

RECEIVED
JUL 26 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
ARBITRATION AWARD

In the Matter of the Arbitration between :

WAUKESHA SCHOOL DISTRICT :

and : Re: WERC Case 61
No. 42752
WAUKESHA SCHOOL DISTRICT EMPLOYEES UNION, : INT/ARB 5371
LOCAL 2485, AFSCME, AFL-CIO : Decision No. 26415-A
(TEACHER AIDES UNIT) :

APPEARANCES: For the Employer, Waukesha School District: Davis & Kuelthau, S.C., Attorneys at Law, by Gary M. Ruesch, Esq., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202.

For the Union, Waukesha School District Employees Union, Local 2485, AFSCME, AFL-CIO: David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719.

The Union represents a collective bargaining unit of teacher aides employed by the Waukesha School District. The parties' labor agreement expired by its terms on June 30, 1989. When they failed to agree on the terms of a renewal, the Union on August 28, 1989, filed a petition with the Wisconsin Employment Relations Commission to initiate arbitration. Commission staff conducted an investigation of the dispute on December 19, 1989. Following the investigation the Commission was informed that the parties were deadlocked. They were given until March 15, 1990 to submit final offers. The final offers as well as a stipulation on matters agreed upon were timely filed. The Commission then declared that an impasse had been reached within the meaning of Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, that conditions precedent to the initiation of arbitration had been met, and that the parties should select an arbitrator from a panel submitted to them by the Commission.

The undersigned was notified of his appointment as arbitrator by letter from the Commission dated July 17, 1990. The parties were given several dates from which to choose for a hearing, but subsequently they made additional efforts to settle the dispute and did not agree upon a hearing date for several more months. Ultimately a hearing was held in Waukesha on April 8, 1991. The parties presented evidence to support their final offers from witnesses and in the form of documents. They were given opportunities to cross examine witnesses and to ask questions of one

another to clarify points in the written evidence. At the conclusion of the hearing they agreed that they should have seven days to check the accuracy of the exhibits and that they would submit written briefs within 30 days after that. After an agreed-upon delay the briefs were timely filed and exchanged by the arbitrator on June 1, 1991. The hearing is considered closed as of that date.

The statute requires that the arbitrator choose one or the other of the final offers submitted by the parties. The Union's final offer would amend the salary schedule by "increasing all wage rates for all employees by 5% effective 7-1-89; and by another 5% effective 7-1-90." The Union would also amend the holiday clause "by adding Memorial Day as a paid holiday."

The Employer's final offer would "increase the hourly wage rate in Range I, Range II and Range III by 4.5% across-the-board effective July 1, 1989 and an additional 4.5% across-the-board effective July 1, 1990."

THE UNION'S SUPPORT FOR ITS POSITION

The Union represents three different units of Board employees. In earlier negotiations the parties settled the wage issue in a clerical employees unit for a 5% increase across-the-board in each year of a two year agreement running from July 1, 1989 to June 30, 1991. In a custodial unit they settled for 4.8% across-the-board for each year of a similar two year agreement. The Union argues that its final offer is closer to the earlier settlements than is the Employer's offer of 4.5%. The Union also points out that the effective cents-per-hour effect of the 5% increase in the clerical unit is 47 to 54 cents, the effect of the 4.8% increase in the custodial unit is from 61 to 69 cents, while the effect of a 5% increase in the teacher aides unit would be only from 34 to 39 cents and even less (32 to 35 cents) if the 4.5 % Employer offer prevailed.

The Union's final wage offer would apply to all work performed by teacher aides while the Board's wage offer applies specifically to Ranges I, II, and III. Noon hour supervision is performed by teacher aides but is not work included in the duties of aides in Ranges I, II, and III, as defined in the labor agreement. That agreement's recognition clause applies to "all regular full time and regular part time teacher aides working ten (10) hours per week or more. . ." Some members of the unit, i.e., aides who work more than ten hours per week, accept assignment for noon hour supervision as an extra duty and source of income. That duty alone, however, does not total ten hours per week. A minor number of employees who perform only that work are not represented by the Union. Thus, according to the Union, although the Employer's final offer would exclude these non-union employees from the wage increase, its major effect would be on certain members of the unit.

