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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of WESTFIELD EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between the Petitioner and WESTFIELD SCHOOL DISTRICT	Case 9 No. 38899 Arb - 4447 Decision No. 24677-A

APPEARANCES:

Jermitt Krage, UniServ Director, South Central United Educators, on behalf of the Association

David R. Friedman, Attorney at Law, on behalf of the District

INTRODUCTION

On August 3, 1987, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.70(4) (cm) 6 of the Municipal Employment Relations Act (MERA) in the dispute existing between the Westfield Education Association (hereinafter the "Union" or "Association") and the School District of Westfield (hereinafter the "Employer", "District" or "Board"). On October 20, 1987, mediation proceedings were held between the parties pursuant to statutory requirements. Mediation failed to produce a voluntary resolution of the dispute. Accordingly, an arbitration hearing was held that same day and the parties agreed to submit briefs and reply briefs. Briefing was completed on December 22, 1987. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.70 (4) (cm), Wis. Stats. (1985).

ISSUE

Should the salary schedule contained in the contract offer reflect the final offer of the District or that of the Association?

COMPARABILITY

The District's Position:

The Board would limit the Arbitrator to the Dual County Conference, the athletic conference to which Westfield belongs. In urging that position, the District recognizes the obvious lack of settlements within the conference. This lack of settlement is true for 1987/88, as well as 1988/89. Of the nine Dual County Conference members, only Princeton, which is in the second year of a three year contract expiring after the 1988/89 school year, and Randolph, which is in the first year of a two year contract which expires after the 1988/89 year, are settled.

The District has reviewed the lists of proposed comparables presented by the Association in its exhibits. Those exhibits appear to have been offered to support the use of CESA 5 and state-wide comparables. The Board asks the Arbitrator to reject the use of broad comparables, citing a number of awards which reject such a broad-brush list as failing to meet the standards of geographical proximity, student and/or teacher size, tax base, local school levies, etc. Unless such standards are generally present in a comparable group, the District contends the comparable group must be rejected.

The Association's Position:

The teachers are not satisfied that the Dual County Conference is a proper comparable unit, irrespective of the number of settlements or lack of settlements in the conference.

Westfield is so much larger than its fellows in number of students, FTE's, tax base or school budget that this customary comparable base ought not to be accepted here. When it is also true that only two conference schools have settled for the 1987/88 or 1988/89 school terms, the conference comparable base becomes irrelevant.

The Association would ask the Arbitrator to consider two other comparable groups. The first is the other members of CESA 5. It believes the relative cohesiveness of the CESA District and the comparatively large number of settled contracts, the number of districts having comparable student and teacher numbers, the general agriculture nature of the districts and the comparable local tax effort in CESA 5 offer a proper comparable unit.

The Teachers also cite precedent for recognizing state-wide comparables. They argue that this group offers information on state settlement patterns that are useful to the Arbitrator in analyzing the final offers.

SALARY STRUCTURE

The Association's Position:

The Association believes it has left the salary structure in place in its final offer. It has asked for no changes in number of lanes or steps. It has requested changes in base and in the index, which result in a wage offer in excess of that offered by the Board.

It justifies this increase on the need to compensate teachers adequately. The Association feels that adoption of the Board's final offer would place the Westfield District in a poor competitive position when it comes to obtaining and retaining professional personnel.

The District's Position:

The District believes the Association is asking for fundamental changes in salary structure. The Union's final offer contains a relatively small increase in the BA base. But by increasing the lane and increment differentials in each contract year, the Association would benefit teachers higher up on the salary schedule unreasonably.

No showing has been made that the present salary structure is so unreasonable as to present a "compelling need" for change. Absent such a showing, the present salary structure ought to be preserved.

ECONOMIC PACKAGE

The District's Position:

The Board's brief is divided into two parts. The first analyzes the cost of each final offer and compares them to other Dual County Conference members. The second addresses the economic conditions in the Westfield School District.

The District finds that its final offer contains a salary increase of 4.75% in the first year and 4.35% in the second. The Teachers have requested a salary increase of 8.03% in the first and 7.63% in the second year.

The package costs are 5.15% in the first year and 4.59% in the second year under its offer. The Association is requesting package increases of 8.13% and 7.56%, respectively.

The Princeton School District figures for salaries are 5.92% for 1987/88 and 5.51% in 1988/89. The total package cost would be 7.21% in the first year and not more than 6.37% in the second.

Although its brief does not indicate a percentage increase for salaries in the Randolph District, the District computes the package increase for 1987/88 in that District to be 6.78% and the 1988/89 increase to be no more than 7.67%

The Board acknowledges that the package costs for Princeton and Randolph are about in the middle of the two final offers being considered here.

The District also analyzes the average dollar increase in salary per teacher under each offer and then compares them to Randolph and Princeton.

