

JUN 15 1987

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

\* \* \* \* \*

\* In the Matter of the Petition of \* \*

\* NORTHWEST UNITED EDUCATORS \* \*

\* To Initiate Mediation-Arbitration \* Case No. 6 \*

\* Between Said Petitioner \* No. 35846 \*

\* and \* MED/ARB-3564 \*

\* \* Decision No. 23921-A \*

\* COOPERATIVE EDUCATIONAL \* \*

\* SERVICE AGENCY #11 \* \*

\* \* \* \* \*

APPEARANCES

On Behalf of the CESA #11: Stephen L. Weld, Attorney at Law  
Mulcahy and Wherry, S. C.

On Behalf of the NUE: Alan D. Manson, Executive Director.

I. BACKGROUND

On August 12, 1985, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired April 30, 1985. Thereafter, the Parties met on two occasions in efforts to reach an accord on a new collective bargaining agreement. On October 21, 1985, the Union filed the instant petition requesting that the Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On December 4, 1985, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by August 28, 1986, the Parties submitted to said Investigator their final offers, and thereupon the Investigator notified the Parties that the investigation was closed. The Investigator has advised the Commission that the Parties remain at impasse.

The Commission then ordered the Parties to select a Mediator/Arbitrator. The Parties selected the undersigned and he was appointed by the Commission on September 15, 1986. The Parties met with the Arbitrator on October 11, 1986 for the purpose of mediation and arbitration, if necessary. Mediation was unsuccessful and the Arbitrator received evidence from the Parties in support of their final offers. Post hearing briefs were exchanged December 18, 1986. The following award is based on the final offers, the evidence and the relevant statutory criteria.

## II. FINAL OFFERS AND ISSUES

The only issue before the Arbitrator is the salary schedule for 1985-86. However, the impact of each offer over 1984-85 is not easily explained and must be viewed against a somewhat complex bargaining history.

On July 1, 1984, the nineteen CESA Districts in Wisconsin were consolidated into twelve districts. Prior to that time, the forty-one local school districts now in CESA #11 were parts of CESAs #4 and #5. Twenty of the twenty districts from CESA #5 are now in CESA #11; twenty-one of twenty-six former CESA #4 districts are now in CESA #11. Northwest United Educators had been the certified representative for the professional CESA #4 staff since approximately 1974 and the CESA #5 employees were unrepresented. During the transition from CESAs #4 and #5 to CESA #11, which occurred on July 1, 1984, there was an WERC representation election for professional employees. The professional employees of CESA #5 voted not to accrete into the CESA #4 bargaining unit and thus remained unrepresented. NUE and CESA #11 had previously agreed that NUE would continue as the representative for the former CESA #4 employees in negotiations for the 1984-85 contract.

In the spring of 1985 another WERC representation election was held. This time all the CESA #11 professional staff voted with the results being that NUE became certified as the representative for all the CESA #11 professional staff. Thus, this case represents the first contract for the new unit and is complicated by the fact that the former CESA #5 employees had a salary schedule in place in 1984-85 and the former CESA #4 employees did not, having instead a somewhat unique salary determination procedure. Rather than a salary schedule, the Parties, prior to 1985-86, utilized a weighted average formula of certain salaries in the various CESA #4 schools. Both offers attempt to put in place a uniform method of salary determination for 1985-86.

The Employer's final offer is basically the 1984-85 CESA #5 schedule with each cell increased by 6 percent and with an additional step added to each lane and an additional lane beyond the master's lane +12. The Employer offer proposes 13 BA lane steps, with 16 in the MA lane and 17 in the MA+12 and +24 lanes. The lanes are BA, BA+8, BA+15, BA+22, MS, MS+12, MS+24. Their schedule and final offer is attached as Appendix A.

The Union's salary schedule is attached as Appendix B. It contains 12 BA lane steps, and 14 steps in all MA lanes. The lanes in the Union offer are BA, BA+8, BA+11, BA+24, MA, MA+8, MA+16 and MA+24. The Union developed its schedule by taking a mathematical average of the BA base, the BA increment, the number of steps and BA maximum etc. of 40 of 41 schools in CESA #11 for 1984-85 and then increased that by 6.5% because 36 of the CESA

schools settled for a BA base increase of 6%. The MA portion of the schedule was developed in similar fashion except the 1984-85 MA base was increased by 7 percent for 1985-86 to match the average 7 percent increase in the thirty-six of forty available settlements.

