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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

PLYMOUTH EDUCATION ASSOCIATION

To Initiate Mediation-Arbitration
Between Said Petitioner and

PLYMOUTH JOINT SCHOOL DISTRICT

Case 29
No. 37475
MED/ARB-4028
Decision No. 24183-A

APPEARANCES.

Jon E Anderson, Esq on behalf of the District
Richard Terry on behalf of the Association

On January 26, 1987 the Wisconsin Employment Relations Commission appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70(4)(cm) 6b. of the Municipal Employment Relations Act in the dispute existing between the above named parties. Pursuant to statutory responsibilities the undersigned conducted a mediation session between the parties on March 31, 1987 which did not result in resolution of the dispute The matter was thereafter presented to the undersigned in an arbitration hearing conducted on the same date for final and binding determination. Post hearing briefs were filed by the parties which were exchanged by May 1, 1987. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

ISSUE:

Two issues are before the arbitrator. the appropriate salary schedule for the 1986-87 school year, and whether the contract should be modified to specifically allow the Association to file grievances.

With respect to wages, the District proposes maintaining the current salary structure and increasing the BA base to $16,580, and the Association also proposes maintaining the structure and increasing the BA base to $16,780

The Association's final offer represents a total package increase of somewhat in excess of 7% while the District's represents a total package increase

somewhat in excess of 6%. The Association's final offer, when measured in terms of dollars per FTE, yields a figure of $1802 (salary plus longevity) for a 7.53% increase, while the District's final offer yields $1507 per FTE, or a 6.3% increase.

The Association also proposes that the Association have the right to grieve under its own name

Both parties consider the Eastern Wisconsin Athletic Conference districts as primary comparables. In addition however, the Association proposes that the arbitrator consider other chronologically pertinent voluntary statewide settlements.

ASSOCIATION POSITION:

Ability to pay is not an issue in this proceeding. In fact, the record indicates that the District has a superior ability to pay relative to its comparables.

Relatedly, the District's per pupil costs for teachers' salaries and benefits are less than the statewide average and are next to last among athletic conference schools.

The average increase for the four settled athletic conference districts is $1844 or 7.6%. The statewide average increase is $2103, and the statewide average of districts of similar size (100-299) is $1998 These averages clearly support the reasonableness of the Association's offer.

The teachers in the District should not be required to accept a wage increase which places them farther and farther behind comparable districts. The Association proposal does little more than maintain the status quo level of spendable income, as compared to teachers in comparable districts

Also relevant is the fact that settlements in the athletic conference have come very near the time of this case.

The District has historically ranked near the midpoint among its comparaables at most salary benchmarks. The Distrct would fall far behind its historical ranking in this regard if the District's offer is selected.

The record simply does not support the District's assertion that economic conditions in the District support its offer herein.

The preponderant weight of arbitral authority clearly rests on the side of comparing teachers to teachers. Comparisons with other employees, both private and public, are not made unless there is insufficient data for making comparisons with teachers. Such is not the case here.

With respect to the issue pertaining to the Association's right to file a grievance under its own name, the majority of the comparables in the Athletic Conferent cede to the Union the independent right to grieve.

In this regard, while it is clear that arbitrators have a great reluctance to remove items from a contract to which parties have agree, it is not uncommon, however, for them 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. [1] Here, the net effect of the adoption of the Association's proposal is to move the Association into a "comparble position"

Furthermore, the Association has made a showing of an unworkable and inequitable situation in terms of the Association's right to grieve As a result of its status and responsibilities as exclusive bargaining representative and as co-party to the Agreement, the Association has a fundamental interest in, and entitlement to, independent access to the contractual grievance procedure. The Association, as the majority representative, has a basic interest in the proper and consistent enforcement of all of the terms of the contract which it has negotiated. The Association thus has both the right and duty to prevent the abrogation or delution of collectively bargained contract provisions by grieving the loss of "individual" benefits even in cases where the affected individual does not choose to grieve. Finally, the Association has a right to protect and enforce its own contractual rights and to maintain its own authority and credibility by being a party to any grievance resolution.

DISTRICT POSITION:

The Association's proposed comparables outside of the athlectic conference should be rejected by the arbitrator since the Association has failed to demonstrate that such districts meet any of the traditionally accepted criteria of comparability such as size, enrollment, equalized valuation, levy rate, school costs and state aids.

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[1] Citations omitted.

On the salary issue, due to the extensive revisions to salary schedules which have occurred in comparable districts, a traditional benchmark analysis is inappropriate. In this regard the record indicates that both Chilton and Kiel granted flat dollar amounts and no increment in 1986-87. Thus, employee placement on these comparable salary schedules is not concomitatnt with their experience within the district.

