

RECEIVED

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MAR 15 1989

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the matter of the Petition of: NORWALK-ONTARIO EDUCATION ASSOCIATION To Initiate Arbitration Between said Petitioner and NORWALK-ONTARIO SCHOOL DISTRICT	Case 4 No. 40425 INT/ARB-4878 Decision No. 25618-A AWARD
--	---

BACKGROUND

This matter came on for resolution by means of final and binding arbitration pursuant to Sec. 111.70(4) (cm), Wis. Stats. following the parties' inability to resolve their differences. The statute requires the Arbitrator to determine whether the final offer of the Association or the School District is the most reasonable by virtue of the applications of the factors specified in Sec. 111.70 (4) (cm) 7, as amended.

A hearing was held by Arbitrator Dudley W. Pierce on December 1, 1988 at Ontario, Wisconsin. Both parties introduced and explained their respective exhibits and the School District offered testimony from Harold Winchel, Board Treasurer; Janeen Downing, Board Clerk, and Duane Slatten, Board Vice-President regarding the reduced harvest of the Vernon County farmers, the wage increases granted to bank employees, current interest rates being charged to farmers and the extent of the 1988 crop losses due to the drought. The hearing was closed

without any testimony being presented by the Association. Briefs and Reply Briefs were exchanged pursuant to a briefing schedule which closed February 21, 1989.

STIPULATIONS

The parties stipulated as follows:

1. The only issues before the Arbitrator were:
 - a. The 1988-89 and 1989-90 salary schedules.
 - b. The Health Insurance contribution formula.
2. There was no issue as to the ability of the School District to pay either final offer.
3. That all other items to be included in the contract between the parties had been agreed upon.

FINAL OFFERS

The School District has offered a 1988-89 salary schedule with a BA base of \$17,784.00, experience increments of \$608.00 to \$645.00, and educational increments of \$671.00. It has also offered a 1989-90 salary schedule with a BA base of \$18,495.00, experience increments of \$633.00 to \$670.00 and educational increments of \$698.00. As to the Health Insurance the District has agreed to pay the entire single premium and up to \$191.41 per month toward the family premium for 1988-89 and the entire single premium and up to 97% of the family premium, with a cap of \$210.55 per month, for said insurance during 1989-90.

The Association has demanded a salary schedule for 1988-89 with a BA base of \$18,090.00, experience increments of \$635.00 to \$670.00 and educational increments of \$700.00 and a 1989-90 salary schedule with a BA base of \$19,080.00, experience increments of \$685.00 to \$720.00 and educational incre-

ments of \$775.00. The Association has also demanded that the District pay the full single premium of the health insurance for both 88-89 and 89-90 school years and further that the District contribute \$191.41 toward the family premium in 88-89 and 97% of the premium in 89-90 with the proviso that if the premium for 89-90 exceeds \$210.55 (a 10% increase) then the balance shall be deducted from the BA base salary for 89-90.

Thus, as to the insurance offers, the parties are in agreement on how much the District will pay each year but disagree on how any increase in the family premium for 89-90 in excess of 10% will be funded.

DISCUSSION

There is no dispute regarding the lawful authority of the employer or its ability to pay either final offer, thus these statutory criteria will not be considered. Similarly, there has been no evidence adduced regarding the wages and benefits of other public employees in the District, the overall compensation of the District's employees including all benefits, or of any changes in circumstances during the pendency of these proceedings and, therefore, those criteria will not be considered. The District did present some evidence regarding wages in two local banks, however, statements that wages have increased by only 3 to 4 percent a year or that only bonuses of \$500.00 and \$1000.00 were paid without some background information on wage scales and amounts being offered does not help establish a community trend. In addition, citing wage rates for bank clericals is not likely to produce an accurate picture of wage rates or trends in the private sector in any community as such rates are historically at the low end of the spectrum. Therefore, I find that there has been no relevant evidence presented regarding the wages, hours, and conditions of employment in the private sector of this or comparable communities.

This brings us to the heart of the matter before us ... the comparison of wages, hours and conditions of employment of the Norwalk-Ontario teachers with teachers elsewhere and the interest and welfare of the public. As the Association points out, in order to make comparisons one must determine the group with which to compare.