Also, it should be noted that both final offers specify salary schedule placement for the forty-one employees who worked in both 1984-85 and 1985-86 for CESA #11. Both placements for the most part reflect the actual years of service and the Parties have agreed to place staff in the proper lane with respect to credits earned prior to the 1985-86 year. Additionally, the Union offer contains a maximum raise provision which is that no employee shall receive more than a 9 percent increase over their 1984-85 wages plus one-third of the difference between what that 9 percent raise produces and the wage rate on the appropriate step of the 1985-86 salary schedule proposed by NUE.

The Employer offered the following costing of the offers on an average per teacher basis.<sup>1</sup>

	<u>Wages Only</u>	<u>Total Package</u>
<u>Association</u>		
Percentage	10.7	10.7
Dollars	\$2095	\$2760
<u>Board</u>		
Percentage	7.8	8.1
Dollars	\$1538	\$2091

### III. ARGUMENTS OF THE PARTIES

The argument and exhibits of the Parties are extensive. However, the major thrust is summarized as follows.

#### A. The Association

In general, the Association focuses their analysis on the comparability factor. More specifically, they present a detailed analysis of their offer relative to the CESA #11 member schools and the collective bargaining contracts in CESA #3 and #9.

They believe a move to a uniform schedule as opposed to the weighted average method formerly used in CESA # 4 is appropriate because it was difficult to administer. Their schedule is reasonable because it, as noted above, is constructed around a non-weighted mathematical average of all member school schedules. For instance, based on an analysis of the benchmarks, they present the following comparison.

1. The NUE questions this costing.

	NUE FO 1985-86	CESA #11 Unweighted Avg. (36 of 40)	Employer FO 1985-86
BA Base	15740(-47)	15787	15582(-205)
BA 7th	19518(+20)	19498	18762(-736)
BA Max	23295(+586)	22709	22472(-237)
MA Base	17244(+8)	17236	17167(-69)
MA 10th	23607(+68)	23539	22432(-1107)
MA Max	27142(+432)	26710	26527(-183)
Sched. Max	28918(+850)	28068	28172(+104)
Average	(+274)		(-433)

Also, they note in addition to lower than average benchmarks that when the BA Maximum, MA Maximum and Schedule Maximum benchmarks are removed NUE's offer has a schedule with from .7 to .3 more steps than average in each lane and the Employer offer has from 1.7 to 3.3 more steps than average.

Their schedule is also needed for catch-up. To limit the impact of this they have proposed a maximum increase of 9% plus 1/3 of the difference between an employee's 1984-85 salary increased by 9% and salary cell at which they are placed. They note this is consistent with the negotiations between NUE and CESA #11 for the Unified CESA #4 and CESA #5 non-certified staffs. NUE and CESA #11 negotiated a voluntary settlement for the 1984-85 year and again for a 1985-86-87 contract for these employees. During those negotiations the Parties established a wage scale and wage adjustments which provided catch-up for former CESA #5 employees; for the 1984-85 year the average raise for former CESA #5 employees, which was based on one-third of the difference between their current salaries and the agreed upon schedule, was 15.5 percent. This one-third per year catch-up adjustment in basic wages was continued in 1985-86 and 1986-87 by the Parties.

Noting that the NUE proposal for CESA #11 is the equivalent of the non-weighted average of the member school benchmarks and that this is less than the weighted average, the NUE also makes reference to CESA #9 and CESA #3. They suggest their proposal which is based on the non-weighted average is reasonable because their analysis of schedules in CESA #9 and #3 show that in 10 of 14 benchmark comparisons, the negotiated CESA schedule is above the weighted average; this includes the 2 BA Maximum benchmarks where there are many fewer steps than average in the CESA schedules with correspondingly lower rates.

NUE also argues that a competitive schedule is needed to reduce turnover. The average of the local districts, based on statistics gathered by NUE over 4 years in 27 school districts, is between 5 and 10 percent, compared to CESA #11 which has

experienced an average 30 percent turnover per year in the same period. This is in addition to working conditions that are less desirable than member schools (travel etc.)

