

STATE OF WISCONSIN  
Before the Interest Arbitrator

RECEIVED  
JUN 22 1992  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Petition )  
of )  
Gibraltar Area Education )  
Association, )  
 )  
For Final and Binding )  
Arbitration Involving )  
Education Personnel in the )  
Employ of )  
Gibraltar School Board )  
\_\_\_\_\_ )

Case 32  
No. 46196 INT/ARB-6117  
Decision No. 27100-A

APPEARANCES

For the Association:

Dennis W. Muehl, Executive Director

For the Board:

William G. Braken, Director Employee  
Relations Services

PROCEEDINGS

On January 2, 1992 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6 of the Municipal Employment Relations Act, to resolve an impasse existing between Gibraltar Area Education Association, hereinafter referred to as the

Association, and the Gibraltar School Board, hereinafter referred to as the Employer.

The hearing was held on March 6, 1992 in Fish Creek, Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on June 5, 1992 subsequent to receiving the final briefs.

### ISSUES

While the Parties cannot agree on the costing of each other's final proposals, the difference between the Parties is so slight as to be insignificant. In any case, the following represents the issues in this case.

1. Except for the tentative agreements of the Parties, all other provisions are as currently constituted.
2. The Contract would provide for a duration of two years which would include the 91-92 and 92-93 school years.
3. The Association proposes an average package percent increase of 7.1% for the 1991-1992 school year and a 7.3%

average package percentage increase for the 1992-1993 school year.

4. The Board proposes a 6.7% average package increase for the 1991-1992 school year and a 6.3% average package increase for the 1992-1993 school year.

#### BACKGROUND FACTS

This is a wages only dispute. All other issues between the Parties have been settled and, therefore, the Arbitrator will review the arguments of both sides and issue an opinion based on the statutory criteria.

#### ASSOCIATION POSITION

The Association represents classroom teachers, librarians and guidance counselors employed by the Gibraltar area school district. The Parties have resolved most issues for a 1991-1993 Collective Bargaining Agreement with only salaries in dispute. Using the base salary as criteria, the Parties are \$99 per year apart for the 1991-1992 and \$331 apart for the 1992-1993 school year. The Board and the Association have agreed on the following comparables. They are Savastapol, Sturgeon Bay, Southern Door County, Algoma, Luxemburg-Casko, Kewaunee and Denmark. The

Parties disagree as to whether Michicot should be included in the list of comparables with the Board proposing to add Michicot and the Association arguing that including this district would not add anything in terms of deciding this matter. The Association also noted that Michicot does not participate in the insurance consortium and, therefore, does not have identical health and dental insurance benefits. The Association cited an award involving the Southern Door County School District in which the Arbitrator concluded that Michicot should not be included in that comparable group. The Association noted that Michicot is also no longer in the athletic conference. The Association noted that neither party offered to add Oconto and Oconto Falls as comparables even though they are in the same athletic conference. It must be concluded that the Association and the Board recognize the insurance consortium as the primary comparable group. Therefore Michicot does not share a community of interest with the agreed upon district comparables. Therefore, the Association asked the Arbitrator to include only the mutually agreed upon comparables which have been listed above.

The Board supplied a number of exhibits which purport to show income levels and settlement in the public and private sectors outside of education. The Association objected to these exhibits due to their hearsay nature and lack of relevance. At best these exhibits represent reactions to the general state of things without any perspective in terms of the Gibraltar School

District and its comparable group. The Association contended that there is insufficient data for making comparisons with teachers. The Association cited a number of arbitration decisions in support of its position.

