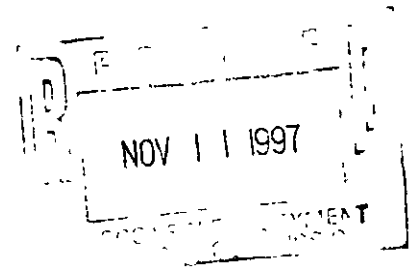


STATE OF WISCONSIN
BEFORE THE ARBITRATOR



In the Matter of Interest Arbitration
Between

SCHOOL DISTRICT OF BLACK RIVER FALLS

Case 16 No. 5424⁸
INT/ARB-7996

and

Decision No. 29002-A

BLACK RIVER FALLS EDUCATIONAL
SUPPORT PERSONNEL ASSOCIATION

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the District: Malina R. P. Fisher, Attorney - Lathrop & Clark

On Behalf of the Association: James C. Betram, Executive Director - Coulee Region United Educators

I. BACKGROUND

The School District of Black River Falls on June 25, 1996, filed a petition with the Wisconsin Employment Relations Commission (WERC) wherein it alleged that an impasse existed between it and the Black River Falls Educational Support Personnel Association in their collective bargaining, and it further requested the Commission to initiate Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission's staff, conducted an investigation in the matter and submitted the report of the results to the Commission.

On February 6, 1997, the Commission ordered the Parties to select an arbitrator from a list submitted by the commission. The Parties selected the undersigned, and on March 19, 1997, he was so appointed by WERC. A hearing was held on June 19, 1997. At that time the District agreed to allow the Union to modify its final offer to correct a technical error. After the hearing the Parties exchanged post-hearing exhibits, and briefs were reviewed September 8, 1997.

II. FINAL OFFERS AND ISSUES

The Parties resolved all issues except the adjustments to be made to the salary schedule and the resultant total package. Both Parties agree the duration of the contract should be two years, 1996-97 and 1997-98.

The Union's final offer is as follows:

- "1996-97 The Salary Schedule reflects a total package increase of ~~4%~~ 4.36%. Total package costs include FICA, health, dental, life insurance, retirements and extra trips.

- "1997-98 The ~~1995-96~~ 1997-98 Salary Schedule reflects a total package increase of ~~4.2%~~ 4.04%. Total package costs include FICA, health and dental and life insurance, retirement, and extra trips. Health insurance is projected to increase by ~~6%~~ 8% and dental insurance is projected to increase by ~~4%~~ 5%. If the insurance rates increase by less than these amounts, the difference shall be added to the salary schedule. Conversely, if the insurance rates increase by more than these amounts, the difference shall be subtracted from the salary schedule. This will be accomplished on a per-cent-per-cell basis.

The District's final offer is as follows:

- "1996-97 Adjust the 1996-97 salary schedule for each year of the proposed contract to reflect a total package increase of 3.6% per year. See attached salary schedule and costings.

- "1997-98 The ~~1995-96~~ 1997-98 Salary Schedule reflects a total package increase of ~~4.2%~~ 3.8%. Total package costs include FICA, health, dental and life insurance, retirement, and extra trips. Health insurance is projected to increase by 6% and dental insurance is projected to increase by ~~4%~~ 5%. If the insurance rates increase by less than these amounts, the difference shall be added to the salary schedule. Conversely, if the insurance rates increase by more than these amounts, the difference shall be subtracted from the salary schedule. This will be accomplished on a per-cent-per-cell basis.

III. STATUTORY CRITERIA

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully

issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

IV. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The District

1. The greatest weight factor. The District first addresses the factor to be given greatest weight by the Arbitrator. In this case the revenue limits imposed by the legislature, in the opinion of the District, should be given greatest weight. There is a permanent revenue limit of \$206 per student per year. Districts must keep expenditures within revenue limits, and the only way in which a school district can exceed the revenue limit is to receive voter approval at a referendum.

The evidence in this case, the District submits, supports the District's final offer under the criterion to be given "greatest weight." They note in two years the new monies generated under the revenue limits equal the new expenditures generated by salary and benefit increases. After that time reductions in programs and/or staff must be made. If the District funds salary and benefit increases above 3.8% per year, the two-year time period will be shortened. The Union's total package final offer is a 4.4% increase in the first year and a 4.0% increase in the second year. Thus, its offer forces the District into a situation in which it must cut programs and/or staff sooner rather than later. Even under the 1996-97 budget expenditures exceeded revenue by \$20,000. The District did not have to raise additional revenue because of its ability to fund the difference from money left over from a roofing project funded by a 1994 referendum. They also argue that it is not realistic to try to raise revenue via a referendum for recurring costs, nor is it appropriate to fund recurring costs from the fund balance.

