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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
WEST BEND JOINT SCHOOL DISTRICT
NO. 1
To Initiate Mediation-Arbitration
Between Said Petitioner and
WEST BEND EDUCATION ASSOCIATION

Case 55
No. 37323 MED/ARB-3988
Decision No. 24136-A

Appearances:

Mulcahy & Wherry, S. C., Attorneys at Law, by Mr. Jon E. Anderson, appearing on behalf of the Employer.
Mr. John Weigelt, UniServ Director, Cedar Lake United Educators, appearing on behalf of the Association.

ARBITRATION AWARD:

On January 6, 1987, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator pursuant to 111.70 (4) (cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between West Bend Joint School District No. 1, referred to herein as the Employer, and West Bend Education Association, referred to herein as the Association, with respect to certain issues as specified below. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings between the Employer and the Association on March 3, 1987, at West Bend, Wisconsin. Mediation efforts failed to produce a resolution of the dispute, and pursuant to prior notice, hearing was conducted at West Bend, Wisconsin, on March 3, 1987, as well. During the arbitration proceedings, the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs were filed in the matter. Final briefs were received from the parties by May 13, 1987.

THE ISSUES:

1. SALARY

The Employer proposes that the present salary structure be retained with a BA base of \$18,041 for the year 1986-87.

The Association proposes to retain the current salary structure, with a BA base of \$18,172 for 1986-87.

2. FLAT DOLLAR EXTRA DUTY PAY

The Employer proposes to increase all flat dollar extra duty pay amounts not otherwise addressed in the stipulations between the parties by 3%.

The Association proposes to increase all flat dollar extra duty pay not otherwise addressed in the stipulations between the parties by the amount of increase in the BA base salary, 5.67%.

3. PLACEMENT OF NEW TEACHERS ON THE SALARY SCHEDULE

The Employer proposes to modify paragraph 2 of Appendix A, Training and Experience, by adding the following paragraph to the existing language:

For all new-to-the District teachers, placement on the salary schedule shall be established by the Superintendent or designee after considering the needs of the District. When the applicant signs a contract, the applicant accepts this salary schedule placement.

The Association proposes to retain the existing language from the predecessor Agreements set forth in paragraph 2, which reads as follows:

Teachers New to the District. Teachers entering the District who are first employed for the 1985-86 school year or thereafter will be placed on the salary schedule equal to their number of years of outside experience through six years; thereafter, one-half year credit for the 7th through the 14th years of experience. Maximum experience credit will be 18 years.

Example: A teacher has taught 4 years in another District. This teacher will be placed on step 4, not step 5. A second teacher has 10 years of outside teaching experience. (S)he would be placed on step 8.

Definition of teaching experience other than actual teaching:

Intern Teachers will receive one-half year experience credit for intern assignments provided the individual was certified as an intern by the Department of Public Instruction.

Technical Experience for certified teachers will be given on the basis of one-half year of teaching experience for each full year of technical experience.

DISCUSSION:

The undersigned, in determining which final offer to adopt, is directed by the statutes to consider the criteria contained therein at 111.70 (4) (cm) 7, paragraphs a through h. Therefore, in all of the following discussion, the undersigned will consider the evidence adduced at hearing and the arguments submitted in briefs as it pertains to the foregoing criteria.

Prior to a discussion with respect to the application of the criteria to the evidence adduced at hearing, and the arguments contained in the briefs, it is essential in this matter to determine what the comparables will be, since the parties are not in agreement as to what constitutes comparable communities as set forth in the statutes. The undersigned will, therefore, first address that question.

THE COMPARABLES

The Association proposes that the comparables should be comprised of fourteen districts, exclusive of West Bend, which include the districts which are geographically proximate, and those districts which in the Association's judgment, have the same radiating influence of metropolitan Milwaukee on locally economic factors, as does the District of West Bend. The Association also urges the adoption of its proposed comparables by reason of the population of the District as it goes to both pupils and faculty. The Association relies on the presence of West Bend in the four county Consolidated Metropolitan Statistical Area in support of its urging that its comparables be adopted. The comparables the Association urges, then, are: Cedarburg, Elmbrook, Germantown, Grafton, Hamilton, Hartford, Hartland, Menomonee Falls, Mukwonago, Muskego, New Berlin, Nicolet, Oconomowoc, Port Washington.

