

MAR 23 1987

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF MEDIATION-ARBITRATION) INTEREST-ARBITRATION)
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 between)
)
 Manitowoc County Handicapped) Case 6 No. 37357)
 Children's Education Board) MED/ARB - 3999)
) Decision No. 24009-A)
 -and-)
)
 Manitowoc County Education)
 Association) March 23, 1987)
))

APPEARANCES

On Behalf of Manitowoc County Handicapped Children's Education Board

John M. Spindler, Attorney, Nash, Spindler, Dean & Grimstad,
 Manitowoc, Wisconsin
 James A. Mast, Attorney, Nash, Spindler, Dean & Grimstad,
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 Henry Donatell, Administrator

On Behalf of Manitowoc County Education Association

Richard W. Terry, Executive Director, Kettle Moraine UniServ
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JURISDICTION OF MEDIATOR-ARBITRATOR

On May 6, 1986, the Parties, Manitowoc County Handicapped Children's Education Board (hereinafter referred to as the "School Board", "School District", or "Manitowoc County") and the Manitowoc County 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, 1986; that thereafter the Parties met on four occasions in efforts to reach an accord on a new collective bargaining agreement; that on July 31, 1986, 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 October 8, 1986, Lionel L. Crowley, 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 October 9, 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 October 14, 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-time and regular part-time professional employees excluding supervisory, managerial and confidential employees; 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 October 17, 1986, been advised that the Parties had selected Richard John Miller, New Hope, Minnesota as the mediator-arbitrator.

The Parties mutually waived mediation and thereafter the arbitration proceeding convened on Monday, January 12, 1987, at 4:30 p.m. at the administrative offices of the School Board, 4400 Michigan Avenue, Manitowoc, Wisconsin. Following receipt of evidence and argument, the Parties filed post hearing briefs which were received on February 16, 1987. The Parties elected to file reply briefs which were received on March 9, 1987, after which the hearing was considered closed.

POSITIONS OF THE PARTIES

This arbitration has two issues remaining for the settlement of a 1986-87 collective bargaining agreement between the Parties. The issues involve the salary schedule and automatic yearly step increases.

The Parties agreed on December 9, 1986, that the Association's final offer contained a typographical error at the BA Step 2. The Association's offer submitted to the Commission read \$17,475 at BA Step 2 and should have been \$17,745. By mutual agreement, the certified final offer of the Association was amended to reflect the correction of the typographical error. Accordingly, the Association's final offer for the 1986-87 salary schedule reads as follows:

<u>Step</u>	<u>BA</u>	<u>MA</u>
1	\$17,000	\$18,200
2	17,745	19,500
3	18,928	20,800
4	20,111	22,100
5	21,294	23,400
6	22,477	24,700
7	23,660	26,000
8	24,843	27,300
9	26,026	28,600
10	27,209	29,900
11	28,392	31,200
12	29,575	32,500

The School Board's final salary offer is as follows:

- \$18,100
- 18,650
- 19,100
- 19,450
- 20,350
- 21,250
- 22,000
- 22,450
- 23,350
- 24,050
- 24,250
- 24,850
- 25,450
- 25,500
- 26,100
- 27,800

28,000
28,400
31,800

ANALYSIS OF THE EVIDENCE

The 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 Board 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 for 1986-87. (Association

Exhibit #3; School Board Exhibit A3). 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.

The School District contends that the cost of the two final offers is best shown at School Board Exhibits B3 and B1b (revised edition). The total package increase per teacher is \$2,280 under the Association's offer and \$1,520 under the proposal of the School District. These dollars equated to percentages of total cost come to 8.28% for the Association and 5.52% for the School District or a difference of 2.76%.

According to the Association, its final offer will cost \$1,157,832, while that of the School District will cost \$1,173,238. The Association's final offer represents a percentage increase of 7.9%, while the School District's offer represents a 5.05%. (Association Exhibit #6). The Parties' respective final offers, when measured in terms of dollars per FTE yield a figure of \$1,716 per FTE for the Association's final offer and \$1,102 per FTE for the School District's final offer. (Association Exhibit #6).

