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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration

between

Northwest United Educators

-and-

The Frederic School District
Frederic, Wisconsin

OPINION AND AWARD

Interest Arbitration

WERC Case No. 37716

MED/ARB - 4093

Decision No. 24364-A

J.C. Fogelberg,
Mediator/Arbitrator

Representation -

For the Union:

Timothy A. Schultz, Executive Director

For the District:

Steven Holzhausen, WASB

Preliminary Statement -

The Frederic School District, situated in the northwest portion of the state and Northwest United Educators, representing the teachers in the District, exchanged initial proposals covering provisions to be included in their new collective bargaining agreement on July 31st and again on September 25th, 1986. Subsequently, through negotiations, agreements were reached concerning a number of items. However two issues remained at impasse and consequently in October of 1986 the NUE filed a petition with the Wisconsin Employment Relations Commission requesting

them to initiate mediation- arbitration pursuant to Section 111.70(4)(cm)6 of the Employment Relations Act. Thereafter, James W. Engmann, member of the Commission's staff, conducted an investigation and in his report dated March 5, 1987 concluded that the parties were at impasse regarding the issues of salary schedule and personal leave. As a consequence, the parties submitted their final certified offers to the WERC and on March 27, 1987 the undersigned was notified that he had been selected to serve as the mediator/arbitrator.

On June 4th the Neutral met with the Union and the District whereupon efforts were undertaken to achieve a voluntary settlement through mediation. When it became apparent that the matter was not going to be settled in this manner, the parties agreed to move directly to arbitration on that same date. At the hearing, evidence was received and testimony taken relative to the outstanding issues. At the conclusion of the proceedings the parties indicated a preference for filing post-hearing briefs as well as reply briefs within a set time frame following receipt of the initial written summations. The original briefs were received by the Arbitrator on or before July 17, 1987. Thereafter, additional correspondence was submitted and the hearing deemed officially closed on July 28th.

The Issues -

The following issues remain at impasse between the parties as certified by the Commission:

- 1) Salary increases for the school year 1986-87.
- 2) Personal leave language.

Position of the Parties -

ASSOCIATION'S POSITION: For the term of the 1986-87 contract, the teachers seek an increase in wages of 6.25% for each cell on the existing salary schedule. In addition, the NUE proposes that the newly negotiated "personal leave" language in Section G of Article VIII not include wording which would deduct such leave from the emergency leave bank provided in the same article. The specific structure of the salary schedule as proposed by the NUE and the salary allotted for each cell on the grid is set forth in detail in Appendix A, attached.

BOARD'S POSITION: Conversely, the School Board has offered a 4.3% salary increase at each cell on the schedule, and a total package improvement of 5% for 1986-87. In addition, the District has proposed the following condition to be included in the new personal leave language of Article VIII: "Personal leave shall be deducted from emergency leave." Like the Association's, the Employer's final salary proposal is more fully set forth in Appendix B, attached.

Analysis of the Evidence -

Arriving at the decision that has been made here, the Arbitrator has given careful consideration to the criteria enumerated in Section 111.70(4)(cm) of the Wisconsin Statutes, as they relate to the documents, testimony and written arguments submitted by the parties.

While two issues remain at impasse, it is abundantly clear from even the most casual examination of the record that the principle dispute centers upon the salary adjustments to be allotted to the teachers in the 1986-87 school year. Moreover, a clear scrutiny of the arguments and supportive data submitted demonstrates that each side has formulated separate and quite distinct approaches to this issue. The teachers rely principally upon the comparability criterion enumerated in the statute, presenting exhibits which they believe establish the reasonableness of their final offer. Conversely, the Board maintains that historically the parties have measured the strength of their respective positions by comparing them to other schools in the Upper St. Croix Valley conference (USCV). This year however, only one other district had settled upon a 1986-87 salary when the parties went to arbitration. That school however (Webster), is the only one in the conference that uses a compensatory format based upon a merit pay system. Its relevance therefore, is limited. Indeed the parties indicated at the hearing that

Webster is not "comparable." Thus absent any discernible "trend" among the remaining conference schools, the Board asserts that there are no districts which can be utilized in this proceeding for comparability purposes. Rather, Employer would emphasize wage settlements found in the private sector, and the remaining criteria set forth in Section 111.70 when analyzing the final positions of the parties.

