the BA base by \$552, from \$13,811 to \$14,363, increased the educational lane increment by \$50 between MA lanes and between MA lanes while decreasing the increment between the BA+30 and the MA lane by \$190. The School District increased the vertical step increments by anywhere from \$23 to \$35.

The issue surrounding insurance premium payment concerns the method to be used to calculate the 100% payment by the School District. The School District seeks to maintain the current contract language in Article IX, A.1 that provides for payment by the School Board in an amount equal to 100% of the previous years premium on the jointly approved health and dental insurance plans. The Association proposes that the current contract language be modified so that the School District will pay an amount equal to 100% of the current year's premium on the jointly approved health and dental insurance plans.

The dispute around extended personal leave centers on the "types of leave" to serve as examples or criteria to determine eligibility. The current contract language in Article VIII, C.3. d. 1 and 2 reads as follows:

- d. The following types of leave shall be taken in consideration:
 1. Vacations which are considered a prize and would be forfeited if not claimed during the school year.
 2. Teachers who are or would accompany a spouse who is a delegate, alternate delegate, or special representative to a convention, exclusive of school related activities.

The Association considers the above contract language as examples. The School Board considers them as the sole criteria. Therefore, the Association proposes the deletion of Article VIII, C.3.d. 1 and 2 from the contract.

ANALYSIS OF THE EVIDENCE

The mediator-arbitrator evaluated the final offers of the Parties in light of the criteria set forth in Wis. Stats. 111.70(4)(cm)7, which includes:

- A. The lawful authority of the municipal employer.
- B. Stipulations of the parties.
- C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- D. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in the private employment in the same community and in comparable communities.
- E. The average consumer prices for goods and services, commonly known as the cost-of-living.
- F. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- H. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

A. The lawful authority of the municipal employer.

This factor is not an issue in the instant proceedings. The lawful authority of the School District permits the retention of rights and responsibilities to operate the school system so as to carry out the statutory mandate and goals assigned to it consistent with the provisions of the collective bargaining agreement.

B. Stipulations of the parties.

The Parties have reached agreement on several issues which are shown as agreed upon and stipulated to for 1985-86. (Association Exhibit #3; School District Exhibit #4). As such, the arbitrator shall include the stipulations as part of the final award in this matter.

C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

There is some dispute between the Parties over the cost of their respective final offers. The difference between the cost

of the Parties' offers as computed by the School Board on School District Exhibit #5 is as follows:

<u>Wages Only</u>	<u>School Board</u>	<u>Association</u>
Average Teacher Increase	\$1,247	\$1,839
% Increase	6.23%	9.19%
<u>Total Compensation</u>		
Average Teacher Increase	\$2,030	\$2,754
% Increase	7.50%	10.20%

The Association's costing exhibits are contained in Association Exhibits #4-#6. The Association last received 1984-85 School Board costing data for this instant arbitration at the February 18, 1986 investigation or mediation and is shown as Association Exhibit #6. The Association aligned its costing in accordance with that from the School Board office for 1984-85 as shown on Association Exhibit #4. Aside from the early retirement, the Parties agree that the 1984-85 data base is \$1,212,635. The Association's costing does not include \$24,000 for those early retirees who are no longer part of the bargaining unit. If, however, the cost of the early retirement is included, the Association's costing of the final offers at the bargaining table (Association Reply Brief, p. 8) is as follows:

	<u>1984-85</u>	<u>1985-86</u>	<u>\$ Inc.</u>	<u>% Inc.</u>
Association	\$1,236,635	\$1,349,930	\$113,295	9.2
School Board	\$1,236,635	\$1,325,758	\$89,123	7.2

After consideration of the Parties' arguments in regard to this costing dispute, it appears to the arbitrator that the School Board has modified its earlier costing for insurance when it moved from its cost of \$88,489 (used by the Association and the School Board at certification of final offers) over to a new cost of \$99,582. The School District claims that the new insurance cost was verified by the Eleva-Strum District Administrator. According to the Association, it has confirmed the insurance cost of \$88,489 with the School Board office since the arbitration hearing and also found the School Board office to be totally unaware of why the School Board's new figure of \$99,582 is used. In that there is no written verification by the Association from the School Board or any administrator that the insurance cost is \$88,489 rather than \$99,582, the arbitrator places more reliance on the School District's costing method and thus will use these percentage increases for wages only and total compensation for comparison purposes in both the private and public sectors as they appear on School District Exhibit #5.

