

SEP 11 1987

EDWARD B. KRINSKY, MEDIATOR-ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Mediation-Arbitration	:	
Between	:	
	:	Case 28
ONDOSSAGON SCHOOL DISTRICT	:	No. 37838
	:	MED/ARB-4137
and	:	Decision No. 24348-A
	:	
ONDOSSAGON EDUCATION ASSOCIATION	:	
	:	

Appearances:

Mulcahy & Wherry, Attorneys at Law, by Ms. Kathryn J. Prens, for the District.
 Chequamegon United Teachers, by Mr. Barry Delaney, Executive Director, for the Association.

On April 13, 1987, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator in the above-captioned dispute. Mediation was attempted on June 26, 1987, at the District's offices. The parties were unable to resolve their differences, and at the close of mediation an arbitration hearing was conducted. No transcript of the proceedings was made. At the hearing both parties had the opportunity to present evidence, testimony and arguments. The record was completed on August 25, 1987, with the exchange by the arbitrator of the parties' reply briefs.

There are four issues in dispute in this case: salary increase per cell of the salary schedule; personal leave language; salary increase for school psychologist; index for determining pay of Cheerleading coach. The parties' final offers are appended to this AWARD.

In reaching his decision the arbitrator is required by statute to "give weight to (certain) factors." In this matter there is no dispute with respect to the following factors: (a) lawful authority of the employer; (b) stipulations of the parties; (c) insofar as this factor deals with "the financial ability of the unit of government to meet the costs of any proposed settlement"; (g) changes in circumstances during the pendency of the arbitration proceedings. The parties' final offers, therefore, will be analyzed using the remaining criteria.

Salary Issue

Interests and Welfare of the Public

Factor (c) requires the arbitrator to consider the interests and welfare of the public. The District views its offer as more reasonable when this factor is considered. It characterizes its offer of a 7.5% total package as balancing the needs of the students, taxpayers and employees by providing a reasonable salary increase without compounding the financial burden on taxpayers. It contrasts this with the Association's 7.86% package. (The Association's calculations are that the District's offer is 7.3% and its offer is 7.7%.)

In particular the District emphasizes that the District is in a dairy based farm economy and has the highest percentage (9.3%) of rural population engaged in farming of the comparable school districts.

The District notes that Bayfield County, in which the District is located, has the highest percentage of population in "farming, forestry, and related products" of the other Counties in which the comparable districts are located. It also has the highest per capita tax levy and had the greatest increase in per capita tax levy in 1986-87. It also has the highest percentage of delinquent taxes. Bayfield County also has the highest percentage of gross receipts from farm sales from dairy, and the District emphasizes the sharp drop that has occurred in milk prices, and in other farm commodities.

The Association argues that the District's tax levy is lower in 1986-87 than it was in 1984-85. Moreover, it argues, the parties agree that implementation of either of their final offers will not affect the 1986-87 tax levy.

The Association notes that there are three other settled Conference districts located in Bayfield County and their taxpayers are subject to the same economic forces as taxpayers of the District. In the Association's view, the District is not significantly different from the other three districts in the County so as to merit special consideration when weighing interests and welfare of the public.

The economic position of Bayfield County ranks as follows in relationship to the other four area counties in the Conference (Ashland, Douglas, Iron and Price). Bayfield ranks:

- 4th in median family income
- 3rd in per capita income
- 3rd in 1986 average unemployment rate

- 1st in long-term debt 1/
- 1st in equalized value per capita
- 1st in debt per capita 1/
- 2nd in 1985 per capita tax levy
- 4th in 1985 property tax rate
- 3rd in 1986 and 1987 property tax levies
- 1st in % change in 1986-1987 property tax levy
- 2nd in 1984 and 1985 tax delinquencies
- 1st in increase in 1984-1985 tax delinquencies

Certain additional economic data is broken down by school district. The following data are for the four districts (Ondossagon, Bayfield, South Shore and Drummond) within Bayfield County.

	Ondossagon	Bayfield	South Shore	Drummond
Full Value Tax Rate	14.23	11.00	18.32	11.38
Equalized Value Per Member	132,944	104,423	138,171	404,823
School Cost Per Pupil	3,658.05	2,873.76	4,291.56	4,607.36
State Aid Per Pupil	1,766.26	1,724.95	1,759.38	None
% Population Below Poverty	11.6	11.1	13.8	14.8
% Population in Agriculture/Forestry	13.8	11.5	15.9	7.7
% of Rural Population in Farming	9.3	4.4	6.1	2.4

The arbitrator recognizes that the District has a higher percentage of its population in farming than do the other districts, and that dairy farmers have serious economic problems. Nonetheless, it is the arbitrator's opinion that the economic data do not demonstrate that the taxpayers of the District are significantly worse off than those in comparable districts in the County or the Conference. There is also no indication that the position of the District's taxpayers will be significantly better if the District's offer is selected over the Association's, or significantly

1/ Data not presented for Price County.

worse if the Association's offer is selected. The difference between the final offers is not large (about a third of a percent in package costs, or less than \$5,000).