The approach and the documentation submitted by each side evidences a significant disparity. Quite apart from their reliance upon different criteria, there is over \$1,000 per teacher separating the two final positions. It is equally clear that the Association has chosen to support their argument primarily by comparing Frederic to other school settlements in the surrounding geographic region, excluding the athletic conference. If accepted as a valid comparison, their position is enhanced significantly as the exhibits they have submitted aptly demonstrate the similarities between the settlements reported and their final offer. The District does not choose to challenge this resemblance, as much as the appropriateness of it. The arguments then, center initially (and principally) upon theory more than figures.¹ In their written summaries

¹In their reply brief, the Employer begins by noting, "a major issue in this dispute is what, if any, weight should be afforded to the teacher-to-teacher comparability criterion in the statute."

both sides devoted considerable energies to this issue. The Employer claims that without adequate data from other schools in the conference concerning 1986-87 salary settlements, there is no valid district-to-district comparability which can be used. This position, of course, is disputed by the NUE who counter that absent comparability evidenced from within the USCV conference, it is most reasonable and appropriate to look beyond to other districts of similar size and geographic proximity to obtain meaningful comparisons. In turn, each party cites the decisions of other arbitrators who have participated in the Wisconsin impasse process and who have, in the past, supported the respective approaches taken here. Following a careful examination of these positions, the Arbitrator finds that it would be inappropriate to summarily dismiss the teacher comparability data submitted by one side simply because there is no discernible settlement pattern available from within the school's athletic conference. Ordinarily it is true that parties involved in an impasse dispute in Wisconsin have historically looked to other districts' wage settlements in their own conference first in order to ascertain the reasonableness of their respective final offers. The logic in doing so is readily apparent. Normally these schools are grouped together within the same conference because they share common traits such as

size, and geographic location. At the same time however, a third party examining the relative merits of an interest dispute would be ill-advised to ignore all together this very significant statutory criterion simply because there is a dearth of current settlements within the conference. This arbitrator shares the opinion of others who have previously held that the teaching profession, its function, its duties and its responsibilities as well as its funding, make it somewhat unique. Just as in other impasse matters involving law enforcement or health care, for example, the Neutral finds that the commonality within these professions make it most desirable to test the reasonableness of each side's final position against other compensatory schedules of employees charged with similar duties, who utilize similar costing methods, and who rely upon similar funding procedures. If this approach finds little relevant data when looking first to the athletic conference in which that school is a member (in matters involving conflicts between teachers and school boards), then it is not unreasonable to go beyond the boundaries of that conference when circumstances dictate. The District in the instant dispute has charged that giving credence to this approach will result in "comparability shopping." While this is certainly a valid concern, this Arbitrator believes that any party who engages in

such a practice will quickly be exposed when they seek to justify the comparisons utilized. If the non-conference schools cited in a proponent's support exhibits cannot be readily correlated with their own, then their position becomes transparent. Conversely however, if it can be shown that the teachers (or district) in question share a commonality with schools beyond their own primary grouping (i.e., conference) based upon criteria such as school size, student/teacher ratios, community, socio-economic conditions and geographic proximity, then it would be necessary for the opposition to present significant arguments and evidence in order to dismiss such a grouping from consideration.

In the Arbitrator's view the NUE in this instance has met the burden of proof necessary to go beyond the parameters of the primary comparable (conference) grouping. In doing so, they have limited their examination to other districts that are geographically proximate to Frederic. They've utilized two separate collections of schools. The first (and the one the Arbitrator perceives to be the most relevant) consists of eight districts which all lie within distance of the farthest geographic point of the conference from Frederic (Association Exhibit 5). Additionally, these schools are similar in size, full time teacher equivalence (FTE's) tax levying rates and student enrollment to the District's comprising the USCV

(Association Exhibits 6-8). All have settled on one year agreements for the 1986-87 school year. Moreover, this grouping includes Shell Lake — a district cited by the arbitrator as being relevant in the only other impasse dispute between these same parties approximately six years ago.²

The totality of the evidence presented by the Association demonstrates that their final position falls squarely within the settlement ranges of the eight school grouping which, in their own words, is "more comparable" in terms of school size, to Frederic. NUE Exhibit 23, for example, clearly shows that an adoption of their final offer would be far more consistent with the agreements reached among these eight similar schools for 1986-87 when considering benchmarks.³ Conversely, were the

² The Employer has argued that it would be inappropriate to now consider any of the three non-conference schools utilized by Arbitrator Imes in her 1980 decision. In support of this position the Board cites the rationale of Arbitrator Flagler in his 1986 Elroy-Kendall-Wilton decision (WERC No. 23327). In that award, the writer refers to the "valid comparisons ... among like-situated school districts" which are found in athletic conferences. Citing the "common grouping" that occurs within these conferences in terms of relative size and geographic proximity, the arbitrator reasons that this leads to "certain salary commonalities through collective bargaining and market pressure." In the instant matter however, this Arbitrator notes that Shell Lake is closer to Frederic in terms of this criteria than the majority of the districts in the USCV conference.