With respect to the cost of living index, teacher bargaining units have not paralleled increases in the cost of living. During the years of double digit inflation, teachers' salary levels eroded significantly in real dollar terms. During recent times of moderate inflationary pressures, teacher settlements have been somewhat larger than CPI measurements. It is the pattern of settlements that is the most significant consideration under cost of living criteria. The Association cited an award by Arbitrator Kirkman who considered that cost of living criteria is only one of 10 factors mandated by the statute. The Association argued that the Board did not propose a cost of living provision in the contract and there are two comparable schools settled in the 1991-1992 school year and one in the 1992-1993 school year. Those settlements exceeded the cost of living criteria in both years as is true of virtually every teacher settlement in Wisconsin. The Association noted that with the exception of the 1981-1982 agreement, all agreements in Gibraltar have been reached voluntarily. The Parties would have considered any cost of living implications at the time of settlement in each voluntary agreement. The Board's own exhibits show that the Parties have been willing to settle

voluntarily at a rate higher than the cost of living in virtually every case. The Association also cited an award by Arbitrator Petrie which rejected a consideration of experience in the cost of living determination.

The evidence in this case shows that the District has an extraordinary ability to pay. The school district is among the richest in the state. Full value of taxable property is nearly 4 times that of the comparable average and has been consistently increasing while the comparable average shows increases at a marginal rate. During 1991 this district had nearly \$1 billion of property value supporting its school district. Therefore, its mill rate is about 1/3 of the comparable average. Even though the District does not receive equalized aid from the state, its gross levy impact is not much greater than the comparable schools. During 1989-1990 there was more than \$1 million in property supporting each student, while the comparables averaged \$200,000. The Gibraltar School District property tax payers pay 1/3 the property tax that others pay on a comparable home in comparable communities. The increase in property tax has been smaller in the Gibraltar schools than the comparables' average even on a percentage basis. Seasonal property owners own 6,905 residential properties and pay 38.4% of the taxes paid locally. Thus, the seasonal owners pay a property tax offset. This more than makes up for the lack of state educational aid. Thus, Gibraltar school residents are able to spend at a rate per pupil

among the highest of Wisconsin School Districts with a lower effort by its property tax payers. The difference between the two offers would result in a mill rate increase which would cost the average homeowner \$.93 per year in 1991-1992 and \$3.18 per year in 1992-1993. When the income generated by the Door County sales tax and the residential property tax credit is applied, the residents of the Gibraltar are even further ahead.

The ability to pay is a factor in this case. Only two of the comparables are settled for 1991-1992 and one in 1992-1993, but there is nothing in the record which supports the Board's offer over the Association's when compared to these settlements. There is no inability to pay in this case. The Board has the authority and the financial wherewithal to meet virtually any demand the Association may make. The Association could have asked for even higher increases, however, it only demands a salary increase which is reasonable and consistent with the comparables and the other statutory criteria utilized to judge the reasonableness of final offers.

Contrary to the doom and gloom put forth by the Board, exhibits provided by the Association show that the economy of Door County has substantial vitality and also only approximately 60% of Gibraltar School District's residents live in the district year round. The Association admitted that there are periods of time during the year where unemployment is high, but that is

driven by the tourism industry. The overall unemployment rates are lower in 1991 than ever before. The historically high unemployment in winter months is decreasing as winter sports become more a part of the overall Door County tourist industry. The Association contended that the Door County economic condition is excellent and noted that the Gibraltar School District residents wanted the Board to increase the tax levy, and the Board did not follow the direction of the annual meeting.

The proposed school district cost controls are in the Association's view not a factor in this case. The Board planned on non-renewing 6 bargaining unit members as a result of these proposed controls. In fact, cost controls did not materialize and it is business as usual. Cost controls have been proposed in the past but not enacted. The same governor and legislature failed to enact cost controls this year, also.