This also translates into a relatively inexperienced staff averaging between 7 and 8 years experience compared to the member school average of 12 years. This is significant in their estimation because it means the employers' cost of the experience increment is closer to 3% than the average 1.5 to 2% in more experienced staffs with greater numbers of teachers at the top of the schedule. Thus, the employers' 7.8% increase is more like 5% on the base and their 10.7% is more like 7.7% on the base.

#### B. The Employer

At the outset, the Employer reviews the unusual nature of this case. One unique problem is the placement of the CESA #4 employees on a salary schedule. In this regard and in order to minimize the artificial placement of the employees, the Board has proposed a salary schedule which would incorporate the "old" CESA #5 salary schedule with one additional lane and one additional step. The Employer contends that it is advantageous to use the existing CESA #5 salary schedule structure as a basis for these negotiations because only the "old" CESA #4 employees would have to be artificially placed on the schedule. On the other hand, the Association has proposed to artificially place all of the CESA employees on a schedule. As a result, only one of all the employees' salaries will be at their step and all others will qualify for the additional 1/3 of the difference. They argue that in effect it will take three years to phase in the NUE's proposed schedule and get everybody's salary to match their position on the salary schedule. On the other hand, their proposal would result in minimal artificial placement of the CESA #4 staff.

In addition to these arguments, the Board does offer argument on comparability. They believe the comparable pool ought to include the CESA #11 member schools and CESA #10 and #12, even though not organized, on the basis of proximity.

In making their comparisons, the Board does not believe that benchmarks cannot be reliably utilized because many districts comprising CESA #11, have used "gimmicks" such as increment freezes, artificial placement of staff, delayed implementation of wage proposals and split-year increases in order to voluntarily settle negotiations. They cite a number of decisions which they believe demonstrates that as a result of the parties' use of these "gimmicks" to reach voluntary settlement, arbitrators have begun to reject traditional benchmark comparisons. Thus, they focus on the data showing

average salary increases in dollars and percents and total compensation increases in schools without "gimmicks" and offer the following:

	<u>Board</u>	<u>Association</u>	<u>Average</u>
<u>Salary</u>			
%	7.8	10.7	7.8
\$	\$1538	\$2095	\$1642
<u>Total Compensation</u>			
%	8.1	10.7	7.87
\$	\$2091	\$2760	\$2223

Based on this they argue the Board's wages-only offer more closely represents the averages offered among the comparable districts whereas the Association's proposal does not reflect the settlement trend among the comparable districts and grossly exceeds both the trend and the average in comparison to the dollar increases and the percentage increases. In fact, not a single district in their sample provided their teachers with a wages only increase greater than \$2000 or a double digit percentage increase in wages. They also point out that the total compensation package offered to the CESA #11 employees encompasses comparable health, dental and WRS benefits and the employees are one of the few who receive vision insurance and 100% paid life insurance and LTD.

This raises a concern on their part that CESA #11 will, if their salaries get too high, price themselves out of the market by making it too expensive for member schools to use their services.

The Employer also makes a number of other arguments as well. They contend their offer is more reasonable because (1) the Board's wage final offer exceeds the increases received by other municipal employees in the general geographic area, (2) the Board's final offer exceeds the increases received by private sector employees (3) the Board's final offer exceeds the cost of living and (4) because the Board's offer represents the appropriate wage and benefit increase based upon the interest and welfare of the public. In this last respect, they draw attention to a variety of statistics demonstrating economic problems in the rural/agricultural economy.

#### IV. OPINION AND DISCUSSION

As both parties note, this is not a typical salary dispute. This is not a situation where the parties had in place a traditional salary schedule, are only proposing increases along the traditional structures and where easy comparisons are made to other schools. This case has nearly infinite complexities and variations.

For instance, one portion of the bargaining unit was represented the previous year but had no salary schedule. Thus, this bargain represents for them--under either offer--a move to a traditional schedule. The implications of this are many but foremost it makes it difficult to judge on a benchmark basis the amount of their wage increases from one year to the next.

Another complexity is that another portion of the unit is being represented for the first time in this bargain and even though they had a schedule last year it was unilaterally implemented and moreover there is some evidence that the wage levels under it are somewhat out of step with the trend in the member schools.

Other complexities include the fact that costing is difficult because only 40 of the 58 on staff in 1985-86 were on staff in 1984-85. These and other complexities cause this case not to be easily subject to a traditional mathematical type analysis.