³ The eight schools are Cameron, St. Croix Central, Clear Lake, Glenwood City, Turtle Lake, Boyceville, Shell Lake and Minong.

District's position adopted, a dramatic variance would result at all seven benchmarks — reducing the relative ranking of the Frederic teachers by an average of 2.3 places at each of these positions. In similar fashion, the exhibits submitted by NUE indicate that their proposal of 6.25% per cell for the 1986-87 school year is consistent with the settlement trends in both the eight and nineteen school grouping utilized, as well as the state averages. To graphically illustrate their position, the following table was prepared based upon Association Exhibits 27 and 28.

1986-87 BENCHMARK PERCENTAGE INCREASES

<u>Comp. Group</u>	<u>BA Min</u>	<u>BA 7th</u>	<u>BA Max</u>	<u>MA Min</u>	<u>MA 10th</u>	<u>MA Max</u>	<u>Sched Max</u>
NUE Group of 8	6.5 %	6.3 %	6.3 %	6.5 %	6.3 %	6.2 %	6.2 %
NUE Group of 19	6.6	6.5	6.4	6.6	6.5	6.5	6.5
Statewide as of 5/28/87 (weighted)	6.7	6.5	6.3	6.9	6.7	6.4	6.6
NUE F.O.	6.25	6.25	6.25	6.25	6.25	6.25	6.25
Bd F.O.	2.7	2.7	2.7	2.7	2.7	2.7	2.7

As previously noted, the District does not challenge the accuracy of these comparisons so much as their relevance.

Having determined that they are appropriate and valid comparisons under the circumstances, the Arbitrator must conclude that the teachers' evidence in this important criterion is to be favored.

Beyond the interconference comparison process, the Board has emphasized other statutory criteria such as private employment wage increases covering the same period, as well as the compensation paid to other employees in the public sector. In connection with this position, the Board has stressed the rural make up of the District and its economic condition. While in general this data is more supportive of the Employer's position, there are nevertheless certain inconsistencies which (when compared to the Association's evidence on teacher-to-teacher settlements) renders it the less convincing of the two.

Board Exhibit 43 was introduced to show the statewide trends of declining total package increases for teachers vis-a-vis the cost of living over the past few years. These figures demonstrate that of the 1986-87 settlements reported, the average was 7.8% versus a June-to-June cost of living increase of 1.3%. When compared to the Board's own costing of the two final positions, however (which the Association concurs with), their offer of 5% is further from the average cited than the NUE's (8.3%). Additionally, Board Exhibit 49 — an excerpt from the Milwaukee Sentinel referring to anticipated "pay increases" for 1987 across the nation — indicates that

the projection of 5% more closely parallels the teachers' position than the Board's (2.9 vs. 6.25 — assuming no other form of compensation for comparison purposes).

Further, it is interesting to note that while the Board is adamant in their arguments that teachers beyond the conference should not be used for comparison purposes, their own documentation regarding salary comparison in the private and public sector, transcends the USCV boundaries.

The District has also argued financial hardship. Certainly this concern is extremely important in resolving any interest arbitration dispute involving employees in the public sector who rely upon taxpayers to fund their salaries. However it warrants mention that at the hearing the Employer indicated that they were not claiming an inability to fund the Association's final position in this matter. Moreover their financial data does not indicate that the current economic situation in the Frederic district is far different from the neighboring districts within the region where the wage settlements have been closer to what the NUE is here advancing.

