

FREDERICK P. KESSLER, ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the matter of the petition of the

JEFFERSON SUPPORT STAFF FEDERATION,
Local 4364, WFT, AFT, AFL-CLO

to initiate arbitration between
the petitioner and

THE JEFFERSON SCHOOL DISTRICT

DECISION
Case 23, No. 40915
INT/ARB-4989
Decision No. 25752-A

A. HEARING

The hearing in the Jefferson School District Support Staff mediation/arbitration proceeding was scheduled to be held at the Jefferson School District administrative offices in the City of Jefferson on January 25, 1989 at 4:30 P.M. The proceedings commenced at 4:45 P.M. Since no petition for a public hearing was filed with the arbitrator, no public hearing was held.

Dennis Derrick, an Assistant to the President of the Wisconsin Federation of Teachers and Steve Kowalsky, a staff representative for that union appeared as witnesses for the Union. The District called District Administrator Thomas Shepro and the Business Manager, Ted Kozlowski as witnesses. The hearing adjourned at 7:25 P.M. Briefs were to be sent postmarked March 2, 1989. The final brief was not actually received by the arbitrator until March 19, 1989, since the arbitrator was out of the city until that time.

B. APPEARANCES

The district was represented by Attorney James K. Ruhly of Melli, Walker, Pease & Ruhly, S.C. Also present at the hearing was Thomas Shepro the District Administrator, Ted Kozlowski the District Business Manager, and School Board member Lloyd Buske.

Appearing on behalf of the Union were Staff Representatives Steve Kowalski and Dennis Derrick. Also present were local President Jerry Rader and members Pat Hotter, Tom Smothers, Marilyn Stelmascewski and Barbara Stephan.

C. NATURE OF THE PROCEEDINGS

This is a final and binding arbitration proceeding brought between the parties under Wis. Stats. Sec. 111.70(4) (cm). The record shows that on July 25, 1988 the commission received a petition from the Union requesting that arbitration

proceedings be initiated. On September 19, 1988 Karen J. Mawhinney of the commission staff conducted an investigation and concluded that the parties were at an impasse. On October 26, 1988 the parties submitted their final offers. On November 10, 1988 the parties were advised of the list of names of arbitrators to be selected. On November 29, this arbitrator was advised of his selection in this dispute.

D. ISSUES IN DISPUTE

There are four major issues that are the subject of the dispute between the Jefferson School District and its service employees. At the time of the hearing, the Union indicated that there were two other issues of some significance to its members. The four major issues are:

(1) Wages. The contract proposed by both parties is a two year contract. The second year wage proposals of the parties are identical. The issue in dispute is the wage rate for the first year. The union is seeking 23 cents per hour and the District is proposing 14 cents per hour. The arbitrator must decide which more equitably meets the standards set out in the statute.

(2) Fair Share. The Union has proposed that a "fair share" agreement be adopted upon receiving a majority vote in the bargaining unit, while the District is proposing that "fair share" provisions go into effect only if they receive 80% of the votes of all the employees in the unit.

(3) Leave of Absence for Convention Attendance. The Union proposes that a two day per year paid leave of absence be allowed for a delegate to attend the American Federation of Teachers Convention. The District is opposed to the proposal and has offered no alternative suggestions.

(4) Transfer Clause. The Union is proposing that when a job vacancy exists in the service sector, that the senior qualified employee be allowed to fill the job. The District has opposed this suggestion and has not made a counter proposal in this area.

At the time of the hearing, in addition to the four issues set forth above, the Union Staff Representative indicated that there are two additional issues in dispute. Those are:

(5) Pay of the Cleaners. The impact of the proposals by both of the parties are identical, but the language differs. This area of conflict was not addressed in the briefs.

(6) Date of the Cleaners Wage Increase. The wage increase is set to be commenced July 1, in the Union's proposal and the start of the school year in the District's proposal. This subject was not addressed in the briefs.

These two issues appear to be de minimus and therefore will not be addressed in the decision.

E. DETERMINATION OF COMPARABLES

The District has submitted a list of comparable school districts that are adjacent to Jefferson: Cambridge, Fort Atkinson, Johnson Creek, Lake Mills, Palmyra-Eagle and Whitewater. The Union's list also focused on Jefferson County. It adds the Watertown and Edgerton School Districts to the list of the District and deletes the Cambridge and the Johnson Creek Districts.