According to its computation, the average dollar increase under its offer is $1,085, $1,108 of which is in the first year and $1,062 in the second. The comparable Association figures are $1,897, $1,873 and $1,920.

For Princeton, the average salary increase is $1,297, with $1,288 in 1987/88 and $1,309 for 1988/89.

In Randolph, the Board finds an average salary increase of $1,459, with $1,476 coming in the first year and $1,441 in the second.

Using these comparables, the Board finds the Association to be significantly higher than the others, while its offer is on the lower side of the average.

The District has presented an analysis of five benchmarks in the conference from 1983/84 through 1986/87. Adjusting this set of comparables for a change in composition of the athletic conference, it would appear that Westfield's average rank would be 5.4 in the first year and 3 in the last year. The Board argues that this progress is indicative of the level of commitment of Westfield to offer competitive salaries or better to its teachers.

Turning from economic comparisons with other school districts, the Board then presents material relating to the Westfield School District.

The District maintains that the increase asked by the Union is unreasonable in light of the All Urban Consumer's Index. Noting that most of this district falls within Marquette County, the Board has presented exhibits to show that the weekly wage rates in that county are significantly below those of adjoining counties in the Dual County Conference, is low in household income and has the second highest percentage of people below the poverty line.

Moreover, the economy is growing slowly in Marquette County and employment is subject to significant seasonal factors which cause an average unemployment rate much higher than for the state as a whole.

The District would have the Arbitrator contrast these conditions with the fact that the Westfield taxpayers are shouldering about 70% of the District's budget themselves, a larger percentage than all but two other Dual County Conference districts.

Notwithstanding this unusual burden, the District prides itself on having held the line on tax increases, on raising teachers' salaries competitively as compared to other conference schools and to have been able to retain and recruit staff.

The District has placed particular emphasis on the economic impact of the final offers, especially in light of the paucity of voluntary settlements in the Dual County Conference. It urges the Arbitrator to place a similar emphasis in his deliberation, believing that economic considerations require adoption of the District's final offer.

The Association's Position:

The teachers remind the Arbitrator that many writers have found that teacher recruitment and retention is directly tied to salaries.

Moreover, the ultimate economic success of any district to a substantial degree depends upon the quality of education offered by it and the level of attainment reached by the population. The Association's brief points out that Westfield District students rank well above average levels in all but three categories in grades K through 8. A continued commitment to its teaching staff by the Westfield Board is vital to the economic well-being of the taxpaying population.

The District has budgeted an increase in spending for the 1987/8 school year. Yet a budgeted increase from state revenue would enable the District to reduce its tax levy in that year, while maintaining a substantial reserve fund. It proposes to reduce its local tax levy by 12.71%, while increasing its general fund balance by 7.72%.

The Union further challenges the District's assertion as to its educational effort financially by asserting that the Westfield School District falls behind the state, CESA 5 and Dual County Conference cost per student member. It is 17% below the conference average cost, the comparable group favored by the District in its exhibits and brief.

The Association shows that the pupil-teacher ratio in Westfield is well below the state average.

Then, to rebut further the District's assertion regarding its financial commitment, the Union has presented a chart which shows that Westfield is below the CESA 5 average in cost per member and levy rate, even though it is above the average in evaluation per member. This same chart appears to show that Westfield ranks last among Dual County Conference districts in cost per member and levy rate, while it has the second highest evaluation per member. All this in the Dual County District with by far the largest student membership.

DISCUSSION

This arbitration award is made in accordance with the provisions of Section 111.70 (4) (cm) 7 of the Wisconsin Statutes. This section establishes a series of eight factors to be considered by arbitrators in evaluating the parties' final offers and arriving at an award.

Not all of the factors are in dispute here. For instance, there appears to be no question of the lawful authority of the municipal employer (sub a.).

Attached to the final offers is an extensive list of stipulated contract changes. Such items as the calendar, the days in the school year, probationary terms for new teachers and employer contribution to health insurance, all subjects of disagreement in bargaining in other districts, have been voluntarily resolved in the Westfield School District. Therefore it is not necessary to consider sub b., except to note the good faith of the parties in bargaining.

Similarly, there seems to be no dispute as to the overall compensation paid to the teachers (sub h.). The parties differ on costing and the salary schedule, but all items contained in this sub-section have been addressed by the parties.

Neither side has raised the question of changes in the statutory circumstances during the pendency of these proceedings (sub i.).

Sub j., the "other factors" factor is really to be remembered while discussing all the matters to be considered in preparing an award.

Although some exhibits were presented which dealt with public and private employment (subs e. and f.), neither party dealt extensively with such matters in their briefs. Without more detailed data dealing with the wages, hours and conditions of employment in the public and private sectors, one is forced to agree with the Association's statement that they are not comparable and have little or no impact on the salary schedule of the Westfield School District.