2. The greater weight factor. Moving to the factor to be given "greater weight" than other factors in Wis. Stats. 111.70(4)(cm)7R, the District notes that neither party placed a lot of weight on this factor when presenting its evidence to the Arbitrator. Nonetheless, they argue that what information is available supports the District's final offer. For instance, per capita income and household income are lower in Black River Falls than the state average. The state median household income, according to the 1990 census data, was \$29,442, while median household income in the School District of Black River Falls was \$8,000 less at \$21,250.

The District also claims that local economic conditions may be gauged by the total package compensation provided to other District employees. In 1996-97 administrators and other non-Union support staff employees received total package compensation increases of 3.4%. In 1997-98 administrators and other non-Union support staff received total package increases of 3.6%, while

teachers received a total package increase of 3.8%, which wholly supports the District's 3.8% total package final offer for 1997-98.

The District, in measuring local economic conditions, also looks to settlements in nearby districts. Neighboring Tomah, which was also supposed to be positively impacted by the building of a nearby prison, settled a contract with its support staff employes of 3.8% in 1996-97 and 3.67% in 1997-98. The School District of Alma Center, which borders on the District, provided its support staff employes with a 3.0% salary increase plus benefits. Similarly, the bordering school district of Melrose-Mindoro set wages for the 1996-97 school year which were, on average, 3.2% higher than the prior year. Both Sparta and Pittsville, also border school districts, settled with their unionized support staff at 3.8% in 1996-97 and 1997-98. They also contend that another indication of the local economy is the fact that all of these school districts cited, with the exception of the school districts of Gale-Ettrick-Trempealeau and New Lisbon, also passed referenda within the last three years.

3. Other factors. The District next looks to the "7r" factors, the last group of factors to be given weight. First, regarding factor (b), the District notes that the Parties, in the form of stipulations, have agreed to an enhancement to the personal leave benefit, additional time off from duties with pay for purposes of court appearances, and several economic enhancements relating to the custodial building and grounds position, the cook position, and bus drivers.

Next, regarding factor (c), they contend the interest and welfare of the public favors the District's final offer. In this connection they note the District's budget was drawn up in the context of declining budgets. This affects new monies generated under the revenue limits. The District shaped its final offer keeping in mind its financial condition in light of revenue limits and declining enrollment. The Union's offer fails to do this.

The District next considers factor (d) or the so-called "comparables." Since this is the first arbitration between the Parties, it is necessary to establish a group of schools for comparability purposes. In the present case the Parties have agreed that the athletic conference is the appropriate comparison group to be applied by the Arbitrator. However, the Parties disagree over the group of schools to be used as secondary comparables. Of the comparables proposed by the District, only one has not been utilized by the Union as a comparable--the School District of New Lisbon. On the other hand, the Union posits that the School District of Blair-Taylor, Neillsville, and Whitehall should be included among this secondary comparability group. While the District acknowledges that Blair-Taylor may be an appropriate comparable because a number of support staff employes of the District reside in Blair-Taylor, because

Blair-Taylor was not settled for the 1997-98 school year, the District did not include it as a comparable. Further, there is insufficient evidence to demonstrate that Neillsville and Whitehall school districts are comparable to either the primary or secondary comparability groupings. Even so, because it is clear that the Parties agreed upon a sufficient number of secondary comparables, however, it is unnecessary for the Arbitrator to address whether Blair-Taylor, Whitehall, Neillsville, and New Lisbon should be included as secondary comparables. These secondary schools are the school districts of Alma Center, Melrose-Mindoro, Pittsville, Sparta, and Tomah.

Given this set of primary and secondary comparables, the District contends that comparisons of a total package basis favor the District's final offer. They contend it is appropriate to focus on total package because since the inception of the Union, the District has bargained with the Union on a total package basis and because the last two settlements have been on a total package basis. Additionally, several of the primary comparables bargain on a total package basis.

It is noted by the District that in 1996-97 the average conference settlement is 3.6%, which is the exact same total package increase being offered by the District in its final offer. The Union's offer exceeds this by .8%. The conference average for the 1997-98 school year is a total package increase of 3.7%. The District's offer of 3.8% exceeds this slightly, and the Union's offer exceeds it by .3%.