The District contends that the list of proposed comparable districts it has submitted is more appropriate because it consists of a school district contiguous to Jefferson. It points out that several of the districts on the Union's list were not considered during the bargaining between the parties.

The Union's list consists of all the school districts that are wholly or partially in Jefferson County and that are of the same general size. They specifically reject Johnson Creek because it has an enrollment half the size of Jefferson's, and reject Cambridge because it's enrollment is one third of Jefferson's.

The comparable schools that will be used in this case will consist of districts of similar size from the same general area of the State. Since the Jefferson District is located in the center of Jefferson County, the county is a good geographic focal point. Jefferson had 1794 students enrolled in it's schools. Any system that had between 1000 and 2500 students would be an appropriate comparable system. Of the districts that are wholly or partially in the county, the following enrollments are found:

<u>District</u>	<u>Enrollment</u>
Oconomowoc	4069
Kettle Moraine	3280
Watertown	3195
Ft. Atkinson	2286
Jefferson	1794
Whitewater	1742
Edgerton	1616
Palmyra-Eagle	1227
Lake Mills	1063
Cambridge	792
Waterloo	706
Johnson Creek	556

Fort Atkinson, Whitewater, Edgerton, Palmyra-Eagle, and Lake Mills are the appropriate districts to be used for comparison purposes. Watertown, Johnson Creek and Cambridge

are specifically rejected as being either too large or too small a system. These districts are in communities of a different size than Jefferson, which may reflect a different economic base. Those differences could be manifested in the wage rates generally paid in those communities.

F. WAGE INCREASE

1. The position of the Union

The Union contends that the \$.23 per hour wage increase it proposes is more equitable than the \$.14 per hour proposal made by the District. When the step increase is calculated into the Union's proposal, it's increase amounts to \$.33 per hour or 4.8%. This compares with the district's proposal, with the step increase included, which amounts to \$.24 or a 4.5% increase.

The average salary figures that are used by the district are not as significant in the comparisons because a large proportion of all the employees are at the top of their classification and will not receive a step increase. 69% of all the hours worked by all the employees are preformed by workers at the top of their classification. The average salary increase is only significant in that the teachers in Jefferson received a 5.6% increase in their wages for 1988-89. This compares with the 3.5% offer the district has made to the service employees.

The Union challenges the District's use of some of the wage information from comparable districts. It contends that the District is using minimum and maximum salary ranges indiscriminately for the different positions without noting their place in the range. For some positions it compares a maximum rate and, for other positions, a minimum rate. This makes the District's data suspect.

The \$.14 per hour increase proposed by the District is considerably less than the increase given to the service employees in the districts it claims are comparable. The difference is particularly acute at the maximum step level. Even the Union's own offer, which keeps the employees at fifth place, will result in the secretaries receiving a wage that is \$.88/hour below the average in the District's comparable list.

In the District's final offer, the administrative secretaries' wages decline to \$1.51 below the average, and ranks sixth out of the six schools. The cooks would retain their ranking, but their wages would fall an additional 22 cents below average. Aides would drop to sixth place. Custodians would see their wages fall \$.10 below the average, while retaining their fourth place ranking.

The Union contends that the District's offer is an attempt by them to avoid paying a wage rate at the level of the pattern of settlements, at a time when a "catch-up" wage increase might be more appropriate. They respond to the District's contention, that the service employees are receiving a higher benefit increase than the teachers, by pointing out that the teachers make more money than the service employees, but the benefit costs almost always are constant. The only way that benefit costs should be considered is if the District is contributing more to the insurance costs than the other districts used for comparison purposes. The Jefferson School District is not making such a contribution, therefore, that argument is not relevant.

2. The position of the District

The District contends that its final offer is the more equitable of the two offers. It is actually a 7.84% package increase, as compared with the Union's proposed 9.1% package increase for the first year of the contract. The District will be paying a 53% increase in the cost of it's health insurance premium for the first year, a significant cost increase for the district as compared with past years.

Under the District's final offer the service employees will see their rankings slip in four categories and improve once, when compared with the District's proposes comparable districts. Under the Union's final offer, the rankings would slip three times and improve twice. They differ only in the rank of the lowest custodian and lowest food service rank. Such minor differences show that there is no compelling need to spend the additional \$21,000 that union's offer would cost during the two years.

