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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

In the Matter of the Petition of

**BARABOO SECRETARIAL AND
CLERICAL ORGANIZATION**

To Initiate Arbitration
Between Said Petitioner and

Case 37
No. 46550 INT/ARB-6214
Decision No. 27237-A

BARABOO SCHOOL DISTRICT

APPEARANCES:

James M. Yoder on behalf of the Association
William G. Bracken on behalf of the District

On April 22, 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 September 1, 1992 at Baraboo, WI. Briefs were exchanged by the parties and the record was closed by October 16, 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' collective bargaining agreement covering the 1991-93 school years. There are several issues in dispute:

Sick leave accumulation--The District proposes the status quo accumulation of 84 days, while the Association proposes increasing the maximum to 100 days.

Emergency leave--The District proposes retaining the status quo which allows one day of leave to be used in case of illness of a dependent. The Association proposes changing the number of days to five, to be used in case of illness of an immediate family member. The Association also proposes three days of emergency leave per year for emergency matters including fires, floods, heating problems, wind damage, automobile accidents and inclement weather.

Arbitration of grievances--The Association proposes binding arbitration of grievances by the WERC, while the District proposes continuation of the status quo, which allows the Association to file a prohibitive practice complaint with the WERC to enforce the terms of the collective bargaining agreement.

Discipline and discharge--The Association proposes incorporation of the just cause standard into the contract, while the District proposes continuation of the status quo, which provides for use of the arbitrary/capricious standard.

Posting of job vacancies--The Association proposes that job vacancies be posted at all work sites, and that consideration be given to existing employees for vacancies before outside candidates are considered. The District has no proposal in this regard.

Overtime--The Association proposes time and one half for hours worked over forty. The District has no proposal in this regard.

Paycheck distribution--The Association proposes that employees be given the option of receiving their paychecks over a twelve month period. The District proposes retention of the status quo, which provides that employees are paid over the period of their employment, which is usually either nine or ten months.

Fair share--The Association proposes a fair share proviso and the District has no proposal in this regard.

Wages--The Association proposes a 4% wage rate adjustment in each year of the contract, while the District proposes a 15 cents per hour increase in each year.

In the first year of the proposed contract, including step increases, the Board's proposal amounts to a 3.4 percent increase while the Union's proposal amounts to a 5.4 percent salary increase. In the second year, the Board's salary proposal amounts to a 5.2 percent increase, while the Association's proposal amounts to a 7.5 percent increase.

Total Package--In the first year of the proposed contract the Board's offer amounts to 7.2%, while the Association's amounts to 8.9%. In the second year, the Board proposes a 6.7 percent total package while the Association proposes a 9.0 percent total package.

The parties are approximately \$13,000 apart over the term of the two year contract.

Comparability--Both parties agree that other employee groups in the District are relevant comparables. The teachers and custodians are represented by unions, the other employee groups in the District are not.

The District proposes that the following districts also be used as external comparables: Adams-Friendship, Nekoosa, Mauston, Portage, Reedsburg, Wisconsin Dells, Lodi, Sparta and Tomah.

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

COMPARABILITY:

Association Position--

The appropriate basis of comparability in this dispute is the other organized employee groups in the District.

A secondary comparable groups is the other represented employee support staff groups in the Athletic Conference, which include the Reedsburg custodians, the Wisconsin Delis support staff, the Adams-Friendship support staff, and the Portage custodians. Due to the limited number of represented support staff groups in the Conference, taken as a whole, these school districts do not constitute a meaningful comparable.

District Position--

The District proposes the use of the same comparable districts used by an arbitrator in a recent case involving the maintenance and custodial bargaining unit in the District. These same districts were used as comparables in other arbitration awards involving teachers.

The Association's proposed group of comparables, which is based solely on the fact that all employees in said group are represented by unions, is flawed, since it is well settled that otherwise comparable non represented employees should be included in comparable groups in proceedings such as this. (Citations omitted)

The District also believes that similarly situated employees of other employers in the area should also be used as comparables in this matter.

Discussion--

Because the evidence in this proceeding pertaining to comparability of wages is somewhat unreliable, based upon the difficulty one has in comparing jobs of similar skills and responsibilities, the undersigned is forced to conclude, at least with respect to the wage issue, that comparability should not be given as much weight in this dispute as would be the case in other disputes where more reliable comparability data is available.

The undersigned is also persuaded that it is reasonable in this case to look at private sector comparisons and to look at the working conditions of unrepresented, as well as represented clerical employees, in order to assess the reasonableness and comparability of the parties' positions on economic issues in dispute. By and large, based upon these considerations, at least with respect to economic issues, the District's proposed group

of comparables appears to be somewhat more reasonable than the Association's; though, as indicated above, because the record is far from clear with respect to the comparability of proposed employers and employee groups, such comparability data is of less importance in this case than might otherwise be the case.

