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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of	:	
EAU CLAIRE SUPPORT STAFF FEDERATION, LOCAL 4018, WFT/AFT, AFL-CIO	:	Case 45 No. 45925 INT/ARB-6072
To Initiate Arbitration Between Said Petitioner and	:	Decision No. 27161-A
EAU CLAIRE SCHOOL DISTRICT	:	

Appearances:
Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Mr. James M. Ward, for the District.
Mr. Steve Kowalsky, WFT Representative, for the Union.

On February 27, 1992, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator ". . . to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, . . . by selecting either the total final offer of the . . ." District or of the Union.

A hearing was held at Eau Claire, Wisconsin, on April 30, 1992. No transcript of the proceeding was made. At the hearing the parties were offered the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties' post-hearing briefs on June 9, 1992.

There is one issue in dispute: the amount of the wage increase for 1991-92. The parties entered into a 1990-92 Agreement which contained a wage reopener clause for the second year of the contract, but they were unable to agree upon what the second year increase should be. The parties agree that the wage rate is retroactive to July 1, 1991.

The Union's final offer is: "Increase wage rates by 4.0% each cell of the salary schedule." The Employer's final offer is: "Increase in wage schedule by 2.95%."

The arbitrator is required by statute to consider the factors contained in it. There is no dispute between the parties, and/or no evidence presented with respect to several of them: (a) lawful authority of the employer; (b) stipulations of

the parties; that portion of (c) pertaining to the financial ability of the District to meet the costs of any proposed settlement; (f) comparison with employees in private employment; (i) changes during the pendency of the arbitration. The other factors will be discussed below.

Comparables

The parties do not agree on which districts should be used for purposes of comparisons. Eau Claire School District is part of the Big Rivers Conference. The District urges use of the Conference districts as the primary comparables. The Union agrees that Menomonie and Chippewa Falls, both Conference members should be part of the primary comparable group, but it views as secondary comparables the other Conference schools, Hudson, Rice Lake and River Falls. The Union also includes in its primary group, Chippewa Valley Technical Institute. The District does not include CVTI among its comparables.

The District presented economic data with respect to the Conference Schools and the contiguous school districts. The arbitrator has concluded that with the exception of Chippewa Falls (which is in the Conference), the other contiguous districts are not as appropriate for comparisons to the District as are the Conference districts. Even though they are undoubtedly part of the same labor market for support staff, the other contiguous districts are considerably smaller in enrollment and staff size, have lower equalized value and receive greater school aids than the Conference schools.

The Union has not presented economic data with respect to CVTI. Thus, the arbitrator does not have a sound basis, grounded in data, for including CVTI in the comparisons. What supports inclusion of CVTI among the comparables, however, is the testimony of Assistant Superintendent for Personnel Fiedler, on cross-examination, that at times in the past the District has used CVTI as a comparable. Thus, while the arbitrator has decided to consider CVTI among the comparables because of Fiedler's testimony, he is mindful of the District's arguments in its brief:

> . . . Nor can CVTC be justified as a primary comparable in light of the fact that more than half of the existing bargaining unit is comprised of aides, for which there are no comparable positions within an adult technical college. In addition, the fact that the Union has provided absolutely no supporting data for the CVTC, other than the wage rate increase, by percent, for 1991-92, precludes it from being used for comparable purposes. There is simply an inadequate foundation upon which a comparison can be made. . . .

In conclusion, the arbitrator will consider the Conference districts and CVTI as the primary comparables.

Factor (c) requires the arbitrator to consider "the interests and welfare of the public." The District cites two developments which, it argues, support its final offer when this factor is considered. First is the shutdown of Eau Claire's largest employer, Uniroyal, with its adverse effects on the local economy. The Union does not deny that there will be adverse effects of the closing. The Union argues, however, that there is no reason to suggest that the District will be adversely affected more than other local units of government in and around Eau Claire, and those governments, it argues, are paying wage increases of the magnitude sought by the Union in this case.

The second aspect of the economy which the District deems relevant is that for 1991-92 there has been an increase of 333 students enrolled in the District. This increase has resulted, and will continue to result, in large expenditures of dollars to accommodate these students. The District argues, therefore, that it must emphasize economy and efficiency, and this is reflected in its final offer.