The inclusion of Watertown in the list of comparables is inappropriate. That school system has 1400 more students; it is in a different athletic conference; it is not contiguous to Jefferson. It's wage rates are much higher and they distort the averages for the other communities. The rate for cooks in Watertown and Fort Atkinson together is so high it causes the average to rise by \$.55. The Union's offer, even while it is skewed by these disparities, might come closer to the average when considered for wages alone, but it would be unjust to consider the costs of wages only.

The District's offer is superior in that it both considers the total settlement costs and protects the interest of the public. It keeps the package increase in the range of what other employee units in the district are receiving. The Union's attempt to compare the wages with City of Jefferson street and sewer workers is inappropriate because their fiscal year is different and insufficient data was provided about their wages and benefits.

Living costs rose by 4.02% between July 1, 1987 and June 30, 1988, a figure that is closer to the district's offer of 3.65% than the Union's offer of 4.97%. When insurance costs are included the District's offer is even far more superior. Fairness requires that the increasing costs of insurance must be absorbed partly by the Union in addition to the District, since the Union members benefited from the years when the cost of insurance did not increase at such a substantial rate.

3. The Decision on the Wage proposal

Sec. 111.70(4)(cm) of the Wisconsin Statutes mandates that arbitrators consider certain factors when they choose between final offers. Among the factors to consider is the "comparison of the wages, hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in the public employment in the same community or comparable communities."

The wage information that the two sides have provided as to comparable public employees is inconsistent and contradictory in several classifications.

My experience as an arbitrator has shown me that each side in school district interest arbitration proceedings keeps their own records as to settlements and contracts. Because percentages are used in the calculations, sometimes the dollar amounts do not match. That appears to have happened here. No attempt has been made to mislead me, but I must note that some of the figures each side has submitted are not identical.

A factual basis must be found in order to make a decision of this nature. When the information as to the current pay rates in the comparable districts was found to be at variance, and the record was silent on which figure was correct, I have chosen to pick the lowest of the conflicting amounts for the column of minimum salaries and the highest of the conflicting amounts for the maximum salaries. The particular figures in which conflicting wage information was received involves the minimum custodian and secretary salary in Fort Atkinson, and the maximum secretary salary in Lake Mills.

Those wage rates were compared for some of the positions in the comparable districts:

<u>DISTRICT</u>	<u>CUSTODIAN</u>		<u>SECRETARY</u>		<u>ADMIN SEC.</u>	
	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>
Edgerton	6.36	9.82	6.25	8.40	6.65	10.58
Fort Atkinson	7.58	9.57	4.90	9.61	8.92	9.61
Lake Mills			4.62	8.45	5.30	7.20
Palmyra-Eagle	7.86	8.22	4.70	8.37		

Whitewater	<u>7.67</u>	<u>8.63</u>	<u>6.79</u>	<u>8.39</u>	<u>7.41</u>	<u>10.21</u>
Average	7.37	9.06	5.46	8.69	7.07	9.40
Union final offer	7.89	9.18	6.46	8.28	6.52	8.02
Dist. final offer	7.80	9.09	6.37	8.19	6.43	7.93

	<u>COOKS</u>		<u>AIDES</u>	
	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>
Edgerton	5.68	6.75	3.90	
Fort Atkinson	7.58	8.66	4.49	7.23
Lake Mills	4.26	6.05	4.95	6.65
Palmyra-Eagle	5.01	6.50	4.68	7.88
Whitewater	<u>5.41</u>	<u>6.73</u>	<u>6.33</u>	<u>7.77</u>
Average	5.59	6.94	4.87	7.38
Union final offer	5.44	6.66	5.68	7.38
Dist. final offer	5.33	6.57	5.59	6.26

Insufficient data made it impossible to examine additional positions and classifications.

When these wage rates of the other districts are compared with the offers of both the District and the Union, the final offer of the Union is closer to the average on six of the comparisons while the final offer of the District is closer to the average on four of the comparisons. Both of the offers are very close when viewed in this context, with the Union's final offer receiving a slight preference.