The Arbitrator has also reviewed the data submitted by the Employer regarding the 1986 "Wisconsin School District Facts" (District Exhibit 63); a compilation of enrollment, staffing, expenditures and revenues for each district in the

State. This document is both extensive and demonstrative. It indicates, for example, that in terms of per pupil expenditures, the amount of money budgeted in Frederic for instruction, support services and non-program expenditures for the 1985-86 school year was well below the average in both the USCV conference as well as the Association's "eight other" relevant schools in the geographic region (\$3,994 vs. \$4,161 for the Association's grouping). Moreover the Union's data demonstrates that this same booklet ranks Frederic near the bottom among both the conference and the eight school comparability grouping in terms of property tax levy rates (NUE Exhibit 7). On balance, this evidence further supports the previous finding that the overall financial condition of the District is not dissimilar to other schools in the area who have settled their contracts for the 1986-87 school year.

Finally as regards the secondary issue of personal leave, the Arbitrator concludes that although the evidence shows this to be a relatively close question, the comparables in terms of existing contract language in other schools within the conference favors the Union's position.⁴

As noted by the NUE, no other school in the Upper St. Croix Valley conference deducts personal leave from emergency leave

4

Relative data from within the conference regarding this matter is, unlike the salary question, readily available for examination.

thereby reducing the total number of days available to a teacher for emergency leave each year. Moreover, Frederic currently has no funeral leave or family illness leave provision in their contract, where others in the conference do.

Award -

Accordingly, for the reasons set forth above, any and all stipulations entered into by the parties and the Association's final offer are to be incorporated into the 1986-87 Agreement effective July 1, 1986.

Respectfully submitted this 28th day of August, 1987.



J. C. Fogelberg,
Mediator/Arbitrator

APPENDIX A

NUE PROPOSED SALARY SCHEDULE FOR FREDERIC 1986-87

STEP	BA	BA8	BA16	BA24	MA	MA8	MA16
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0.0	16920	17264	17605	17947	18286	18629	18970
1.0	17551	17893	18234	18575	19055	19395	19735
2.0	18179	18524	18865	19206	19818	20162	20502
3.0	18812	19153	19494	19834	20588	20928	21268
4.0	19440	19783	20124	20466	21351	21694	22035
5.0	20071	20413	20753	21094	22121	22460	22801
6.0	20699	21043	21383	21725	22885	23227	23568
7.0	21330	21672	22012	22353	23653	23992	24333
8.0	21958	22302	22643	22985	24417	24761	25102
9.0	22590	22931	23273	23613	25184	25526	25867
10.0	23218	23561	23902	24245	25951	26293	26633
11.0	23850	24191	24532	24873	26717	27059	27400
12.0	24478	24821	25161	25504	27484	27826	28166
13.0	25109	25450	25792	26132	28250	28591	28933

APPENDIX B

FREDERIC SCHOOL DISTRICT FINAL OFFER

3-5-87

APPENDIX A

1986-87

	<u>BA</u>	<u>BA + 8</u>	<u>BA + 16</u>	<u>BA + 24</u>	<u>MA</u>	<u>MA + 8</u>	<u>MA + 16</u>
0	16,355.	16,687.	17,016.	17,347.	17,675.	18,006.	18,336.
1	16,965.	17,295.	17,625.	17,954.	18,418.	18,747.	19,076.
2	17,572.	17,905.	18,234.	18,564.	19,156.	19,488.	19,817.
3	18,183.	18,513.	18,842.	19,171.	19,900.	20,229.	20,558.
4	18,790.	19,122.	19,451.	19,782.	20,638.	20,969.	21,299.
5	19,400.	19,731.	20,059.	20,389.	21,382.	21,710.	22,039.
6	20,007.	20,340.	20,668.	20,999.	22,121.	22,451.	22,781.
7	20,617.	20,948.	21,276.	21,606.	22,863.	23,191.	23,520.
8	21,224.	21,557.	21,886.	22,217.	23,602.	23,933.	24,263.
9	21,835.	22,165.	22,495.	22,824.	24,343.	24,673.	25,002.
10	22,442.	22,774.	23,103.	23,435.	25,084.	25,414.	25,743.
11	23,053.	23,383.	23,712.	24,042.	25,824.	26,155.	26,484.
12	23,660.	23,992.	24,320.	24,652.	26,565.	26,896.	27,225.
13	24,270.	24,600.	24,930.	25,259.	27,306.	27,636.	27,966.

No one shall receive an experience increment for 1981-82.

The school district will pay 6% of the employee's contract salary (1986-87) as the employee's contribution to the State Teacher's Retirement System. Contract salary is defined to be that amount specified to be paid over a number of pay days plus all other pay not therein listed for extra-curricular and extra duty. The 6% does not apply to wages earned during summer school