

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

RECEIVED  
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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Stipulation of  
HAYWARD COMMUNITY SCHOOL DISTRICT

and

Case 54  
No. 46169 INT/ARB-6114  
Decision No. 27132-A

NORTHWEST UNITED EDUCATORS

To Initiate Arbitration  
Between Said Parties

**APPEARANCES:**

Stevens L. Riley, Esq. on behalf of the District  
Michael J. Burke, on behalf of the Union

On February 3, 1992 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on March 16, 1992 at Hayward, WI. Briefs were exchanged by the parties by June 1, 1992. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats. the undersigned renders the following arbitration award.

**ISSUES:**

This dispute is over the terms of the parties' initial collective bargaining agreement covering the 1991-93 school years. There are several issues in dispute:

With respect to retirement, the Union asserts that it is proposing that effective 1/1/93, unit employees would be covered by WRS, and that the Board would pay both the employer and employee share, i.e., 12.2%. The District proposes continuing its current 7.5% IRA contribution for the duration of the agreement.

On the Workday and Workweek, the Union proposes putting into the contract the District's past attendance policies for clerical and secretarial employees during the summer, Easter and Christmas vacations, and inservice days. The District does not address these issues in its proposal, but contends that the District's practices in this regard would be continued, and that they would be protected since the agreed upon zipper clause does not refer to past practices.

The District proposes continuing its practice of prorating health and dental insurance entitlement based upon 2080 hours, whereas, the Union proposes prorating based upon 1820 hours in the second year of the proposed agreement.

The District proposes incorporating into the Agreement a proviso defining various categories of employees, e.g., part time, full time, casual, school year, and 12 month. The Union asserts that such definitions are unnecessary, and its proposal therefore does not address the issue.

Both parties propose continuing to utilize a 17 step wage schedule. The Union proposes a 5% increase on all rates in the first year, and a 3% increase on all rates in the second year. The District proposes a 1.5% increase in all rates in the first year, and a 3% increase in all rates the second year.

Under the Emergency Leave provision the Union proposes that immediate family include parents, brothers and sisters, while the District proposes that it include only spouses and children.

Both parties agree that all school districts in the Heart of the North Athletic Conference be utilized as the primary set of comparables.

The undersigned will first discuss the relative merit of the parties' proposals on each of the issues addressed individually, and thereafter, the relative merit of the parties' proposed total packages will be addressed.

#### **WAGES:**

##### **District Position--**

44 of the 49 bargaining unit members will receive an increment increase in both years of the proposed agreement's term. When the value of such increments is included in the costing of the parties' proposals, the Board's first year wage proposal is worth 4.47% and its second year wage proposal is worth 5.95%. Using the same costing method, the Union's first year proposal

amounts to an 8.07% increase, and its second year wage proposal would result in a 5.93% increase.

The increments in the schedule warrant a less than average increase in the schedule rates since the increments alone approximate a 3% increase in both years.

When the cost of increments are included, the Board's offer is supported by the settlement pattern in the Conference. Comparisons in the Conference should be confined to the 1991-92 school year since only one district is settled for 1992-93. In 1991-92 the Board's offer provides an average wage increase of 1.45% less than the Conference average of 5.92%, while the Union's offer exceeds the Conference average by 2.15%

The average wage increase within the Conference in 1991-92 amounted to 45¢/hour. The parties' proposals are equally distant from the average--the Board's offer being 13¢/hour less, and the Union's offer being 13\$/hour more.

Analysis of the District's proposed maximum wage rates demonstrates that in the majority of cases District employees can expect to earn a higher maximum wage than employees in comparable districts. In only two instances does the maximum rate within the Conference exceed the maximum offered by the Board. There is simply no justification for increasing the District's maximum wage rates which are already superior to the majority of the Conference comparables.

The Union could have proposed a much shorter salary schedule wherein the increment costs would be a minimal factor, in which case a 3% or 5% increases would have been more acceptable to the District and supported by the comparables.

It is highly inequitable to allow the Union to hang on to a lengthy salary schedule, automatically providing a 3% increment increase over 16 years, and then ignore the automatic increases provided thereby.

