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EDWARD B. KRINSKY, MEDIATOR-ARBITRATOR

**WISCONSIN EMPLOYMENT
RELATIONS COMMISSION**

: In the Matter of Mediation-Arbitration :
: Between :
: SHELL LAKE SCHOOL DISTRICT : Case 20
: : No. 37350
: and : MED/ARB-3998
: : Decision No. 24036-A
: NORTHWEST UNITED EDUCATORS :
: :
: :

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, by
Ms. Kathryn J. Prenn, for the District.
Mr. Alan D. Manson, Executive Director, for
Northwest United Educators.

On November 12, 1986, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator in the above-captioned matter. A mediation meeting was held at Shell Lake, Wisconsin, on December 16, 1986. After approximately two hours of mediation, which did not resolve the outstanding issues, an arbitration hearing was held.

At the arbitration hearing the parties had the opportunity to present evidence, testimony and arguments. No transcript of the proceedings was made. The parties subsequently submitted briefs, and NUE submitted a reply brief. The District did not submit a reply brief. The record was concluded with the receipt of the NUE reply brief on February 18, 1987.

At the hearing it was agreed that the record would be viewed as closed for receipt of evidence as of December 16, 1986, except for correction of any errors in the data submitted. The parties agreed also that neither party would make an ability to pay argument.

The dispute in this case involves two issues. The first is salary. The District offers to increase each cell of the salary schedule by 5%. The NUE offer is an increase of 6.25% per cell. According to the District, these offers result in a salary increase to the teachers for 1986-87 of 6.5% under the District's offer, and 7.8% under NUE's offer. In terms of total package, the District's offer results in a 6.9% package, while NUE's package is 8.1%.

The second issue is the date for issuance of final notice of layoff. At the present time the parties' Agreement does not have a specified date. The parties agree that they are governed by the date specified in Section 118.22 of the Wisconsin Statutes, which is March 15th. NUE makes no offer on this issue, thus proposing to maintain the status quo. The District proposes that the notification date be May 15th.

In making his decision the arbitrator is directed by Section 111.70(4)(cm)7 of the Statutes to give weight to certain factors. In the present dispute there is no issue between the parties with respect to the following factors: (a) lawful authority of the employer; (b) stipulations of the parties; (c) . . . that portion of factor (c) dealing with "the financial ability of the unit of government to meet the costs of any proposed settlement"; (g) changes . . . during the pendency of the arbitration proceedings. The arbitrator will discuss the disputed issues below in light of the remaining statutory factors.

Issue: Salary

The first factor to consider in evaluating the salary offers is (c) "the interests and welfare of the public." The District argues that its offer is competitive in wages and benefits with those paid to teachers in other districts, and that its offer is well above the increase in the cost of living indices. Its offer is also higher than those paid to other employees of the District as well as those paid in public and private employment in the Shell Lake area. As the lower of the two offers, it argues, the District's offer is . . . more reflective of the current state of the economy and as such best serves the public interest while providing a fair and equitable increase to Shell Lake teachers." The District presents economic data in support of an argument that its location in Burnett and Washburn Counties makes its taxpayers less able to afford the increases offered than is the case in the other comparable school districts which are located in counties whose financial condition is somewhat better.

NUE argues that its offer better serves the interests and welfare of the public because in its view the District's offer depresses the wages of teachers in comparison to those in comparable districts, and this is especially the case for teachers at the top of the schedule. Such an offer is not in the public's interest, according to NUE, ". . . since it is the experienced, established teachers in a small district which produce the vital stability necessary to maintain the quality of the education in the school." NUE disputes any

contention by the District that it is less able to afford to pay the increases at issue here than are the other comparable school districts.

The arbitrator has considered the parties' arguments with respect to the "interests and welfare of the public" and he is unable to conclude that one offer is clearly preferable to the other based on that factor. Neither offer is contrary to the interests and welfare of the public and both offers substantially increase salaries. The District is correct that it is located in relatively poor counties but there is no claim by the District that it is unable to pay the proposed increases. The arbitrator is not persuaded by the evidence that this consideration should be determinative. There is no showing that the economy of the Shell Lake area has deteriorated in the last year in comparison to the other local economies used for comparison purposes by the parties. There is no showing that the economy which supports the District cannot withstand the maintenance of the relative salary position that has been achieved by the parties through prior bargaining and/or arbitration.

The next factor to be considered is (d) "comparison of wages, hours and conditions of employment . . . with (those) . . . of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities."