The School District will receive \$89,486 more funding for the 1985-86 school year than it did in the 1984-85 school year. (Association Exhibit #51). Aids decreased by \$16,000 due to local matters. New state credits allow the School District to receive new monies in the amount of \$105,424. (Association Exhibit #52). Eleva-Strum has the fifth lowest 1985-86 net levy rate for the Dairyland Athletic Conference of which the School District is a member school. (Association Exhibit #52). The School Board presented no exhibits on staffing or curriculum change, nor even hardship in implementing either Parties' offer. Clearly, the School District has the financial ability to fund either of the Parties' final offers without impacting on any existing educational program or making any staff changes.

The School District, in the instant proceeding, must serve three primary constituencies: the students of the School District, the taxpayers and the School District employees. The School Board submits that its final offer attempts to responsibly balance the taxpayers' interests and reduce conflict by providing a reasonable wage and benefit increase to the School District's teachers without imposing significant tax increases on the taxpayers in the School District. The dichotomy between the employees' interest and the public interest is easily recognized when the testimony and School District exhibits are examined and analyzed.

The Eleva-Strum School District, located in Eau Claire and Trempealeau Counties, provides educational services to a primarily rural, farm populace. In fact, Trempealeau County's population is 100% rural. (School District Exhibit #23). In addition, 95.7% of its land is in farms, the highest percentage of any of the comparable counties. (School District Exhibit #25). One hundred percent of the nearby towns and villages that comprise the School District lie in rural areas. (School District Exhibit #24).

The prices that farmers receive for their commodities has declined substantially, especially throughout 1984, 1985 and through 1986. (School District Exhibits #26-#28). The decline in income along with farm foreclosures and consolidations is resulting in a mass-exodus from farming which results in declining property values. (School District Exhibits #29, #30, #32, #33).

Falling farm income, heavy debt service, increasing delinquent property taxes, increasing foreclosures, deteriorating farmland prices and the devastating impact on such businesses serving agriculture were testified to at the arbitration hearing by LaVern Gullicksrud, Jim Tweet, Robert Bockus, Gary Monson, Ron Higley, Verl Deetz, David Everson and Ruby Spangberg, all local Eleva-Strum residents.

Current economic conditions in rural Wisconsin must be reasonably considered as one factor in determining the final settlement package. It is, however, not the only criterion to be considered by the arbitrator. The wisdom of the state legislature left it to the discretion of the arbitrator to determine, in varying degree and combinations, which of the criteria under Wis. Stats. 111.70(4)(cm)(7) are more relevant and determinative in a particular dispute. Thus, the arbitrator is charged with the responsibility of not only considering this criterion but all of the other statutory criteria before determining if the Association or School District's final offer is more reasonable in light of the interest and welfare of the public.

D. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in the private employment in the same community and in comparable communities.

Both Parties have agreed to use the twelve schools in the Dairyland Athletic Conference for external comparison purposes. Out of the twelve athletic conference schools, there is a total of ten settlements for 1985-86. Eleva-Strum and Independence remain unsettled with the parties at Independence awaiting the decision by an arbitrator. Both the Independence Association and the Independence School District have an economic proposal above

the final offer of the Eleva-Strum School Board. Consequently, the conference settlements must be construed as being valid and a reliable comparative resource for use in this case.

Association Exhibits #10-#14 and #21-#24 show that the BA base for Eleva-Strum has had a tradition of being no more than \$484 below the average of the conference schools since 1981-82. Also, a tradition for Eleva-Strum since 1981-82 is to have its BA base approximately \$75 to \$500 below the conference average. In this case, both Parties would have Eleva-Strum remain below the conference average with the Association at \$545 and the School Board at \$960 for 1985-86. In 1984-85, Eleva-Strum trailed the conference average by \$484. The School Board would have Eleva-Strum drop to its lowest level in five years or -\$960, which is about two times its previous low of -\$484 in 1984-85.