The Employer urges that fifteen districts, other than the District of West Bend, be considered as comparables. The Employer relies on a determination of comparables in two prior arbitration awards by Arbitrators Pegnetter and Fleischli in urging that those same comparables adopted by Pegnetter and Fleischli be applied

in the instant matter. Those comparable districts urged by the Employer, as found by Pegnetter and Fleischli, are: Beaver Dam, Cedarburg, Fredonia, Germantown, Grafton, Hamilton, Hartford Union High School, Kewaskum, Menomonee Falls, Mequon-Thiensville, Oconomowoc, Port Washington, Slinger, Watertown and Waupun.

Thus, from the foregoing, the Union would delete from the previously determined comparables relied on by the Employer the districts of Beaver Dam, Fredonia, Kewaskum, Mequon-Thiensville, Slinger, Watertown and Waupun. In its place, the Association would include Elmbrook, Hartland, Mukwonago, Muskego, New Berlin and Nicolet. The remaining eight districts which prior arbitrators have determined to be comparable remain intact and are common to both parties' listing of comparables. They are: Cedarburg, Germantown, Grafton, Hamilton, Hartford, Menomonee Falls, Oconomowoc and Port Washington.

It has long been this Arbitrator's opinion that once comparables have been established they should be left intact for the benefit of the parties, and for the purposes of consistency of comparisons at the bargaining table, unless there are demonstrated changes shown among those comparables so as to warrant a revision.

The Employer argues that the proposed revision of the comparables by the Association is arbitrary and capricious. The undersigned disagrees with that characterization, because there is demonstrated logic to the selection of the comparable districts espoused by the Association. Nevertheless, the undersigned is of the opinion that the parties would be poorly served to "switch horses" with respect to comparables for the purposes of the instant arbitration. The undersigned is not persuaded that the Association has brought forward sufficient evidence so as to tamper with the comparables which have been established by two prior Arbitrators in this matter. Furthermore, the very fact that there are eight districts that are common to both parties' comparables suggests that the original list of comparables determined by Arbitrators Fleischli and reaffirmed by Pegnetter, should not be revised at this time.

The undersigned recognizes the validity of some of the Association's assertions with respect to its proposed comparables. However, the undersigned also notes that the Association comparables lack any proposed comparables that would lie to the north of the instant school district, and would rely on all districts to the south, closer to Milwaukee. Furthermore, even though certain of the districts proposed by the Association lie within the standard metropolitan statistical area of Milwaukee, the undersigned is persuaded that certain of those districts are far enough removed geographically so as not to be appropriate for the purposes of these comparisons. Those districts specifically, in the opinion of the undersigned, are: Mukwonago, Muskego and New Berlin.

From all of the foregoing, then, the undersigned determines that the comparables as they have been previously established by Arbitrators Fleischli and Pegnetter are the appropriate comparables for the purposes of these proceedings.

THE SALARY ISSUE

The evidence reveals that the parties have impasse on the salary issue where the Employer offers \$18,041 base, and a \$35,721 maximum salary. By way of contrast, the Association offer proposes an \$18,172 base, and a \$35,979 schedule max. From the foregoing, it is clear that the parties in their final offers are \$71 per year apart at base, and \$258 per year apart at the maximum of the schedule. The evidence further establishes that the percentage increase proposed by the Employer is 7.03%, compared to 7.8% proposed by the Association. Additionally, the evidence establishes that the average increase for a returning teacher pursuant to the Association offer is \$2,074.93 compared to an average increase per returning teacher, pursuant to the Employer offer, of \$1,869.24. The difference in the average increase per returning teacher, pursuant to the final offers of the parties, amounts to \$205.69 per year.

It is the judgment of the undersigned that where parties are this close at the final stage of bargaining as these parties are in their final offers, there is no reason that reasonable parties should be unable to establish a voluntary settlement. Nevertheless, the parties in mediation were unable to do so, and the under-

signed is now faced with the task of selecting final offers which are so close to each other that even before making the traditional comparisons it is doubtful, in the mind of the undersigned, whether either party will have a clearly established and strong case for its final offer to be adopted, because the offers are so proximate.

Notwithstanding all of the foregoing, the undersigned will undertake to make an evaluation to determine which party's final offer is to be preferred. The Employer argues the following in support of its position:

1. The continuity and stability of employment in West Bend favors adoption of the District offer.

2. The Employer's final offer provides District teachers with increases in excess of those provided to other District employees and area employees, in both the public and private sectors.

3. The CPI favors the adoption of the Employer offer.

4. Total compensation is a significant factor, and when the expense of health and dental insurance benefits is considered along with salary, West Bend salaries generally exceed the average salaries within the comparable grouping.

5. The Employer offer retains the relative rank order position of West Bend teachers' salaries which have improved markedly since 1980 and 1981.