The first comparison is with teachers in comparable districts. The parties agree that the other fourteen districts of the Lakeland Athletic Conference are relevant comparables. At the time the record was closed in this case, there were settlements in eleven of those fourteen districts (Birchwood, Bruce, Cameron, Clayton, Clear Lake, Flambeau, New Auburn, Northwood, Prairie Farm, Turtle Lake and Winter).

The arbitrator has used the data provided by the parties to derive the following information relating the District to the comparable districts. He has used for comparison only those eleven districts that have settled for 1986-87 and has compared the District to those districts for 1986-87 and 1985-86. This is a sufficient body of data to allow meaningful comparisons to be made even though it does not include the three additional conference districts which had not yet settled for 1986-87. The arbitrator has made these comparisons at each of the salary benchmarks that both parties view as appropriate: BA-min, BA-max, MA-min, MA-max and Schedule-max.

BA-min: In 1985-86 the District ranked 3rd and its BA-min salary was \$349 above the median of the eleven districts. For 1986-87 the NUE offer maintains the 3rd rank. The

District's offer would rank 5th. In relationship to the median, the NUE offer is \$284 above the median (a decrease of \$65). The District offer is \$88 above the median (a decrease of \$261).

BA-max: In 1985-86 the District ranked 6th and its BA-max salary was \$304 above the median of the eleven districts. For 1986-87 NUE's offer improves the ranking to 5th, while the District's offer maintains the 6th rank. The NUE offer is \$379 above the median (an increase of \$75). The District's offer is \$97 above the median (a decrease of \$207).

MA-min: In 1985-86 the District ranked 1st and its salary was \$1,037 above the median of the eleven districts. For 1986-87 both parties' offers maintain the 1st rank. NUE's offer is \$1,077 above the median (an increase of \$40). The District's offer is \$858 (a decrease of \$179).

MA-max: In 1985-86 the District ranked 1st and its salary was \$1,864 above the median of the eleven districts. For 1986-87 both parties' offers maintain the 1st rank. NUE's offer is \$1,918 above the median (an increase of \$54). The District's offer is \$1,582 (a decrease of \$282).

Sched-max: In 1985-86 the District ranked 2nd and its salary was \$1,594 above the median of the eleven districts. For 1986-87 NUE's offer improves the ranking to 1st, while the District maintains the 2nd rank. NUE's offer is \$1,758 above the median (an increase of \$164). The District's offer is \$1,414 above the median (a decrease of \$180).

The distribution of staff on the schedule in the District is heavily weighted towards the top of the schedule. For example, on the BA columns, 21 of 31 FTE are at or above step 9. Similarly at the MA columns, 9 of 11 FTE are at or above step 9. Thus, it is reasonable, in the absence of any persuasive reasons given to the contrary, to place greater emphasis on the effects of the offers on the maximum benchmarks.

With regard to rankings, the District offer is preferred at BA-max and Schedule-max because it maintains the status quo, while the NUE offer increases the rankings and no particular justification is given for doing so. The improvement is a slight one, however, of one rank in each case. Neither offer is preferred over the other at MA-max in terms of ranking.

With regard to the dollar relationship to the median, the NUE offer is preferred at BA-max and MA-max. There the NUE offer results in moderate increases (\$75 and \$54) over the 1985-86 relationship to the median, but the District's offer results in decreases of a much larger magnitude (\$207

and \$282). At Schedule-max neither offer is preferred over the other, since for all intents and purposes the NUE increase in relationship to the median (\$164) and the District decrease (\$180) offset one another.

Both of these offers produce substantial salary increases which maintain or slightly improve the already high relative ranking. However, the District's offer results in relative salary deterioration of \$207-282 at BA-max and MA-max. It is the arbitrator's conclusion based on this analysis that in comparison to other conference school districts, the NUE offer is slightly preferred because it avoids the relative deterioration at the maximum benchmarks that is a result of implementation of the District's offer. This conclusion is also consistent with the results at the BA-min, MA-min and Sched-max benchmarks where the NUE offer results in much less relative deterioration than does the District's offer.

As mentioned above, factor (d) also directs the arbitrator to look at comparisons with "... other employees generally in public employment in the same community and in comparable communities." The District introduced data showing that employees of the City of Shell Lake, which are not unionized, received wage increases of either 6.0% or 7.0% in 1986 and 4.5% in 1987. In Burnett County and Washburn County, for unionized employees, there was a range of increases for 1986. One unit received 1.6% and two units received 4%. The other four settled units were in the 2.75% to 3.0% range. Only one unit was settled for 1987, at 2.9% for an eighteen month contract.