To support its final offer the Union submitted as external comparables twelve school districts in Waukesha, Washington and Milwaukee Counties. The districts from Waukesha County are Elmbrook, Kettle Moraine, Menomonee Falls, Mukwonago, Muskego-Norway, and New Berlin. The districts from Washington County are Germantown and West Bend. The districts from

Milwaukee County are Cudahy, Greendale, South Milwaukee, and West Allis-West Milwaukee. Although the Waukesha School District is far larger than any of the proposed comparables in terms of K-12 enrollment, it is about at the median of the comparables in terms of equalized value per student, levy rate, and level of state aid per student. As a city within the Milwaukee metropolitan area, the Union believes that Waukesha should properly be compared with jurisdictions in other parts of the metropolitan area, that is, Milwaukee County and Washington County.

Comparisons are made among top rates of pay for the lowest paid teacher aide classifications, top rates of pay for the highest paid teacher aide classifications, rates for special education aides, clerical/general aides, and benchmark data from the twelve comparable districts for the years 1989-90 and 1990-91. In all these comparisons Waukesha rates are lower than the averages, regardless of which offer is accepted in this proceeding. While acceptance of the Union's final offer would place Waukesha wage levels as high as tenth among the thirteen, acceptance of the Employer's final offer would keep Waukesha teacher aides at or near the bottom in comparison with wage levels in the other twelve districts.

The Union also compared the proposed final offer percentage wage increases with percentage increases that had been made effective among the twelve districts proposed to be appropriate comparables. Separate comparisons were made for the two years and for what the Union termed the "combined lift" of the two years. For the year 1989-90 the Union's proposal was fifth of thirteen (tied with two others) and the Employer final offer was eighth of thirteen (tied with three others). For the year 1990-91 the Union's offer was second of thirteen (tied with two others), and the Employer offer was fifth of thirteen (tied with four others). In the comparisons for the combined lift the Union's final offer was third of thirteen (tied with three others), and the Employer's offer was eighth of thirteen (tied with three others).

The teacher aides currently have four paid holidays: Labor Day, Thanksgiving Day, the day after Thanksgiving, and Good Friday. The Union's final offer would add a fifth holiday, Memorial Day. Internal comparisons presented by the Union indicated that twelve month clerical employees have ten paid holidays and ten month clerical employeess have eight. Custodial employees, who all work twelve months, have ten paid holidays. Among the external districts that the Union assert to be comparable, teacher aides get six holidays in three districts, five in three districts, four in one district, three in three districts, and none in two districts. The Union argues that although Waukesha is currently about in the middle with respect to paid holidays, there is a trend among the comparable districts to add holidays and that if a holiday is not added in this arbitration, the Waukesha district will lag in the trend.

THE EMPLOYER'S SUPPORT FOR ITS POSITION

The Employer explains the fact that it has limited its wage rate increase to Ranges I, II, and III by stating that "(t)he noon-hour supervision position is primarily a duty which can be performed by a non-union individual. The terms of Article 2.02 provide that individuals

working this position only would not be covered under the contract."

The Employer favors a different set of comparable school districts, a set of districts identical to what was used in a 1986 interest arbitration involving this same unit and this Union. The districts that the Employer believes are appropriate comparables include Arrowhead Union High School, Elmbrook, Hamilton, Kettle Moraine, Menomonee Falls, Mukwonago, Muskego-Norway, New Berlin, and Oconomowoc. All are within Waukesha County. Arrowhead UHS, Elmbrook, Menomonee Falls, Mukwonago and Waukesha are all in the Braveland Athletic Conference. The Employer argues that many arbitrators have indicated that athletic conferences compose appropriate comparables for proceedings such as this one. It is also argued that school districts within Waukesha County compose an appropriate labor market for teaching aides and it is unlikely that the individuals who make up the unit in this case would seek jobs as far away as some of the districts deemed appropriate as comparables by the Union.