The arbitrator is not persuaded that the interests and welfare of the public can be shown to be served better by one offer more than the other. There is an interest in keeping the tax burden low, as the District argues, but there is also an interest in paying teachers' salaries competitive with teachers in comparable districts in order to continue to attract and retain quality teachers.

Salary Comparisons

Factor (d) requires consideration of "comparisons of wages, hours and conditions of employment . . . with (those) of other employees performing similar services . . ."

Both parties agree that the districts in the Indianhead Conference constitute a suitable group of comparable districts. The Conference consists of: Bayfield, Butternut, Drummond, Glidden, Hurley, Mellen, Mercer, Solon Springs, South Shore and Washburn.

The District argues that for the purpose of this arbitration Hurley should not be included because it is in the midst of a three-year agreement that was negotiated prior to Hurley's entrance into the Conference. The arbitrator agrees. 2/

At the time of the arbitration hearing Washburn was not yet settled for 1986-87. For purposes of consistent comparison between 1986-87 and prior years, the arbitrator has excluded Washburn from the comparisons, also.

The District argues that less weight should be accorded to Mercer because in 1986-87 Mercer was in the second year of a two-year agreement. Unlike Hurley, Mercer has been a part of the Conference. There is no showing that economic conditions were markedly different when the Mercer agreement was negotiated than those which exist at the present time, or that there was anything extraordinary about the Mercer settlement. The arbitrator has included Mercer in the comparisons.

2/ The arbitrator notes the Union's arguments in its reply brief that Arbitrators Rice and Imes have included Hurley in comparisons with other Conference districts. Those decisions notwithstanding, the arbitrator believes that the District's arguments are persuasive that Hurley should not be used in Conference comparisons for this dispute.

Thus, the arbitrator will use the Indianhead Conference, excluding Hurley and Washburn, for comparisons with other school districts.

Comparisons with Other School Districts

For 1986-87 the District offers an increase of 6.0% per cell of the salary schedule; the Association's offer is 6.4%. The following increases have been agreed to in the comparison districts:

Bayfield	6.5%*
Butternut	6.0
Drummond	6.5
Glidden	6.0 *
Mellen	6.8
Mercer	6.5
Solon Springs	6.3
South Shore	6.0

* per an arbitrator's decision

The average increase is 6.3%. The median increase is 6.4%. By either measure the Association's 6.4% offer is closer to the increase given by the comparable districts than is the District's offer.

The parties provided data for these districts at each of five benchmarks on the salary structure: BA-min; BA-max; MA-min; MA-max and Schedule-max.

These data show the following for 1986-87 and 1985-86:

	1986-87	1985-86
<u>BA-min</u>		
Conference median	16,246.50	15,279
Board Offer in Relation to Median	(-224.50)	(-164)
Association Offer in Relation to Median	(-164.50)	
Rank of Ondossagon	6 of 9	6 of 9

	1986-87	1985-86
<u>BA-Max</u>		
Conference median	24,129	22,659.50
Board Offer	(+319)	(+405)
Association Offer	(+412)	
Rank of Ondossagon	2 of 9	2 of 9
<u>MA-Min</u>		
Conference median	17,771.50	16,668.50
Board Offer	(-307.50)	(-193.50)
Association Offer	(-242.50)	
Rank of Ondossagon	7 of 9	7 of 9
<u>MA-Max</u>		
Conference median	26,829.50	25,089.50
Board Offer	(+2,132.50)	(+2,232.50)
Association Offer	(+2,242)	
Rank of Ondossagon	1 of 9	1 of 9
<u>Schedule-Max</u>		
Conference median	27,760	27,535
Board Offer	(+2,380)	(+2,469.50)
Association Offer	(+2,494)	
Rank of Ondossagon	1 of 9	1 of 9

The benchmark data show that neither offer alters the District's relative ranking at any of the benchmarks; thus, neither offer is favored based on that measure. In relationship to the Conference median, the Association's offer maintains the relationship of the District to the Conference median that existed in 1985-86 to a greater degree in 1986-87 than does the Board's offer.

