

The Commission having, on November 7, 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 custodial and maintenance 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 November 17, 1986, been advised that the Parties had selected Richard John Miller, New Hope, Minnesota, as the mediator-arbitrator.

The Parties mutually agreed to waive mediation and thereafter the arbitration session was held on Thursday, January 29, 1987, at 10:00 a.m. at the School District Administration Offices, Richland Center, Wisconsin. The hearing was transcribed. The Parties were afforded full opportunity to present evidence and argument in support of their respective positions. Following receipt of evidence and argument, the Parties filed post hearing briefs which were received and crossed in the mail by the arbitrator on March 16, 1987. The Parties elected to file reply briefs which were received on March 30, 1987, after which the hearing was considered closed.

POSITIONS OF THE PARTIES

Consistent with Article XXVII, Section 27.1, of the existing collective bargaining agreement between the Parties, the Union proposes the following change to Article IX, Section 9.2 as follows:

Increase each cell of the Wage Schedule (Section 9.2) and the wage rate of each incumbent employee above the wage schedule by five and one quarter percent (5.25%) effective July 1, 1986.

The School District's final offer to the Union is that the wage schedule at Article IX, Section 9.2 shall remain unchanged for the duration of the Collective Bargaining Agreement. Employee wages shall be increased at a rate of three percent (3%) effective July 1, 1986.

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)(c)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.

- F. 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.

Because the scope of the reopener clause is limited to the wages, the sole issue in dispute between the Parties is the determination of the appropriate wage increase.

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 was serious debate over the intent of the School District's final offer. The Union believes that under the School District's final offer all of the bargaining unit employees will receive a 3% wage increase and those three employees who are moving through the current salary schedule would not be entitled to a step increment in addition to the 3% wage increase. The School District, on the other hand, claims that under its final offer all of the bargaining unit employees will receive at least a 3% wage increase and those employees who are on the salary schedule will receive the step increment, as well as 3% of that new wage rate. For those employees who are either at the top or off the salary schedule, they will also receive a 3% wage increase. Therefore, according to the School District, all employees will receive the same increase as if the money was applied to the schedule. This yields an average wages only increase of 3.41% per employee.

There are seventeen employees in the bargaining unit. Only three remain on the salary schedule. The testimony of Ms. Tim Gasser, Research Associate, Law Offices of Mulcahy & Cherry, Madison, Wisconsin, indicates that the intent of the School District's final offer is for three employees to receive step increases plus the 3% wage offer and the remaining fourteen employees will receive a flat percentage of 3%. (Tr. 32, 33). Her testimony was not successfully rebutted by the Union and therefore constitutes the true intent of the School District's final offer in this regard.

Another source of dispute between the Parties arises over dental insurance. The Union takes the position that the School District should be foreclosed from costing dental insurance in these proceedings and, accordingly, the arbitrator should not consider the cost impact of dental insurance in weighing the relative merits of the Parties' final offers.

School District Exhibit #36 sets forth the agreements reached between the Parties for the ratification of the current two-year collective bargaining agreement. Within that exhibit, the agreement relative to the addition of dental insurance is clearly outlined -- coverage will begin with the second year of the contract which is 1986-87. Upon ratification of this contract both Parties realized that the impact of dental insurance would be felt in the beginning of the 1986-87 school year.

Although wages were the only subject for renegotiation in the second year of the contract, the fact remains that this is a two-year contract. The Parties agreed that dental insurance would be part of this contract. Furthermore, the Parties specifically recognized that the dental insurance package would become effective in October, 1986, the year of the wage reopener in dispute here.

It would be illogical for the arbitrator to accept the Union's contention that there was no explicit or tacit agreement between the Parties to cost the dental insurance for 1986-87. The School District has yet to reap the credit which it is due. The dental benefit was not costed in 1985-86 so the cost impact was not realized in that year. (Tr. 73). In that dental insurance was negotiated with an effective date of October, 1986, the budget impact of the benefit must be costed in that same year. Thus, the School Board's method of costing, which includes this benefit, is more reflective of the total package increase. The School District costed its own final offer at a total package increase of 4.06% compared to 6.93% for the Union's final offer. (D-6,7).