The Board asserts that it is difficult to compare rates of teacher aides among the comparable districts for the reason that titles and jobs vary. In this connection the Board quotes with approval a segment of the last award involving this unit in which the arbitrator stated that ". . . meaningful comparisons of individual positions or position classifications, based on this record, are very difficult, if not impossible. . ." For these reasons the Board ranks Waukesha as to minimum and maximum rates in three presumably benchmark classifications: EEN Aides, Kindg. Aide, and Library Aide. At the minimum level the Board final offer would maintain its position in these classifications at fourth among ten comparable districts in 1989-90 and 1990-91. At the maximums the EEN Aides would maintain their rank at sixth among ten for both years, the Kindg. Aide at ninth among ten for both years, and the Library Aide at eighth among ten for both years. The Board asserts that adoption of the Union wage offer would not change the rankings from what they would be if the Board's offer is accepted by the arbitrator.

The Board cites the rate increases provided to seven City of Waukesha and six Waukesha County employee bargaining units. For the most part employees in these units received 2.9 to 3.5 per cent in 1989-90 and 3.5 to 4 per cent in 1990-91. These increases are considerably less than either the Board's or the Union's final offers in this proceeding.

As to the holiday issue the Board makes two arguments: First, the proposal by the Union for a fifth paid holiday is unsupported by the comparables. The Board argues that among the comparable districts only Mukwonago has five paid holidays. (Actually, according to the Board's Exhibit 5Q, New Berlin grants pay for Christmas and New Year's Day in addition to three other paid holidays.) Second, the Union has offered no quid pro quo for the addition of another paid holiday. The Board quotes other awards where arbitrators have insisted that fundamental changes require that the party making the proposal needs to trade something for it. The Board argues that a change such as this should be adopted only as a result of collective bargaining between the parties, not by an outside arbitrator. The Employer also asserts that an identical proposal was made in a 1986 interest arbitration involving this same unit and that the

arbitrator "specifically stated his dissatisfaction with granting to the Union a holiday benefit proposal which was not only costly, but also was totally unjustified in the comparables. . ."

DISCUSSION

I am not satisfied with either the Union's or the Employer's sets of comparable school districts. The Union's comparables give some support to the Union's proposal to add a fifth paid holiday. But I agree with the Employer's argument that Cudahy, South Milwaukee, Germantown, Greendale, and West Allis-West Milwaukee are not in the same teacher aide labor market as Waukesha. I find three of the comparable districts proposed by the Employer unsatisfactory as well. Although I do not agree with the Union that teacher aides not represented by unions should always be excluded, I think that their conditions of employment should be set forth as completely as would be the case if a labor agreement was presented as an exhibit. This was not the case with the districts designated as Arrowhead, Hamilton, and Oconomowoc. The Arrowhead data were obtained in a telephone call and included only bare details of hourly rates and the fact that there were no paid holidays. The Hamilton data did not describe part-time and full-time employment so as to know what benefits were extended except in the case of health and dental insurance. Although it indicated pay rate increases for the appropriate periods, there was no indication of the rules for advancement in grade. The Oconomowoc data were more complete but had some of the same failings as the Hamilton data. Like the Hamilton data, it contained minimum and maximum rates only and no reference to progression. While it specified pay rate increases and the number of paid holidays, much of what was submitted consisted of job descriptions for the various categories of teacher aides but with no indication of which classifications were paid which rates.

The data I find useful are from the six districts that both parties agree upon. These are Elmbrook, Kettle Moraine, Menomonee Falls, Mukwonago, Muskego/Norway, and New Berlin. Both parties presented ample useful data from these districts.

On the issue of wages the Union data purport to show that, on the basis of comparisons of entrance rates, top rates, benchmark rates, and clerical/general aide rates, Waukesha rates are at or near the bottom of all rates among the six comparable districts that I find useful for such comparisons. The Union asserts that this is the case for both 1989-90 and 1990-91. As to the proposed percentage increases, the Union comparisons show the Union's 5.0% proposal to be lower than four of the comparable districts and the Employer's 4.5% proposal to be tied with two districts for last among the six in 1989-90. For 1990-91 the Union's 5% proposal is higher than the other six while the Employer's 4.5% proposal is tied for second with two others, with three districts granting lower percentage increases. In terms of the combined increases over two years, the Union's 10% proposed increase is third among the six and the Employer's 9% proposed increase is tied for fourth with two other districts.