The District also, for purposes of factor (d), reviews wage rankings. They anticipate that the Union will argue that it deserves a greater total package increase because of "low" wage rate rankings. However, the District contends that a review of the historical rankings in the various job categories covered by the agreement reveals that the District's final offer maintains its traditional position among both primary comparables and secondary comparables. Moreover, the salary schedule rates generated by the District's final offer and the Union's final offer do not substantively vary in rank among a group consisting of the primary and secondary comparables. Indeed, employees do not lose ground under the District's offer.

The District believes the Union will point to cents-per-hour increases to support its final offer. The District's position with respect to cents-per-hour increases is that it is irrelevant to this dispute as the Parties did not bargain on a cents-per-hour basis. This is because the Parties bargain on a total package basis and because the comparables are mixed.

Factor (d) is addressed next by the District. This is the comparison to other public employees in Black River Falls. The internal comparisons have already been noted. As for other municipal comparables, these support neither the District's nor the Union's final offer.

As for the private sector comparisons (factor "f"), they note there is only one piece of evidence offered by the District addressing the statutory criterion which requires the Arbitrator to give weight to a comparison of wages, hours and conditions of employment of the bargaining unit members with the wages, hours and conditions of employment of private sector employees in Black River Falls. In September 1996 employees of D & S Manufacturing Co., Inc., located in Black River Falls, received pay increases averaging 3.0% per year. The Association provided information pertaining to personal income and wage and salary income in Wisconsin. The District urges the Arbitrator to disregard this information because it is not shown how this is calculated or how it relates to the private sector.

The other two factors ("g," cost of living, and "j," other consideration) are also addressed by the District. The cost of living for the 1996-97 year is 3.3%. The District's final offer is a total package increase of 3.6% while the Union's final offer is a total package increase of 4.4%. The applicable CPI change relevant to the 1997-98 year is 3.3% again. The District's final offer exceeds this rate with a total package increase of 3.8%, while the Union's final offer far exceeds this rate with a total package increase of 4.0%. The bargaining history is relevant, in their opinion, under "j" because the Parties have always bargained on a total package basis, and all the evidence in this regard, they claim, favors the District.

The remaining factor addressed by the District is the "overall compensation" of the employees (factor "h"). Here they look to the healthy package of fringe benefits, including health insurance, dental insurance, and retirement benefits.

B. The Association

The Union notes at the outset that their offer is simply a proposal to continue the 4.2% package the Parties agreed to for the last year of their prior agreement--1995-96. The Union's offer of 8.4% (total package) amounts to \$18,055 or 1% over the District's two-year package of 7.41%. On wage rates, only the Union's final offer includes a wage rate adjustment of 3.48% for 1996-97 and 2.216% for 1997-98. The District is offering 2.54% for 1996-97 and 1.83% for 1997-98. It is their position that the Union's final offer should be chosen as the position that best meets the criteria for interest arbitration contained in Wis. Stat. 111.70 as well as chosen to give the District a competitive edge in attracting quality prospective employees for employment.

The Union, too, addresses the schools to be considered for comparability purposes. The Union adds Blair-Taylor, Neillsville, and Whitehall to the District's list and discounts New Lisbon from the District's list. The Union

believes its comparable school districts arise from commonly used criteria-- contiguous school districts and athletic conferences which are generally closer in proximity to establish more of a "local group." The Union rejects the inclusion of New Lisbon as a comparable for the District as it is neither in the athletic conference nor a contiguous school district.

In support of its offer, the Association contends the District can easily pay for its \$13,373 cost over that of the Board's final offer cost. The District's Fund 10 balance is \$2,629,708. If the District reduced the 1996-97 Fund 10 balance to an amount equal to 18% of its Fund 10 expenditures (still well above the projected statewide average of 15% for 1996-97), it would still have a balance of \$2,263,391. This reduction would free up \$366,317, which is over 20 times the two-year difference between the offers of \$18,055.

There are other favorable conditions as well. They include a history of enrollment growth and a new penal institution. Favorable economic conditions have had a favorable impact on the District's excellent financial conditions. For example, the District's 1996-97 mill rate decreased 30.1% to 10.88 mills. The drop in mill rate is due to a combined impact of a drop in level of 23.4% and an increase in tax base. Only three other schools in the comparables decreased more. Thus, the record fails to demonstrate that the District cannot afford to fund the Association's package. The District can indeed, in the Union's opinion, fund either Party's proposal without having harmful effects on its budget and without placing an onerous tax burden on the school community.