WAGES:

Association Position--

The 4% wage rate increase proposed by the Association is reasonable and consistent with the primary comparability group as well as unrepresented employees of the District. Only the Teamsters received less and that was the result of an arbitration award in a dispute in which the Union requested more than the 4% proposed by the Association. In fact, said award was based not on excessive demands by the Union, but rather a perceived need to create a greater wage differential between custodians and maintenance employees, which is what the District offer did. It is also noteworthy that the custodial contract provides benefits in excess of those enjoyed by the secretaries.

CPI considerations are best left to the prevailing pattern of increases among appropriate comparability groups. Relatedly, the District wage offer falls below even the current modest increase in the CPI.

District Position--

The District's offer best matches the prevailing settlement trend. When comparable school districts are used as a basis of comparison, the Association's offer is closer only in 1991-92 on a salary only basis. In the second year, the District's offer is directly on target with the salary only trend while the Association's is over 2 percent above it. When total packages are compared, the District's offer is one half of one percent above the settlement pattern while the Association's offer is nearly 3 percent above it.

Utilizing internal comparisons, the District's offer is again closer to the settlement pattern, particularly when total packages are compared. While other groups of District employees received 4 percent wage increases, some do not have a salary schedule, which means that the 4 percent wage increase they received was just that. In this unit, the 4 percent increase the Union proposes, with step increases, amounts to a 5.4 percent increase. In the second year, the Association's wage proposal, with step increases, amounts to a 7.5 percent increase.

Because comparison of salaries of secretaries is difficult due to different levels of responsibility and because of different salary schedule structures, the District has chosen to compare maximum salaries as did arbitrator Johnson in the custodian arbitration award. When such comparisons are made, it becomes apparent that the District's wage rates for secretaries are in the middle of the range.

When comparisons are made with the wage rates of secretaries working for other types of employers in the County, the District's wages rank very competitively.

When comparisons are made with the CPI, in the first year of the proposed contract, on a total package basis, the District's offer is 2.8% above the CPI while the Association's proposal is above the relevant CPI index by 4.5 %. In the second year of the proposed contract, on a total package basis, the District is 3.6% above the CPI and the Association is nearly 6% above it.

The cost of living criterion should be given more weight in this matter due to the precarious economic environment and the lack of solid comparison data among the comparables.

Discussion--

Based upon other District settlements and increases, the District's wage proposal is unreasonably low in the first year, , and is more comparable and reasonable than the Association's in the second year of the proposed contract.

The record does not indicate any need for catch up when clerical salaries in other employment settings are analyzed.

Based upon these two considerations, when wages are looked at alone, the parties' final offers appear to be a relative wash, with the Association's first year proposal being the more reasonable of the two, and the District's second year proposal being more reasonable than the Association's.

SICK LEAVE ACCUMULATION:

Association Position--

The number of days of sick leave in the parties' contract are fewer than the number of such days included in the contracts covering other groups of District employees. Even the increase requested by the Association would still leave the secretaries well below both the teachers and custodians in this regard.

The confidential secretarial staff in the District also receive 96 cumulative sick leave days, which is well above what unit members receive, although they perform essentially the same work.

Among secondary comparable groups, only one unit has less days than the secretaries.

District Position-

A comparison of sick leave accumulation in comparable school districts indicate that some are higher, and some are lower. There is little reason to change the 84 day accumulation given the comparables, both external and internal.

Discussion--

There appears to be little justification for the disparity between the number of accumulated sick days the District affords these employees, and the number of days it allows custodians, confidential secretaries and teachers to accumulate. Based thereon, the Association's proposal is deemed to be more reasonable than the District's in this regard.

EMERGENCY LEAVE:

Association Position--

The Association's proposal to raise available leave days for dependent care is comparable to the District's teacher contract, and addresses the needs of young mothers who predominate the ranks of unit members. Unlike the teacher contract, the use of such days by unit members would be chargeable against sick leave. The teachers' contract also provides the broader based definition of "immediate family" sought by the Association.

Though the custodian contract does not provide for dependent care leave, perhaps this reflects the different demographics of these two bargaining units.

The parties current contract provides for three days of emergency leave, but lumps it together with bereavement leave. The Association's proposal, therefore, does not initiate a new concept, but rather creates distinct provisions for bereavement and emergency leave. Though bereavement and emergency leave are not deductible from sick leave under the teachers' contract, under the Association's proposal, emergency leave would be so deductible.

Among the secondary comparables, three days of bereavement leave is provided, with additional days for emergency situations provided in two of them. Therefore, there is support for distinguishing between these two leaves, and likewise the number of days being proposed in total is consistent with the range provided in both the primary and secondary comparables.

District Position--

The Association's proposal is not supported by the comparables. In fact, emergency leave policies in most comparable school districts are more restrictive than are the District's.