There is no disagreement between the Parties concerning the School District's ability to pay. The School Board has never denied that it cannot pay the Union's final offer. Rather, the major thrust of the School District's arguments focuses on the consideration of the public interest and welfare. The School District argues that the arbitrator must balance the employee's interest with that of the taxpayers in the School District. The School Board cites both arbitral authority and economic factors urging the arbitrator to declare the Union's final offer excessive. Thus, the cost of the respective total package increases is important because the arbitrator must give due consideration to the interests and welfare of the public in evaluating the reasonableness of the Parties' final offers.

The interests of the public require a serious analysis of the economic conditions within the School District. For 1986-87 the School District has realized a decline in the equalized valuation, an increase in the tax levy and also an increase in the net tax

levy. In fact, in 1985 the School District realized a 5.48% decline in equalized valuation; in 1986 that decline dropped again to 8.77%. (D-37).

The tax levy is an amount which the School District establishes for the general operations of the District. Richland realized a 7.07% increase from 1986-87. (D-37).

The net tax levy is the actual money the property taxpayers pay to the School District. In 1986-87, the net tax levy increased by 6.09% compared to 1985-86. (D-37). The reasons for the increase is reflective of the increased student enrollment, as well as lower payments by the State of Wisconsin in the form of state aids. Consequently, the School District like all other similar districts have been the recipient of higher tax bills.

The School District, located in Richland County, serves a predominately rural populace. (D-13). Richland County is surrounded by the counties of Crawford, Grant, Sauk and Vernon. Richland has the second highest percentage of land in farms among the five-county area -- 82.9%. As such, Richland County has been labeled as the fifth highest "farm dependent" county. At least 20% of its total earned income is from agricultural earnings. (D-17).

The farmers/taxpayers of the School District like all other state farmers are suffering through some rough times. The prices that farmers receive for their commodities has declined substantially from 1981 through 1985. (D-14). During 1986, however, the average price paid per CWT for milk on a 3.5% milkfat basis increased 8.4%. (D-14). During the instant disputed contract term, milk prices increased from \$11.60 (7/86) to \$13.10 (11/86) or by 12.9%. (D-14). Hence, a majority of the earned income from dairy farming during 1986 has increased in excess of 8%.

Declines have occurred with other commodities, such as corn, milk cows, steers, slaughter cows and calves. In 1984, the average price for corn was \$3.03 and have plunged through November, 1986 to \$1.43. (D-15). In 1985, the average price for steers and heifers declined from \$56.87 to \$50.49, an 11% reduction. Similarly, the average price decline for slaughter cows, milk cows and calves range from 2.7% to 6.6% during this time. About the only redeeming hope for the farm economy is that the worst appears to be over. For example, the price of milk cows has increased from \$730.00 to \$810.00 or a 11% increase during 1986. The price of steers and heifers, slaughter cows and calves has remained relatively constant during 1986. (D-15).

As a result of the drop in prices of some farm commodities, especially corn, farmers have found it increasingly difficult to meet their financial obligations. Projections indicate a continued increase in forced sales and liquidation of farm capital assets. (D-20). This, coupled with the decline in the percentage of the food dollar going back to farmers (D-23), the continued erosion of farmland values (D-18,19), and the increases in property taxes has exacerbated the financial duress of Wisconsin farmers.

The above evidence clearly proves that the agricultural communities in the State of Wisconsin have suffered through serious and devastating financial difficulties in recent years. These adversities, however, are not solely limited to the taxpayers/farmers in this School District, as they have spread to many other communities dependent upon agriculture. What this evidence proves is that the local economy, the region and the entire State of Wisconsin share the same depressed economy. It is for that very reason that the state statute in the next section

mandates the arbitrator to compare salaries of this bargaining unit with salaries paid to 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 sector in the same community and in comparable communities. If the selected comparables favor the Union's final offer, the arbitrator cannot circumvent that determination by the utilizing the criterion of public interests and welfare since the economic conditions of the Richland School District are no different from most agricultural communities in this region and in the State of Wisconsin.

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 School Board has submitted a list of comparables which comprise the Southwest Athletic Conference (i.e. Richland, Roscobel, Fennimore, Prairie du Chien, Riverdale, River Valley and Viroqua), as well as the contiguous districts of Hillsboro, Ithaca, Kickapoo Area, North Crawford and Weston. (D-26,27). The Union's selection of comparables consists solely of those districts within the Southwest Athletic Conference. (U-3). Richland is the largest district in the conference with a student enrollment of 1,733 which is 508 students above the enrollment median for the other athletic conference schools. (U-4).

