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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

In the Matter of the Petition of

WITTENBERG-BIRNAMWOOD SCHOOL DISTRICT

To Initiate Arbitration  
Between Said Petitioner and

Case 14  
No 46366 INT/ARB-6170  
DECISION NO. 27299-A

WITTENBERG-BIRNAMWOOD EDUCATION  
ASSOCIATION

APPEARANCES.

Jeffrey T. Jones on behalf of the District  
Thomas J. Coffey on behalf of the Association

On June 16 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 17, 1992 at Wittenberg, WI. Briefs were exchanged by the parties and the record was closed by November 9, 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. The issues in dispute are wages and liquidated damages.

For 1991-92, the District's wage offer generates \$1857.32 per teacher, which amounts to a 6.33% increase. The District's total package for 1991-92 is \$2972 per teacher, or 7.42%. The Association's first year wage proposal amounts to approximately \$2065 per teacher, or 7.04%. Its total package amounts to \$3231 per teacher, or 8.06%.

For 1992-93, the District's wage proposal generates \$1824.15 per teacher, or 5.84% and its total package generates \$2623 per teacher, or 6.09%. The Association's wage proposal generates \$2069.89 per teacher, or 6.59%, and its total package generates \$2928 per teacher, or 6.76%.

The cost difference between the parties' proposals over two years is approximately \$88,200.

On the liquidated damages issue, the District proposes increasing the liquidated damages a teacher must pay if he/she breaches an employment contract from \$100 to \$250 after June 1 and \$500 after August 1. The Association proposes that the contract not change in this regard.

The undersigned will first address the wage and liquidated damages issues separately, and thereafter, the relative merit of the parties' proposed total packages will be discussed

## WAGES

### District Position--

The District's proposed per teacher salary increase is closer to the average increase granted comparable teachers than is that proposed by the Association. Though the Association's proposal in this regard may be closer to the comparable average for 1992-93, only six of 16 comparable districts have reached settlements for that year, and the District does not believe that constitutes an established settlement pattern.

The District compensates its teachers at or above the median of the Conference schools. Though the Board's offer may rank slightly lower on the BA Minimum and MA Minimum, the majority of teachers in the District are closer to the BA and MA Maximums. The Board's offer is \$1063 more at the BA Maximum than the average of the comparables at this benchmark. 24 of the District's teachers are in the MA lanes at the top half of the schedule. Under the Board's offer, the District will rank 5 out of 14 districts at the MA Maximum. In sum, 70% of the teachers are located at areas on the salary schedule at which, under the Board's offer, they will receive a more than competitive salary.

Essentially, the District has maintained a ranking on all benchmarks near the middle of the comparables in the past. The Board's offer maintains that relationship. On the other hand, the Association's wage proposal jumps the teachers ahead, particularly at the BA and MA Maximum benchmarks, where the District already provides a more than competitive salary.

The Board's wage offer also surpasses increases received by other public sector employees. The Association's wage offer is excessive in that it is close to twice the increase received by other municipal employees.

In response to the Association's assertion that statewide averages should also be utilized as a basis of comparison, such comparisons are not valid because they fail to take into consideration size, demographics and local economic conditions.

### Association Position--

The BA Maximum benchmark has diminished in significance since teachers must now earn additional credit to remain licensed.

The Association's offer in each year of the proposed agreement is the more reasonable of the two at issue herein when dollar and percentage benchmark increases are compared. The Association's offer best maintains the benchmark relationship to other Conference schools for 1991-92 and 1992-93. The Association's offer does not leapfrog the District's benchmark rankings as the District asserts.

In addition, the Association's offer retains the 1990-91 average ranking of benchmarks at six of 15 benchmarks for 1991-92, while the Board's offer deteriorates the ranking of seven of 15.

The Association's offer also is closer to the two year comparable average dollar increase than is the Board's offer.

The Association's offer also is closer to the average percentage increase than is the Board's offer, which is substantially below the average increase

The District's comparability evidence regarding other public employees is fragmentary and is missing supporting proof since no actual wage rates or salaries were provided. The District has also failed to establish a historical relationship between salaries of the District's teachers and the wages/salaries of other public sector employees.

The Association's offer also best maintains the District's previous relationship to average State teacher salaries. More importantly, the Association's offer best maintains the comparable relationships on the six benchmarks on a statewide basis.

It is unreasonable for the District to ignore the 1992-93 Conference settlements since it is reasonable to assume that such settlements will be the basis for other voluntary and arbitrated settlements in the Conference for that year.

#### Discussion--

In the first year of the proposed two year agreement, the parties have proposed wage increases which are approximately equally above and below the comparable average in this regard. The comparable benchmark evidence for that year also does not lend significant support to either of the parties' proposals in that under both of the parties' proposals the District's salaries are either relatively close to or above the comparable averages. In this regard, though the parties' offers result in some change in the benchmark ranking of the District amongst its comparables, in the undersigned's opinion such ranking changes should not be given significant weight, particularly, where, as here, the District remains in the mainstream of the comparable benchmarks. If such changes were not allowed to occur, catchups and other legitimate salary schedule adjustments would never be allowed to occur without a spillover effect on comparable district schedules. In the undersigned's opinion, such an effect would be both illogical and inequitable.