The difference between the parties' salary offers is not large whether measured in percentage or dollar terms. The above analysis has shown, however, that the Association's offer is closer to the salary offers of the comparable districts than is the Board's offer.

Factor (d) also requires that the arbitrator give weight to comparisons with ". . . other employees generally in public employment in the same communities and in private employment in the same community and comparable communities."

The District introduced wage data showing that its non-teaching support employees received 1986-87 wage increases of 5.2% (custodians, secretaries, food service, aides) and 5.0% (bus drivers). These employees are represented by the Association in a separate bargaining unit.

The Association argues that it is common for teachers to get greater percentage increases than support staffs get, and it notes that this is true also in the other Conference districts which are located in Bayfield County. Bayfield support staff got a 5.3% increase; Drummond 5.5%; South Shore 6.0% (aides, secretaries, cooks) and 6.7% (custodians). (A District exhibit shows the rates for South Shore to be 6% for cooks and aides; 6.2% for secretaries; 6.8% for custodians and 2% for bus drivers.)

The District introduced data showing that Bayfield County courthouse and law enforcement units received 3% wage increases in 1987. City of Washburn employees received a 1986 wage increase of 4% plus an additional 1% retirement increase. A private employer in the area, Bayfield County Memorial Hospital, gave its employees a 3% increase in 1986. 3/

The public and private sector increases cited by the District favor the District's final offer. However, as the Association notes, these settlements have not resulted in lower salary settlements for teachers in the other school districts located in Bayfield County: Bayfield (6.5%), Drummond (6.5%) and South Shore (6.0%).

3/ The District also presented some data for salaries given to other professional occupations in Wisconsin. Among other reasons that the arbitrator does not view this information as useful is that neither the annual increases for these professions are shown nor the historical relationship between salaries in these occupations and teaching.

The arbitrator is of the opinion that the salary comparisons with other area teachers are entitled to greater weight than the comparisons with non-teaching public and private employees where, as here, there is no showing that the teachers' increases have historically been of the same or similar magnitude as increases paid to the non-teaching employees.

Consumer Price Index

Factor (e) is the "cost of living." The cost-of-living data for August 1985-86, the year preceding the term of the contract in dispute here, indicates that the annual August-August increase in the U.S. City Average for Urban Wage Earners and Clerical Workers was 1.2%. The average for the same period for the U.S. City All Urban Consumers was 1.6%. While obviously these measures do not fit precisely the economy of the Ondossagon School District, they are an indicator that the cost of living in the economy rose at a magnitude of less than 2%.

In this dispute the parties' salary offers are both at or above 6% and the total package offers are above 7%, both offers being far in excess of the increase in cost of living. Since the District's offer is the lower of the two, and hence closer to the increase in the cost-of-living index, the District's offer is preferred in relation to the cost-of-living criterion.

Total Compensation

Factor (f) is "the overall compensation presently received by the employees . . ."

	District Total Cost Data	Association Total Cost Data
	1986-87	1986-87
Bayfield	7.67	8.2
Drummond	7.50	8.6
Mellen	7.28	7.9
Mercer	7.47	8.2
Board	7.5	7.3
Association	7.86	7.7
Median of four other Conference Schools	7.485	8.2

As the above table indicates, the parties have presented total cost data for only four of the eight settled Conference districts. Moreover, their data for these districts conflict, and the arbitrator does not have a basis for reconciling them or determining which party's data is correct. The data presented by each party supports a conclusion that its final offer is more reasonable than the other when total compensation is taken into account.

The arbitrator makes no judgment concerning which offer is favored by total cost data since he is not confident about judgments based on incomplete and conflicting data.

Personal Leave Language Issue

This issue is analyzed below utilizing factors (d) (comparisons) and (h) ("factors . . . which are normally or traditionally taken into consideration in the determination of . . . conditions of employment . . .").

Both parties proposed changes in the personal leave language. The District proposed that there be notice requirements. The Association's offer provides notice requirements. The wording of its proposal is slightly different from the District's in that the District's calls for 48 hour notice "except in cases of emergency" and the Association's is in terms of "when it is not possible" and goes on to say that notice shall be given "within a reasonable time determined by the circumstance."

In the arbitrator's opinion there is very little substantive difference between these proposals so far as notice is concerned, certainly not enough for him to choose which one is preferable. The significant issue which divides the parties is the District's proposal that "personal leave days cannot be used for vacation or recreation." The Association's proposal is silent with respect to vacation and recreation.

