STATE OF WISCONSIN
ARBITRATION

IN THE MATTER OF MEDIATION/ARBITRATION
BETWEEN

TWO RIVERS SCHOOL DISTRICT

and

TWO RIVERS EDUCATION ASSOCIATION

CASE 20 No. 37302
MED/ARB-3981
AWARD

Decision No. 23992-A

Introduction

On July 17, 1986 the Two Rivers Education Association (hereafter Association) filed a petition with the Wisconsin Employment Relations Commission (hereafter WERC) requesting mediation/arbitration of its dispute over the terms of a new collective bargaining agreement with the Two Rivers School District (hereafter Board or District) pursuant to Section 111.70 (4) (cm) 6, Wis. Stat. After an investigation the WERC determined that a deadlock existed and ordered mediation/arbitration. The parties selected Arlen Christenson of Madison, Wisconsin to serve as mediator/arbitrator. A meeting was held on January 8, 1987 and, after mediation reduced the issues to the single issue of salary, an arbitration hearing was held on that same date. The parties had full opportunity to present evidence and argument in support of their respective final offers and agreed upon a briefing schedule. Briefs were filed with the arbitrator by February 12, 1987 and the arbitrator was notified on February 17 that the parties had agreed to waive reply briefs.

Appearances

Dennis W. Rader, Esq., Mulcahy & Wherry, S.C., Green Bay, Wisconsin appeared on behalf of the District.

Richard Terry, Executive Director, Kettle Moraine UniServ Council, Sheboygan, Wisconsin appeared on behalf of the Association.

Issue

The single issue raised by the final offers of the parties is that of salary schedule. On that issue the parties have the following positions:

Board Offer: Maintain the current salary structure and increase each cell by 3.82%

Association Offer: Maintain the current salary structure and increase each cell by 6.50%

Discussion

The factors to be considered in selecting one or the other of the final offers of the parties are set forth in Section 111.70 (4) (cm) 7, Wis. Stat. In this proceeding, however, the parties have limited their evidence and argument to the following:

1. The interest and welfare of the public.

2. The average consumer prices for goods and services.

3. Comparison with wages of employees performing similar services in public employment and private employment.

4. Comparison with total compensation received by other public employees.

5. Other factors normally and traditionally considered when determining wages for public sector employees.

At the outset it is necessary to deal with a dispute concerning the appropriate selection of comparable school districts in the application of the third criterion listed above. As is so often the case, this criterion becomes a critical factor in the decision.

The Board proposes a group of ten school districts which it contends are the appropriate comparables. This group is supported by history in that it has been adopted by previous arbitrators in arbitration awards involving the District. The Board also contends that it is appropriate because of comparable student enrollment and ful-time equivalency staff, per pupil operating costs and full value tax rate. The Association contends that the comparable districts consist of three groups. Group 1, the most comparable, consists of districts within the same athletic conference; Group 2 consists of those districts which are geographically proximate and which have settled their collective bargaining agreements for 1986-1987; Group 3 is all settled districts in the state.

The historical precedent argument is persuasive. As a number of arbitrators have pointed out, the parties should not find it necessary to re-litigate the issue of comaparability in every arbitration proceeding. At the same time it is true, as the Association's approach implies, that comparability is a matter of degree and all districts in the state are in some measure comparable to one another. It is particularly important to take account of this fact when, as here, there are few settlements among the most comparable districts. The Board, by insisting that the comparables be limited to those used historically, is able to cite only three 1986-1987 settlements for comparison. It is simply contrary to common sense to say that in such circumstances the settlements in other nearby, but perhaps less comparable, districts are irrelevant to this dispute.

The primary group of districts to be used for comparison should consist of those historically used in this district, not the athletic conference. That means the group identified in the Board's exhibits: Brillion, Chilton, Kiel, Manitowoc, Mishicot, New Holstein, Plymouth, Random Lake, Sheboygan Falls and Valders. In addition I will rely to a lesser degree on information about other settlements in what the Association has identified as its Group 2. Statewide information about settlements, while not irrelevant, is useful primarily as a means of identifying and taking into account deviant patterns; a matter of particular concern when, as here, the data base of current settlements is small.

Regardless of which group of comparables is used the settlements in other districts favor the Association's offer. The Association's offer, the parties agree, is a 7.2% increase measured in terms of dollars per full time equivalent (FTE). The Boards is a 4.5% increase. No other settlement has been cited by either party that is less than a 6.7& increase. The three settlements in the group identified by the Board and adopted as the primary group of comparables are in the Chilton, Kiel and Random Lake school districts. Those settlements are for 7.8%, 7.3% and 7.6% respectively. The average among the geographically proximate districts which have settled is 7.5%.

