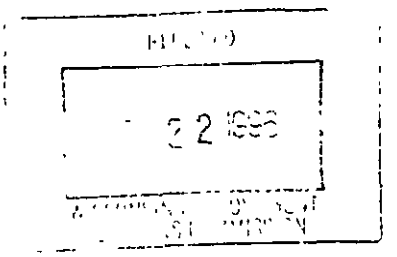
# WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**BEFORE THE ARBITRATOR**



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| **IN THE MATTER OF ARBITRATION BETWEEN LOCAL 332, AFSCME** | : | |
| | : | **CASE 22** |
| **AFL-CIO** | : | |
| | : | **NO. 52872** |
| and | : | |
| | : | **INT/ARB 7691** |
| **THE OREGON SCHOOL DISTRICT (SECRETARIAL)** | : | Decision No. 28723-A |

## OPINION AND AWARD

**ARBITRATOR:** WILLIAM G. CALLOW

**APPEARANCES:**

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# INITIATION OF ARBITRATION

When the parties to the arbitration were unable to reach agreement during the initial collective bargaining negotiation on the limited issue presented, a petition was filed with the Wisconsin Employment Relations Commission requesting the Commission (WERC) to initiate arbitration pursuant to Section 111.70 (4) (c m ) 6 & 7 of the Municipal Employment Relations Act. On June 4, 1996 the WERC determined that an impasse existed and that arbitration should be initiated William G Callow was appointed Arbitrator to arbitrate the dispute involving the collective bargaining units consisting of all regular full-time and regular part-time secretarial employees. The dispute specifically addressed matters affecting wages, hours and conditions of employment. By mutual agreement, the parties met Wednesday, July 31, 1996 for an evidentiary hearing at the offices of the Oregon School District, 200 North Main Street, City of Oregon, Wisconsin, commencing at 9·05 a m. A mutual understanding concerning a briefing schedule was reached. The final reply brief was received on or about October 17, 1996. The parties waived the 30-day time limit for the Arbitration Decision. Final offers were filed.

# SPECIFIC ISSUES AT IMPASSE

I. The amount of money to be contributed by the Employer toward the Tax Sheltered Annuity (TSA) for each employee's retirement and the salary schedule to be in place for each year of the Agreement. The differences in the parties' position regarding the salary schedule include the number of classifications and the number of steps and pay levels.

II The District identifies three primary differences between the parties' final offers.

(1) The salary schedule

(2) The placement of the payroll specialist on the salary schedule

(3) The percentage of retirement contribution or tax shelter annuity

# THE PETITIONER UNION'S ARGUMENT

## LABOR MARKET COMPARISONS

The Union notes that this is the first contract negotiation for this bargaining unit and, therefore, there has not been established a set of external comparable communities identified for use as comparison communities. The Union and the District have submitted significantly different communities for comparison and submit arguments supporting their respective choices

The Union lists the Deerfield School District, Madison School District, McFarlane School District, Middleton-Cross Plains School District, Monona Grove School District, Mount Hareb Area School District, Sun Prairie Area School District, Verona Area School District, and Wisconsin Heights (Black Earth) School District. The Union strongly believes that only unionized districts are relevant because salaries and conditions of employment in unrepresented districts are established unilaterally by the employer. The Union cites an opinion rendered by Arbitrator Kessler in Case No. 28339-A 10-29-95. The Union argues the comparison communities be limited to Dane County because Dane County represents a unique labor market. The City of Madison dominates the labor

market in Dane County because its presence creates an urban metroplex with people throughout the County gravitating to the Madison labor market

THE RETIREMENT CONTRIBUTION TOWARD
A TAX SHELTER ANNUITY (TSA)
CHART SHOWING DIFFERENCE

| School Year | Employer | Union |
|---|---|---|
| 1994-95 | 5 74% | 7 5% |
| 1995-96 | 6 74% | 9.0% |
| 1996-97 | 7 24% | 10 5% |

The employees represented in this bargaining unit are not covered by the provisions of the Wisconsin Retirement System (WRS). The employees of the bargaining unit receive an employer contribution toward a TSA.