Discussion--

Neither internal nor external comparability data support the reasonableness of the Association's leave proposal. Though components of the proposal address legitimate employee interests and needs, meriting a substantive District response, when viewed in its entirety, the Associations' proposal simply asks the District to provide these employees more leave entitlement than can be justified based upon comparability considerations.

BINDING ARBITRATION OF GRIEVANCES:

Association Position--

The District in its contracts with both the teachers and custodians has agreed to final and binding arbitration of grievances. In the case of the secondary comparables, all have binding arbitration.

District Position--

The existing grievance procedure has worked well and needs no further change. In fact, there has not been a grievance filed at least in the last nine years. If the Association wishes to file a charge that the District acted improperly in administering the contract, it may do so with the WERC. While the custodial contract has binding arbitration of grievances, it provides for the use of private arbitrators, which serves to prevent frivolous grievances from being filed.

Discussion--

Internal comparability again supports the reasonableness of the Association's proposal on this issue. In addition, though the Association has the right to enforce its contract through prohibited practice proceedings before the WERC, such a procedure is much more time consuming and costly than the arbitration process. Though the undersigned is sympathetic to the District's argument that there should be some cost deterrents to prevent overuse of the arbitration process, the District's failure to propose a reasonable alternative in that regard justifies a finding that the Association's proposal on this issue is more reasonable than the District's.

JUST CAUSE:

Association Position--

The current "arbitrary and capricious" standard for discipline provides inadequate job protection and is not consistent with the comparables.

Just cause is a termination standard that is found commonly in labor agreements, and there has, in fact, been at least one forced quit that might have been contested had

there been a cause standard in place. Irrespective of arguments about historic need, the absence of such a standard tends to chill the employment relationship.

Among the secondary set of comparables, all have cause for discipline except Portage custodians who have cause for discharge only.

District Position--

There is no demonstrated need to change the "arbitrary or capricious" standard utilized in the parties' current agreement since there has been no allegation that the District unfairly disciplined employees in the past. In addition, the custodial contract does not have the just cause standard.

Discussion--

While comparability considerations do not mandate inclusion of a just cause standard in the parties' agreement, the District's arguments are not persuasive that the inclusion of such a standard is unnecessary based upon historical considerations, since it is commonly understood that it is very difficult to challenge disciplinary decisions governed by an "arbitrary and/or capricious" standard. More importantly, no persuasive argument has been presented why these employees should be entitled to less job security in this regard than are the teachers in the District, or for that matter, the majority of employees covered by collective bargaining agreements. The Association's proposal in this regard is therefore deemed to be more reasonable than the District's position on this issue.

JOB DESCRIPTIONS:

Association Position--

A proviso to allow for posting of job vacancies is necessary so that there is a systematic way of informing employees of job opportunities.

The District has agreed with both the custodial bargaining unit and with the teachers' bargaining unit that job vacancies will be posted. Both the Teamsters and teachers contracts also give priority consideration to existing employees.

Among the secondary comparables, all provide for job posting and priority consideration to existing employees.

District Position--

This proposal is one of many the Association has proposed without offering the District a fair quid pro quo, and therefore it should be rejected.

Discussion--

Internal comparables support the Association's position on this issue. In addition, the District has presented no arguments regarding the merits of the Association's proposal which contradict the basic fairness and viability of the proposal, from both parties' perspectives. Based thereon, the Association's proposal is deemed to be more reasonable than the District's position on this issue.

PAYCHECK DISTRIBUTION:

Association Position--

The option of receiving wage payments over 12 months is afforded to other District employee groups, including the custodians and teachers. Existing computer systems are thus obviously set up to accommodate this method of payment.

District Position--

The only other employees in the District that have the option the Association proposes are the teachers. No proof was given regarding why the employees need this option. Absent such proof, the status quo should be retained.

Discussion--

The Association's proposal is deemed to be more reasonable than the District's position on this issue based upon internal comparability and the fact that the District presented no persuasive arguments as to why or how the merits of the Association's request would cause the District problems or unreasonable costs.

OVERTIME:

Association Position--

Overtime work is an ongoing expectation of the District for its secretarial employees, yet there is no reference to contractual overtime compensation. The Association proposal remedies this deficiency.

Though overtime is not applicable to the teacher unit, the Teamsters contract covering custodians does provide for overtime pay.

In the case of the secondary group of comparables, all provide overtime in their contracts.

District Position--

This is a minor issue and the District has no objection to the Association's proposal.

Discussion--

There is no basis for rejecting the Association's proposal in this regard.

FAIR SHARE:**Association Position--**

All represented employee groups in the District have fair share. All of the secondary comparables also have fair share provisions.