The arbitrator does not view either final offer as weighing heavily in favor of, or against, the public interest and welfare. Both offers are reasonable and will not unduly burden the taxpayer. The District's arguments are more persuasive than the Union's however. The pressures of the Uniroyal shutdown and increased student enrollments are such that increased attention should be paid to efficiency and economy where possible. Thus, the arbitrator views the interests and welfare factor as slightly favoring the District's final offer.

The arbitrator is required to consider factor (d), comparisons with ". . . other employes generally in public employment in the same community and in comparable communities."

The Union presents data showing 1991-92 wage increases for employees in the City of Eau Claire, the Eau Claire Library, and Eau Claire County. These increases are:

City of Eau Claire:	4.0%	effective 7/1/91
Eau Claire Library	4.0	1/1/91
	3.75	1/1/92
Eau Claire County	3.0	1/1/91
	4.5	1/1/92

These comparisons with non-school jurisdictions in Eau Claire favor the Union's final offer more than the District's final offer.

Both parties present data for other units within the Eau Claire School District, the so-called "internal comparables." There are three other groups of unionized employees: teachers, custodians and food service. They received the following wage increases:

	1990-91	1991-92
teachers	5.0%	4.0%
custodians	3.2%	3.95%
food service	3.2%	3.95%

The increases for the Union (support staff) are:

	4.0% (Union)
4.5% (3.5% cost)	2.95% (Board)

At the hearing, Fiedler testified that the parties have never agreed upon internal comparability. He testified that the comparisons with the custodial unit have always been "the strongest link." The Union did not rebut Fiedler's assertion.

The arbitrator would anticipate, absent evidence to the contrary, that the labor market for the support staff is more similar to that for custodians and food service personnel than for teachers, and he thus views comparisons with those groups as having greater relevance than increases for teachers. These comparisons suggest that if the District were intending to treat these groups consistently for the two year period, its offer for 1991-92 would produce that result more than would the Union's offer. There is more discussion on this subject in the arbitrator's discussion of factor (j), below.

The arbitrator puts greater weight on internal comparisons than he does on comparisons with non-school jurisdictions in the geographic area. For that reason he views factor (d) as favoring the District's offer more than the Union's final offer.

The arbitrator is required to consider factor (e), comparisons with other employees performing similar services.

The parties have agreed that the following data are accurate for 1991-92:

	Secretaries	Aides
Chippewa Falls	7.3% - 7.4%	6.12% Aides 4.7% Instructional Assistant
Hudson	Varies due to restructuring of schedules.	7%
Menomonie	4.9%	2%
Rice Lake	4.25%	4.25%
River Falls		
Clericals	4.9%	
Para (Aides)		2.5%/2.5% split
Spec. Ed.		3.5%

These figures appear to support the Union's final offer of 4.0% more than the District's final offer of 2.95%. Even if for argument's sake, as discussed in relationship to factor (j), the parties' offers were viewed instead as 3.95% (District) and 5.0% (Union), the data would still support the Union's final offer more than the District's final offer.

The only data presented relative to CVTI is a Union exhibit showing that the support staff there received an increase of 4.5%. This figure, when factored in with the others above, would not alter the arbitrator's assessment of which final offer is preferred in relationship to employees performing similar services.

The District argues that these comparisons should be discounted because they ". . . represent not only the increase in the total actual wages received but also several wage adjustments . . ."

Thus, the District argues that in Chippewa Falls, the general wage increase was 4.765% which was then given on top of an additional wage adjustment for secretaries and aides. The arbitrator notes, however, that even if the Chippewa Falls increase is viewed as being 4.765% rather than the figures shown in the table above, that increase would be more supportive of the Union's final offer than the District's final offer.

The District discusses the Hudson increases for 1991-92 at some length. It relies upon correspondence from the Hudson district which characterizes the actual wage increases as "around the 4.1% cost of living for our area." It is difficult for the

arbitrator to evaluate the accuracy of the 4.1% figure. However, even if he were to accept it at face value and substitute the 4.1% figure in the table above, it would still be his overall conclusion that the comparisons favor the Union's final offer more than the District's final offer. Moreover, the Hudson employees are not unionized, which reduces the weight to be given to the comparison in any event.