The Union cites the Oregon District Business Manager Roger Price, who testified that those employees covered by the WRS receive a contribution to the fund of 12 9% in 1996. The Union argues that the comparable communities they deem appropriate make a contribution toward employee's retirement greater than the contribution proposed by the Union in this case. The Union further argues that while the District denies any intention to reduce any contribution for an employee from the level of the 1993-94 benefit, the Union concludes the District proposal does establish a lower rate than currently exists.

## SALARY SCHEDULE

The Union argues the primary issue between the parties is the relative pay rates to be paid to these employees who are members of the bargaining unit Of lesser significance is the issue concerning the structure of the wage schedule The Union proposes a 6-step schedule The initial step would be paid during the six months probationary period of employment. The Union proposed a 4% increase in the wage following the probationary period Thereafter, the employee would receive a 4% raise every twelve months for four years. In contrast, the District proposes a starting pay scale that would continue for one year and then there would be automatic pay increases of 3% for each of the following two years. The Union notes that none of the comparable communities provide such a short progression period Thus, the Union proposal, they argue, most closely resembles the comparable districts.

The Union proposes a 2-classification structure recognizing the difference in responsibilities of the comparable districts building secretaries. The Union further argues their proposals more closely follow the comparable districts wage range between $9 00 and $12.33 in 1993-94.

The Union proposes a $1.00 differential between the two classifications while the District calls for approximately a $2.00 differential. The Union argues this $1.00 differential is closely aligned with the established wage rate for other support staff bargaining units similar to the employees involved in this arbitration.

The Union addresses the ability to pay by noting the District has had a budget surplus of $172,390 in 1993-94, $522,999 in 1994-95, and a surplus of $365,976 in 1995-96 Since this arbitration affects a retroactive pay period, the Union argues that to the

same degree this surplus recognizes the subject employees have had no pay increase since July 1993

For the above reasons, the Union avers that its final offer is more worthy of selection based on the criteria specified by Section 111 70 (4) (cm) 7

## THE OREGON SCHOOL DISTRICT RESPONSE

The District focuses on three primary differences between the final offer of each party. The first issue is salary schedule. This issue deals with the amount of money in each salary increment and the length of time it takes for an employee to move through the pay steps before reaching the highest pay level.

The second issue deals with the placement of the payroll specialist on the salary schedule. The District argues that this specialist position calls for a person more highly skilled and, therefore, should have a separate classification which would call for a pay rate comparable to the head building secretaries The Union response declares this position is comparable with the general clerical employees.

The third issue is the percentage of the retirement contribution to the tax sheltered annuity The District argues that their conclusions are more reasonable in the light of the severe revenue limitations on the school district imposed by State law

The District argues the Union seeks to obtain more than a fair share of the District's revenues Both parties recognize that theirs is an initial contract which will set the pattern for funding in future salary negotiations

Thus, this issue is presented in significant measure as a question of whether these problems are to be resolved equitably in the light of realistic revenue distribution.

The Union filed for interest arbitration on July 14, 1995 prior to the effective date of the 1995 Wisconsin statutory changes effective later in 1995 Because two of the three years of this Employment Agreement will cover the period of time during which the new law is effective, the District argues the Arbitrator should consider the content of the 1995 law in addressing the result of this arbitration. Revenue caps were changed by the 1995 Act. The original revenue raising caps were enacted in 1993. It is conceded that the standards to be applied are at the 1993 legislative level, but the District cites other arbitrators' decisions that the District says support a conclusion that revenue limitations known to exist during the term of the Contract time period cannot be ignored by this Arbitrator. Thus, the old (1993) criteria of "lawful authority" utilized by arbitrators was significantly impacted by the 1995 legislation.