Although they believe it to be a minor issue, the Union takes issue with the District's insurance projections. They note the 1995-96 health insurance premiums did not increase and remained at the prior year's level (1994-95). Thus, the 1995-96 wage rates went up accordingly but no higher than the 1995-96 total package cost limit of 4.2%. Thus, the Union's rationale to increase health insurance projections by 2% was guided by the fact that health insurance premium rates were being increased several times what dental rates were, plus there was no health premium increase for 1996-97--the first year of this disputed contract.

The Union next focuses on wage rates. The Union asserts that careful comparison of comparable wage rates will weigh heavy in the determination favorable to the Union offer. Again they stress that the difference between the offers is 0.00088% or 9/10 of 1% of the budget review.

They analyze the offers by focusing on the wage rates of certain wage classifications. The top starting salaries for secretaries in the comparables was \$9 per hour. The minimum pay in 1995-96 for any secretary at Black River Falls was \$6.41. Additionally, for 1996-97, the first year of this dispute, the Union's offer will have secretaries trail wage leaders by \$2.57 and \$0.76 behind comparable group average wage. The situation with respect to other

classifications is described as "desperate." Without exception, Black River Falls will be falling further behind wage leaders each year of 1996-97 and 1997-98. The District's offer widens the gap and further exacerbates the problem. The evidence shows Black River Falls to be near or in the bottom one-third of the comparable school districts with the only exception of the maximum for the cooks, custodians, and mechanics. This is nearly opposite the case for teachers in Black River Falls who rank quite high in the comparables. The same is true for the salary of the District administrators. The salary is No. 1 and over \$3,000 ahead of No. 2 ranked Tomah.

The District anticipates that the District will claim its total package is in line with other District employees. However, it is argued that the District's approach will keep this District's support staff rank low and continuing to lose rank as shown by increasingly larger gaps with comparables' wage leaders and comparable wage averages. This argument should carry much less weight in comparison to wage rates that show Black River Falls to be falling further and further behind. They note further that the District's final offer is in effect a minimum QEO when compared to the full 3.8% QEO given teachers. They argue strenuously that QEO limitations should not apply to support staff.

The Association also analyzes the factors of "7r," if they apply in this case. They note, for instance, with respect to the "interest and welfare of the public" that the District has made no claim that the Union's final offer in this matter is in conflict with the interest and welfare of the public or exceeds the ability of the unit of government to meet the costs. Indeed, it is argued it would be incongruous to contend that the cost of this dispute could attribute to any inability on the part of the District to meet its financial obligation. As for the cost of living, they contend the Association rate is closer to prevailing CPI figures.

V. OPINION AND DISCUSSION

The starting point for the Arbitrator's analysis must be 111.70(4)(cm)7 ("the factor given greatest weight"). It is the opinion of the Arbitrator that this factor isn't relevant in this case because acceptance of the Union's demand will not cause the District to exceed spending limitations or raise revenues above those permitted by law or require them to curtail student services, activities, or programs. The District did argue that acceptance of the Union's proposal would speed the District toward the day (assuming constant wage and benefit levels increase in the future at 3.8%) when expenditures would exceed permitted revenues and require program cuts. This kind of speculation isn't particularly relevant. Dealing with the time frame of the offers is difficult enough without having to look even further into the future.

The next factor to be given greater weight than any of the enumerated factors in Subd. 7R is the economic conditions in the jurisdiction of the District. The Union doesn't particularly address this criteria except to note the financial condition of the District relative to other districts, the growth of the District, and the recent building of a penal institution. The District points to state median household income for Black River Falls is 30% lower than the statewide average. The same kind of disparity exists with respect to per capita income. The District also points out its settlement with the teachers, its pay rate grants to administrators and non-Union personnel. Then the District spends much time discussing settlements in area schools as a reflection of economic conditions in Black River Falls.

It is the Arbitrator's opinion that very little of the information presented by the Parties on factor "7g" is helpful. First, data with respect to other school districts simply doesn't fit and isn't true to the statutory directive to give greater weight "to economic conditions in the jurisdiction of the municipal employer." Tomah, Melrose, Alma Center, etc., while contiguous districts, are not in the jurisdiction of this municipal employer. The legislature intended, it seems, to reduce reliance on comparisons to other school districts (factor "7d") rather than multiply it.