The settlement pattern of the comparables supports the Association's offer. Two of the seven comparables are settled for 1991-1992. The schedule structures are comparable, particularly at the hiring rates and at the scheduled BA, MA and scheduled max. The Association noted that Kewaunee and Sturgeon Bay did not change schedule structures, so all benchmarks are usable as points of comparison for analysis. It is the Association's position that it is its proposals which more closely approximate the comparables' settlements. It also is



more appropriate when compared to the average statewide settlement at the benchmarks in both the 1992 and 1993 school years. The Association also contended that its position vis-a-vis the other school districts has been slipping over a ten-year period and the Board's offer would exacerbate this slippage. The Board also contended that its average dollar increase supports the Association's offer. While the Association does not advocate the use of the total package concept, the Board raised this argument and the Association responds by stating its offer is also preferred from a total compensation standpoint among the comparables for which data is available. Likewise, a comparison of final offers in other comparable districts which have not settled, and the Board's offer still falls short even if the Employer's offers are selected in every one of the open cases, particularly when voluntary settlements are factored into the mix.

The Association stated its offer is more reasonable than the Board's offer, and the Association requested that the Arbitrator find in the Association's favor in this award.

#### BOARD POSITION

The current economic uncertainty and the possibility of cost controls and levy limits have made this a difficult round of bargaining. The comparables, while mostly agreed upon with the

exception of Michicot, are basically unavailable since there are very few comparable settlements. It is the Board that absorbs the greatest risk because it has agreed to pay 95% of the health care cost increase for family coverage and 100% for single coverage during the 92-93 school year.

With respect to the comparables, the Board stated that the only comparable not agreed upon is Michicot. It is the Board's position that Michicot should be included in the list of comparables and refers to an Arbitrator Yaffe award, which included Michicot as a relevant comparable. Just because they are not in the insurance consortium, there is no reason to exclude them, and there are many cases which cite consistency as an important part of the collective bargaining process. There are only two settlements among the comparables. Kewaunee is in the second year of a two-year agreement, and Sturgeon Bay is in the first year of a three-year contract. The Board argued that these two settlements are not comparable since there are different economic conditions and there is a different political climate than when these contracts were settled. The spector of cost control and levy limits were not considered during those negotiations. In any event two settlements do not make a pattern. The Board cited a number of cases in support of these arguments. The Board noted that the cost of living was 4.8% in 1990 and only 3.1% now. In any event there is much higher unemployment in the Door County area. There are substantial

economic differentials between Kewaunee-Sturgeon Bay and Gibraltar. Gibraltar receives no state aid. Its costs are highest among the comparables, and its cost per pupil is second highest among those same comparables. The Board noted that schools in the same geographic area do not necessarily have the same economic conditions.

The Sturgeon Bay settlement is also not directly comparable since there was a quid pro quo in that settlement. There is no comparable quid pro quo in Gibraltar. When factoring in the quid pro quo, the Sturgeon Bay settlement comes closer to the Board's offer in Gibraltar. In addition, Sturgeon Bay is a larger and more urban area.

The Board contended that there are not enough settlements to form a pattern. Boards in other districts among the comparables have rejected the Sturgeon Bay and Kewaunee settlements. Likewise, statewide data is of little value since there is no consideration of local or regional economic differences. There is no shortage of competent teachers in the local labor market area and, therefore, other criteria should be weighed more heavily and the comps given little or no weight. Again, the Board cited numerous cases in favor of its position.

With respect to other statutory criteria, it is the Board's position that the interest and welfare of the public criteria is

the most important. The District is not claiming that it cannot pay the salaries requested by the Association, but the Association offer is too high a burden on the taxpayer. Taxpayers in this area face serious economic problems. Cost controls could cause the entire budget increase to go for teacher salaries leaving nothing for other items. The economy in this district is based on tourism and agriculture. Service and farming jobs are not economically viable to support the kind of increases requested by the Association. The Arbitrator's decision must be based on the current economic conditions. The state and federal economy is in decline. There is intense pressure on school boards to control costs, and controls may be imposed upon this district. It comes as no surprise that Wisconsin is a highly taxed state. The District offer balances a fair raise with the interest of the public. Teachers have received a better than a cost of living raise and current rates are already high enough to attract competent teachers. These teachers have beaten inflation by a substantial margin over the last ten years, and taxpayers' incomes in the area did not keep pace with teachers' salaries. Administration and non-union employees did not receive increased wages at the same pace as teachers have over the last 10 years. The District is populated with a lot of retirees and those approaching retirement, and the taxpayers pay the full cost of education, therefore, balance favors the District's offer. A number of cases were cited in support of the District's position.

