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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the matter of the Arbitration
of an Impasse Between

OOSTBURG SCHOOL DISTRICT

and

OOSTBURG EDUCATION ASSOCIATION

Decision No. 24228-A

Appearances:

Debra Schwoch-Swoboda, UniServ Director, for the Association

Mulcahy & Wherry, Attorneys-at-Law, by Jon E. Anderson, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected the undersigned Arbitrator, pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act (M.E.R.A.), to resolve an impasse existing between them over wages, hours and working conditions. (WERC Case 8, No. 37460, ARB-4023, Decision No. 24228).

A hearing was held in Oostburg, Wisconsin on April 27, 1987. No transcript was made. Final post-hearing briefs were exchanged on June 30, 1987.

This impasse arose under reopening provisions of the parties' 1985-1987 collective bargaining agreement. That agreement covers the bargaining unit consisting of all full-time and regular part-time employees engaged in teaching, including classroom teachers, guidance personnel, and librarians, but excluding administrators, coordinators, principals, supervisors, non-instructional personnel, office, clerical, maintenance and operating employees.

The only matter in dispute is the salary schedule for said unit for the 1986-1987 school year. Briefly, the Employer offers to maintain the 1985-1986

schedule structure and increase the BA based to $16,835.00. The Association offer also maintains the structure, but increase that base to $17,217.00.

The undersigned arbitrator has analyzed these offers and the record as a whole in terms of the "factors", or criteria, for such determinations provided at Section 111.70(4)(cm)7 of the M.E.R.A.

Among these factors is comparison to the wages, hours and conditions of employment of similar employees elsewhere. The Employer contends that such comparison should focus upon the Central Lakeshore Athletic Conference of which it is a member. This conference also includes the Cedar Grove, Elkhart Lake-Glenbeulah, Howards Grove, Kohler, Fredonia and Random Lake school districts.

The Association, on the other hand, urges that the appropriate districts for comparison are primarily the athletic conference members, and secondarily: the Sheboygan, Sheboygan Falls, Plymouth, Port Washington, and Kewaskum districts.

On June 8, 1985, Arbitrator Steven Briggs determined an impasse between these parties under the M.E.R.A. In that case as well the sole impasse item was salary and the Arbitrator was required to consider conflicting contentions respecting the appropriate universe of comparisons among other school districts. Arbitrator Briggs selected the Employer's athletic conference as the "primary comparables pool", and explained the basis of that judgment thoroughly. His award applied to the 1984-1985 school year, (Case VI, No. 33400, MED/ARB-2772, Dec. No. 22048).

In the instant case then, the parties are arguing for at least the second time regarding this aspect of comparability. Their contentions are complex, subtle and extensive. They cite arbitral authority and many abstract principles. The undersigned truly appreciates the intellectual quality of

this argumentation. Still, amongst the most compelling reasoning is that of Arbitrator Briggs, who stated:

> . . . municipal employers and unions use several guidelines to formulate their suggested comparable groups. And those guidelines seem to change on a case-by-case basis, depending upon whether they support the position of one party or the other. That is, selection of guidelines to be used in formulating the suggested comparables pool is generally used as a strategy in the interest arbitration process. Comparables selection by advocates is self-serving."

The undersigned would also recognize this pragmatic behavior. It seems likely that many municipal employer and union advocates develop their proposals first and their comparables second. Therefore, it would be naive -- presumably a fault in an Arbitrator -- to examine a proposed universe of comparables as though it was first formulated and then generated a party's offer.

Athletic conferences are very often used by parties and arbitrators for such comparisons. They have the virtue of conventionality. But they were not formulated for this purpose so they can be criticized as well, and soundly. Still, coincidentally they often include districts which are geographically proximate and share various attributes such as size and economic characteristics. (Perhaps this is why they became a conventional grouping for such comparisons).

In this case the conference does not seem to have any serious defect that should preclude its serving as the Employer contends; whereas the additions proposed by the Association, although sensible, seem more questionable. That

is, unlike the conference which is readily identifiable, the Association's preferred grouping seems more clearly assembled for the purposes of advocacy. It is not apparent, for example, what principles underlying the Association's selections would militate against including still more nearby districts.

Assuming a bargaining unit membership of 49.08 "F.T.E.'s", the Employer is offering a salary increase of 5.25%, which provides an average increase per teacher of $1,375.00, and a cost increase of $67,488.00 The Association's offer is a 7.64% increase, yielding an average of $2,000.00 per teacher, and costing $98,171.00.

At the time of the hearing four conference districts were settled, and prior to closing the record herein one more settled pursuant to an Arbitrator's Award. Thus, the Arbitrator attempted to compare the above data, as well as others, to those of the settled conference members, but with the disadvantage of exhibits which did not reflect one settlement and/or added other districts from outside the conference.

Indeed, it should be noted that the record in this case includes 109 pages of Association briefs, 37 pages of Employer briefs, 25 Employer exhibits, and approximately 200 Association exhibits, many of which are several pages in length.

Despite normal inclinations and practices to the contrary, it does not seem useful to specify all of this evidence or respond explicitly to the dozens of ingenious and often ornate arguments based upon it. Rather, the undersigned would focus upon that which was given the most weight in this determination. Mainly, that was the above-quoted increases generated by the respective offers, and how they would affect the comparability of the Employer within the conference.

It is found that the Employer's offer would cause a material deterioration of the relative position of the unit's compensation within the conference. Recognizing that the non-salary compensation of this unit is comparatively generous, it is still the case that this offer would cause certain "benchmark" salary levels to fall in rank among the conference districts. Further, it provides an average teacher increase $610.00 below that of the other settled conference districts, whereas the Association's offer generates a $15.00 higher-than-average per teacher increase. Thirdly, the Employer's offer of a 5.25% salary increase compares unfavorably to the conference average of 7.85%. On the other hand, the Association's offer of a 7.64% salary increase is not excessive on this scale.

The Arbitrator does not agree with many of the Association's arguments. For example, it does not seem proven that increasing teacher wages in this district in particular will cause an improvement in the education of students; or that popular opinion, such as might be determinative in this district, favors such increases. Neither, have all of the Employer's contentions been rejected. The Arbitrator appreciates that the Employer's offer compares well to settlements with other District employees and nearby municipal employees, and maintains the unit's position relative to the "cost of living". Further, operating the District in an economical manner wherever practicable is certainly an appropriate value.

Nevertheless, where there is no employer contention of economic strictures (indeed, there is evidence that the District is relatively strong in this respect), and no specific ground for reducing relative compensation levels as described above, such a reduction seems unjustified.

AWARD

On the basis of the foregoing, and the record as a whole, it is the decision and award of the undersigned Arbitrator that the final offer of the Association should be, and hereby is, adopted.

Signed at Madison, Wisconsin this 10th day of August, 1987.

Howard S. Bellman

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Arbitrator