

BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration
of an Impasse Between

AREA BOARD OF VOCATIONAL,
TECHNICAL AND ADULT EDUCATION,
DISTRICT NO. 4,

Decision No. 25046-A

and

MADISON AREA TECHNICAL COLLEGE
TEACHERS' UNION, LOCAL 243, AFT

Appearances:

William Kalin, Representative, for the Union.
Lee, Johnson, Kilkelly & Nichol, Attorneys-at-Law,
by Donald D. Johnson, for the Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Decision No. 25046-A, 1/8/88), the undersigned Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act resolving an impasse between the parties by selecting either the total final offer of the Employer or of the Union.

A hearing was held in Madison, Wisconsin on February 22, 1988. No transcript was made. Briefs were exchanged on April 6, 1988.

The collective bargaining unit covered in this proceeding consists of all professional classroom teachers teaching at least 50% of a normal teaching schedule, including government project employees and counselors working at least half time, but excluding administrative, supervisory, ancillary and classified employees. There are approximately 330 employees in this unit.

The parties are seeking an agreement for the 1987-1988 and 1988-1989 school years.

THE FINAL OFFERS:

The Employer's final offer is to increase each cell of the unit's salary schedule by 2.8139% for 1987-1988 and by 4% for 1988-1989.

The Union, on the other hand, would increase each cell by 4.1% and 4.9%; and add the following provisions to the agreement.

"The teachers who retire or who are disabled and who are eligible to receive Social Security benefits, Wisconsin Retirement Fund annuity payments or other public employment fund annuities shall receive the equivalent value of up to three-fourths (3/4) of their accumulated unused sick leave credits, not to exceed 112.5 working days' compensation computed at the prevailing rate plus any longevity pay in effect at the time of the teacher's retirement, or in the case of disability, as soon as the teacher's disability has been established by either the Social Security Office or the Wisconsin Retirement Fund Board. At the teacher's request, these funds may be placed in an escrow account and will be utilized to pay the full premium of his/her continued participation in the hospital, surgical, and medical group insurance plan or medicare supplement then in force for District employees until said funds are exhausted.

Should the retired or disabled teacher die prior to the exhaustion of the said escrow account, the remaining funds shall be utilized to pay the full premium of the surviving spouse, and eligible dependents, if any, in the hospital, surgical, and medical group insurance plan or medicare supplement, then in force, until such funds are exhausted. If there are no eligible survivors, any remaining funds in the escrow account will be paid to the teacher's estate.

Should a teacher die while employed by the District, any accrued unused sick leave shall be added to the last pay due the teacher."

DISCUSSION:

At the hearing District Director Norman P. Mitby explained that the District Board in determining its 1987-1988 budget judged "that throughout the District at both the

agricultural and business level the economy was particularly soft" and that "the only exception to that was the City of Madison which has a substantial amount of State employees". On this basis they enacted a budget providing an increase in the operational mill rate to cover many increasing costs, but no salary increases. However, during the intervening period the increases proposed by the Employer herein were made possible by two factors. Those were increased property values in Madison and increased enrollment. Still, Mitby urged, the Employer cannot fund the Union's offer "because of the major impact of the added payoff for sick leave", which he describes as "a potential liability to the District of \$774,524 for FY 1987-1988".

The Union refers to this aspect of its offer as an "early retirement provision". It is intended to replace the following provision in the parties' 1985-1987 agreement.

4. One-half of unused accumulated sick leave, up to a maximum of thirty (30) days of full pay, is to be used to continue the payment of health insurance premiums for a teacher and his/her eligible dependents at the time of retirement (disability, early, or normal). The teacher has the option to request (or in the event of the death of the teacher, his/her designated beneficiaries shall receive) a lump sum payment equivalent to the total benefit less any payment for the extended medical coverage. The beneficiary designated under the Board's group life insurance shall receive the payment unless the teacher has filed a different designation in writing with the Board.

It is also to be read in conjunction with this provision, which the parties have maintained.

5. A contractual teacher who has been employed by the Board for a period of 15 or more years and who has attained the age of 60 years may elect to retire at the end of the year during which that teacher has attained age sixty (60) or in any year thereafter.