With respect to COLA as noted above, the Board's offer is above the cost of living and provides real gains for the teachers. This is not a catchup situation. Inflation is measured by the consumer price index and not comparable settlements. The Association's offer breaks the historical pattern, and the Board's offer is more reasonable when compared with the cost of living. Regarding the total package, overall compensation is the best measure and it favors the Board's position. The Gibraltar teachers have the second highest total compensation package among the comparables. A number of cases were cited in which the Arbitrator found that overall compensation is the criteria on which judgement should be made. In addition the second year poses the greatest risk for the District due to the unknown insurance costs, and the Association's offer contains higher increases for the second year without any justification. The Board agreed to take on the risk of funding the insurance when the Board could have asked the bargaining unit to take on more of the risk. In addition the Board agreed to add a new MA + 24 lane to reward teachers in that category.

The Board also noted that external comparables favor the Board's position. When compared to Door County employees, other Board employees, parochial schools, private and public sector employees employed by the state and federal government, no one is

getting the kind of increase that is requested by the Association. The external comparables have more value for comparables than two teachers' settlements. The Board is competitive at the benchmarks and no catchup is required in this case. The Association's evidence fails to support its offer, and it is the Board's position that there is nothing in the Association's exhibits that justifies the selection of its offer. And for that and all the reasons stated above, the Board asks that the Arbitrator select its offer as the most reasonable in this matter.

#### DISCUSSION AND OPINION

Each side has brought forward extensive and well thought out arguments and, for the most part, each side's arguments and data are correct. What is left to the Arbitrator is to weigh all of this information and determine which side's salary proposal more closely meets the statutory criteria--all in all, an extremely close decision.

The Parties have basically agreed upon the list of comparables in this matter, and they are listed on the bottom of page 3 and top of page 4 in this award. The Parties disagree as to whether or not Michicot should be included. Michicot was included during the last interest arbitration. The Association

argued for exclusion and the Board argued for inclusion. The Arbitrator finds that, at least for this interest arbitration, whether or not Michicot is included is immaterial, although the Arbitrator would note for the record that the side which would wish to remove one of the previously used comparables must establish a prima facie case for this change. That is, the proponent of change must fully justify its position. The reason that the inclusion of Michicot is moot is that their contract has also not been settled. This Arbitrator has the interest arbitration assignment involving that school district. While the Parties have agreed for the most part on the list of comparables, the Arbitrator notes that the Board made a gallant effort to disassociate itself from the settlements reached at Sturgeon Bay and Kewaunee.

After reviewing all of the evidence and arguments presented, the Arbitrator has made the following determinations:

With respect to the arguments concerning the economy, the Arbitrator finds that this issue does not favor either side. It is true that the economy has been struggling the last few years, however, there are substantial signs of improvement, and this improvement has already materialized and should continue throughout the term of the contract. Therefore, the economic arguments favor neither side's position. Likewise, cost controls are not a factor in this arbitration. The Arbitrator understands

how seriously the Board takes the spector of mandated cost controls, however, this Arbitrator finds himself in agreement with Arbitrator Krinski (Kendall-Wilton District case) in which he observed that we cannot deal with speculation as a factor to be utilized by the Arbitrator in determining the outcome of the case. If cost controls come, then arbitrators will be forced to deal with that reality at that time.

Favoring the Board's position are the non-school district external comparables and the cost of living criteria. External comparables are appropriate to be considered by the Arbitrator although it has been noted in many cases and by this Arbitrator, also, that teachers are in a unique situation, and direct comparisons to teacher units from other units of government and the private sector are difficult at best. The Arbitrator would note for the record that a comparison with parochial teachers will always favor the employer's position, and this Arbitrator believes that parochial school comparisons are not appropriate. Contrary to the Association's argument, all of this kind of data will almost always be in the nature of hearsay evidence, however, the Arbitrator finds that the external comparables do favor the employer's position.