Both final offers here appear to exceed the cost-of-living (sub g.). In a case where both exceed the index, it is reasonable to expect that one will exceed it by more than the other. Neither final offer appears to have been based upon changes in the index, and neither party has addressed the issue in depth in their briefs. Therefore, the factor is considered here, but shall not be controlling.

We turn now to sub d., which requires consideration of comparables with other employees performing similar services. This comparison of wages, hours and conditions of employment with teachers from other districts has been universally accepted by arbitrators as one of the most important factors, or, indeed, as the single most important factor, in evaluating final offers. Both parties have devoted considerable attention to these factors in their briefs.

The comparable struggle is the result of an entirely reasonable attempt on the part of arbitrators to compare apples with apples, rather than oranges. Most would prefer to compare MacIntosh with MacIntosh, eliminating even the Johathons from the comparable group. An ideal comparable group would consist of five or more districts, all of which had voluntary settlements. The districts would be geographically proximate, of similar membership and FTE size, and would have similar economic and public and private employment conditions. They would even have had a long-term acceptability as comparables in other binding arbitrations.

Arbitrators are forced to accept something less than the ideal in many cases. And, the further the proposed comparables fall away from the ideal, the less controlling comparability becomes.

The District has proposed the settled schools in the Dual County Conference. This proposal is flawed for a number of reasons.

The first is that the Dual County Conference itself is not really a first-rate comparable group. More than most, this conference consists of districts having widely disparate size. Even though it has been used historically as a comparable group, arbitrators in Westfield have customarily added other districts to the group. Such modifications would appear proper in a conference where the Westfield District is about three times the size of two other districts in membership and is substantially above all the rest whether measured by membership or by evaluation per member.

Westfield also exceeds its fellows in numbers of FTE's.

Finally, the number of the settled conference districts is too small to constitute an adequate comparable group. Only two districts are settled and an attempt to control this award by comparison to such a small group of districts must fail.

Having adopted the Association's position on the comparability of conference members, the next step is to agree with the District's view of the Teacher's comparable offering of state-wide and CESA 5 districts.

From CESA 5 the Association has selected a list of districts having comparable membership to Westfield. It was tempting to construct a comparable group using all or some of those districts. However, some of the districts which have been accepted as comparable in the past, Lodi, Columbus, Pardeeville and Montello, have not settled for 1987/88 and Poynette has not settled for 1988/89.

Although CESA 5 would appear to be a remarkably homogeneous district, this Arbitrator is not sufficiently informed to judge the comparability of districts far afield which may or may not have characteristics comparable to Westfield.

Having thus appeared to have rejected both sides' offerings, it is necessary to refer to the remarks made at the beginning of this discussion. It was stated there that comparability is often the single most important factor in considering final offers. Although sub d. has been found to not provide the most important factor here, it remains important, though not controlling. The writer of this award will continue to be aware of the settled conference schools and the impact of districts in CESA 5 as well as state-wide data.

One additional issue has been raised in this matter. That is the change in the salary structure proposed by the Association in its final offer. The District has attacked this salary structure as a fundamental change and has asked the Arbitrator to impose a "compelling need" standard in evaluating it. The Union replies that the salary structure remains in place with changes in index applied to the same number of lanes and steps contained in the previous schedule.

The "compelling need" standard has come to pass owing to the proper reluctance of arbitrators to alter contract language in arbitration that has been previously agreed to in collective bargaining. This Arbitrator has subscribed to a strict test to be applied to such requests, requiring the moving party to show a compelling need, that the other party has the ability to make the requested change, and that the proposed language change will produce the hoped for result by satisfying the need.

The 1986/87 salary schedule in Westfield is what is commonly referred to as a "dollar per cell" schedule. It is not a "percentage per cell" schedule. Both final offers here contain a dollar per cell schedule. The District is correct in stating that the Association's offer changes the salary schedule to provide a larger benefit to the teachers than would have been true if the present index were retained. That may be true. However, the essential structure remains in place in this offer. The only alteration occurs in the relationship between lanes and increments. This cannot be construed as such an assault upon the salary schedule as to require imposition of the "compelling need" standard.

We turn now to consideration of the remaining required factor (sub c.). This factor deals with the interests and welfare of the public and the financial ability of the school district to meet the costs of any proposed settlement.

One cannot state with certainty that lower salaries and tax levies benefit the interest and welfare of the public. Surely the public is benefited by a sound educational program and adequate salaries play a large role in maintaining a sound educational program. At the sme time, we must acknowledge that the cost-benefit ratio is not constant and that the public interest and welfare will not be served by an unreasonable teacher salary and benefit package. Both parties here point with pride to the level of education in Westfield. The issue is the cost-benefit ratio, and it is a hard judgment to make on an objective basis. In the absence of information on which to make an objective analysis, we must turn finally to the question of whether the district has the financial ability to meet the cost of any proposed settlement.