The Association would have me adopt as comparables two groups:

(1) The sixteen schools in the combined Scenic Bluffs and Ridge and Valley Conferences, and (2) All of the schools in the State of Wisconsin. The first, on the grounds that these sixteen schools have been historically considered as comparable and the second on the ground that the statutory amendment of criterion "d" permits statewide comparison. The District disagrees for three reasons: (1) Only seven of the sixteen schools (those in the Ridge and Valley Conference) have settled their 1988-89 contracts and all of those settlements were second year settlements, made before the drought in the spring and summer of 1988 and, thus, made under very different circumstances not comparable to those now existing, (2) That statistical analysis of the salaries paid in the two conferences show that the schools are not truly comparable and, (3) In any event, the local economic conditions in the Norwalk-Ontario School District are substantially different than any other district in the alleged comparison group. Further, the District points out the statutory amendment of criterion "d" did not relieve the parties from the obligation of justifying the "usefulness" of their comparisons and that the statewide comparisons have not proved "useful" because there is such a wide diversity of economic conditions. The District, for the above reasons, would have me determine that, in effect, there are no comparable schools in Wisconsin and decide the issues solely on the basis of one factor in criterion "c", the interest and welfare of the public.

There is something to say for each position, however, the Association has

history, size and geography on its side when arguing for the 16 school group and I am persuaded that of all the groups or non-groups proposed, it is the most reasonable. True, as the District points out, the settlements in the Ridge and Valley Conference are all second year settlements, entered into under different circumstances than those that now obtain; but this fact goes to the weight to be given, not to comparability. The District's claim to uniqueness (and therefore, incompatibility) is based on data that shows Vernon County has more farmland than otherwise comparable districts and is thus arguably more dependent on farming, has one of the highest levy rates per admission than otherwise comparable districts and has the highest levy rate in the combined conferences. These data also show that the District has historically held these rankings. While there is no question that the District is located in a rural area where farming is a very important activity, it is noted from the District's own exhibits that in the 15 most farm dependent rural counties only 42.5% of employment is on the farm or farm related. So when the predictions of impending doom in the local economy are made (predictions which have been made annually for many years according to the cited arbitration cases) we must keep in mind that these predictions relate to less than half of the economic base of the District at best (or worst). In short, the entire burden of supporting the educational system of the District does not fall on farmers, at least the District has not provided any evidence to that affect. While there is no dispute that an economic disaster in the 42.5% of the economy would have a profound effect on the District's ability to pay, there again is not sufficient evidence to show that Norwalk-Ontario is really any different from any of the other comparable districts. Besides, the District has admitted that ability to pay is not an issue.

The claim that there is no other school district which is comparable

stretches the imagination and is not reasonable. In the last few years two arbitrators have found the 16 school group comparable for all the usual reasons and no evidence has been introduced that has persuaded me that this has changed in the way the District would have me find. I would imagine that a comparison of tax levies per teacher, or per pupil expenditures for education, or personal income reported would show similar disparities for previous years as those claimed now. There are not and cannot be to districts which are identical. Identicalness of interest is not required or even sought by the statute. We are only required to compare, that is, to bring together for the purpose of discovering points of likeness and difference. The District, by comparison has shown several points of difference which must be given weight but that does not mean that all comparison should then be abandoned.

I agree that the statewide comparison is less justified for the reasons put forth by the District. However, in situations where traditional comparables are weak, I believe there is some value in looking at statewide settlements if only to determine trends. For instance, while geographic location, size and economic base are very important in establishing whether two districts are comparable, the discovery that most districts in the state are giving 5% wage increases regardless of size, economic base or location is instructive and establishes a trend.

Instead of abandoning the comparison required by the statute, as the District would have me do, the Association (and the statute) urges me to cast the net further. For the above reasons I find the combined Scenic Bluffs/Ridge and Valley Conferences the comparable group and, if necessary to established trends, statewide settlements may be examined.

An analysis of the data of the comparable group shows, as the Association has pointed out, that the relative position of the Norwalk-Ontario School

District will be better maintained by implementing the Association's offer than the District's offer, which would substantially alter this position. I use the relative position because this, in my judgment, takes into account that half of the districts have not settled. The Association also urges me to consider the Board proposal at La Farge as indicative of what settlements are likely to be after the drought. It seems to me that the La Farge offer is almost entirely the result of a need to catch up, as they have consistently ranked at the bottom of the 16 school group. While the La Farge offer may not be indicative or representative of a percentage increase pattern in the conference, it does show that the drought has not had the all-pervasive, calamitous results predicted. At least some farmers have hope.

The District, by urging me to ignore all comparables, has, in effect, defaulted on this issue and, therefore, I find that the Association's offer is more reasonable when making the comparison called for by the factor specified in Sec. 111.70(4) (cm) 7d, Wis. Stats.

As to the interest and welfare of the public, the District basically makes the same arguments that it made to show Norwalk-Ontario was not comparable with any other district. Thus, they point out (1) The local taxpayers have serious economic problems, and (2) These problems are significantly different than those in otherwise comparable districts because of the amount of farm land in Vernon County and the fact that a drought occurred after the 88-89 settlements in the Ridge and Valley Conference. These arguments have been dealt with above. In short the Norwalk-Ontario district has not been shown to be unique.