These exhibits also show that the Association's final offer would have Eleva-Strum more in line with the conference average wage settlements. Even the Association's final offer would have Eleva-Strum trail the conference average more than at any time back through 1981-82.

It is difficult to determine where the final 1985-86 BA base benchmark ranking will be in the conference inasmuch as two of the twelve conference schools are still not settled. However, if only the ten settled schools are used for historical comparison purposes, starting with 1981-82, it can be concluded from the evidence that the Association's final offer would have Eleva-Strum more in line with its own immediate past rank among the ten conference schools settled for 1985-86 than would the School Board's final offer. (Association Exhibits #17-#20).

The ranking in the athletic conference of the ten settled schools for the seven benchmarks -- BA base, BA step 7, BA maximum, MA base, MA step 10, MA maximum and schedule maximum since 1981-82 produces further support for the Association's final offer. (Association Exhibits #14, #20). The evidence proves that the Association's final offer is more in line with past ranking than the School Board's final offer. For example, the Association's salary schedule would preserve more of the past benchmark rank. Only two benchmarks, BA step 7 and MA base are lower with rankings of 8 and 9, respectively, while the School Board's salary schedule would have five benchmarks lower than in the past.

In addition, the benchmark dollar improvement and the average percentage increase of the Association's final offer is more in the mainstream of improvements made in 1985-86 conference settlements. (Association Exhibits #29, #34, #53).

As to the justification for educational lane increment increase, the improvement by the Association of \$105 is much closer to the 1985-86 average settlement of \$144 in the athletic conference than is the School Board with its \$60 improvement. (Association Exhibits #38, #39).

The same need is also shown for the experience step increments or vertical increments. The conference settlements show vertical step improvement and the increases are generally more than what the Association proposes (\$39-\$53) and considerably more than the School Board's proposal (\$23-\$35) for the 1985-86 Eleva-Strum salary schedule. (Association Exhibits #43, #44).

This statutory criterion also directs the arbitrator to compare the offers of the Parties not only with comparable teacher settlements but also with other employees of the public employer, other municipal settlements and also with private sector

settlements. Municipal settlements support the School District's final offer. (School District Exhibit #17). Private sector as well as settlements with other employee groups in the School District also support acceptance of the School Board's final offer. (School District Exhibits #20, #22). However, the teacher settlements in comparable school districts should be the essential criteria to evaluate the reasonableness of the Parties' final offers. The one-year 1985-86 settlement in the comparable schools were negotiated in the same economic climate and gives the proper measure of how teacher agreements have responded to other private and public sector settlements.

In summary, the Association's salary schedule offer maintains tradition coupled with consideration for a salary schedule that maintains its relative ranking among the settled schools in the Dairyland Athletic Conference. As such, the Association's final salary schedule offer better satisfies Section 111.70(4)(cm)7.d., Wis. Stats.

Another issue before the arbitrator is that of the insurance premium payment. The issue surrounds which premium is to be used to calculate the 100% payment by the School Board. The Association proposes the current year's premium while the School Board seeks the current contract language of the previous year's premium. There is no new cost to the School Board if the Association's proposal is granted because the previous year's cost (1984-85) is the same as the current year's cost (1985-86). (School District Exhibit #5). The cost, however, would increase if the rates were to increase in 1986-87.

In terms of dollar amount comparability, the School District pays the second highest dollar amount for both single and family plan health insurance among the comparable schools. (School District Exhibit #49). In addition, the current language has been in the Parties' contract since 1979-80 and also appears in the contract of the support group represented by the Association.

The Association is proposing a change in the School Board's method of payment based upon comparable support of 100% of current insurance premiums in ten of the eleven athletic conference schools with Osseo-Fairchild being the exception. Additionally, at least for the 1985-86 school year, there should be no cost impact on the School Board based upon the Association's proposed contract language. Consequently, the Association's arguments are more persuasive than the School Board's for the proposed change to "current year's premium".