The Board argues that its offer compares favorably with other comparable districts because it maintains the District's relative ranking among settled districts in the comparable group. The ranking of the Two Rivers District has historically been second and it remains that if the Board's offer is adopted. That argument, however, is based on the use of the settlements from just two of ten comparable districts. Moreover, it ignores the fact that the District's relative position would suffer even if it is not enough to change the ranking. In sum the argument is unpersuasive.

When we turn from a comparison with other school districts to a comparison with settlements in private employment the picture, based upon the information in the record, changes dramatically. Evidence of private sector settlements in the area shows that the three major private employers in the District have settled current contracts for and average increase of approximately 2.5%. This follows on the heels of settlements for no increase in prior years. In addition, the employees of these employers have seen their fringe benefits reduced and have suffered substantial unemployment. These facts, the Board contends, compel "acceptance of the already too high Board offer and compel rejection of the unreasonable Union final offer."

The statutory criterion requiring comparison of wages, hours and conditions of employment of the employees involved in arbitration with other comparable employees is, by its own terms and by interpretation over the years, a market oriented criterion. It instructs arbitrators to consider market conditions for the employees whose compensation is under consideration. This, of course, is consistent with the market economy within which we operate. Compensation for services is, in a free market system, determined not by what someone thinks is fair or just but by the market rate for those services. The task of an arbitrator applying the statute is to determine from the available evidence which of the competing offers is closer to the market rate for the services under consideration. That is determined by looking at rates paid comparable employees in comparable employment situations. There is no evidence that the employees in private employment cited by the Board are in the same or similar market as the teachers employed by the District.

The 1986-1987 wage settlements for other public sector employees in the area have also been at a level lower than either the Board or the Association offer. Again, however, these employees are not in comparable jobs. Evidence of settlements in this sector, like that of settlements in the private sector, is not irrelevant to the evaluation of the final offers under consideration. No doubt the overall level of public and private employee compensation in the community has some impact on the market for teachers. That impact, however, is indirect and not as significant as the impact of salaries paid teachers in comparable communities. Moreover, the evidence with respect to non-teaching employees in both the private and public sector pertains solely to increases in compensation and not to the level of compensation. There is no way of knowing from the record whether the percentage of increase is applied to a relatively high base or a low one. That fact too makes this information less persuasive than the much more complete information about teacher salaries in comparable districts.

Other employees of the District, with the exception of the secretaries, have received wage increases for 1986-1987 of 4.5%, the same as the Board's offer in this case. Secretaries, due to a comparable worth study, received 6.7%. Internal comparables are relevant under the statutory criteria and have often been found by interest arbitrators to be determinative. Internal consistency is considered an important objective from the standpoint of labor peace and encouraging voluntary settlements. When internal comparables come into direct conflict with the market, however, the market must prevail. It is quite likely that the non-teaching employees of other comparable districts also received a smaller increase than did the teachers. The evidence on that question is not in the record. In any event the record does establish that to keep pace with the market for teachers the District's teacher salaries must be increased by more than the Board's offer would provide. This does not appear to be the case with respect to non-teaching employees.

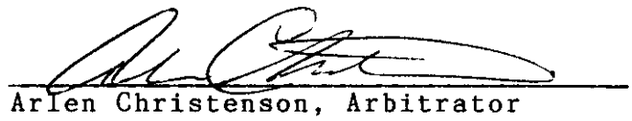
Both final offers provide for salary increases in excess of the increase in the cost of living as measured by the consumer price index (CPI). The statute does not adopt the CPI as the measure of cost of living but it is one measure commonly used. The statute requires that cost of living be considered in evaluating final offers. The rate of inflation and, accordingly, the rate of increase in the cost of living has declined since January, 1986 and before. Both the Board's offer and the Association's offer exceed the cost of living increase. The Board contends that the Association's offer exceeds it by too much. The contention is difficult to evaluate outside the market context. Some increase in excess of the cost of living is called for, largely because of the competitive forces of the market. The question is how much the increase might appropriately exceed the increase in the cost of living. The best indication of that is the comparable settlements. This was the case when settlements tended not to keep pace with rampant inflation and it remains the case when settlements exceed inflation. The comparable settlements, as demonstrated above, support the Association's offer.

The Association's final offer is high in comparison to the increase in the cost of living and in comparison to private employment settlements and other public employment settlements. It is not high, however, in comparison to settlements and salary levels in comparable teacher units in comparable communities. It is the latter that must control for the reasons developed above. Accordingly the Association's final offer must be preferred.

Award

The final offer of the Two Rivers Education Association is adopted. It shall be made a part of the collective bargaining agreement between the parties.

Dated at Madison, Wisconsin this 20th day of March, 1987.



Arlen Christenson, Arbitrator