It should be noted that most of the contract issues were successfully negotiated by the parties in their contract bargaining sessions.

The District offered testimony by Roger Price, the Business Manager for the District, who spoke of the need to balance the expenditure of available funds It is obvious there are many different classifications of expenditures. The substance of the extensive argument by the District is the difference between the need for increased spending on operating necessities and the cost of temporary borrowing to accommodate

cash flow problems and the limitation on revenues established by State law Prior to 1993, the School District Budget operated in the deficit column but in recent years, the District, through visionary management, has had significant budget surpluses as previously noted in this Award

In addition to the financial ability to pay salaries, attracting lower bonding costs and the need to attract qualified employees in the secretarial bargaining unit is at issue The District notes there is no evidence the District proposal will inhibit their ability to attract qualified employees.

The matter of comparables is vigorously addressed by the Union and the District Several fundamental differences exist. The Union chooses to limit the comparables to the Dane County area and rejects the significance of the size differential of those districts because the Union insists the tone of the area labor market is set by the Dane County Districts The District argues size should cause the larger and smaller districts to be eliminated and that similarity of composition and size produce better comparables even though some of the identified districts are beyond Dane County. I note that several of the districts recognized as comparables are on the Union and the Districts lists. The District argues general clericals in their comparables are paid slightly less than the District's offer. The District also notes that under either the District or Union offer, building secretaries will be paid above the average and that of the three comparables chosen both by the Union and the District, the Oregon District falls right in the middle of their salary schedules.

The District recognizes the Union's emphasis on the TSA percentage contribution by the District. The District responds by noting that when the Union wage demand is added to their TSA demand, the package becomes significantly excessive The District argues the internal comparisons heavily support the District's proposal. Neither party has

submitted evidence with respect to the possible wage impact of the private employment sector. The District references the Consumer Price Index for urban wage earners but those numbers deal with general employment classifications

## UNION RESPONSE TO THE DISTRICT'S BRIEF

The Union insists the criteria to be considered by the Arbitrator must be the 1993 statutory criteria and the District agrees but argues the 1995 legislation cannot be ignored

The Union properly notes the Arbitrator should not be persuaded by compromise positions offered by the parties but ultimately rejected by the parties because giving weight to proposals would have a chilling effect on negotiations.

The Union argues the surplus funds in excess of $1,000,000 eliminates any substance to the District's position that revenue caps have seriously inhibited the District's ability to pay the wage and TSA contribution proposed by the Union. This surplus does not include funds held in reserve to pay the cost of these retroactive pay increases The Union notes that the District's effort to match the support staff pay raise to the teachers and administrative 3 8% statutory limitation is not required by statute and is not justified by the evidence offered. The Union notes that costing overtime was inappropriately used by the District. Also the second contract costing in the custodial package is usually not an appropriate reference to a first-contract costing The Union challenges the propriety of the District's selective comparisons.

The Union identified the TSA contribution as a major issue The Union insists these bargaining unit members are disadvantaged when compared with their comparables as well as other groups of employees in the Oregon District. The Union recognizes that bringing the support employees to parity with the teachers and administrators benefits that requires full payment of the participation in the Wisconsin Retirement Fund is unattainable during the term of this agreement The Union's proposal is intended to advance the contribution to the TSA to approach the goal of parity with other members of this bargaining unit The Union makes reference to Ex. #16 which appears to show the clerical positions in the Village of Oregon are consistent with the Union's proposed schedule for the District's secretarial employees

The Union notes the Cost Price Index is measured against the ability one has to purchase products, so take-home pay is the criteria

The Union and the District differ in that in addition to the two classifications they agree on, the District adds a third by placing one individual in a separate classification but provides only two pay levels The Union insists there should be two classification pay schedules with relative proximity between the classifications.