Lastly, the District argues that the wage increases given in River Falls for secretaries in 1991-92 were ". . . in response to a need for catch-up advocated by Arbitrator Neil Gundermann . . . for the secretarial unit for the 1989-91 contract." The District cites a portion of the Gundermann award:

> Due to the geographic proximity of the District to the Twin Cities, an argument can be made that the District's employes are entitled to a somewhat higher wage rate than is being offered by the District. ... While there may be justification for an increase somewhat in excess of the average increase, the undersigned can find no justification for the magnitude of the increase being sought by the Association

The District argues that, "The River Falls School District responded to Arbitrator Gundermann's decision by increasing the wage rates, resulting in the 4.9% wage increase for River Falls secretaries." It argues further, "Likewise, River Falls' aides were considerably underpaid in comparison to other Big Rivers schools, and the District responded by restructuring the wage schedule and providing a split increase in both 1990-91 and 1991-92." Based on this reasoning, the District argues that River Falls' increases should be viewed as ". . . a need for schedule restructuring and/or catch-up."

The District may be correct about why River Falls did what it did, but the District has presented no evidence in support of that position, other than putting the Gundermann quotation into evidence. This is not a sufficient basis for treating the River Falls increase in a fashion different from a wage increase given in some other district. Districts always have reasons for what they pay, whether those payments are higher, lower or the same as the increases in other districts. Those reasons may or may not be adequate for excluding them from a general settlement pattern in an arbitration. In this proceeding, the arbitrator is not persuaded, based on the evidence before him, that the River Falls increase should be treated differently.

The District has also put into evidence maximum hourly rate figures for certain categories of employees and has made comparisons between its own employees and those similarly

employed in the Conference schools. These data show that the District's wage rates rank in the top half of the Conference, and the hourly rates paid are above the Conference median figure. For each category, for 1991-92, these figures are as follows:

Highest Paid Secretary (excluding District Administrator's Secretary

District Offer:	$10.36
Union Offer:	$10.47
District Rank:	(2nd of 6)
Conference Median:	$ 9.74

Lowest Paid Secretary

District Offer:	$ 8.82
Union Offer:	$ 8.91
District Rank:	(3rd of 6)
Conference Median:	$ 8.70

General Teacher Aide

District Offer:	$ 8.82
Union Offer:	$ 8.91
District Rank:	(3rd of 6)
Conference Median:	$ 8.32

Teacher Aide for Handicapped/Special Education

District Offer:	$ 8.82
Union Offer:	$ 8.91
District Rank:	(4th of 6)
Conference Median:	$ 8.95

These figures support the District's final offer more than the Union's final offer.

The District also presents data for 1991-92 wage increases for secretaries in the contiguous districts. Those data (not counting Chippewa Falls which is shown in the presentation of data for Conference districts) are as follows, expressed in percentage terms (even though the increases given might have been expressed in dollar terms). Only those districts whose employees are unionized are shown:

Altoona	3.5%
Eleva-Strum	6.0%
Osseo-Fairchild	3.8%

The Mondovi increase is more difficult to calculate, since it is an increase of 4.25% on July 1, 1991, and an additional 20 cents per hour on January 1, 1992.

The District also presents data which show that it pays its secretaries and aides considerably higher wages than are paid by the contiguous districts, in terms of dollars per hour. In fact, both final offers produce hourly rates which are much higher than those paid in the contiguous districts, but that is not persuasive, particularly since these are smaller districts which are not economically as well off as the District or the Conference comparables.

As already noted, the hourly rates paid by the District are relatively high in relationship to the comparables. Nonetheless, based on comparisons of the percentage increases given by comparable districts, the arbitrator views factor (e) as more supportive of the Union's final offer than the District's final offer.

The arbitrator is required to consider factor (g), the cost of living. The Union cites the fact that for the year preceding July, 1991, the Consumer Price Index increased by about 4.6%. It argues that its offer of a 4% wage increase is clearly justified more than the District's offer of 2.9%.