Perhaps in anticipation of such a presentation by the Union that would put the level of the Employer's rates in an unfavorable light, the Employer

argues in its brief that neither proposal would change the ranking of Waukesha rates (among the Employer's comparables) for three benchmark classifications. Since I was unable to find data to support these tables in the exhibits presented by the Board at the hearing, and because I was puzzled by the specific choices the Union had made in its tables as to lowest and highest rates as well as its benchmark rates, I made a comparison of entrance rates and highest rates for Waukesha and the six districts I have found to be appropriate comparables. These comparisons indicated that Waukesha teacher aide starting rates were fourth in 1988-89 among the seven and that neither the Union's nor the Employer's proposed increases would change that ranking for 1989-90 and 1990-91. Waukesha top rates were lowest of the seven districts in 1988-89 and would remain lowest among the seven in both years regardless of which proposed increase is accepted in this proceeding.

Although the lower wage rate increases granted to the City of Waukesha and Waukesha County organized employees are noteworthy, most of their rates are substantially higher than those of the teacher aides so that their effective cents-per-hour wage increases are higher. Nor do the job titles listed in their labor agreements indicate that these employees have the kind of training or skills that would qualify them or make them interested in teacher aide jobs. The fact that this Employer has earlier settled in negotiations for its clerical employees at 5% for two years and with the custodial employees for 4.8% for two years is more relevant as an internal comparison. Thus, in view of the fact that the Waukesha top rates are low in the comparisons and in view of the fact that the Union proposed increases seem more in line with the increases adopted by the six comparable districts, the Union's wage proposal is a more attractive choice in this proceeding than the Employer's proposal.

On the issue of adding Memorial Day to the four paid holidays already granted to these employees, the external comparisons provide little support. Two of the six, New Berlin and Mukwonago have five paid holidays, one has four (Muskego), one has three (Elmbrook), and two have none (Kettle Moraine and Menomonee Falls). There is some substance, however, to the Union's argument that weight should be given to an internal comparison. Clerical employees of the Board who work ten months of the year receive eight paid holidays. And while the Employer emphasizes that the employees in this proceeding are part-timers, many of them work almost as many hours during the year as the clericals. The Employer offered a list of names of employees, their rates, and daily hours worked for the date of March 28, 1991. On that date there were 286 teacher aides. Twenty-four did not work as many as 2 hours, so at that time there appear to have been 262 employees in the unit. Seventy-one individuals, or 27% worked 7 or more hours per day. The labor agreement defines these employees as full-timers. One hundred twelve, or 43% worked 6 or more hours per day, and 140, or 53% worked 5 hours or more per day. One hundred fifty-five, or 59% worked more than 4 hours per day and were therefore eligible, under the terms of the labor agreement, for Employer paid health insurance (on a pro rata basis for those working more than 4 hours and fewer than 7 hours per day). Part-time employees receive other benefits, such as sick leave as well as holidays, under terms of the agreement. These facts are recounted so as to emphasize that it is not unreasonable for the Union to base its support for

the proposal for an additional holiday on an internal comparison with the clerical workers.

The parties disagree about the cost of adding a Memorial Day holiday. The Board estimates the cost at \$11,649 in the second year or .7% of the salary budgeted for the teacher aides, using November as a month on which to base the calculations. The Board did not submit into evidence the annual payroll for the teacher aides, but if the holiday is estimated to cost .7% of the budgeted amount for teacher aide salaries, then that figure is \$1,664,143. The Union estimates the cost differently. It would use the fraction of one day over the number of days paid during the year, or 1/184.

According to this calculation, the Union estimates the cost as .543% of payroll. Although the Union did not make the calculation, this would equal \$9,036. These estimated figures are to be compared with an estimated seventy to eighty thousand dollars increase in wages each year over the two year period, no matter which final offer is selected.