Though the District's proposed minimum rates are less than the Conference average for secretaries, aides and cooks, the Board's offer provides that qualified new hires may be placed higher on the salary schedule.

The District's wage offer is also more reasonable when compared to the local public sector labor market, i.e. Sawyer and Washburn counties and the City of Hayward. In this regard the average maximum secretarial/clerical wage

received by comparable employees was far lower in 1991 and 1992 than that proposed by the District. The same may be said for Washburn County's food service personnel. In addition, in all three instances full-time employees covered by family health insurance contribute toward their insurance premiums, and none receive dental insurance, long-term disability insurance, or a contribution toward a health care expense account--all of which are benefits enjoyed by bargaining unit employees. In addition, in these three settings it is likely that a majority of employees did not receive increments by virtue of the nature of their wage schedules, and yet, Sawyer County agreed to a 3% increase for both 1991 and 1992, while Washburn County agreed to a 3%/1% split (on January 1/July 1, respectively) in both 1991 and 1992.

In addition, the Board wage offer greatly exceeds the majority of the wages paid in comparable jobs in the private sector in the immediate counties. Relatedly, the benefits offered by the District are far superior to those offered by the private sector.

Another major consideration supporting the reasonableness of the Board's wage offer was the 34.5% increase in the District's health insurance premiums which occurred in 1991-92, the first year of the proposed two year agreement.

**Union Position--**

Hayward is the largest district in the Athletic Conference, and its financial condition appears to be good. Yet, in terms of cost per member, the District is well below the Conference Average.

The salary schedule for unit employees is also below average, as are the increases proposed by the District. The Union's proposal for a 5% wage rate adjustment is much closer to the Conference average than the District's proposed 1.5% rate increase. Not a single district in the Conference settled for less than a 4% adjustment for 1991-92. Chetek and Spooner non-union support staff received a 5% adjustment.

The District also pays below average for all three classifications involved: clerical, cooks, and aides. The starting wages are the lowest in the Conference. While the maximum pay levels are competitive, it takes sixteen years to reach the maximum rate, and no other Conference district has even a ten step schedule maximum.

In addition, the 3% increment cost is clearly a function of a low paid staff and extremely long salary schedule, and thus, the % cost of increments are artificially high.

The salary schedule needs average to above average rate increases to remain comparable. If these increases result in schedule maximums that are out of line with the comparables, then modifications of the maximum rates can be addressed in future negotiations. At the current time there are few, if any, employees receiving maximum rates.

Though the District contends that it may hire above the minimum rates, this has not occurred in the District.

#### Discussion--

The parties agree that the most relevant comparables are the support staffs in the Athletic Conference, and, in that regard, the availability of data limits comparisons to the 1991-92 school year.

In that regard it would appear that the average wage settlement, including increments, among the comparables was 5.92%. Based upon this factor alone, the District's wage proposal is more comparable than the Union's.

However, the undersigned believes that another comparison must be made in order to ascertain how comparable the parties' respective wage proposals actually are. The problem in this regard is what wages to actually compare. It is clear that the District's minimum wages are below the comparable averages, and that its maximum wages are above the comparable average. The undersigned believes however that a more valid basis of comparison is the maximum wage rates in comparable districts at the point in time when employees in those districts are eligible to receive such rates compared against the rates in the District that employees would receive at a similar point in time.

The record indicates in this regard that in comparable districts, clericals, teacher aides, and cooks, on average, are eligible to receive maximum wage rates after four to five years of service in their districts.

Thus, with respect to clericals with four to five years of service, on average, in comparable districts they receive \$9.37 per hour. After four to five years under the Board's proposal, clericals would receive between \$7.01 and \$8.56 per hour, and it would take, again on average, about seven years for a clerical to reach a wage rate that approximates the comparable average.

Under the Union's proposal, after four to five years clericals would receive between \$7.26 and \$8.85 per hour, and it would also take about seven years for clericals to receive the approximate comparable average.

A similar analysis applied to teacher aides indicates that on average, aides in comparable districts receive \$8.30 per hour after four to five years. Under the Board's offer they would receive between \$6.37 and \$6.59 per hour after four to five years, and it would take them 13 years to approximately reach the comparable average. Under the Union's offer, they would receive between \$6.59 and \$6.81 after between four and five years, and it would take them 12 years to approximately reach the comparable average.