The Board's brief is frank to state that it has the financial ability to meet the teachers' demands. It also states, correctly, that mere ability to pay does not require it to accept the Association's final offer. The District makes no bones of having budgeted a tax levy decrease for 1987/88. An increase in state aids has made this action possible, even though the budget has gone up. This represents recognition that the depressed economy in Westfield makes such a reduction extremely beneficial to its tax-payers. The Board would argue that the public will be better served by a levy reduction than by an increase in teachers' salaries. This is especially true if the recent trend toward reduced property land values continues.

There is no question that the manner of state aids computations has reduced Westfield's ability to receive financial support from that source in the past. The Board is reluctant to plan for a continuation of state aids at the budgeted 1987/88 levels. Yet insofar as possible, the Board wishes to reduce the portion of the entire school costs borne by the individual tax-payers in Westfield.

The Association introduced the materials presented by the Board of Education at public hearings prior to the 1986/87 and 1987/88 school years. The District objected to this submission on grounds of relevancy. However, in light of the turn this analysis has taken, they are relevant and will be considered because they are public documents prepared by the District and presented to the public by it.

The materials show actual income and expense data from 1984/85 through 1986/87, together with budgeted figures for 1987/88. In those four years, the District's revenues have increased by 30.65%. Instructional costs have gone up 35.04%. In the same period, tax revenues have gone up 21.27% and the general fund balance (the sum of money available to the Board at the end of each year) has increased by 42.88%. The fund balance was 33.73% of revenues in 1984/85 and 36.87% in 1987/88.

A district which has reserves in excess of one third of its projected revenues, in which that fund has increased at a substantially higher rate than revenues or instructional costs and in which tax revenues have increased at a slower rate than any must be complimented on its conservative fiscal policies. On the other hand, it cannot be said it lacks the financial ability to meet the costs of either proposed settlement, despite the difficult economic conditions prevelant in the Westfield District.

Having found that the required factors do not control the findings here, it becomes necessary to decide which final offer is the more reasonable.

And here we must turn again to comparables between teachers in other districts, including those in the Dual County Conference, CESA 5, and the state. Although they are not controlling here, they remain the most important factor to be considered.

The District is correct when it says its proposed salary increases and the Association's are roughly the same distance apart when compared with Princeton and Randolph for 1987/88 and 1988/89. It maintains its average package increase is more nearly comparable with the settled Dual County Conference members than the Union's.

Yet, the District's final offer would cause it to fall behind the rankings of the other two districts in salary rank in two benchmarks. The Association's offer would cause an increase in rank in one benchmark over the two years.

The Association's offer is the highest in the benchmarks over two years in all but two instances. The Board's offer is the lowest in all but one benchmark.

A bit more light can be shed by examining the offers in comparison to the other settled districts in CESA 5. The Association has listed the CESA districts that have settled for 1987/88 and 1988/89. It must be conceeded that some are substantially larger in membership than Westfield (Stevens Point, Wisconsin Rapids, Marshfield), but some, all of which are Dual County Conference members, are substantially lower in membership than Westfield. Westfield is smaller than the average district, has an above average evaluation per member, a lower than average cost per member and a lower than average levy rate. Within the conference districts, Westfield has the largest membership, the lowest cost per member, the lowest levy rate, and is second only to Princeton in size of evaluation.

Of the districts in CESA 5, approximately twenty have settled for 1987/88 and eleven for 1988/89. Among the districts settled for 1987/88, the Association's offer would be in the top eschelon in every benchmark, but would never be the highest in the seven benchmarks. With the sole exception of the BA Minimum benchmark, the Board's offer is the lowest among the comparable districts. This is also true in comparing the percentage increases in the benchmarks.

Turning to the 1988/89 settled districts, the teachers' final offer is never the highest in salary dollars nor in percentage of salary increase, while the District's offer is the lowest in both categories in the seven benchmarks.

While the District's final offer is 2.21% below the average for 1987/88, the Association's offer is only .73% above the average for all the benchmarks. For 1988/89, the District's offer is 2.88% below in the benchmarks, while the Union's offer is .20% above.

One must acknowledge the paucity of information, including the total package costs. Yet, the only information available in this arbitration matter indicates that the Association's offer is the more reasonable of the final offers reviewed here.

DECISION

Based upon the foregoing discussion, the final offer of the Westfield Education Association shall be incorporated in the 1987/88 and 1988/89 labor agreement, together with the stipulations agreed to between the parties.

Dated this 18th day of March, 1988, at Madison, Wisconsin.

ROBERT L. REYNOLDS, JR., Arbitrator