In terms of the financial condition of the District, this relates more to the District's ability to pay rather than the economic conditions found throughout the jurisdiction. It is apparent the legislature intended to have the Arbitrator consider the health of the economy within the jurisdiction, not necessarily the economic health of the District's books. The principal components of the economy as it bears on a school district are taxpayers, individuals, and businesses who pay property tax. There is scant information on this in this record. The 1990 census data showing per capita and household income isn't particularly reflective of conditions in 1997. Moreover, the mere fact that a prison was built does not say much about the economic conditions in Black River Falls. It isn't even known how many prison employees reside in the jurisdiction or how many pay property taxes in the jurisdiction. Neither does the District's unilateral pay increases given administrators and non-Union personnel demonstrate anything about the local economy. Similarly, artificially capped wages bargained with teachers are also not indicative of economic conditions in the District.

Given the lack of meaningful data in this record, it is not possible to give any weight to factor "7g." Even if there was some evidence, the statute implores the Arbitrator to give this factor greater weight than any single factor under "7r." In this case, to the extent there is evidence on "7g," it cannot, under these circumstances, be given more weight than the evidence concerning several "7r" factors combined. More specifically, the following factors

combined in this case deserve more weight than 7g or Factor 7: Interest and welfare of the public ("7r.c.") and comparisons to other districts ("7r.d.").

The Union argued that the District could clearly afford to grant its request because the District received 5.55% more revenue in 1996-97 over 1995-96 and because the District has a surplus Fund 10 budget. The Arbitrator is persuaded, however, by cases cited by the District that recurring expenses should not be paid out of such funds. It is prudent, reasonable, and in the public interest to maintain a healthy Fund 10 balance. To the extent their Fund 10 balance is higher than average, it isn't excessive or even the highest among nearby districts. Thus, factors "7r.c." favor the District.

The Parties fundamentally disagree in their analytical approach to factor "7r.d.." The union looks at wage rate levels principally, and the District looks at not wage and benefit levels, but the changes in the wage benefit levels, or simply put, the percentage of the total package increases in comparable districts. The Arbitrator believes it is more appropriate in this case to look at total package increases.

This opinion is based on the basic belief that wage levels are not as important, in most cases, as wage increases unless there is some significant wage level problem that needs to be addressed. While the wage rates of secretaries, aides, and mechanics in 1995-96 were below average, they are still within the normal range and rank. The disparity isn't yet significant. Moreover, cooks and custodians were above the average in 1995-96. Thus, it cannot be fairly said that there is a significant wage disparity overall at this time that would justify breaking the settlement pattern, although that day may be approaching.

The Arbitrator believes, too, that in assessing the pattern in comparable schools, it is more appropriate to look at total package increases. This wasn't always the case. In past years labor agreements generally were of one-year duration, as were insurance contracts. Now that two-year contracts are the norm and insurance rate contracts are still yearly affairs, it poses a difficulty because the Parties are bargaining in the dark. Because the insurance rates are unknown, the total cost impact is unknown. The total cost impact is extremely important now, given the restructured criteria and permanent revenue caps. It is highly likely why these Parties and other area school districts bargain on a total package basis with projections on insurance and snap-up and snap-back rate adjustment provisions for wage rates. This is one of the other reasons focusing on wage rates in the contract years is not as useful as it used to be because projected wage rates are speculative, depending on insurance and the final total package cost.

Judged on the basis of a total package value the District's offer is moderately more reasonable. District Exhibit 61 shows the following eight schools among the District's comparable group:

	<u>1996-97</u>	<u>1997-98</u>	<u>Two Years</u>
School Average	3.68	3.71	7.39%
Board Offer	3.60	3.81	7.41%
Union Offer	4.23	4.36	8.40%

This shows that the District's offer is virtually identical to the typical offers in comparable schools. The Union's offer requests 1.1% more than the average. The average is fairly reliable since only one school had a two-year total package less than 7% (6.02) and only one had a settlement over 8% (8.05) while the others ranged between 7.30 and 7.68. Thus, factor "7r.d." favors the District.

Comparisons to other public employes tend to favor the Union. The unionized Streets Department in Black River Falls received a 5% wage increase. There was one private settlement at 3.0%, which tends to favor the Employer. The combined weight, however, of these two factors, does not deserve more consideration under these facts than comparisons to other districts because other public and private settlements relate to dissimilar employes. The other "7r" factors are not particularly relevant in this case.

In summary, the Employer's offer is more consistent with the revised statutory criteria.

AWARD

The Employer's offer will become part of the Parties' contract.



Gil Vernon, Arbitrator

Dated this 9th day of November 1997