The record also indicates that there is a general surplus of employees in the area, and that moderation has been the watchword of area employers in regard to wage setting practices In fact, the Board's wage offer is more than reasonable when compared to area practices, and the Association's is unrealistic and unjustified. Because local economic conditions warrant moderation, the District's final offer should be selected.

Increases received by other local public sector employees also support the reasonableness of the District's salary offer. In this regard the District's offer exceeds the average wages only increase received by local public employees, while the Association offer greatly exceeds the same average.

The District's final offer is also more reasonable when compared with wage increases received by other District employees.

When compared to increases in the cost of living, the District's final offer is undeniably more reasonable than the Association's. In fact, the District's total package increase is more than three times the increase in the All-Urban Coinsumer Index. The Association's offer is more than three and one-half times the increase.

The Association's excessive wage demand is also not justified when the benefit package provided by the District is considered.

The District's offer is also more in accord with the interest and welfare of the public in light of current economic trends, which suggest moderation in regard to wage setting.

With respect to the Association's proposed change in the grievance procedure, the Association has failed to demonstrate a need for such a change. It is well established in arbitration law that the party proposing to change existing language in a contract must demonstrate a substantial need for modification. The Association pointed to but one grievance in support of its position. Clearly one grievance does not document a problem which satisfies the "compelling" need standard. Moreover, the Association's post-hearing submission of excerpts from grievance procedures in comparable

districts is not persuasive. Relatedly, the fact that other districts may have language which allows the Association to grieve does not create a "compelling" need.

The Association is not precluded from enforcing the terms of the Agreement. The Association is currently allowed to participate as a representative of a grievant. Such a right gives more than adequate enforcement authority

The Association has further failed to demonstrate that it is offering an equivalent "quid pro quo" for the proferred language.

Lastly, the Association's proposed language is much too broad to solve its alleged problem. The Association language would allow the Association to grieve in any case. It is not limited to those situations asserted by the Association in support of the need for change, i.e. situations where an individual is reluctant or refuses to grieve

DISCUSSION.

On the comparability issue, since a majority of the districts in the Athletic Conference have recently achieved settlements for the 1986-87 school year, the undersigned does not believe that it is necessary to consider other districts as comparables in this proceeding

Utilizing the salary settlements which have been implemented in said comparables, it is clear that the Association's salary proposal is substantially more comparable than the District's. While it is also clear that the District's salary proposal is more comparable with the wage settlements that have been reached with other public and private sector employees in the area, the undersigned is persuaded that the most significant weight must be given to other comparable district/teacher settlements to assure that the District's teachers will be compensated similarly to teachers similarly situated in comparable districts in the area.

Relatedly, though the record indicates that some are experiencing difficult economic times in the area, the record fails to demonstrate that the District is distinguishable from its comparables in that regard, or that the District is unable to keep up with its comparables because unique economic considerations In fact, in that regard, it would appear that the District is comparatively well off in its ability to support the District's educational programs.

Cost of living data in the record also supports the reasonableness of the District's salary proposal; however, where, as here, the record also demonstrates an established pattern of salary settlements in comparable districts, that pattern of settlements must be given greater weight than the cost of living data, which is frequently at variance with the level of teacher settlements in public education.

Based upon all of the foregoing considerations, it would appear that the Association salary proposal is clearly the more comparable and reasonable of the two at issue herein.

With respect to the grievance procedure issue, again it would appear that a majority of the comparable districts allow the teachers' associations to file grievances independent of affected employees. While it might reasonably be argued that Association grievances should be limited to the enforcement of Association contractual rights, it seems unreasonable to deny the Association any right to enforce contractual rights which accrue to its benefit thkrough the contracutal grievance procedure. Therefore, although the Association's proposal is somewhat broader than what might reasonably be called for, in view of the fact that a majority of the District's comparables afford teacher associations such rights, and in view of the unreasonableness of an absolute denial of the Association's right to enforce its own contractual rights through the grievance procedure, in the undersigned's opinion the Association's proposal on this issue is more reasonable than the District's.

Based upon all of the foregoing considerations, the undersigned concludes that the Association's total package final offer is more reasonable than the Districts, and based upon said conclusion, the undersigned hereby renders the following:

ARBITRATION AWARD

The Association's final offer shall be incorporated into the parties' 1986-87 collective bargaining agreement.

Dated this 12th day of May, 1987 at Madison, Wisconsin.

Byron Yaffe
Arbitrator