For the following wages studies prepared by the Union, the Custodian II classification has been chosen as the primary reference group. This class is being used because it is the most common in the bargaining unit. Nine of the seventeen employees in the bargaining unit are classified as Custodian II's. (U-18).

The 1986-87 median increase for the custodial maximum rates among the settled athletic conference schools and where data was available (all schools except Richland and Viroqua) is 5.1%. The average increase for the athletic conference maximums during the same period is 6.1%. (U-15,17; D-31).

The average and median increases for the minimum rates of the athletic conference is 4.5%. This 4.5% contrasts sharply with the School Board's proposal to freeze minimum salary rates at 1985-86 levels. (U-15,17; D-31).

The following table summarizes graphically how the Union's final offer more closely conforms with the settlement pattern within the Southwest Athletic Conference both for median minimum and maximum rates from 1985-86 to 1986-87.

TABLE I
(Derived from U-15,17; D-31)

	<u>Relation to Median</u>	
	<u>Minimum</u>	<u>Maximum</u>
Conference	0	0
Richland (District)	-4.50%	-2.00%
Richland (Union)	+0.75%	+0.25%

One direct outcome of the School District's final offer is that Richland will no longer pay the highest minimum rates for a new custodian within the Southwest Athletic Conference. Under the School Board's proposed 1986-87 schedule freeze, River Valley will pass Richland and thereby assume wage leadership with respect to minimum custodial rates.

The School Board's list of comparable school districts includes a diverse assortment of neighboring districts and the schools in the Southwest Athletic Conference. Among those used are districts which include several whose student enrollment is less than one-third as large as that of Richland. Richland's student enrollment is approximately twice the size of the average of its comparables, compared to 67% of the average of the Union comparables (Southwest Athletic Conference). (D-30). Despite the disparity in student enrollment, the School District's proposed group of comparable schools in terms of 1985-86 State Aid per Pupil, Equalized Value per Member, School Cost per Pupil and Full Value Tax Rate is not only within the range of all of the indices but is also very close to the average. (D-28,29). Not only must the above indicators be considered to determine the appropriate comparable schools, so must the criterion of geographic proximity. Arbitrators must afford great weight to geographic proximity in the determination of a labor market for non-certified staff. As such, the School District's selection of comparable districts is clearly representative of the labor market surrounding the School District.

Unlike the Union, the School District has presented comparative benchmark wage data for the classifications of Custodian II, Maintenance Engineer, Bus Driver/Messenger and Temporary/Part-Time Custodian. For the 1986-87 school year, neither the School Board's nor Union's final offer is significantly better than the other on wages only for the positions of Custodian II (minimum and maximum), Maintenance Engineer (minimum), Bus Driver/Messenger (maximum) and Temporary/Part-Time Custodian (maximum). With respect to the Maintenance Engineer classification (maximum), the School Board's final offer would maintain its previous rank of second. Conversely, the Union's final offer would place Richland first among its comparables. (D-31-34).

An analysis of the dollars/cents per hour above the average amounts for the base year 1985-86 and for 1986-87, under the Parties' final offers (D-31-34), shows that under the Custodian II classification, the School Board's final offer at the minimum would be \$.22 above the average compared to \$.35 above for the Union's final offer. Under the maximum pay for the Custodian II classification, Richland is \$.41 above the average, but under the School District's final offer it would be reduced to \$.29 and would only increase by \$.03 under the Union's final offer. Under the Maintenance Engineer classification, both final offers would be above the average of 1985-86 for minimum pay. For maximum pay, the School Board's offer would be \$.11 below and the Union's offer would be \$.09 above. For 1985-86, the Bus Driver/Messenger classification was \$.86 above the average and under the School Board's final offer it would drop to \$.09 compared to \$.24 for the Union's position. The Temporary/Part-Time Custodian classification was \$.27 above the average for 1985-86 but would fall to \$.25 under the School Board's position while increasing to \$.37 under the Union's offer.

In summary, if the arbitrator uses the comparables proposed by the School District with respect to Richland's rank order and upon the analysis of the dollars/cents per hour above the average amounts in the base, it is evident that the Parties' final offers are very comparable and neither position is significantly better than the other. If anything, more weight must be given to the

Union's position as it more closely conforms with the settlement pattern within the Southwest Athletic Conference both for median minimum and maximum rates from 1985-86 to 1986-87.