The District also presented data showing that other employees of the District, who are represented by NUE, received 6% increases for 1986-87. NUE pointed out that these employees also received additional insurance benefits.

These data for other area public employee settlements for 1986 and 1987 favor the District's 6.5% wage offer more than the NUE offer of 7.8% for wages. There is no historical data given to show any pattern of relationships between teacher salaries and wages or salaries of these employee groups in the past.

Factor (d) also directs the arbitrator to look at comparisons "in private employment in the same community and in comparable communities." The District has introduced data for 1986 for two Shell Lake employers, both of which are not unionized. The medical center employees received 3% wage increases in 1986, and the employees of a manufacturing company gave wage increases from November 1986 to November 1987 of 3% for non-professional employees, and 0-4% for

professional employees. These two employers employ approximately 120 employees. The arbitrator does not know how representative a sample of employers this is, but these data reflect increases much closer to the District's offer than to NUE's offer.

In evaluating factor (d) the arbitrator believes that the most relevant comparisons are with the salaries being paid to other teachers in comparable districts. These comparisons favor the NUE offer slightly more than the District's offer. The preference for the NUE offer is a weak one, however, and especially so given the fact that the other public and private data comparisons favor the District's offer.

Factor (3) is "The average consumer prices for goods and services, commonly known as the cost of living," (CPI). The CPI data show that for the period August 1985-August 1986, the one-year period prior to the effective date of the Agreement in dispute in this case, the index for "All Urban Consumers" rose 1.6% and the index for "Urban Wage Earners and Clerical Workers" rose 1.2%. Both of the parties' offers in this dispute are far in excess of the increase in CPI. The District's offer, as the lower of the two offers, is the preferred one viewed in terms of the consumer price index.

The arbitrator is directed by factor (f) to look at overall compensation of the employees. The arbitrator has looked at the data presented by the parties with respect to the insurance and retirement benefits provided. The employees of the District are not at a disadvantage relative to employees in the comparable districts. Since there is no dispute in this case about non-wage benefits, and nothing about the benefits levels makes one party's wage offer preferable to the other, the arbitrator does not view the total compensation factor as favoring either party's offer.

Factor (h) deals with "other factors . . . which are normally or traditionally taken into consideration . . ." The arbitrator does not view this factor as favoring either party's offer.

Issue: Layoff Notice

The second issue between the parties is the District's offer to change the layoff notification date. The District's final offer states: "Layoff timeline: May 15." The District does not propose specific contract language.

In its brief, NUE made the following argument relative to the lack of specific language:

Does it mean that May 15 is the timeline for layoffs, or for layoff notification? If it is for layoff notification, will that notification be in writing? Will it be proceeded (sic) by a preliminary notice? Will any such preliminary notice be in writing or not? Are there any exceptions to the timeline? Is the timeline a deadline?

Under the current language the teacher considered for layoff is entitled to a private conference with the Board to discuss the reasons for the proposed nonrenewal/layoff. Is there a similar right under the District's proposal? It is not clear.

The imprecise nature of the Board's language proposal on this important item does not allow these questions to be answered, and therefore the District's proposal would potentially cause much harm in the processing of any layoff.

There was no testimony presented by the District with respect to the need for a change in the layoff notification date. The only evidence submitted by either party is an exhibit submitted by the District showing the dates for final notice of layoff in effect in the comparison districts. The layoff language in those Agreements is not in evidence. Of the 14 other districts, 5 have no timeline mentioned; 1 has 30-day notice; another uses 30-day notice in the Spring, and uses the end of the preceding school year, for Fall layoffs; 1 has April 15th; 1 has May 15th; 2 have June 1st; 3 have the last day of the school year. No data are shown concerning how long these deadlines have existed and whether there is a recent trend towards one or another of the dates.

The District acknowledges that if there is no change in the existing date, ". . . the District is bound by the March 15 date set forth in Section 118.22, Wis. Stat., with a preliminary notice required by the last day in February."

The District argues for the change to May 15th, stating:

In addressing the May 15 layoff timeline issue, the District submits that the needs and responsibilities of a school district, which ultimately must produce the educational foundation upon which its students build their future lives, require that the District enter into a balancing test under the circumstances which lead to the need to lay off teachers. On one hand, the District must consider its responsibility to its employees. On the other hand, the District cannot exclude

other considerations premised upon the needs of the District and the best instructional and educational interests of its students, parents and taxpayers.