The District presented testimony on this issue. Former Board member Anderson testified that originally, in the early 1960s the personal leave provision was agreed to at the initiative of the Association because teachers needed the time off to conduct business that could only be done during the work day; for example, legal and some family matters. It wasn't for the purpose of vacation or recreation. Originally, the Agreement contained a list of items for which leave could be taken. At some point between 1969 and 1985, while Anderson was off the Board, the list of acceptable reasons was deleted from the Agreement. Since 1985, he testified, the Board has raised the issue of vacations and recreation in negotiations in hopes of resolving it voluntarily, but the matter remains unresolved.

Schmidt has been the high school principal and a member of the District's negotiating team for more than twenty years. He corroborated Anderson's testimony. In addition he testified that the list of acceptable reasons for personal leave was deleted in about 1979-80. In those negotiations the Association wanted a larger number of personal leave days and also wanted to have them without giving reasons for taking them, the idea being that it was the teacher's business, not the administration's. In mediation, according to Schmidt, the parties agreed to allow personal leave days without the necessity of giving reasons. In the discussions which led to the agreement there was no mention of vacations or recreation in connection with personal leave days. The language has remained unchanged since that time, but since approximately 1981-82 the District has proposed that reasons be given because, in its view, there have been abuses occurring.

District Administrator Wallschlaeger provided data that showed:

	1983-84	1985-86	1986-87
% of personal days used	75%	65%	63%
Of days used, % before/after vacation	28	24	13
Of days used, % on Monday or Friday	40	48	60

The Support Staff Agreement, which is for a different bargaining unit of District employees which is represented by the Association, contains language stating, "Personal leave days cannot be used for vacation or recreation."

The District presented language from other Conference agreements which show restrictions on use of personal leave:

Bayfield: "before or after a holiday or student vacation."

Butternut: "before or after holidays."

Glidden: "during the first two weeks or the last two weeks of school nor two (2) days immediately before or after a holiday without approval of the District Administrator."

Solon Springs: "The district administrator may also deny a request for personal leave on a day before any holiday or vacation period or on a scheduled inservice day."

Washburn: "Personal leave for purposes of recreation, . . . and on days immediately before any holiday or vacation periods shall be denied . . ."

The District's figures indicate that the trend is downward for use of personal days. In the current year 63% of such days were used, whereas two years ago the figure was 75%. The same downward trend is evident for use of personal days before or after vacation periods, 13% now as compared with 28% two years ago. The upward trend is evident with respect to use of personal days on Mondays and Fridays. However, there is no evidence which supports the District's intended inference that Monday and Friday use is in connection with vacation or recreation. It may be the case that this is occurring, but there is no proof of that.

A majority of other schools in the Conference have restrictive language such as the District wants with regard to vacations, but only one, Washburn, makes reference to recreation. The Support Staff Agreement in the District has the precise language that the District wants.

The arbitrator is impressed by the fact that the parties had restrictions in their Agreement at one time and then voluntarily deleted those restrictions in collective bargaining. Having bargained them in and then out again, the arbitrator believes that if the parties want to reintroduce restrictions they should do it through bargaining and not through an arbitrator's award. This is particularly the case where the usage trend in conjunction with vacations is down and thus the evidence of a problem of abuse is not persuasive, and where only one of the comparable districts has the specific prohibition on use in connection with recreation that the District is seeking.

In supporting the Association's position on this issue the arbitrator is not supporting or urging the use of personal leave days in connection with vacations or recreation. He believes District witnesses when they say that use of personal leave days was never intended to enable teachers to use time off for vacation and recreation. The arbitrator assumes that the parties will, or will continue to, discourage teachers from using personal leave days for other than legitimate purposes which cannot be accomplished during the regular school day. If teachers increase the

degree to which they appear to be using personal leave in conjunction with vacations and recreation they will provide the District with the evidence which might enable the District to achieve restrictive language in the future.

School Psychologist Issue

The parties' offers result in a dollar difference of \$104 for the 1986-87 salary for the school psychologist. Only salary data for pay for two other Conference school psychologists hired by these districts is presented, and the parties' offers both would result in a second place ranking. In addition, the offers are higher than the salary paid to the CESA school psychologist who services three Conference schools, and lower than that paid to the CESA supervisory school psychologist who services three other Conference schools.

The District offer is an increase of 9.82%; the Association's is 10.25%. The only salary increase data presented which does not involve a supervisory psychologist is the 6.5% increase in Drummond and the 10.9% increase to the CESA psychologist in Mellen and Mercer. These data are not a sufficient basis for determining which offer is preferable. Moreover, the parties' differences over this one position are so slight as to not be determinative of the outcome of this case.