Upon such an early retirement, the teacher shall be eligible to receive the following benefit:

a. A monthly retirement payment equal to that which the teacher would receive from the State Teachers' Retirement System had retirement taken place at sixty-five (65). This payment shall be a combination reduced STRS payment and Board payment with the sum equal to age sixty-five (65) benefits.

The Union explains that its proposal increases the maximum sick-leave accumulation payoff from 30 to 112.5 days' pay, and the sick-leave accumulation credit up to the maximum from 1/2 to 3/4. There are also changes related to survivorship in the Union's offer.

The essence of the Union's Financial argument on behalf of this proposal is the contention that by replacing early retirees with lower paid new hirees, the District will realize a net savings.

The District, on the other hand, conservatively projects the cost of the Union's sick-leave proposal on the premise that it will be used to the maximum extent possible. Thus, according to the Employer it will cost \$774,524 for 1987-1988 and \$127,631 for 1988-1989.

The Union also emphasizes that the Employer's 1986-1987 collective bargaining agreement with another local of the Wisconsin Federation of Teachers covering "all office, clerical, custodial, maintenance, and related employees", and its April 29, 1986 compensation program covering its administrative and administrative support personnel included provisions substantially identical to those proposed by the Union herein. The Milwaukee, Waukesha and Gateway VTAE Districts, which the Union contends are the most comparable to District #4, also provide enhanced benefits to encourage early retirement, although on varying formats.

This conservatism of the Employer and optimism of the Union as they project the effects of this Union proposal reaches many of their other calculations. It affects, for example, the percentage increases and total costs attributed to the Union proposal, and in turn the relative placement of the Union's final offer among settlements and proposals being considered elsewhere. Thus, the Employer's costing of the Union's offer indicates a 10.879% increase in the first year, and a 6.454% increase in the second year; is based on its calculation of the potential maximum cost of the sick-leave payout; and is then compared unfavorably to settlements and offers at other VTAE districts.

According to Board calculations, the salary increases offered by the Board, not including "rollups", would cost \$350,000 and \$518,665 whereas the Union proposal's salary increases would cost \$509,968 and \$643,312. Thus, the Union's salary proposal would cost \$284,615 more over the two years, plus approximately \$58,774 in "rollups" such as social security, retirement, and insurance costs.

Data provided by the Employer compare salary levels among the 16 VTAE districts and the VTAE "circuit teachers" faculty at certain "benchmarks" on the salary schedule. These faculties include the Milwaukee, Waukesha and Gateway districts which the Union contends are most comparable to District #4.

During 1986-1987, District #4 had the second highest salary level at all of the benchmarks - second always to Milwaukee - except at the Master's Degree plus no credits with maximum experience benchmark, where it was third following Milwaukee and Waukesha.

For 1987-1988, under the Employer's 2.8139% salary increase offer, given settlements known when the record closed herein, this overall second position would apparently continue, as would the aforesaid third position, but District #4 would also fall to third at the Master's Degree plus no credits with 9 years of experience benchmark. While the Union's 4.1% offer would raise the salaries higher than the Employer's offer, it would result in the same rankings as in the previous year.

For 1988-1989, the Union offer would apparently maintain the second position at the Master's Degree plus no credits with 9 years experience, while the Board's offer would maintain the third rank. On the other hand, while the Board offer would maintain the second position for the Master's Degree maximum cell, the Union offer would elevate it to first.

The Employer stresses its effort to maintain such rankings, whereas the Union places great emphasis on the fact that Employer offer of a 2.8139% increase is quite low compared to the known settlements. The Union's 4.1% offer, on the other hand, seems very typical for 1987-1988.

1988-1989 settlement data in the instant record indicate that the Board's 4% increase offer was typical, whereas the Union's 4.9% offer was somewhat higher than the norm.

The Employer also emphasizes wage settlements by the City of Madison (3% each for 1988 and 1989), Dane County (2.56% in 1988 and 3% in 1989), the State of Wisconsin professional educators' unit (2.1% in 1987 and 2.1% in 1988)

and the Madison School District (5% for 1987-1988 and 4.75% for 1988-1989). Referring to the latter instance the Employer characterizes an editorial opinion in a Madison newspaper as "the City of Madison taxpayers choked".