The evidence indicates that 14.1% of the cost of the District's final offer and 14.0% of the Union's final offer reflects the cost of insurance. Evidence indicates that the insurance portion of the total cost has risen substantially since 1984-85. The cost of insurance should be relatively constant in all the districts. The percentage of total compensation that is attributable to insurance costs declines as income rises. It is therefore more persuasive to compare such costs with other districts rather than to compare them internally. The comparison with the other districts show:

<u>DISTRICT</u>	<u>FAMILY HEALTH</u>	<u>FAMILY DENTAL</u>	<u>TOTAL</u>
Edgerton	\$239.99	\$39.44	\$279.43
Fort Atkinson	248.95	29.93	278.88
Lake Mills	278.00	52.00	330.00
Palmyra-Eagle	210.75	57.94	268.69
Whitewater	<u>263.50</u>	<u>44.66</u>	<u>308.16</u>
Average	248.24	44.79	293.30
Jefferson	250.12	29.18	279.30

The cost of health and dental insurance for the service employees of the Jefferson School District is not disproportionate when compared with the other districts. While the cost has risen substantially, the burden of the increase has fallen in a similar fashion on all of the districts.

The statutes also mandate that the arbitrator consider "the average consumer prices for goods and services, commonly known as the cost of living." The only evidence offered relating to the cost of living indicates that the increase was 4.02%. This is closer to the percentage increase offered by the District, than to the increase proposed by the Union.

The wage proposals of the parties are each meritorious and provide almost equal dollars. They both are close to the averages found in the comparable districts. The proposal of the Union is slightly favored because it is closer to more of the average wages for which comparables were available. That is almost offset by the fact that the District's offer is closer to the cost of living increase. However, in that category neither one is at a substantial variance. The preferable offer is, therefore, the Union's in the wage category.

G. FAIR SHARE

1. The position of the Union

Most of the Union's list of comparable districts have a "fair share" provision in their contracts. None of them contain any requirement for a referendum before the provisions could go into effect. The District offer requires a referendum before "fair share" provisions can be utilized. The District's offer is silent on how the referendum is administered, and sets an unrealistic date before which it must be conducted. In addition, the Union contends, by setting the date immediately after the arbitration award, it sets it a time when the union has just lost the interest arbitration dispute. (The election would not be held if the Union had won). This timing decreases the likelihood of the Union's success in the voting.

The inclusion of a requirement that at least 80% of the unit members vote in favor of "fair share" is even more

onerous than a requirement for an 80% favorable vote of those who do vote. Every non-voter, in effect, becomes a vote against the Union. Such a high threshold requirement is not supported by evidence of need, or common practice in comparable districts.

2. The position of the District

The District contends that it's "fair share" provision is preferable because it prevents coercion of non-union members into financially supporting the union unless four out of five of the unit employees concur. They note that in two of the five labor group classifications that the Union represents, a majority of employees do not support the union through payroll deduction. In a third classification, five of the eleven employees do not. Outside of the teacher aides, only half of the employees support the union.

The District has incorporated the "fair share" language from the teacher's contract into the provisions in this final offer. This would assure that the district would not have to administer two different "fair share" provisions simultaneously. There are major language differences between the two "fair share" provisions. The A.F.T.'s indemnification provisions are not adequate. The local Union lacks the assets to hold the district harmless in the event a successful equal protection suit is ever brought. Under the teacher's contract, their parent union has agreed to act as a guarantor to the District. The District points out that it could have chosen to offer no "fair share" provision. Their proposal is a middle ground which gives the Union the opportunity to show that it has substantial support among the employees of the District.

3. The Decision as to "Fair Share"

The Palmyra-Eagle School District's service employees do not have a union. The union in Edgerton does not have a "fair share" provision in it's contract. The other three schools have contracts that contain such a requirement.

No evidence supports the District's position that a vote is needed in order to implement such a provision. None of the comparable districts had a referendum requirement. Further, the margin required for the implementation of the referendum is unreasonable.

The fair share provisions found in the final offer of the Union are more equitable and appropriate therefore are preferred.

H. LEAVE OF ABSENCE

1. The position of the Union

The Union has proposed that it be allowed to send one person, who would continue to be paid, to attend the annual convention of the American Federation of Teachers. The District's final offer does not make reference to this issue.

The convention occurs in October at a time that most of the schools are closed for the purpose of teacher conventions. Since some support staff must still work during this time, the provision is a necessity. None of the comparable schools are affiliated with the W.F.T. so it is not possible to find a comparable provision in their agreements. The Union does point out that two thirds of it's support staff locals have paid convention leave provisions.