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

While the the School District is located in a predominately rural area, the City of Richland Center is heavily unionized with seven municipal and county employee bargaining units, six of which are represented by AFSCME. (D-25).

At the arbitration hearing, the School District introduced certain wage data that purported to represent municipal settlements for 1986. (D-25). Subsequent correspondence of both the Union and the School District representatives to the arbitrator has amended the School District's original data for 1986.

The amended data indicates that all Richland County bargaining units represented by AFSCME settled at an end rate of 4.2% for 1986. The municipal settlement pattern for 1987 remains at this time incomplete because none have yet reached agreement.

There was some debate between the Parties over the Richland City settlements because of split-year increases. For the first part of 1986, the Police, DPW, Utility, Non-Union and Fire units all received a 5.0% wage increase. For 1987 these same units received a 3% wage increase. However, it should be noted that in addition to the 3.0% across the board wage increase, the DPW and Police units also received a \$50.00 increase in their longevity payment as well as increases in their shift differentials and their leadman premiums. Together these various wages increases do provide for a total wage increase in excess of 4.0% in 1987 for the City of Richland Center AFSCME units. (Tr. 50,51). When all of the above factors are considered, the Union's final offer in terms of percent deviates less from the average of the comparables than the School District's position.

Municipally based custodians and maintenance employees in Richland Center in 1986 apparently received wage increases between \$.31 to \$.40 per hour or an average increase of approximately \$.35. (U-11-14). The School District disputes the accuracy of the 1985 wages for courthouse custodians. If the arbitrator eliminates that unit from consideration, the settlements for 1986 received by the other three units, County - Highway (janitor), County - Pine Valley (maintenance) and City - DPW (parks maintenance) compare more closely to the Union's final offer. The average increase in cents/hour for the three units equals about \$.37. This increase of \$.37 compared to the Union's final offer of a \$.33 increase in 1986-87 (for custodian), or even the \$.42 increase at the minimum and the \$.45 increase at the maximum at the maintenance engineering classification, is closer to the average than the School District's offer of \$.23 per hour.

The wage increases granted by Gold Bond and Kaul-Tronics are representative of private sector increases in Richland Center. Specifically, the employees from Gold Bond received an approximate increase of 2% (\$.28 per hour) in June of 1986 and the employees from Kaul-Tronic received a \$.20 per hour across the board increase in 1986. In contrast, the School Board's final offer would provide the bargaining unit employees with an average hourly increase of \$.23 or 3.41%. The Union's offer, however, would yield an average hourly increase of \$.38 or 5.65%.

The instant bargaining unit and the Richland Center Education Association, representing the teachers, are the two certified bargaining units of the School District. Arbitrator Richard Ulric Miller, Madison, Wisconsin, on March 6, 1987, awarded an average salary increase per teacher for 1985-86 of \$1,980.33 or an average salary increase of 10.49%. The total package increase per teacher was \$2,595.50 or 10.5%. Arbitrator R.U. Miller rejected the School District's offer to increase the average salary per teacher by 7.15% or \$1,436.33 for 1986-87. Rather, Mr. Miller decided that the 1985-87 agreement be reopened in mid-term and that the second year salary be negotiated. Suffice it to say, what the teachers were awarded in 1985-86 and what Arbitrator R.U. Miller rejected for 1986-87 is considerably more than what the Union is seeking in this arbitration. Clearly, the internal comparability favors the Union's final offer, which compared to the teacher's award is a low salary increase. The arbitrator, however, cannot find any historical relationship between the instant bargaining unit and the teacher's bargaining unit as alleged by the Union.

In conclusion, the external, internal and municipal settlement trends favor the Union's final offer while only the private sector settlements support the School District's final offer. Consequently, this criterion proves that the Union's final offer is the more reasonable final offer.