For cooks, the comparable average is \$7.73 per hour, which they receive after between four to five years. For these employees the Board proposal would result in a wage between \$6.37 and \$6.69 per hour, and it would take them ten years to approximately reach the comparable average. The Union proposal would result in an hourly wage between \$6.59 and \$6.81, and it would take them nine years to approximately reach the comparable average.

The foregoing analysis indicates that similarly situated employees in the District are paid significantly below comparable average wages, and that some wage catch up is justified. Though the Union's wage proposal is not structured in a fashion which efficiently accomplishes that end, and though it will result in unnecessarily high maximum rates for very senior employees, in the undersigned's opinion it is more reasonable than the District's position on this issue, which simply perpetuates this problem. Thus, because the Union's wage proposal more effectively addresses the wage disparity problem for new and mid range employees that exists in the District, when it is compared with its comparables, the undersigned deems the Union's wage proposal to be somewhat more reasonable than the District's, though in neither case is the problem identified herein effectively addressed by either party's proposal.

#### **RETIREMENT:**

District Position--

This issue is at the heart of the parties' dispute.

The District's opposition to including WRS in this initial agreement arises out of the fact that under Wisconsin statutes, once WRS is implemented, all support staff employees must be enrolled in it.

The District's custodians, represented by the Teamsters, are covered by a separate agreement which expires on June 30, 1992. Should the Union's proposal be selected in this proceeding, the custodians will automatically receive a 6.1% increase--the employer' share of the WRS contribution. This puts the District at a serious disadvantage.

The District concedes that the comparables support WRS participation. However, the Union asks too much, too soon.

It is not uncommon for employees to accept a wage adjustment in return for the employee share of WRS, or to gradually phase in the employee share. (Citation omitted) Based on the inflation rate of 1.7% in January, 1992, the general economic recession, the high local unemployment rate, and repeated requests for cost controls and property tax relief in Wisconsin, it should not be found that the Union's 5.93% wage proposal constitutes an adequate trade-off for the District's total contribution to WRS.

In addition, the Union's retirement proposal is open to only one interpretation--as of 7/1/91 the Board must contribute 7.5% of each employee's salary toward an IRA account for that employee, and effective 1/1/93, in addition to continuing the IRA contribution, the Board must pick up both parties' share of the WRS contribution, a total of 12.3% of the employees' annual wages.

Even if the IRA contribution is allowed to terminate after the first year of the agreement, the cost of the Union's proposal is still an additional 4.8%.

Union Position--

This is the single most important issue in dispute.

The current retirement program for this bargaining unit is the most glaring weakness in the District's offer. It is not supported by any comparable districts, nor is it comparable to the retirement benefit afforded to the District's teachers and administrators.

All of the support staffs in the Athletic Conference are covered by WRS. The District's retirement plan is between 4.5 and 4.7% behind that Athletic Conference norm.

Because of this compelling comparability evidence no quid pro quo should be required. (Citation omitted) However, the Union did moderate its wage proposal in the 1992-93 school year (3%) because of the increased

retirement costs it is requesting. In addition, it must be emphasized that the District has realized a financial gain by its substandard retirement plan in prior years.

Also, WRS annuities are based, in part, on years of creditable service. Thus, for every year that this benefit is postponed, the employees' retirement annuities will be reduced.

It is also important to note that the Union has not proposed that the District pick up prior years of service under WRS. All employees would come into WRS with zero years of prior service.

The District is clearly attempting to avoid the costs associated with WRS inclusion by whip-sawing the two bargaining units over the retirement issue.

Discussion--

On its individual merit comparability clearly supports selection of the Union's proposal in this regard. Relatedly, it is clear to the undersigned that the Union's proposal contemplates termination of the District's IRA retirement contribution at the end of calendar year 1992, after which WRS participation will commence. Though this is a rather dramatic change in the status quo, it is strongly supported by comparability, delayed implementation accompanied by a moderate second year wage proposal by the Union, the fact that retroactive credit is not being requested, the fact that further delays in implementation would result in reduced employee entitlements at the time of their retirement, and lastly, the fact that the District has enjoyed considerable historical savings regarding its retirement benefits, when compared to comparable districts which are in WRS. In the context of all of the foregoing, the District's expressed concern about the applicability of the benefit to other support personnel in the District is not sufficient to justify further delays in effectuating this change.