## OREGON SCHOOL DISTRICT'S REPLY BRIEF

The District believes the Union ignores the significance of the legislatively imposed salary caps by requesting salary increases in excess of 3 03% Further, the District believes that the issue of the classification of the payroll specialist is ignored by the Union

and may make it difficult to recruit a competent payroll specialist if the present employee leaves the position.

The District believes the Union's reliance on comparables is not justified in the absence of statutory support That legislation establishing revenue caps explicitly directs the Arbitrators to give the greatest weight to State laws which limit expenditures and revenues

The District denies the existence of a money surplus. The money in excess of spending is described as an increase in the equity of the District. The District acknowledges that State aids will increase but notes those increases, while allowing a reduction in the local tax mill rate, do not increase available funds to pay District expenditure needs. The District argues that comparing mill rates of school districts is unreliable because of inconsistency of assessments.

The District argues that their offer is fair, no matter what comparables are used.

The District discounts the significance of the comparables being limited to Dane County because those communities in Dane County are identified by the Union as satellites.

The District recognizes that it must compete with Districts where the employees are organized as well as Districts where the employees are not organized when they go into the market to hire employees The District notes that Stoughton is the only unrepresented contiguous district which pays higher wage rates than those proposed by this District.

The District makes reference to the length of the proposed salary schedule and the term of the probationary period as well as the differential between general clericals and building secretaries While knowing what might have been acceptable during negotiation may be informative for the arbitrators, it does not follow that suggestions made during negotiations are persuasive because they may have only been exploratory or conditional

When negotiations fail to produce an acceptable result and a third party intervenes, it is inappropriate in the judgment of this Arbitrator to look behind the veil that separates negotiation from arbitration. Negotiations should not be chilled by the possibility that remarks made during negotiations will be used against them in arbitration.

The District acknowledges their contribution to the TSA is less than comparable districts but argues that their package proposal in total is more than fair.

# AWARD

There are several observations that should be made to inform the parties of arguments that are rejected This Arbitrator does not conclude the applicable law or realistic inquiry requires the Arbitrator to limit comparables to only those where the bargaining unit is unionized. The labor market is a significant factor and, therefore, all facets of the market affect the ability of an employer to attract desirable employees While there are compelling reasons offered by the District and the Union concerning comparables, the Arbitrator concludes the most compelling argument supports the conclusion that Madison is the dominate hub of the employment market and, therefore, the Union's position that Dane County is an appropriate sphere for the use of comparables is the better choice.

This Arbitrator looks to the state of the law when the impasse arose which is the 1993 criteria. While the delay in bringing this matter to arbitration allows us to look at the progression of the cited legislative changes and although the term of the award includes the time after legislative change, it seems, as others have determined, that arbitration is the extension of the negotiation. Thus, that which was known to the parties on the effective date of the commencement of negotiations should be the law and circumstances of primary concern to the Arbitrator.

Comparables as evidence of fairness, ability to financially accommodate an award, the state of the labor market, the legislative impact, parity with internal financial obligations to other employees, the term of the labor contract, and fairness to the interests and general welfare of the public along with an inquiry into the ability to pay have been carefully considered

This Arbitrator has followed the provisions of Section 111 70 (4) (cm) (7) (a-j) with diligence. The brief, the transcript, the exhibits, and the law have been thoroughly reviewed. This Arbitrator notes specifically subsection (i) of Section 111 70 stats which speaks of "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings " The statutory changes of 1995 cited by the District occurred before the WERC certified this case for arbitration, and this Arbitrator cannot be certain if the 1995 legislation was effective prior to June 14, 1995 when the Union petitioned the WERC for certification of a labor impasse. The parties have stipulated the 1993 statute controls but that statute has the above-quoted language. This Arbitrator has been made aware of the 1995 legislative changes and notwithstanding the fact that those changes may be applicable, this Award would not change

Based on the above commentary, this Arbitrator selects the final offer of the Union and directs that it be incorporated without modification together with any stipulations of the parties.

Respectfully submitted November 18, 1996

William G Callow, Arbitrator