In addition, the District argues that a balancing of the interests of the teachers in getting better wages with those of the taxpayers in holding down rates favors the adoption of their offer for four reasons:

1. Teachers get an increase over and above the cost of living.

2. Salaries are already high enough to attract all the teachers they need.
3. Taxpayers have not received increases in their income comparable to those offered by either party.
4. Taxpayers already contribute more to support education than taxpayers in otherwise comparable districts.

That the taxpayers have or may have economic problems can be accepted arguendo, but it is not undisputed. That these taxpayers are unique is not persuasively demonstrated by the evidence. For instance, the fact that Vernon County has more farmland than in otherwise comparable countries is not evidence that Norwalk-Ontario has a special burden. Norwalk-Ontario is not entirely in Vernon County and two school districts in each conference have parts of their districts in Vernon County. The fact that a drought occurred after the settlements in the Ridge and Valley Conference has been tempered by the La Farge offer and even though the Ridge and Valley settlements were made before the drought they are being paid after the drought.

As to balancing the interests of the taxpayers and the teachers, the evidence is clear that both offers would provide the teachers with an increase in "real wages" and, therefore, the cost of living criteria would not favor one offer over the other. The District makes the point that taxpayers have not received increases in income comparable to those proposed by either party. This contention is wholly unsupported by the evidence and will not be considered. The main thrust of the District's argument revolves around the fact that local taxpayers are already making a greater contribution to education than taxpayers in comparable districts. The Association has offered no contrary evidence. This fact would have substantial weight in my decision if there was no evidence that the increases called for by either proposal would or could be absorbed by higher state aid or budget surpluses. The Association has pointed out that

state aids for the year 1988-89 have increased by \$124,076.00 and that of this amount \$59,000.00 has been unallocated in the District's 1988-89 budget. The difference in cost between the parties' offers for 1988-89 amounts to \$26,600.00. The unallocated increase in state aids could pay for this. The District has not disputed this evidence or the conclusions drawn from it. It would seem that similarly, the difference between the second year offers could be absorbed next year, in whole or in part, by the increased State aids now being paid to the District. In addition, the Association points out the District enjoys a fund balance (as of June, 1988) of \$582,441.00. Neither the Association or the Arbitrator can tell the District how to allocate and spend its money but the persistent cry of doom, ruin and poverty is considerably dimmed by these figures.

I am persuaded by the above that the Association's offer would better serve the interests and welfare of the public by maintaining the financial position the Norwalk-Ontario School District has chosen for itself. It appears that the Association's offer can be met with little or no further burden on the taxpayers while at the same time encouraging the retention of career teachers in the District.

One comment on the Health Insurance proposals: the District has, in effect, said that it believes the insurance proposals made by the Association would lead to further complications. I believe this is true. I believe the District's offer in this regard is by far more acceptable. While there are several interesting tax reasons for the Associations positions, it is likely to be complicated to implement. If I could split the offers I would do so on this point. However, that is not possible and the unwieldiness of the Association's Health Insurance offer is not sufficient to alter my final decision.

CONCLUSION

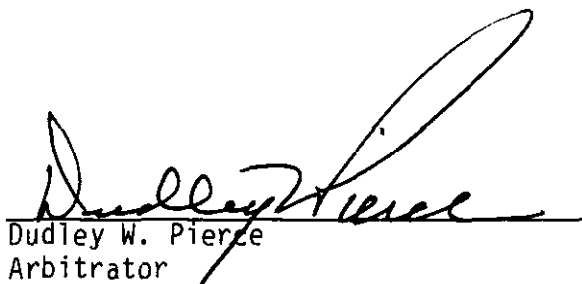
When considering all of the factors noted above and for the reasons given, I believe the Association's offer to be the most reasonable. The teachers in the Norwalk-Ontario School District are, for the most part, in the upper third of the salary ranking when compared with other comparable districts. This position was arrived through collective bargaining, where local conditions and preferences are taken into account and where trade-offs are made for reasons valid to the individual district. The only times when dislocations have occurred in this history is when arbitrators got involved. The advantages of voluntary settlements are obvious.

The District's offer is less than it could be and the Association's offer is more than it need be. This is what makes hard choices.

AWARD

The Association's final offer, together with the stipulations and agreements of the parties, be incorporated into and made a part of the Collective Bargaining Agreement for the 1988-89 and 1989-90 school years.

Dated this 10th day of March, 1989.


Dudley W. Pierce
Arbitrator