#### PRORATION OF HEALTH AND DENTAL INSURANCE PREMIUMS:

District Position--

The District's health insurance premiums rose 34.5% in 1991-92. Even if the 1992-93 premium increase is limited to only 15% and the 2080 hour formula is maintained, the District's health insurance costs will increase another 15.76%. If the Union offer is selected, there will be a 25.99% increase in the cost of health insurance for this employee group, or a total two year increase of over 60%, which is both unreasonable and excessive.



Though external comparables do not support the 2080 proration formula, the District offer in this regard is supported by the internal comparables. Teachers in the District receive prorated health and dental insurance based on their percent of contract, and custodians receive prorated contributions based on 2080 hours.

Arbitrators have agreed that internal comparables should be given greater weight than external comparables when considering a fringe benefit common to internal groups. (Citation omitted)

#### Union Position--

The vast majority of unit employees work between 6 and 7.25 hours per day. In 1991-92, 7.25/hour employees paid approximately 37% of their insurance premium. Under the Union's offer, in 1992-93, these employees will pay about 28% of the premiums. Considering that these employees are basically school-year full-time employees, these premium contribution levels are still very high.

The average threshold in the Conference is 1577.5/hours per year. Once again, the Union's offer is a moderate request. Maintaining 2080 hours as the threshold is unduly harsh.

While the Union's proposal involves a change in the status quo, it is moderate in nature and would cost the District less than \$9,000 in 1992-93, and it is supported by the comparables.

#### Discussion--

Though comparability again supports the Union's position on this issue, when the Union's proposal is viewed in the context of the 60% increase in the District's health insurance costs over the life of the agreement that may result, at least in part, therefrom, and when this requested improvement is viewed in the context of an otherwise generous and costly total package request, the persuasiveness of the Union's arguments pertaining to this issue is at least somewhat diminished. This will be discussed further in the undersigned's discussion of the relative merit of the parties' total package proposals. However, on its individual merit, in the context of comparable benefits and the normal work year of many of the employees in the bargaining unit, the Union's proposal on this issue is deemed to be more reasonable than the District's.

**CATEGORIES OF EMPLOYEES:****District Position--**

The District's proposal simply provides a clear definition of various categories of employees to avoid future disputes. The language represents the status quo.

**Union Position--**

The District's proposal specifically excludes employees working less than 20 hours per week from the bargaining unit. Not only is this contrary to traditional WERC case law (which includes regular part-time employees regardless of hours per week), but is also contrary to the parties' recognition clause, which makes reference to all regular part-time employees.

**Discussion--**

Though the District's proposal constitutes a legitimate attempt to give definition to the various categories of employees covered by the parties' agreement, in view of the fact that there appears to be no agreement between the parties regarding the unit status of part time employees who work less than 20 hours per week, the undersigned is not of the opinion that the interest arbitration process is the appropriate forum to resolve such a dispute. In view of that disagreement, the undersigned therefore deems the Union's position on this issue to be less unreasonable than the District's.

**WORK DAY AND WORK WEEK:****District Position--**

The Union's proposal codifies three very unique District practices, i.e., allowing clerical and secretarial employees to work a 7-hour day during the summer while receiving pay for 8 hours of work; requiring the District to schedule only two clerical or secretarial employees to work during the Easter and Christmas vacations (one in the central office and one in the high school) while paying those not scheduled to work their full salary; and allowing clerical and secretarial employees to leave 1/2 hour early on the days before inservice days.

These particular benefits are unique to the District. Nevertheless, the District agrees that they cannot unilaterally be eliminated during the life of the proposed agreement.

The District seeks merely to defer any bargaining over this issue to future negotiations.

**Union Position--**

The lack of contractual language on this issue puts unit employees in jeopardy of losing this benefit in subsequent years. The District's failure to codify this practice is a change in the status quo, and the District has offered no justification for the change.