The District argues, correctly, that it is not simply the increase in wage offers that should be taken into account when making comparisons with the increase in cost of living. The District notes that its package is an increase of 6.3%, compared to the Union's proposed increase of 7.2%, which thus favors the District's offer since it is closer to the increase in the cost-of-living index.

It is the arbitrator's conclusion that consideration of the cost-of-living factor favors the District's final offer more than the Union's final offer.

The arbitrator is required to consider factor (h), overall compensation. The District argues that it is insufficient to make comparisons only of wages, because it bargains from a total package perspective, in percentage terms. Fiedler testified that the District lets the Union decide how the agreed-upon percentage should be allocated between wages and benefits. The Union did not present data with respect to total package increases.

The District's figures for 1990-91 show that the support staff bargaining unit received a package increase for 1990-91 of 5.45%. The food service and custodial units each received a package increase of 5.0%, and the teachers received a package increase of 6.5%.

For 1991-92 the package increases for custodians was 5.6%, for food service was 5.97% and for teachers, 6.3%. The District maintains that its final offer represents a total package increase of 6.3% for the support staff, whereas the Union's final offer is 7.2%, according to the District.

In its brief, the Union argues that it is likely that the District will argue that its (District's) 2.95% offer "was generated with an eye on total compensation." The Union asserts, however ". . . that the 2.95% offer has nothing to do with package costs." Later, the Union adds, ". . . the Employer's offer was not constructed with package cost in mind."

The arbitrator is not persuaded that either party's final offer puts the bargaining unit at a disadvantage in comparison to the District's other bargaining units with respect to total compensation. It would appear that the package increase offered by the District (the lower of the two final offers) results in a package increase for the support staff which is higher for 1991-92, and for 1990-91 and 1991-92 combined, than the packages given to either the food service or custodial units.

The arbitrator views factor (h) as favoring the District's final offer more than the Union's final offer.

Factor (j) requires the arbitrator to consider other factors which are normally taken into account in arbitration. In the present dispute, the parties have different interpretations of their 1990-91 bargain and its effects on the 1991-92 bargain.

The Union would not settle the Agreement for 1990-91 unless the District agreed to a split wage increase for 1990-91. The District wanted the 1990-91 settlement to be a 3.5% wage increase, but it agreed, ultimately, to a 4.5% lift (2.5% increase in July, 1990, and 2.0% increase in January, 1991). The cost for 1990-91 to the District was identical to what it would have been under the District's proposal (3.5%), but the result of the split increase was to have a higher wage rate for the unit beginning in January, 1991, than would have been the case under the District's proposal.

The District, according to Fiedler, made it clear to the Union in the presence of the mediator that it did not want to begin the 1991-92 bargaining with a 1% inflated settlement, and it made clear that it would not recognize the compounding effect of the 1990-91 split increase. It told the Union that it would expect the parties to view the 1% additional increase as having been paid in the last half of 1990-91. Fiedler testified that the District urged the Union to accept a 3.5% increase in July, 1990, because it would be confusing to the bargaining unit to explain that a 1% increase given in January, 1991 would already be charged to the package when bargaining for 1991-92 began. The Union said it would take care of explaining this to the membership. According to Fiedler, the parties agreed that when bargaining started in 1991-92 there would be 1% already on the table as a charge, for which the District would receive credit. He testified that the Union, through the mediator, accepted the split offer, with no compounding.

Fielder testified that the rationale to which the parties agreed was not put in writing, although it is contained in his bargaining notes.

On cross-examination, Fielder testified that the District wanted the 1990-91 cost of wages to equal 3.5%, and that's what it got. The District kept the cost to 3.5% and the Union got a higher wage level in the second half of the year, he testified. He testified also, however, that he "knows" that there would be "1% charged to their package" for 1991-92, he doesn't just "think" it. In his view the parties fully understood that 1% of the package was already spent for 1991-92 and thus would be taken into account in the 1991-92 bargain.

Fielder testified that for 1991-92 the Union opted to continue full payment by the District of insurance benefits. What was left within the total 6.3% package was wages. The District set its final wage offer at 2.95%, which it equates to 3.95% less the 1% charge from the 1990-91 bargain.