The final issue centers around whether the phrase "types of leave shall be taken in consideration" places Article VIII, C.3.d. 1 and 2 as examples or criteria of eligibility for extended personal leave. The Association provided testimony at the hearing from one of its Negotiations Committee members, Jerry Hanson. Mr. Hanson testified that the intent of the language that the Association is attempting to delete contains examples only of situations where a teacher might request an extended leave and not the sole total criteria as alleged by the School District. Mr. Hanson further testified that two requests for extended leave, one last year and one this year, were denied by the School Board because they did not meet the criteria of these two types. The School Board never refuted the testimony of Mr. Hanson because it has consistently administered the disputed language by rejecting all extended leave requests unless they fall under the two types of leave, namely, vacations which are considered a prize and teachers or spouse attending a convention as a representative, exclusive of school related activities.

School District Exhibit #51 summarizes extended personal leave provisions among the comparable athletic conference schools. No other school in the conference offers an extended personal leave. The Association is attempting to better a benefit which they alone among all the comparables are fortunate enough to receive.

There is ample justification to deny the Association's proposed deletion solely on the lack of comparability among the athletic conference schools. A tantamount reason for denial also stems from the fact that the Association failed to establish a "compelling need" to justify the change. The principle of "compelling need" has long been recognized by arbitrators when faced with a party's proposed change of status quo.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

The School Board's offer (7.5%) more than quadruples the June, 1986 inflation rates (CPI-U - 1.7%, CPI-W - 1.3%) and doubles the 1985 inflation rates (CPI-U - 3.6%, CPI-W - 3.8%). (School District Exhibits #5, #12). In view of the increases in the inflationary rate as measured by the Consumer Price Index, the School District's final offer provides a significant improvement in the economic position and well being of Eleva-Strum teachers over the term of the new agreement. Yet, the Parties were aware of the "prevailing economic conditions" when they constructed their final offers on salary, as were the majority of the ten athletic conference districts who settled higher than the School District's final offer for the 1985-86 school year. As such, this factor has little bearing on the outcome of this case.

F. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

The Association's proposed improvement in health insurance premiums along with Eleva-Strum already having health and dental insurance serves as a combined economic package that is more in line with other athletic conference schools than does the School Board's final offer. Most other schools in the conference have health, LTD and life insurance; Eleva-Strum has health and dental insurance only. (Association Exhibit #50).

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The most recent salary and total package settlements to date, have been reported and incorporated into the decision of the arbitrator.

H. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The School District has filed an unfair labor practice (prohibited practice) charge with the Wisconsin Employment Relations Commission alleging that the Association did not bargain in good faith when the School Board's Negotiations Committee on October 22, 1985, accepted the Association's initial wage offer, submitted on July 2, 1985 (School District Exhibit #10), and the Association then subsequently removed that proposal from the bargaining table. In that the prohibited practice charge is still pending and awaiting scheduling before the WERC, the arbitrator defers comment on this dispute. The proper forum to settle an existing prohibited practice charge is with the WERC and not through an impasse arbitrator.

In conclusion, the Association has presented exhaustive data through its exhibits to show its final offer would place the Eleva-Strum School District more in line with the pattern of 1985-86 settlements. The Association's final offer meets the public's interest to improve the salary schedule overall for prospective employees entering into employment at the School District and for those currently employed at the School District. Further, the public interest is served when making regular overall improvement that is in keeping with trends and patterns among comparable schools because, in the alternative, a lower settlement like that proposed by the School District will place a salary schedule out of the mainstream causing it to play catch-up in later years.

Finally, it cannot be concluded from the record that either final offer will have an adverse effect upon the interest and welfare of the public. There was no showing that the economic climate in Eleva-Strum was any different than the economic conditions which exist among the comparable schools. Absent such showing, the implementation of the Association's final offer cannot therefore have a harmful effect upon the taxpayers of the School District since the Association's final offer is not much different than comparable settlements in salary schedule improvement and the Association's proposal for payment by the School Board for the current year's health insurance premium. The fact that the Association will have the extended leave language deleted from the new contract is not a result of any compelling evidence but rather results from the legal statutory requirements of final package arbitration.

AWARD

Based upon the statutory criteria in Wis. Stats. 111.70(4)(cm)(7), the evidence and arguments presented in this proceeding, and for the reasons discussed above, the arbitrator selects the final offer of the Eleva-Strum Education Association and directs that it, along with any and all stipulations entered into by the Parties, be incorporated into the 1985-86 collective bargaining agreement.


Richard John Miller

Dated this 12th day of December 1986
New Hope, Minnesota