Data provided by the Employer also indicate that the average salary earned by its teachers with a 38-week contract during 1986-1987 was \$35,483, more than the average University of Wisconsin System faculty members' average that year, except at the Madison and Milwaukee campuses; or the average for teachers in the Madison School District during 1987-1988 of \$33,513.

The Employer also introduced October, 1987 data indicating that the consumer price index had increased over the preceding year by 4.4% for urban wage earners and clerical workers, and by 4.3% for all urban consumers.

ANALYSIS:

What much of this record reveals is that this bargaining unit is relatively well paid as compared to other VTAE faculties, nearby K-12 teachers, and other public post-secondary faculties in Wisconsin; and that both parties would in general maintain that position; but the Union would be somewhat more generous in doing so than would the Employer. It is simply the case that both parties are acting consistently, fairly moderately, and according to their roles. Neither threatens drastic change.

The Arbitrator strongly prefers comparing this unit to other VTAE units first, other educators second, and other Madison area public employees third, because that seems to best reflect the labor market in which the parties determine wages, hours and working conditions.

The Arbitrator is also more persuaded by comparing earnings levels than by comparing earnings increase percentages, which the Union emphasizes nearly exclusively. It seems much more sound to insure that the employees are being compensated as the labor market seems to require, than to focus upon what their negotiations are yielding regardless of compensation levels. By this measure, the Employer's offer includes some downward slippage in rank. Similarly, the Union's offer provides some advancement in rank, but mainly holds the unit's position. Neither offer seems immoderate or obviously preferable.

Likewise consideration of the consumer price index does not strongly favor either offer, although the Union's Salary position seems more in accord with that indicator.

The Employer seems most influenced by its assessment of its ability to fund the offers under its views of the economy and the costs generated by the Union's sick-leave

payout proposal. But those judgments seem questionable. First, although it is not inappropriate for the Employer to calculate the maximum possible costs generated by this proposal, it is not sufficient to stop at that point rather than attempting to forecast probable costs, or net costs. Second, the threshold judgment by the District Board that "the economy was particularly soft" is not self-evident. There is, in fact, a great deal of evidence among the regular indicators of a strong economy.

Furthermore, the record indicates that the Employer's current fiscal condition is relatively strong. Particularly, for 1987-1988 it had the lowest operational mill rate of any VTAE District, and is substantially debt-free.

As to the Union's sick-leave payout and early retirement position, the Employer argues that in addition to its cost this proposal is objectionable because it would change long standing contractual language without "a very compelling reason to do so and/or a quid pro quo . . . which makes the substantial change equitable". Further, the Employer emphasizes, the State legislature is contemplating an early retirement program "without any penalty whatsoever". The Employer recognizes that while its calculations of cost in this respect may be unrealistic, it does not accept the Union's calculation of a net reduction. It points to a number of assumptions by the Union which are not necessarily sound.

But the Employer has not squarely confronted a matter emphasized by the Union which is the existence of a substantially identical program for support personnel of many categories and administrators. There are compelling reasons, very well accepted by labor relations personnel practitioners, for consistency, if not uniformity, among various segments of a workforce. Particularly in the area of "fringe benefits" it is widely held that there should be some sound basis for explaining why different groups of employees of a single employer are not treated alike.

In summary, the Employer's position maintains fiscal restraint without significantly detracting from its labor market position, but violates a principal of sound personnel practices which requires consistency among categories of employees. The Union's position would provide such consistency, as well as costs that the market may not require. Neither position seems strongly supported by either general economic considerations or the Employer's fiscal condition.

On balance, the concrete matter of costs seems more persuasive than the fairly abstract matter of consistency. There is no evidence that the Employer's inconsistency has

precipitated any practical consequences. Moreover, the cost or saving that might result in the future from the early retirement simulation proposed by the Union cannot be confidently forecast by the Arbitrator.

AWARD

On the basis of the foregoing, the record as a whole, and due consideration of the "factors" specified in the Municipal Employment Relations Act, the undersigned Arbitrator selects and adopts the final offer of the Municipal Employer.

Signed at Madison, Wisconsin, this 5th day of June, 1988.

Howard S. Bellman

Howard S. Bellman
Arbitrator