The Association argues:

1. That its salary proposal is the more appropriate by reason of the patterns of settlements among the comparables.

2. That the benchmark rankings support the Association offer.

3. That catchup is necessary.

4. That the interest and welfare of the public support the Association offer.

5. That local economic conditions favor the Association offer.

A review of all of the evidence satisfies the undersigned that the Association has failed to make a case for catchup in the instant matter. Furthermore, a review of all the evidence satisfies the undersigned that the criteria of interest and welfare of the public fails to support the position of either party to this dispute.

Given the conclusions in the foregoing paragraph, the undersigned will undertake to make an evaluation of the parties' offers in light of the other criteria. Turning first to the comparison of salaries in the instant bargaining unit compared with the salaries paid in comparable districts, the undersigned concludes that the Employer's offer in this matter is adequate. Employer Exhibits 33 through 43 establish the rates of pay and relative ranking of salaries for teachers in the instant district compared with those in the comparable districts. These exhibits establish that at the significant benchmarks, the relative ranking is essentially maintained with the final offer of the Employer in this dispute. For example, in the year 1985-86, at the BA base, the instant Employer among the comparables ranked 5th at the BA base, and if the Employer's offer is adopted here it will rank 5th for 1986-87, if the Employer offer is adopted in Germantown, and 6th if the Association offer is adopted in Germantown. Similarly, at the schedule max for 1985-86, the Employer ranked 8th at the schedule max among the comparables, and if the Employer offer is adopted here it will still rank 8th at the schedule max. It should be noted that in the foregoing analysis, the Districts of Beaver Dam, Oconomowoc and Slinger are not included in the rankings, since that data is not included in Employer Exhibit 43 with respect to those districts because they were not settled at the time of hearing. From the foregoing, then, the undersigned concludes the Employer offer is adequate and acceptable.

Similarly, the undersigned has reviewed the total compensation evidence, and concludes from the data contained within Employer Exhibit 49 that the total compensation criteria, when compared to the comparable school districts, favors the Employer offer. Notably, the undersigned is impressed with the fact that the instant school district pays the highest family premium for health insurance, which from the exhibit appears to be attributable to the fact that there is no front end deductible in the plan, as compared to nine other districts among the comparables who have front end deductibles.

The undersigned has reviewed all of the cost of living data as it pertains to this dispute, and there is no question that the adoption of the Employer final offer will exceed the increase in the cost of living percentage for the year 1986-87 and, consequently, the undersigned concludes that the Employer offer is preferred based on that criteria.

The undersigned has attempted to compare patterns of settlement. Patterns of settlement comparisons are difficult based on this record because the Employer does not include that data among its evidentiary presentation. While the Association data does include that information, the Association data includes the information for its proposed comparables and not for the comparables as they have been determined to be for the purposes of resolving this dispute. Nevertheless, the undersigned believes that patterns of settlement are a significant basis to consider in determining an interest arbitration matter. Association Exhibit 40 sets forth a comparison of patterns of settlement among its proposed comparables where settlements have taken place for the BA base. There are nine districts listed which have settlements for 1986-87 for the purposes of this comparison, however, only four of those districts are within the comparables as they are determined to be. Furthermore, one of those among the comparables, Port Washington, has a completely revised salary schedule, and the Association eliminates it from consideration for that reason, because the percentage increases are significantly distorted from the remainder of the pattern.

Consequently, the undersigned is able to find only three settled districts among the data presented for the purposes of determining patterns of settlement at the BA minimum. Association Exhibit 46 establishes the same type of information for the same school districts at the schedule maximum. Notwithstanding the limitations and the shortcomings of only a three district comparison, the undersigned will look to this data to see what comparable patterns of settlement appear to be emerging among the comparable school districts as set forth in Association Exhibits 40 and 46, BA minimum and schedule maximum.