In my opinion the Union has not provided convincing support for its holiday proposal. If that were the only issue, it could not be selected. But the Union has made a more convincing case to support its wage proposal than has the Board. This leaves the arbitration award as a kind of toss-up with regard to the two issues. But the matter regarding the exclusion of the noon-hour supervision aides from the wage increase needs to be considered. The labor agreement recognizes the Union as representing teacher aides working ten hours or more each week. Noon hour duty is generally just that: one hour per day. The Employer minimizes this matter in its testimony at the hearing and in its brief, arguing that "(t)he noon-hour supervision position is primarily a duty which can be performed by a non-union individual." In examining the names of the individuals who actually performed the duty on March 28, 1991, however, I found that 86 individuals were members of the unit and that only 15 who performed noon-hour duty did not perform two hours of work per day and were therefore not in the bargaining unit. Thus 86 individuals who performed the noon-hour duty did it in addition to other duties in their classifications in Grades I, II, and III. Their rates ranged from \$6.36 to \$7.50 in 1988-89 and would range from \$6.65 or \$6.68 to \$8.19 or \$8.27 in 1990-91, depending on which final proposal is accepted. But their noon-hour supervision rate, which was \$6.51 in 1988-89, would continue at that level for 1989-90 and 1990-91 if the Employer's final offer is accepted. For 1990-91 this is about 67 cents per hour less than they would receive for that work if the Union's offer is accepted. For these 86 individual teacher aides, therefore, noon-hour supervision provides a significant part of their total wages.

In the 1987-89 labor agreement the duty of noon-hour supervision received the same 5% increase in the 1988-89 year as Ranges I, II, and III.

In that same agreement the following paragraph appeared in the recognition clause:

- 2.02 All noon hour supervision hours worked by bargaining unit employees will be counted under all applicable provisions of the labor agreement, effective July 1, 1986, except that noon hour supervision hours worked

by bargaining unit members shall not be counted for purposes of determining eligibility for hospital and medical insurance until September 1, 1987.

This indicates that in their negotiations for the 1987-89 agreement the parties extended both wage rate increases and benefits to members of the bargaining unit for the time in which they performed noon hour supervision. I cannot agree with the Union when it is said that there is "absolutely no justification" for excluding noon-hour supervision from the wage increases offered. That work clearly is not included in the coverage of the recognition clause of the labor agreement. The action of excluding members of the unit who perform the work from wage increases for that extra hour, however, is inconsistent with the policy that parties have expressed in Subparagraph 2.02. In other respects the parties are about evenly matched in support of their differing positions on the two issues. In my opinion this last aspect of the case tilts the award in favor of the Union.

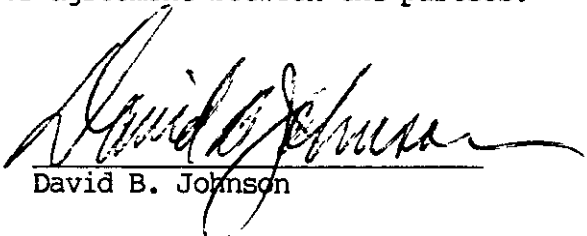
The Municipal Employment Relations Act requires me to consider the ten factors specified in Section 111.70(4)(cm)7. I have carefully considered these factors. Neither party provided any evidence related to factors a., b., c., f., or i. The most important of those I have considered are subparagraphs d. and e., which relate to comparisons of the wages, hours, and conditions of employment of these employees with those of other employees performing similar services and with other employees generally in public employment in the Waukesha community and in comparable communities.

For the reasons given in the previous paragraphs I believe that the Union's final offer in this case would result in wages, hours, and conditions of employment for these teacher aides that compare more closely with those with whom they need to be compared than would the Employer's final offer. In terms of subparagraph g., referring to the cost of living, the Union final offer is higher than the increase in the Consumer Price Index, according to the figures furnished by the Employer, but not by an unreasonable amount. As to the overall compensation of these employees, including benefits (factor h.), and consideration of other factors, not confined to the foregoing factors (factor j.), the discussion above contains adequate consideration of these factors.

AWARD

The final offer of the Union is accepted in this arbitration and will be incorporated into the 1989-91 labor agreement between the parties.

Dated: July 25, 1991


David B. Johnson