Union bargaining team member Harmon testified that the Union agreed that there would be no compounding. Thus, he testified, the 2% additional wage increase in January, 1991, was 2% of the rate as of June 30, 1990, not 2% of the June 30, 1990 rate times the 2.5% increase given July 1, 1990. Harmon testified that the Union never agreed that its 1991-92 settlement would be 1% lower than the settlement given to other of the District's employee groups.

Asked how the Union was taking into account the 1% additional lift which it received in 1990-91, Harmon testified that for 1991-92 the Union was asking for a 4% increase rather than the 5% increase which the Union feels would be justifiable in light of comparability with other jurisdictions.

In its brief, the District argues:

> Even though the Union evidently acknowledges its existence by way of Mr. Harmon's testimony, the District has been given no credit for the 1.0% increase in the District's cost for 1991-92 which resulted from the split increase in 1990-91. That 1.0% carryover represents a new cost to the District in 1991-92, and new money in the pockets of the support staff employees. For that reason, the District's proposed 2.95% increase, per its final offer, is, in practical effect, the same as the 3.95% increase for the custodial and food service units. Yet, the Union is rejecting the same total wage increase that has been accepted to by the District's custodial and food service bargaining units. Curiously, the Union has offered <u>absolutely no reason</u> why the support staff should receive special treatment.

The Union argues that, "The Employer is attempting to litigate not only the 1991-92 salary adjustment, but 1990-91's as well," and argues that if it succeeds in doing so, this ". . . would severely inhibit the future bargaining relationship between the parties." The Union's brief states further:

> The philosophy behind split raise is that the Union gets a boast (sic) on the schedule and the Employer's salary cost in that particular year is not as great. But with that type of settlement comes the full realization by the Employer that a portion of the cost for the salary raise is being deferred until the following year. This is usually referred to as a roll up cost which is then considered, to some degree, in the total economic package for the following year. It is not, as the Employer would argue, an additional salary raise.
>
> So, in the instant case, how did the parties deal with the roll up cost resulting from the 1990-91 split schedule. The Union considered the roll up costs when it crafted a final offer that was on the low end of comparable settlements. As Mr. Harmon admitted, based on the pattern of comparable settlements, the Union's offer probably would have been higher if not for having to take into account the roll-ups from the previous year.
>
> The Employer did not deal with roll up costs at all. They simply rolled back their salary offer by the 1% they believed that the Union gained from the previous year. . . .

The Union argues further that the result of the District's final offer is that the Union loses ground to the other internal bargaining units which it gained when it succeeded in getting a relatively higher settlement for 1990-91.

This last of the Union's arguments is perhaps at the crux of the matter. It is true that the result of the bargain, if the District's final offer prevails, is to have approximately the same size bargain that the District reached with its other non-teaching units over the two years, 1990-91 and 1991-92. The Union objects to that, and sees the District taking back through arbitration in 1991-92 what it gave voluntarily in bargaining in 1990-91. The arbitrator is not persuaded, however, that the District ever intended to give the Union more than it gave to its other non-teaching units over the two year period. It is just that point that it was trying to make when it expressed its

reluctance about agreeing to a split increase in 1990-91. It gave the split increase, finally, in the belief that the Union bargaining team understood that its 1991-92 package would be discounted by the 1% lift which it received in 1990-91.

The arbitrator believes, based upon the testimony about the 1990-91 bargaining history, that factor (j) supports the District's position more than the Union's position with respect to how the 1991-92 bargain would be approached. In so concluding, however, the arbitrator is not concluding that the Union ever agreed specifically that its settlement for 1991-92 would be 1% lower than was ultimately received by the other bargaining units. Rather, he is simply concluding that the District could legitimately weigh the 1% lift given in 1990-91 when it calculated what bargain would be appropriate for 1991-92.

Conclusion

The statute requires that the arbitrator select one final offer in its entirety. It is always difficult to have to choose between two reasonable final offers.

Having considered the statutory factors, the arbitrator has concluded that there is more reason to support the District's final offer than the Union's final offer. Therefore, the arbitrator makes the following

AWARD

The District's final offer is selected.

Dated at Madison, Wisconsin, this 6th day of July, 1992.

Edward B. Krinsky
Arbitrator