The difference in costing methods used by the Parties is a result of what may be termed the "roll-up factor". That is, the School District used the method of costing which takes the 1985-86 staff and assumes that all employees returned or were "rolled-up" to the 1986-87 school year. This practice is common in school districts where the parties are proposing similar schedules. The Association, on the other hand, has used as a costing method the actual cost to the School District of 1986-87 staff compared to the actual cost to the School District for the 1985-86 school year for the staff in place for 1985-86. This method compares the cost of 51.35 FTE's for 1985-86 with 49.4 FTE's for 1986-87.

Since the Association's final offer represents a traditional salary schedule format, and if the Association's final offer is awarded by the arbitrator, which would be the first year for the School District to have employees placed on such a schedule, the costing method used by the Association is quite proper and statistically correct. Thus, the "roll-up" cost is \$1,716 per FTE for the Association's final offer and \$1,102 for the School District's proposal. However, the actual impact to the taxpayers of Manitowoc County for the 1986-87 contract will be 3.67% or \$832 per FTE (\$41,079 divided by 49.4 FTE). The Association's costing, therefore, is more reflective of the actual cost to be borne by the taxpayers and does not include the "phantom employees" found in the School District's cost analysis.

The interest and welfare of the public requires a review of the local economic conditions in Manitowoc and surrounding areas. The School District provided testimony from Manitowoc Mayor, Anthony Dufek, Two Rivers City Manager, Steve Nenonen and Manitowoc County Board Chairman, Donald Rehbein. In a nutshell, their testimony indicates that the local economy is rather depressed.

Of the 4,000 jobs lost in the City of Manitowoc since 1981, 1,573 such jobs were lost with one company alone, The Manitowoc Company, Inc. (School District Exhibits #E8a and E9). Other employment reductions were noted in Brillion Iron Works, Hamilton Industries and Jagemann Plating. (School District Exhibits E2, E5a, E7).

The local foundries at Eck Industries, Manitowoc Grey Iron and Wisconsin Aluminum are experiencing problems due to foreign competition in both castings and finished products. (School District Exhibits E3, E10, E8).

The average unemployment rate for Manitowoc County in 1986 was 7.8%, compared to a Wisconsin average of 7.1%. For the month of November, 1986, the rate for the State of Wisconsin was 6.6%, whereas Manitowoc County in November was 8.7% and the City of Manitowoc in November was 10.7%. (School District Exhibit G1). These November figures are higher than the two neighboring counties of Sheboygan County at 5.3% and Kewaunee County at 7.2%. (School District Exhibit G2). In addition, The Manitowoc Company, Inc. also has an operation in Door County which is greatly depressed, which accounts for the 10.1% unemployment rate for November in that county. (School District Exhibit G2).

Finally, as an indication of the economic woes being suffered in Manitowoc County, School District Exhibits G4a and G4b show a sharp increase in uncollected taxes in the County in 1985 over 1984 and 1984 over 1983. In fact, since 1981 tax delinquencies have tripled.

The real estate problems are also demonstrated in School Board Exhibits G5a, G5b and G5c. The number of days single family homes are on the market average 85 days for the State of Wisconsin as a whole. In Manitowoc County, that figure is double or better. The average number of days on the market in Fond du Lac, Oshkosh and Sheboygan is 102 days, which is very substantially less than in Manitowoc.

In summary, the interest and welfare of the public giving consideration to the high unemployment and a resultant increase in delinquent real estate taxes, store closings, bankruptcies, vacant real estate and foreclosure on farms proves that the economy in this area is depressed but does not prove that the School District is financially unable to fund either of the Parties' final offers. In fact, the School District has not raised the issue of "ability to pay" during the arbitration or during any previous proceedings.

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.

The arbitrator is required under this criterion to compare the teachers involved in the proceeding with other teachers in the same or comparable communities.

The Association considers the following school districts, which are feeder districts to the Manitowoc County Handicapped Children's Education Board to be comparable districts: Manitowoc, Mishicot, Reedsville, Two Rivers, and Valders. (Association Exhibit #7). The School District also agrees to this selection of comparables. (School District Exhibit C1). However, none of these schools have a settled contract for the 1986-87 school year.