2. The position of the District

The district contends that the Union has the burden of showing that there is a need to have a member attend the convention in order to include the requirement in the contract. No employee has ever asked to attend the convention. The Union has not shown there is any advantage, such as attendance at an educational session, that would be gained by attending.

The Union can still send a member to attend. It is not necessary to secure a leave from the administration to attend on that day as the schools would be closed. At least two classifications of the service employees, would be off of work on that day. Since one person can cast all the locals' votes at the convention, an employee from one of those classifications could attend. The inclusion of such a provision, which only rewards Union members with the extra day off, serves principally to encourage union membership, which is not an appropriate provision.

The status quo should be maintained. The Union is not precluded from having a member attend the convention, while at the same time the District is not expanding the numbers of paid days not worked.

3. The Decision as to Convention Attendance

The issues relating to providing for the paid attendance at Union conventions would not be difficult if we were dealing with teachers. Since teachers have no specific obligations to perform during the time of their conventions, it is not a burden to the district to allow them to attend. Some of the service staff do have obligations, which need to be performed on a daily basis, such as maintaining the heat in the school buildings or handling emergency repairs.

It would be more appropriate for this issue to be resolved by negotiations between the parties, rather than by an arbitrator. It does not have the compelling urgency that is found in the wage and "fair share" issues. No "quid pro quo" has been shown. The burden to show the need for the change is on the Union. Since the teachers at Jefferson do not get paid leave, and comparable districts do not appear to provide that benefit, the District's position on paid leave to attend the Union convention appears to be preferred.

I. SENIORITY AND TRANSFERS

1. The position of the Union

The Union proposes that if a vacancy occurs in any position covered by the contract, then the most senior union member should be allowed to transfer to that position, provided they are qualified to perform the work assigned to that job. Seniority currently is recognized in the contract only in the area of layoffs, and for the selection of vacation times.

Nothing in the final offer of the Union would allow a person to transfer into a position that is already occupied. While there are no time limits specified in the offer, this provision falls under the posting and vacancy procedure, and does not allow the "bumping" of job occupants. The "bumping" is only sanctioned in layoff situations.

The Union wants to guarantee that employees have preferential rights in the event of job vacancies. They feel that the existing employees should have the right to improve their financial situation and the quality of their working conditions by filling a higher paid or more rewarding position. The District offers no constructive proposal in this regard.

2. The position of the District

The District currently retains absolute discretion in filling job vacancies in the district after they have been posted. They question whether "bumping" can occur in positions that are already filled under the language in the Union's proposal. They feel that the language would allow an aide to bump a secretary or a food server could bump a cook, a situation that they contend would be inappropriate. Further they indicate that the District Administrators may be unwilling to risk the hard feelings that may be created if they deny a loyal employee a promotion if that person is someone unqualified for the new job. They feel that they may be obligated to promote one employee with more seniority who may be marginally qualified, while the next person on the list might be highly qualified. They also are concerned that personality conflicts between employees, such as secretaries and administrators, could not be avoided under the proposed provision. The District is concerned about how frequently an employee might exercise

transfer rights. None of the comparable contracts provide absolute rights to transfer.

They argue that the efficient administration of the district is encouraged by maintaining the current language rather than making the change advocated by the Union.

The current rule guards against requiring long and costly arbitration proceedings to interpret the contract. No "quid pro quo" is being offered to the District for this proposed change. In evaluating the proposal the District urges the arbitrator to reject this provision.

3. The Decision as to the Transfer Provision

The seniority based transfer provision appears to be an issue that should more appropriately be decided by the parties at the bargaining table. This does not appear to have a compelling need that would justify its imposition by an arbitrator. No "quid pro quo" has been offered by the Union to secure this benefit. It is my opinion that the final offer of the District is more reasonable as to this issue.

K. CONCLUSION

When the issues are ranked in order of importance, undoubtedly the most significant issue is that of the wage increase. Although it is a close question, the Union's final offer is slightly preferable. The next issue in order of importance is the "fair share" provision. Here the Union's final offer is clearly preferable. On the two remaining issues the District's offer is preferable as to each. When all the factors are considered, and weighed for significance to the parties, the position of the Union is preferred.

L. AWARD

Therefore the final offer of the Union shall be adopted and incorporated in the he 1988-89 and 1989-90 Contract between the Jefferson School District and Local 4364 A.F.T. ALF-CLO.

Dated this 16 day of May, 1989

FREDERICK P. KESSLER