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

The School Board's total package offer (4.96%) exceeds the average rate of inflation from July through December, 1986, by 3.48% (CPI-U - 1.48%) and 3.86% (CPI-W - 1.1%). (D-5-8). The Union's total package final offer (6.93%) also exceeds the CPI-U by 5.45% and the CPI-W by 5.93%. In view of the increases in the inflationary rate as measured by the Consumer Price Index, the School District's final offer provides the bargaining unit members with total package percentages significantly above the rate of inflation, as measured by these indices. Despite the fact that the Union's offer is more excessive than School District's final offer in regards to the CPI, the Parties were aware of the "prevailing economic conditions" when they constructed their final offers on salary, as were the majority of the other comparable school districts, municipalities, and private industries. 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.

Employer Exhibit 35a and 35b set forth the total compensation benefits received by custodial employees among the comparable employers. Upon analysis of this exhibit, it is evident that dollar for dollar, the bargaining unit employees receive more paid single and family health insurance than the average of the comparable schools. Richland is only one of the two comparables who receive dental insurance and 100% payment of his/her share to Wisconsin Retirement System. Clearly, the bargaining unit employees at Richland enjoy a benefits package advantage over comparable employees.

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 most troubling aspect of the School District's position is not the actual wage increase of its final offer but the proposed freezing of the custodial wage schedule. The School Board contends that the salary schedule is an outmoded system with five employees actually off schedule, nine employees at the schedule maximum and only three employees who are actually on the schedule.

Arbitrators have generally held that the party seeking to modify an established condition or benefit has the burden of proof in the matter. Dane County (Sheriff's Department), Dec. No. 20135-A (7/83); Sheboygan Schools, Dec. No. 20975-A (3/84). This arbitrator like most other arbitrators conforms to the following conditions required by the moving party in order to sustain its burden in altering the status quo.

1. There must be a uniform practice among the comparables;
2. There must be a compelling reason for such a change, i.e., unfairness or unreasonableness or contrary to the accepted practice in the industry;
3. There must be an equitable quid pro quo.

Using the above standards, the arbitrator finds that none of the Southwest Athletic Conference custodial rates are frozen for the 1986-87 term. (U-15, 17). All of the custodial rates for the School District's own set of comparables, with the single exception of the unorganized North Crawford unit, have been increased during this same term. (D-31). In fact, in none of the previous contracts between the Parties has the custodial salary schedule been frozen. (U-11,19). Neither comparability nor past bargaining history between the Parties supports the School District's final offer in this regard.

At the arbitration hearing, Ms. Rachel Schultz, the School District's Business Manager, testified that the rationale for not applying the 3% directly to the wage schedule is that the School Board wanted to examine the salary schedule during this wage reopener, and upon examination, felt the schedule was adequate. (Tr. 45). There is no compelling reason for the change. The import of the School District's proposed takeback would mean the emergence of a "two-tiered wage system". Employees hired after the date of the frozen salary schedule would never be able to obtain the same wage rates as provided for employees hired prior to the wage freeze. By freezing the schedule, fourteen employees would be paid rates over the schedule instead of the current five employees. (D-4, U-8).

There is no equitable quid pro quo for the frozen salary schedule proposal. The School District has not demonstrated that the bargaining unit members are currently being paid an amount that is excessively higher than the comparables. In fact, the School District's proposed wage increase would constitute a backward slide in wages for these bargaining unit employees. If the School District intended to "buyout" the current salary schedule with the freeze proposal, its final offer should have been higher than 3%.

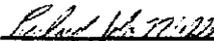
In summary, the School District has failed completely under this criterion in meeting its required burden of proof for altering the status quo by proposing to freeze the existing 1985-86 salary schedule.

In conclusion, the Union's final offer more closely conforms with the statutory criteria. No one can deny that agriculture is suffering through difficult times. Despite the problems in the agricultural economy, Southwest Athletic Conference Schools, the comparable schools proposed by the School District and local municipalities have been able to provide raises to their custodians in 1986-87, which are more comparable to the Union's offer than the School District's position.

The School District's unprecedented action of freezing the salary schedule would seriously jeopardize the relevance of the salary schedule. No other represented or unrepresented employees in the athletic conference, city or county, have proposed raises for individual employees while simultaneously freezing the schedule. Ironically, the School District's rationale for the freeze that the salary schedule is outmoded, would become true should the School District prevail. In all likelihood, awarding the School District's offer would lead to future impasse arbitrations over how to repair the schedule.

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 Union and directs that it be incorporated into the 1986-87 collective bargaining agreement effective July 1, 1986.


Richard John Miller

Dated at New Hope, Minnesota
this 17th day of April, 1987.