Generally, an Arbitrator when assessing the reasonableness of salary schedule proposals looks to the offer which strikes a reasonable balance between a schedule which results in appropriate wage increases (additional dollars received) and appropriate wage levels (the wage rates).

In this case, the NUE focuses on the wage levels by comparing benchmarks, arguing that percentage wage increases are distorted since the wage level is low. They state it thusly: "the basic argument between the parties on these salary comparisons to be made with the member school districts of CESA #11 is should the CESA #11 staff get an average wage, or should they get an average percentage increase on a below average wage." In essence their offer embodies an element of catch-up.

On the other hand, the Employer--in addition to arguing the applicability of other criteria--focuses its attention on the comparability factor in terms of wage increases on a percentage basis.

Which approach--wage levels or wage increases--should be given the most weight obviously depends on the facts and circumstances of each individual case. In addition to the complexities indigenous to this case, the Employer appropriately notes that the validity of benchmark/wage level analysis is suspect due to a number of member schools employing gimmicks to raise the wage level while keeping the wage increases down.<sup>2</sup> Indeed, 12

2. In terms of comparables the Arbitrator sees no reason to rely on other CESA districts. Those settlements are unique, thus not lending themselves to easy comparisons. Moreover, there is more than an adequate number of member schools settled (36 of 41) providing a very representative sample.

of 36 (1/3) of the settled schools employed gimmicks such as delayed implementations, frozen increments and artificial placements. Arbitrators have become increasingly leary of benchmark analysis under certain circumstances. The benchmarks under such gimmicks become somewhat distorted. For instance, when implementation of a schedule is delayed significant differences between the wage levels (benchmarks) and the actual wage earned for that year can arise. A rough calculation in this case for the member schools with delayed implementations show that the wage increases received in 1985-86 at the 5 traditional benchmarks averaged approximately \$200/year--less than the actual benchmarks. This is a significant difference.

This is certainly one reason the Arbitrator believes in this case that data on average wage increases should be given somewhat more weight than benchmarks even though a traditional costing isn't available. The costing on average dollar increases and percentages is, while not perfect, the best "yardstick" of the offers in this case.

The data in this case suggests the average wage increase comparisons favor the Employer. The Arbitrator calculated an average increase on a percentage basis and dollar basis for all the settled member schools with data for both items from Employer Exhibit 45 except Menomonie which costs the horizontal lane movement. The results are as follows:

	<u>Wages Only</u>	
	\$	%
Average	1647	7.8
Employer	1538	7.8
Diff From Aver	-109	--
Association	2095	10.7
Diff from Aver	+448	+2.9

This shows that on a percentage basis the Employer is on the mark but off the mark on a dollar basis. This signals a below average wage level but yet the Association's increase far surpasses the average increase by a much greater degree. The Employer would need to grant only an 8.35% increase to generate approximately the same average dollar increase. In this respect, even recognizing that a somewhat sub par wage level exists, the Association's 10.7%/\$2095 per teacher increase is excessive more so than the Board's 7.8%/\$1538 per teacher is shy of the mark.

Moreover, the wage increase under the Employer offer, even though slightly off the mark, would tend to be favored because the schedule proposed by the NUE exceeds the average benchmarks. Thus their offer tends to overshoot the need for catch up in rates as well as having too big of cost impact. In



general, this analysis suggests to the Arbitrator that the Employer offer, even though its wage levels are somewhat low, is more reasonable.

There are additional considerations which also tend to favor the Employer. First, for the CESA #4 employees the move to a traditional schedule--albeit less than average--in and of itself has considerable merit. When this is considered along with the fact the Employer added a lane on the old CESA #5 schedule and is offering an increase not terribly far off the average and is balanced against the fact the Association is requesting a better than average schedule, the fact they request some catch up resulting in relatively excessive increases and the fact that for many employees this is a first time contract which has brought the employees up to par in many other respects, the Arbitrator must conclude the Association is trying to do too much too soon. The more reasonable approach is to first get all employees on a uniform schedule and contract, at the same time as granting them relatively competitive wage increases and then work on improving that schedule.

For the reasons explained above, the Arbitrator finds the Employer's offer more reasonable.

AWARD

The final award of the Employer is adopted.

  
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Gil Vernon, Arbitrator

Dated this 30<sup>th</sup> day of April, 1987 at Eau Claire, Wisconsin.