**Discussion--**

The record indicates that the Union's proposal merely codifies the status quo in this regard, and the District has presented no persuasive reason why bargaining over that status quo should be deferred to the next round of negotiations. Absent the existence of such a persuasive reason, the undersigned deems the Union's position on this issue to be more reasonable than the District's.

**EMERGENCY LEAVE:**

**District Position--**

On this issue the Athletic Conference comparables do not support either party's position. Though the teacher contract defines immediate family as requested by the Union, the contract with the custodial unit contains no definition.

The District's proposal in this regard however is more reasonable than the Union's.

**Union Position--**

The Union's proposal is identical to that contained in the District's teacher contract. Thus, it is preferable on the basis of internal comparability.

**Discussion--**

Because no persuasive reason has been presented why the benefit in this regard should be more limited than that which the District has given its teachers, the undersigned deems the Union's position on this issue to be more reasonable than the District's.

**TOTAL PACKAGE:****District Position--**

The Board total package offer of 7.37% for 1991-92 is supported by the Conference average of 7.79% for the three unionized comparables, and exceeds Maple's 1992-93 total package cost of 6.28%. The Board offer is also supported by internal settlements for 1991-92--a 6.63% package for custodians and a 6.64% package for teachers.

The Union's total package is simply way out of line. It requires a 25.99% increase in health insurance contributions, a 12.18% increase in dental insurance contributions, and an 11.86% increase in the health care expense account in 1992-93 due to the change in the proration formula. On top of all that, it proposes, at a minimum, a 39.82% increase in retirement costs.

Also relevant is the fact that economic conditions in the Hayward School District do not compare favorably with the rest of the state. Area unemployment was near the highest among comparable counties, and higher than the state average. Inflation was very low. Hayward's average total income was among the lowest in the Conference in 1990.

The Board's offer reflects an over-all increase in wages and benefits over two years of 14.45%, while the Union proposes, at a minimum, a 20.89% increase. The Union's demand simply cannot be justified in light of local economic conditions.

**Union Position--**

Because the wage and benefit package for these employees has been below average in the past, the total package costs must be higher than normal.

The District's base year costs (1990-91) were way below average on retirement, wages, and health insurance. As a result, the Union's offer generates a larger than normal total package increase.

The District's two year total package increase amounts to 14.45% and the Union's amounts to 20.89%.

This dispute should not be decided on the basis of total package costs. On an issue by issue analysis, the Union's offer is preferable. Given the fact that

this is the initial agreement between the parties, these equitable adjustments need to be made.

**Discussion--**

Though the economic value of the District's total package offer for 1991-92 is more comparable than the Union's, the Union's position on each issue in dispute has been found to be more reasonable than the District's. In addition, a relatively strong case has been made for the need for catch up in the District, particularly in the areas of wages and retirement benefits, which justify a higher comparable total package settlement. In addition, since this is the initial agreement between the parties and so many issues remain in dispute, it is not surprising that the total value of the Union's final offer exceeds comparable averages in a situation where the majority of comparable bargaining units have previously bargained collective bargaining agreements. With all that in mind, the undersigned concludes that the Union's total final offer is more reasonable than the District's, and will direct that it be included in the parties collective bargaining agreement.

In spite of that conclusion however, the undersigned believes that it is worth noting that the Union's final offer is not without troublesome deficiencies. In this regard, the salary schedule it has proposed does not address the comparability problems identified herein wisely or efficiently, since it will result in unnecessarily high maximum rates which could have been made more comparable had it chosen to propose a more comparable schedule. Also, the Union, in seeking to address three major economic issues with significant cost impact to the District, came close to proposing a package, the cost of which was more than the District reasonably should have been expected to incur. The undersigned would have been much more comfortable if the Union had chosen to address two of said issues in this round of negotiations, and had been willing to defer one of the issues to the next round.

However, as the parties fully understand, that is the risk both parties take in a final offer/total package interest arbitration process, and in that regard, the undersigned must choose between two imperfect proposals. That is precisely what has occurred herein.

Based upon all of the foregoing considerations, the undersigned hereby renders the following:

**ARBITRATION AWARD**

The Union's final offer shall be incorporated into the parties' 1991-93 collective bargaining agreement.

Dated this 26<sup>th</sup> day of June, 1992 at Madison, WI.

  
Byron Yaffe  
Arbitrator