The evidence establishes that with respect to the BA minimum, the Employer offer raises the BA minimum \$859, and the Association offer raises the BA minimum \$990. Employer offer constitutes a 5% increase at the BA minimum, and the Association offer constitutes a 5.76% increase at that point in the schedule. This compares with an increase at the BA minimum in Cedarburg of \$1062; Grafton of \$911; and Menomonee Falls of \$1095, for an average of \$1022.67. The percentage increases at the BA minimum are 6.46% in Cedarburg; 5.54% at Grafton, and 6.36% at Menomonee Falls. Compared to the final offers of the parties, it follows that the patterns of settlement among those three comparable school districts favor the Association offer in this matter.¹

When considering the schedule maximum, the Employer proposes a \$1701 increase at the schedule maximum, compared to an Association increase of \$1959. As a percentage, the Association percentage increase continues to equal 5.76% at that point of the schedule, and the Employer proposed increase continues to represent a 5% increase. The evidence establishes that among the three comparable settled districts, Cedarburg, Grafton and Menomonee Falls, Cedarburg has settled for a \$2236 increase

^{1/} The undersigned notes that the average of the three comparable districts dollar increase at the BA minimum of \$1022.67 compares very closely with the average of the nine districts proposed by the Association as comparables, which average \$1025 at the BA minimum when excluding New Berlin and Port Washington, who have a completely revised salary schedule.

at the maximum of the schedule; Grafton, \$2519, and Menomonee Falls, \$2190 for an average settlement of \$2315. The undersigned further notes that the percentage of settlement at Cedarburg at the schedule maximum is 6.47%; at Grafton, 7.34%, and at Menomonee Falls, 6.36%. From the foregoing, the patterns of settlement at the maximum of the salary schedule continue to favor the Association final offer in this matter.² Furthermore, Association Exhibit 13 and 14 establish the average increase per teacher among comparable districts, and reveal that among the five settled comparable districts of Cedarburg, Grafton, Hamilton, Menomonee Falls and Port Washington, the average returning teacher is paid \$2231.20 compared to the average pursuant to the Association final offer of \$2075 per returning teacher, and the average, pursuant to the Employer final offer, of \$1869 per returning teacher.³ From the foregoing, the patterns of settlements among the five comparable settled districts establish a preference for the Association final offer. The foregoing is buttressed if one were to include the final offers of the employers contained among the comparables in Association Exhibit 14. There, the evidence reveals that the employer offer at the following districts is: Germantown, \$1950; Hartford, \$1850; Oconomowoc, \$1777. If one were to include the final offers of the employer in those three districts, along with the four comparable settled districts, the average would calculate to \$2091.63, which approximates the average increase proposed by the Association here of \$2075, while the Employer final offer proposal of \$1869 for the average salary paid to a returning teacher is under that average.

The undersigned has considered all of the evidence that the Employer has adduced with respect to settlements among other units within its employ, and with the City of West Bend and Washington County. All of the evidence establishes that those settlements are closer as a percentage to the Employer final offer than they are to the Association final offer. Furthermore, the Employer has placed into evidence data which reveals that administrators have been paid an increase of 6% for the 1986-87 school year, exclusive of the District Administrator. The foregoing data, in the opinion of the undersigned, establishes a preference for the final offer of the Employer.

The Employer has further argued that the evidence supports a conclusion that the offer of the Employer will provide teachers with compensation that significantly exceeds compensation received by other area professionals in both public and private employment. The undersigned is unpersuaded that the Employer data supports such a conclusion. The evidence adduced at hearing with respect to the foregoing reduces the salaries to a monthly salary based on a 191 day teachers' contract vis a vis employment for 52 weeks of the year in the private sector, and other public professional employment. The undersigned is unpersuaded that it is equitable and proper to merely compare monthly salaries with a total disregard to annual income, and, consequently, finds the data unpersuasive to support the Employer offer in this matter.

The undersigned has found that certain of the comparisons favor the Association offer, and certain of the comparisons favor the Employer final offer. Because the Employer final offer maintains or improves the ranking among the comparables, the undersigned concludes that there is a preference established for the Employer offer in this matter.

2/ The undersigned notes here that the three settled comparable districts establish an increase on the average of \$2315 at the schedule maximum, compared to an average increase of the schedule maximum of the Association proposed comparables of \$2189, if Port Washington and New Berlin are excluded by reason of their completely revised salary schedules.

3/ The undersigned has included Hamilton Education Association final offer in this calculation because he has noted the award finding for the Association in that matter.

FLAT DOLLAR EXTRA DUTY PAY

In addition to the foregoing, there is a dispute with respect to the amount of increase to be placed on what the parties term "flat dollar amounts expressed in the Collective Bargaining Agreement". The Employer proposes 3%, the Association proposes an amount equal to the increase in the base salary. The undersigned has reviewed all of the evidence, and finds that neither party's evidence is persuasive in this matter. Furthermore, the issue of flat dollar compensation is not the type which will carry this award one way or the other. Consequently, the undersigned concludes that whichever party prevails on the issues of salary and salary schedule placement will carry its flat dollar compensation provision along with it.