Likewise, the cost of living data also somewhat favor the employer's position although it is clear that both sides have agreed that this bargaining unit deserves increases in excess of



the cost of living index. The dispute lies in the appropriate amount over the index. Cost of living considerations are difficult for arbitrators since it is a relatively volatile index. Many arbitrators have determined that the comparables take into account cost of living considerations and, therefore, need not be considered separately. This is a criteria which both sides have argued historically based on its level in comparison to the wage increases offered. Obviously, in this period of moderate inflationary pressures, it is the employer who is arguing cost of living considerations. While both side's proposals exceed the cost of living, obviously it is the employer's proposal that would be more favored since it more closely approximates the cost of living figures. However, the Arbitrator would note that this is not a particularly important criteria under the circumstances of this case.

Impact on the public is the next factor. Both sides made excellent arguments on behalf of their positions, and the Arbitrator need not burden the record by repeating them. However, in reviewing all of the arguments the Arbitrator is convinced that Door County is a unique situation in that almost 40% of the property owners pay a full property tax load yet use little or no educational services because they are seasonal residents. Therefore, the actual impact on the taxpayer as a result of the difference between the two offers is so minimal as to be insignificant. Therefore, the impact on the public

criteria, while certainly greater under the Association's proposal, does not detract from the Association's position.

We are then left with the consideration of the direct comparables. As is noted in both side's arguments, we have minimal data to guide us. Kewaunee has settled for the 1991-1992 school year, and Sturgeon Bay has settled for the 1991-1992 and 1992-1993 school years. Those settlements strongly favor the Association's position. The question before the Arbitrator is, "Do these two settlements constitute enough of a pattern to tip the balance in favor of the Association?" The Arbitrator must also consider if there are other factors which would cause these two settlements not to be comparable. The Board argued that neither of these units should be compared since there is a different economic and political climate than when these contracts were settled. The Arbitrator has already discussed these two factors and finds that they do not impact on this decision. The fact that Gibraltar receives no state aid is more than offset by the unique population makeup of the Gibraltar district. Likewise, the fact that Sturgeon Bay is the larger and more urban area is not a valid argument since the Parties have agreed to include it in their list of comparables. If the employer wishes to exclude Sturgeon Bay from the list of comparables, then it should make that argument up front.

We are then left with two factors: whether or not two settlements is enough to form a pattern and also whether or not there was a substantial quid pro quo in the Sturgeon Bay contract which would eliminate its use as a direct comparable. The Arbitrator wishes that there were more settlements to guide his deliberations. The facts are that there are not. One of the reasons that there are not is that the others are all in interest arbitrations, which are at various stages in the resolution process. It is a close call, but the Arbitrator finds that, since only two settlements are available, that is what the Arbitrator will utilize in terms of determining what turns out to be the deciding factor in this case.

This leaves us with the concern that the Sturgeon Bay settlement, because of the quid pro quo, may not be directly comparable. The Arbitrator has reviewed Board Exhibit 231 and, while the language changes in the Sturgeon Bay contract were certainly favorable to the employer and perhaps make its job of managing the district somewhat easier, there are no significant economic concessions which would preclude the Arbitrator from using that settlement as a comparable in this case. The Arbitrator finds that what few comparables are available to him substantially favor the Association's position based both on straight salary and total package considerations.

This was an extremely close call and a difficult decision. The Arbitrator has concluded that, when weighing all of the evidence, it is the Association's proposal which most closely matches the statutory criteria. Therefore, it is the Association's proposal that will prevail.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Gibraltar Education Association is the more reasonable proposal before the Arbitrator, and directs that it, along with the predecessor agreement as modified by the stipulations reached in bargaining, constitutes the 1991-1993 agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 19th day of  
June, 1992.



Raymond E. McAlpin, Arbitrator