It is not uncommon for arbitrators to look at other area schools in addition to the set of comparables in keeping with the concept that geographic proximity along with voluntary settlements

are of importance in resolving disputes. In this regard, the Association offered the 1986-87 settlements for the area schools of Chilton, Elkhart Lake, Fond du Lac, Howards Grove, Kiel, LTI, Ozaukee, Random Lake and Sheboygan. (Association Exhibit #17). Additionally, the Association submitted analyses of the settlements on a statewide basis. (Association Exhibit #21). With the submission of the settled schools in the area, there is no need for the arbitrator to use the statewide settled schools as another comparability group.

Referring to School District Exhibits C2 and C3, the 1985-86 salary schedule of the five feeder districts showing the minimum and maximum salary, indicates that the School District's salary schedule for 1985-86 is competitive. The minimum salary in 1985-86 of \$17,000 was as high as that of any of the feeder districts. The maximum salary for 1985-86 at Manitowoc County of \$30,000 was higher than four of the five feeder schools.

At first glance, it appears from the above evidence that the Manitowoc County teachers are in an envious position among the feeder schools. However, the average 1984-85 settlement among the feeder districts was a \$1,577/FTE increase. In 1985-86 it was \$2,061. (Association Exhibit #11). The teachers in this School District received only \$1,104/FTE (5.5%) and \$1,552/FTE (7.5%) respectively. This deviates a total of \$982/FTE (4.25%). (Association Exhibit #24). The data proves that the Manitowoc County teachers were placed in a "catch-up" situation before bargaining commenced for the 1986-87 contract.

If one compares the Parties' final offers with the area districts that have settled for 1986-87, the Association's final offer of \$1,716 is \$214 below the average of these schools, while the School District's final offer is \$828 below the average. (Association Exhibit #17). The percentage wage increase for 1986-87 among the area schools was 7.55%. This compares more favorably with the Association's final offer of 7.9% rather than the School District's final offer of 5.05%, which represents a substantial deviation from that settlement pattern.

It is clear from the above analyses that the Manitowoc County teachers should not be expected to accept another wage increase which places them farther behind and further erodes their salary ranking. The Association's final offer does little more than maintain the status quo and slow down the erosion of spendable income as compared to teachers in the settled area schools. Conversely, the School District's offer tends to exaggerate and widen the difference between Manitowoc County teachers and this comparability group.

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 Exhibits D1-D4). The rate of increases in the City of Manitowoc, the City of Two Rivers and Manitowoc County is 4% or less. Private sector settlements also support acceptance of the School Board's final offer. (School District Exhibits E1-E15). The employees of these reporting local industries received a 0% to 3% wage increase.

Most arbitrators agree that teachers should be compared to teachers and not solely to private sector employees who perform duties and responsibilities unlike those performed by teachers. Eleva-Strum School District (Dec. No. 23779-A); Rock County HCEB (Dec. No. 23688-A); School District of Sheboygan Falls (Voluntary

Impasse Procedure, July 8, 1986). As such, the teacher settlements in comparable school districts should be the essential criteria to evaluate the reasonableness of the Parties' final offers. The one-year 1986-87 settlements 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.

The other issue before the arbitrator is the determination of the format of the salary structure. The award in the instant dispute will represent the fourth contract between the Parties. Prior to the organization of the employees into the Association for purposes of collective bargaining, the School District paid its employees consistent with the Manitowoc Public School District salary schedule. Accordingly, when the parties at the Manitowoc Public School District agreed to eliminate the traditional salary schedule, the teachers in this School District unilaterally lost their traditional salary schedule format. The teachers at the Manitowoc Public School District regained the salary schedule format for the 1985-86 school year through arbitration. The Association has attempted to regain the salary schedule format through impasse resolution but has been unsuccessful to date.

In his 1985-86 arbitration decision between the Parties herein, Arbitrator J.C. Fogelberg (Association Exhibit #13) found a fatal flaw in the Association's "original" salary schedule construction:

"However, there is a critical flaw in their final position which precludes its adoption: the total lack of consistency within the schedule as proposed. If the purpose of a salary grid is to enhance consistency and objectivity, then that schedule needs to reflect these virtues in its structure. Consistent increases in steps and lanes, whether through a set dollar amount or a percentage adjustment is more desirable. Indeed, many schedules themselves are symmetrical."