SALARY SCHEDULE PLACEMENT

Finally, the undersigned considers the Employer proposal with respect to amending the placement language for teachers new to the District. The Employer proposes the following:

For all new-to-the District teachers, placement on the salary schedule shall be established by the Superintendent or designee after considering the needs of the District. When the applicant signs a contract, the applicant accepts this salary schedule placement.

At hearing, the District Administrator testified that there was at least one occasion where the Employer was unable to hire a teacher pursuant to the formula contained in the present Collective Bargaining Agreement. He also testified at several times in the past four years, particularly, in the music area, attraction of particularly desirable candidates has been jeopardized.

The evidence with respect to the comparables in the foregoing establishes the following:

- Oconomowoc - "For all new-to-the-system teachers, placement on the salary schedule shall be established by the Superintendent."
- Cedarburg - "In placement of teachers new to Cedarburg, full credit for experience gained in other school systems may be granted by the Superintendent."
- Menomonee Falls - "Employees new-to-the-system may be granted all or any fraction of their total outside-the-system teaching experience. The exact amount of experience to be granted is at the discretion of the Superintendent."
- Fredonia - "The Board may grant full credit for all years of successful teaching experience to teachers who are hired by the District."
- Waupun - Teachers are hired on a sliding scale based on years of experience not to exceed their "actual years of full-time teaching experience" with actual placement with these limits at the discretion of the Board of Administration.
- Grafton - "Upon entering the School District of Grafton the number of years credited experience will be determined by the Superintendent of Schools at the time the first contract is granted."
- Mequon-Thiensville - "Each new teacher will be placed in the experience step commensurate with actual experience except the Board in its discretion may place a teacher up to steps beyond actual experience step . . ."

- Kewaskum - "In those cases where properly qualified teachers cannot be obtained in a particular field at regular schedule salaries, the school board shall contract any bracket of the schedule or at salaries above the schedule."
- Hamilton - "The School Board will determine the teacher's place on the schedule in all cases."
- Hartford UHS - "At time of hire, the new teacher shall be advised in writing as to his or her original placement on the salary schedule and the credits beyond a B.A. or M.A. degree, if any, which the Board will recognize at the time of hire."
- Watertown - "In hiring teachers new to the system, the Board reserves the right to exceed the basic or regular increments called for in the Teacher Salary Schedules."
- Germantown - "Step location will be sequential and, in the discretion of the District Administrator, commensurate with the overall work experience of the teacher."
- Port Washington - "Outside experience credit evaluated by the Superintendent of Schools. This item is not subject to binding arbitration."

From the foregoing, the undersigned concludes the Employer has demonstrated language similar to and consistent with its proposal in nine of the comparable districts. In the remaining four districts, the language is closer to the existing language of the predecessor Agreement.

By reason of the weight of the comparables in this matter; and because the undersigned is satisfied that the Superintendent has established by his testimony a need for flexibility in certain limited cases; the undersigned concludes that the Employer need for its proposal is supported by the record.

The Association has expressed a concern for an abuse, arguing there is no limitation on the Employer's right to place a teacher anywhere that it deems, either over or under the historic salary placement. The Superintendent's testimony, along with the argument of the Employer in its brief, satisfies the undersigned that the "bargaining history", established by that testimony and argument, fleshes out the meaning and intent of the Employer so that it may not be permitted to place a teacher on the salary schedule at less than the number of credits that teacher would otherwise be entitled to under the former formula.

CONCLUSIONS

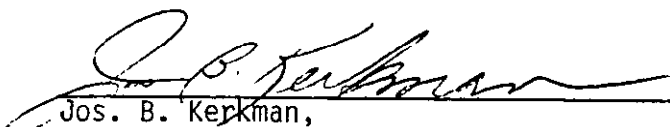
The undersigned has come to the conclusion that the Employer offer is very slightly favored as it pertains to the salary schedule; that the flat dollar compensation increase proposal of neither party is favored; and that the Employer has justified its proposal for flexibility in placement of new teachers on the salary schedule. From the foregoing, it follows that the final offer of the Employer should be adopted and, therefore, based on the record in its entirety, and the discussion set forth above, after considering the arguments of Counsel, and the statutory criteria found at 111.70 (4) (cm) 7, the Mediator-Arbitrator makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties, as well as the terms of the predecessor Collective Bargaining Agreement which re-

mained unchanged throughout the course of bargaining, are to be incorporated into the written Collective Bargaining Agreement of the parties.

Dated at Fond du Lac, Wisconsin, this 20th day of July, 1987.


Jos. B. Kerkman,
Mediator-Arbitrator

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