Cheerleading Issue

Both parties have offered to raise the index for determining the pay of the Cheerleading coach. The previous index was 1.5% of the BA base. The District offer is 2.0; the Association's is 2.25. Data presented by the District shows that the median increase for Cheerleading in the Conference is 6%. The actual pay for these positions is not indicated.

The District argues that its offer to raise the pay for Cheerleader is a 40% increase, much higher than the Conference average increase, and much more justified than the Association's proposed 60% increase. The District acknowledges that its rate for Cheerleading is not in the top half of the Conference.

It would appear that the District's offer takes a large step to improve the relative position of its Cheerleading position in the Conference, and a 40% increase may be preferable at this time to the larger increase offered by the Association. However, the information provided is not sufficient for making that judgment and, in any event, the parties' differences over this issue will not be determinative of the dispute since the differences are very small when compared to the salary and personal leave issues.

Conclusion

The arbitrator is required to select one final offer or the other in its entirety. On the salary issue the arbitrator gives greater weight to the salary comparisons with other teachers in other comparable districts than to the comparisons with non-teachers in area municipal and private employment. While the District's offer is favored with respect to cost of living, the arbitrator gives greater weight to the comparison settlements which were subject to the same changes in the cost of living and which favor the Association.

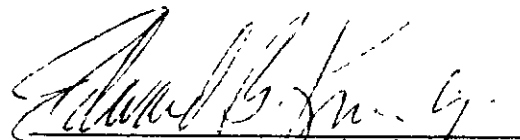
With respect to the other major issue, personal leave language, the arbitrator favors the Association's position.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The Association's final offer is selected.

Dated at Madison, Wisconsin, this 8th day of September, 1987.


Edward B. Krinsky
Mediator-Arbitrator

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ONDOSAGON EDUCATION ASSOCIATION
FINAL OFFER FOR A
1986-87 COLLECTIVE BARGAINING AGREEMENT

1 Except as set forth in the stipulations executed by the parties, or in this final offer, the terms of the 1985-86 contract shall become the terms of the 1986-87 contract.

2. Wage Rates

Increase the wage rates in each of the following contract provisions by 6.4%:

- a. Article III(6)
- b. Article XIV
- c. Addendum A (each cell)
- d. Addendum B
- e. Addendum C
- f. Addendum I.

3. Addendum H

Increase the 1985-86 wage rate for school psychologist the same percentage as the 1986-87 MA+24 (step 5) is above the 1985-86 MA+24 (step 4). This formula changes the wage rate from "\$24,767.86" to "\$27,303.62".

4. Addendum B

Change cheerleading from "1.50" to "2.25".

5. Article VII - Sick Leave and Leaves of Absence

Add the following sentence to Section 6:

"Advance notice of at least forty-eight (48) hours shall be given by the employee to the Administration except in such cases where such notification is not possible. When it is not possible for an employee to give the Administration forty-eight (48) hours advance notice, the employee shall give notice within a reasonable time determined by the circumstance."

2/26/87
BJ

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DISTRICT

FINAL OFFER OF THE ONDOSSAGON SCHOOL DISTRICT
FOR A 1986-87 CONTRACT

MAR 03 1987
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

1. Article VII - Sick Leave and Leave of Absence

Amend Section 6 to read:

A bargaining unit employee may be allowed to take two (2) days personal leave per year at the discretion of the employee. Personal leave days may not be used on parent/teacher conference days except for emergencies, and personal leave days cannot be used for vacation or recreation. Advance notice of at least forty-eight (48) hours shall be given by the employee to the administration except in cases of emergency when such advance notice is not possible.

2. Wage Rates:

Increase the wage rates in each of the following contract provisions by 6.00%:

- a. Article III(6)
- b. Article XIV
- c. Addendum A (each cell)
- d. Addendum B
- e. Addendum C
- f. Addendum I

3. Addendum H:

Increase the 1985-86 wage rate for the school psychologist by the same percentage as the 1986-87 MA+24 (Step 5) is above the 1985-86 MA+24 (Step 4). This formula increases the wage rate to \$27,200.06 for 1986-87.

4. Addendum B:

Increase the salary index for cheerleading to 2.00.

Dated this 26th day of February, 1987.

ON BEHALF OF THE ONDOSSAGON
SCHOOL DISTRICT

By Kathryn J. Prenn
Kathryn J. Prenn