In the second year of the proposed agreement, the undersigned deems the comparable settlement pattern to be sufficiently well established to be utilized as a legitimate basis of comparison against the parties' offers. In that regard the Association's salary proposal is closer to the comparable average than is the District's salary proposal, in terms of both the average dollar and percentage increase teachers would receive. When second year benchmarks are compared, though the both parties' proposals would allow the District to remain relatively close to the comparable averages, the District's proposal at the BA and MA minimums would be below the comparable average by more than \$500.

Based upon the foregoing considerations, the undersigned concludes that when the parties' salary proposals are compared, the Association's proposal is slightly more comparable and reasonable than the District's.

#### LIQUIDATED DAMAGES

#### District Position--

Only one comparable district has a penalty lower than that of the District. In most comparable districts the penalty ranges from \$125 to \$700. This comparability data clearly supports the reasonableness of the District's offer on this issue.

#### Association Position--

The District is proposing a change in the status quo without one shred of evidence that there is any compelling need for the change or any quid pro quo offered for the change. Since the District presented no problems that were caused by the current language, the Association's position on this issue is clearly the more reasonable of the two.

#### Discussion--

Though the District's proposed change in the status quo in this regard is not out of line when viewed in the context of the comparables, the District has failed to demonstrate what problems it has experienced in this regard which would justify this change. Absent such evidence, the undersigned does not believe that a case for a change in the status quo has been made, and therefore concludes that the Association's position on this issue is more reasonable than the District's.

#### TOTAL PACKAGE.

#### District Position--

The Board's offer provides a more equitable total compensation package increase relative to the comparables. The Association, on the other hand, proposes a total package increase that is excessive and unjustified according to the comparables. No other settlement in the Conference even closely matches the Association proposal in terms of total package costs for 1991-92. In fact, the Association's offer ranks third highest of thirteen districts when dollar increases per teacher are compared.

On an average total compensation basis the District's teachers have been consistently compensated in the top third of the comparables. The District's relative ranking in this regard does not change under the Board's offer.

Previous arbitrators have concluded that the District is relatively rural and is partially dependent upon the farm economy. The taxpaying community in the District thus should not be expected to support excessive wage and benefit increases.

When compared to the CPI the Board's offer is also the more reasonable of the two at issue herein since it will provide a significant improvement in the economic position of the District's teachers over the term of the proposed agreement.

#### Association Position--

The record indicates that the costs of the District place no undue burden on the taxpayers of the District. In fact, the District's costs per pupil are near the Conference average, and are \$352 below the State average. In this regard, its rank is 268 out of 372 K-12 districts.

The District has also failed to demonstrate that the taxpayers in the District have any more difficulty supporting the District than is the case in comparable districts.

With respect to the District's CPI arguments, it is well established that the settlement pattern is the basis for applying the cost of living statutory criterion, and in that regard, the Association's proposal is closer to that pattern than the District's

The District has not considered its below average insurance contributions when it framed a below average wage offer.

The District's evidence regarding comparable total package/total compensation costings is not reliable, and therefore, such evidence should not be determinative. If some weight is given to such evidence, the Association's offer is not out of line when viewed in the context of the three year costings presented by the District, and the District's below average insurance costs. A District with below average insurance costs cannot justify subpar wage increases

Discussion--

When the cost of the parties' total packages are analyzed in the context of comparable settlements, it is clear that for the first year of the proposed agreement, the cost of the Board's proposed total package is significantly more in line with comparable settlements than is the cost of the Association's proposed total package. Indeed, in this regard the Board's proposal is more generous than the comparable average, even assuming that the comparability data regarding total compensation is somewhat unreliable, which would appear to be the case based upon the record evidence submitted herein.

In the second year of the proposed agreement, the record evidence does not allow the undersigned to make such comparisons

Cost of living considerations, increases granted other public employees, and the interest and welfare of the public in having to support the District's expenditures in this regard also support the reasonableness of the District's total package proposal in that said proposal will result in gains in real income for affected teachers, in generous increases when said increases are viewed in the context of other public employee settlements, and in what would appear to be a relatively comparable and prudent total package increase.

Based upon the above considerations, though the Association's second year salary proposal seems to be more comparable than the District's, and the Association's position regarding liquidated damages has been deemed to be more reasonable than the District's for the reasons set forth above, the undersigned concludes that because the cost of the District's total package is significantly more in line with the comparable average, at least in the first year of the proposed agreement, and because there is no evidence regarding same in the second year of the proposed agreement, the District's final offer is slightly more reasonable, when viewed in its entirety, than is the Association's

Accordingly, the undersigned hereby renders the following:

#### ARBITRATION AWARD

The District's final offer shall be incorporated into the parties' 1991-1993 collective bargaining agreement

Dated this <sup>14</sup> day of January, 1993 at Madison, WI

*Byron Kaffe*  
Byron Kaffe  
Arbitrator