The timeline set forth in Section 118.22, Wis. Stat., limits this District's flexibility and does not best serve the needs of the District to its students, taxpayers or teachers. The best available information which the District uses to make a layoff decision is usually not available before the end of February. The statutory timeline does not allow an adequate amount of time for the District to analyze the information and make an informed decision. In a period of tighter dollars, the District needs certainty in its factual situation before deciding to realign programs due to declining enrollments, etc. With adequate time available to gather and analyze all of the facts, the District will not have to second-guess a situation. Clearly, this proposal is in the best interest of all parties concerned.

In addition, teachers would not be disadvantaged by the Board's proposed layoff timeline date. If a layoff were necessary, this date would still allow the laid-off teacher to collect summer unemployment benefits and provide an adequate amount of time to search for a new fall job.

NUE argues as follows for maintenance of the status quo:

The involuntary layoff of an employee is a process which is already filled with enough emotion and difficult decision making by the Employer and affected staff members; to add imprecise language to the procedure only heightens the potential for litigation on extraneous procedural matters and thus would jeopardize the desired goal of an uncomplicated administration of a vital job security provision. It is not in the interests of the parties, nor of the public, and it is not consistent with the concepts of voluntary collective bargaining, to weaken a job security provision and to do so without proposing a quid pro quo, and with language that is so vague as to be truly problematical.

Factors (c), (d) and (h) would seem to be the only ones with application to this issue. It is not clear to the arbitrator that either offer is preferred with respect to (c) the interests and welfare of the public. Certainly if

there was an overriding public interest for a change in the date, the State Legislature would make a change in the statute to accommodate it. The status quo cannot be viewed by this arbitrator as not being in the public interest if it is contained in existing statutes. Moreover, and perhaps most importantly, there is no evidence presented by the District to demonstrate that the District now has, or has had, a problem with layoffs and layoff notification caused by the existing statutory timeline. The arbitrator is not willing to require a change where there is an existing statute favoring the NUE position, where he is not persuaded that the interest and welfare of the public favor the District's position, and where there is no demonstration of existing or past problems which compel such a change.

With respect to factor (d), comparisons, there is a range of dates used by the comparison districts. Those comparisons do not clearly favor one offer over the other, in the arbitrators' opinion.

With respect to factor (h), "other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment . . ." there is no showing by the District that it has attempted to bargain this item in the past or that it has demonstrated to NUE the necessity or strong desirability for making such a change. There is also no evidence that it has offered NUE any reasonable or compelling incentive at the bargaining table, financial or otherwise, for making this change. It is not unreasonable for NUE to have refused to concede a change, without incentive for doing so, which it does not view as in the best interest of its members.

An additional factor in NUE's favor, as NUE argues and as cited above, is that the District's offer is not clear. Perhaps the District meant to incorporate the statutory language into the Agreement, and substitute May 15th for the statute's reference to March 15th. That is probably what it meant, but it does not state it in such clear fashion. This lack of clarity is not reason in and of itself to find in NUE's favor, but it is an added reason for doing so.

In summary, the District has included in its offer a change in contractual language which it has not adequately supported. Under these circumstances, it is the arbitrator's view that NUE's offer, which does not make any change in the layoff notification date, is preferred.

Conclusion

The arbitrator is required by statute to select one offer or the other in its entirety. He has concluded that the NUE offer is preferred to the District's offer in

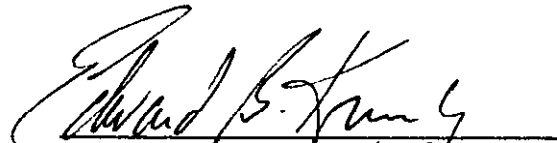
relation to salary increases and is preferred also because it maintains the status quo with respect to layoff language where there is no compelling reason to change it. He has concluded that the NUE offer is preferred in its entirety to the District's offer despite the fact that the District's offer is preferred in relationship to the changes in the cost of living as well as in relationship to non-teacher public and private wage settlements in the Shell Lake area.

Based on the above facts and discussion the arbitrator hereby makes the following

AWARD

The final offer of NUE is selected for the 1986-87 school year.

Dated at Madison, Wisconsin, this 27th day of February, 1987.


Edward B. Krinsky
Mediator-Arbitrator