District Position--

Fair share should come about in the normal give and take of collective bargaining, particularly, where, as here, the District is being offered nothing in return. In addition, fair share should not be a controlling issue in a case such as this. (Citation omitted)

Discussion--

Both internal and external comparables in organized settings support the reasonableness of the Association's position on this issue. In addition, the District has presented no arguments pertaining to the merits of the Association's proposal which require consideration of its fairness or legality. Accordingly, the Association's proposal on this issue is deemed to be more reasonable than the District's position on this issue.

TOTAL PACKAGE:**Association Position--**

The Association has been the representative of the employees in question since 1975, yet the contract covering these employees still fails to embody the most fundamental of accepted labor contract rights. Despite years of efforts to secure these rights voluntarily, the District has steadfastly resisted any effort to incorporate them into the agreement. It is this obstinacy on the part of the District that this arbitration is intended to address. In fact, the District has no proposal on any issue other than wages, though other bargaining units in the District have the benefits in dispute, and in some cases, employee groups not represented have some of the same benefits proposed herein by the Association.

In response to the District's contention that no quid pro quo has been offered by the Association, the Association agreed to a definitive management rights proviso which should constitute a fair quid pro quo for the improvements sought herein.

Much of what the Association proposes will allow the employees in this unit to catch up with comparable others on rights and benefits. When combined with the modest

wage increase the Association is proposing, the District would at last be providing these employees working conditions consistent with prevailing standards.

The record indicates that the District is experiencing no hardship in funding its operations, and in fact, District costs are lower than most area schools.

District Position--

The Association is proposing many significant changes to the parties' collective bargaining agreement without giving the District anything in return. It is also attempting to use the arbitration forum to achieve what it could not reasonably be expected to achieve in the bargaining process. Simply put, the Association is asking for too much in one two year contract term.

The fundamental issue in this case is which proposed total package is more reasonable.

There is well established arbitral precedent for the proposition that an arbitrator ought not impose on the parties a proposal that radically changes the status quo unless an extremely persuasive case has been made to do so. The Association has simply not justified the need to change the status quo to the extent that it proposes.

The Association's total package proposal could never have been secured through negotiations, particularly since the Association has offered no quid pro quo for the many changes and improvements it seeks. It is reasonable to assume that when other districts granted some of the benefits and rights the Association proposes in this case, they received something in return. The notion of getting something for giving something is the key missing ingredient in the Association's proposal.

While the District concedes that some of the Association's proposals, in isolation, may be acceptable or reasonable, this is not true when they are viewed together.

In addition, the District is dependent upon agricultural pursuits for a significant portion of its livelihood, and it is clear from the record that a sizable portion of the District's taxpayers have suffered economically. It is therefore in the interest and welfare of the public for the arbitrator to take into account the ability of the farmers in the District to pay property taxes when their income has declined significantly.

Relatedly, it is self evident that we are currently in a recession, and that taxpayers need relief from an ever increasing tax burden. Such realities dictate moderation in salary and fringe benefit increases that should be granted to public employees.

Discussion--

Though the Association submits that the District's total cost estimates may be inflated, it presented no evidence supporting that contention, and therefore, the undersigned accepts the reliability of said estimates for purposes of this proceeding.

Having so concluded, the undersigned also finds that the costs of the District's total package, for both years of the proposed agreement, are significantly more in line with both internal and external comparable settlements than are the costs of the Association's proposed package. In that regard, not only is the District's total economic package more comparable than the Association's, it is also above the comparable averages while the Association's proposal is significantly greater than practically all of the settlements that have been identified in this record.

Not only is the Association's total economic package out of line when viewed in the context of comparable settlements, it is unreasonably high when viewed in the context of cost of living considerations. Lastly, in this regard, when the wages of the secretaries in this unit are compared with external comparables, the record does not indicate that there is a need for salary catch up which might have supported a settlement above the comparable norm.

Based upon all of these considerations, the undersigned deems the District's total package, when defined by its cost consequences, to be significantly more reasonable than the Associations' total package.

This conclusion forces the undersigned to choose between the District's total package, which is significantly more comparable in terms of economic consequence, and the Association total package proposal, which is significantly more reasonable based upon the merits of the Association's non economic proposals. While that kind of choice is a difficult and unpleasant one to make, the undersigned believes that a choice must be made in favor of the District, in view of the fact that the economic benefits it has offered are comparable and fair, and in view of the fact that the public interest will best be served in these difficult economic times if a more prudent, yet reasonable economic package is selected.

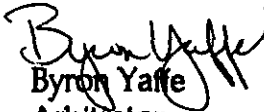
This choice is also being made to keep the District in the mainstream regarding the wages and benefits it provides its employees, with the hope and expectation that many of the issues the Association has identified and constructively attempted to address will be successfully addressed in the next round of negotiations.

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

ARBITRATION AWARD

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

Dated this 24th day of November, 1992 at Madison, WI.


Byron Yaffe
Arbitrator