Arbitrator Fogelberg went on to suggest that the employees in Manitowoc County might very well have been better served by final offering the Manitowoc Public School District salary schedule, which was the historical basis prior to their unionization. Accordingly, the Association used as its final offer for the 1986-87 contract, the 1985-86 salary schedule awarded by Arbitrator Fleischi (City of Manitowoc, Dec. No. 22915-A) to the employees in that arbitration. This schedule has as its lane and step increases a percentage basis which was clearly acceptable to the arbitrator and which remains in place today. That schedule constitutes the schedule for the 1986-87 Association's final offer in this matter and represents a return to a salary schedule which calls for an automatic step increase each year. To adopt the salary schedule proposed by the Association would result in some widely disparate increases ranging from \$1,300 to \$2,327. The minimum increase would go to a teacher with a Master's degree and nine years of service, whereas the maximum would be paid to a teacher with a BA degree with six years of service.

The arbitrator has given due consideration to arbitral precedent, which the Association has relied upon in structuring its final offer. To now disregard Arbitrator Fogelberg's dictum as suggested by the School District would be a travesty to the arbitration process. Parties are to rely upon arbitral precedent for guidance unless the arbitrator's decision is unworkable, unreasonable, unfair or unconscionable. None of these factors exist in the Fogleberg decision and this arbitrator must therefore

accept his wisdom and rule in favor of the Association in regards to the salary schedule format.

Another important consideration is that all of the comparable schools except this School District have a single salary schedule. It is common for arbitrators to add benefits to a contract and bring them in accord with the general practices in the area because such benefits are prevalent among the comparables. Brown County Handicapped Children's Education Board (Dec. No. 18244); Amery Schools (Dec. No. 18172); Southern Door County Schools (Dec. No. 18106); Greenfield Police (Dec. No. 18170); Reedsville Schools (Dec. No. 18024); Cambria-Friesland Schools (Dec. No. 17549). The net effect of the adoption of the Association's final offer in terms of a salary schedule, is to move the Association into a "comparable position" among the other comparable schools.

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

The first line of School District Exhibit F2 shows the U.S. City average for October of 1985 to be 325.5 compared to October of 1986 of 330.5. This is a cost of living increase of 1.53%.

In view of the increases in the inflationary rate as measured by the Consumer Price Index, the School District's final offer like the Association's final offer provides a significant improvement in the economic position and well being of Manitowoc County 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 area schools who settled higher than the School District's final offer for the 1986-87 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.

This factor was not in dispute between the Parties. There is no showing that School District teachers are receiving less by way of total compensation than the teachers in the five feeder schools or the other comparable area schools.

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

The most recent salary 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.

This factor was not given significant weight because such other factors normally or traditionally taken into consideration in the determination of an appropriate wage rate and salary schedule format were already considered in the previous statutory factors.

In conclusion, the evidence confirms the reasonableness of the Association's final offer in the instant matter. The total economic offer of the Association represents a small gain toward reaching parity with the average economic status of the other teachers within the comparable school districts and to halt the erosion that currently exists. Moreover, the final offer of the Association relative to a single salary schedule is simply a step toward parity among the comparable schools. The School District's offer provides too little and provides it in an unfair manner to the Manitowoc County teachers in comparison to the other comparable school districts.

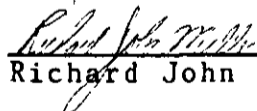
The School District can easily afford the Association's offer without reduction in educational programs or reduction in staff. In fact, the Association's final offer is in the best interest and welfare of the public because the School District's final offer is far below that of the comparable school districts.

The arbitrator must give credence to arbitral precedent, which the Association has relied upon in structuring its final offer. The Association's final offer follows the dictum established by Arbitrator Folgelberg in last year's arbitration case.

Based upon the analysis of the data, testimony, evidence and argument, the Association has proven its total final offer to be the most reasonable and more acceptable to the arbitrator.

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 Association and directs that it, along with any and all stipulations entered into by the Parties, be incorporated into the 1986-87 collective bargaining agreement.


Richard John Miller

Dated this 23rd day of March
1987, at New Hope, Minnesota.