ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	Case [33]
	)	No. 61614
RANDOM LAKE SCHOOL DISTRICT	)	INT/ARB-9744
(Support Staff)	)	[Dec. No. 30545-A]
And	)	
RANDOM LAKE EDUCATION ASSOCIATION	)	

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Random Lake, Wisconsin
May 28, 2003

Appearances

For the Employer	WISCONSIN ASSOCIATION OF SCHOOL BOARDS By Daniel Mallin and Barry Forbes Staff Counsels 122 West Washington Avenue Madison, WI 53703
For the Union	CEDAR LAKE UNITED EDUCATORS COUNCIL By Sam Froiland UniServ Director Four Eleven North River Road West Bend, WI 53090-2600

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Random Lake School District (Support Staff) and the Random Lake Education Association, with the matter in dispute the terms of a two year renewal labor agreement covering July 1, 2002 through June 30, 2004. After the parties had failed to fully agree upon the terms of a renewal agreement the Association filed a petition with the Wisconsin Employment Relations Commission on September 24, 2002, seeking final and binding interest arbitration of the matter. After preliminary investigation by a member of its staff, the Commission, on February 6, 2003, issued certain *findings of fact, conclusions of law, certification of the results of investigation, an order requiring arbitration*, and it appointed the undersigned to hear and decide the matter.

A hearing took place in Random Lake, Wisconsin on May 28, 2003, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and each thereafter closed with the submission of a brief and a reply brief, after the receipt and distribution of which the hearing was closed by the undersigned effective August 2, 2003.[1]

THE FINAL OFFERS OF THE PARTIES

In their final offers, hereby incorporated by reference in this decision, the parties differed only relative to the deferred wage increases to be applied during the term of the agreement.

(1) *The final offer of the Association* proposes two 3.25% across the board wage increases, to be added to each cell in the wage structure, effective July 1, 2002 and July 1, 2003.

(2) *The final offer of the District* proposes 1% and 2% across the board wage increases, to be added to each cell in the wage structure, effective July 1, 2002 and July 1, 2003, respectively, in addition to the following special additional increases: 20¢ per hour added to the highest-paid step for the "Secretary I" and "Professional Asst. I" classifications in each of the two years of the contract; 10¢ per hour added to the highest-paid step for all classifications, except "Secretary I" and "Professional Asst. I", in each of the two years of the contract.

[1] The parties were notified by the Arbitrator on October 1, 2003, that the decision and award would be delayed up to four days.

THE STATUTORY CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the undersigned to utilize the following criteria in arriving at a decision and rendering an award in these proceedings.

> "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 legislature 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.
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> 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.
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> 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:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> 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.
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> d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
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> e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
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> f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
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> g. The average consumer prices for goods and services, commonly known as the cost-of-living.
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> h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
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> i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.
> 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."

POSITION OF THE ASSOCIATION

In support of the contention that its final offer is the more appropriate of the two before the undersigned, the Association emphasized the following principal considerations and arguments.

(1) That the following *background information* is material and relevant in these proceedings.

(a) The parties were parties to a collective agreement which expired on June 30, 2002.

(b) Despite multiple bargaining sessions, mediation, and agreement on various items, they were unable to reach agreement on wages to apply to the terms of the two year renewal agreement.

(c) On May 28, 2003, and after a preliminary public hearing, the matter proceeded to arbitration, at which time agreement was reached on the submission of post-hearing briefs and reply briefs.

(2) Many of the statutory arbitral criteria are not relevant to this matter: the *lawful authority of the Employer* is not in issue; the *stipulations of the parties* do not contain any significant changes to the agreement; nothing in the record refers to *private sector comparisons*; and no evidence was submitted concerning the *overall level of compensation*.

(3) The following discussions address the considerations and arbitral criteria bearing upon the final offer selection process, including *identification of the primary external comparables*, *external comparisons with the primary comparables*, the significance of *the greatest weight* and *the greater weight criteria*, *internal comparisons*, and *changes during the course of these arbitral proceedings*.

(4) Two *previous interest arbitration decisions*, the District's *use of non-represented employee groups*, and the *number of negotiated settlements*, lend support to the comparability set proposed by the Association.

(a) The parties have never before proceeded to interest arbitration, and no comparable pool for this bargaining unit has thus been established.

(i) The Association submits the following school districts as the primary intraindustry comparables in these proceedings: Elkhart Lake-Glenbeulah; Germantown; Hartford Joint #1; Hartford UHS; Kewaskum; Kiel; Kohler; Northern Ozaukee; Plymouth; Port Washington; Random Lake; Sheboygan; Sheboygan Falls; and West Bend.[2]

[2] Citing the contents of Association Exhibit #11.

(ii) the District submits the following school districts as the primary intraindustry comparables: Cedar Grove-Belgium; Kewaskum; Northern Ozaukee; Oostburg; Plymouth; Random Lake; and Sheboygan Falls.[3]

(iii) The Association represents custodial/maintenance, assistants, secretarial, food service and employees holding other staff positions with the District, and all employees in the comparability pool urged by it are represented a labor union. Ten of thirteen comparables have negotiated settlements for 2002-03 and seven of thirteen have negotiated settlements for 2003-04.

(iv) Only four of the six comparables urged by the District are represented by a Union (*i.e.*, Kewaskum, Northern Ozaukee, Plymouth and Sheboygan Falls), and all four are included in the Association proposed comparables; only two of these four have negotiated settlements for 2002-03 or for 2003-04 (i.e., Kewaskum and Plymouth).

(v) It is inappropriate to include non represented employees in a comparability pool, where it is small and where there are too few settlements to establish a settlement pattern, and the Union thus proposed the exclusion of Cedar Grove-Belgium and Oostburg.

(b) The District's inclusion in the comparables of non-represented employees is inappropriate and contrary to arbitral authority.[4]

(i) The support staffs of Cedar Grove-Belgium and Oostburg are not represented by a labor union, and have their wages, hours and conditions of employment set unilaterally by their employers.

(ii) Employee handbooks for Cedar Grove-Belgium indicate that they are for informational purposes only, that the plans, policies and procedures described therein are not conditions of employment, and that the District reserves the right to modify, revoke, suspend, terminate, or change any or all such plans, policies, or procedures, in whole or in part, at any time with or without notice."[5] Benchmark and salary comparisons cannot be determined for this district.

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[3] Citing the contents of Board Exhibit #11.

[4] Citing the following principal arbitral decisions: *Arbitrator Kerkman* in Washburn School District, Dec. No. 24278-A (1987); *Arbitrator Johnson* in Potosi School District, Dec. No. 1997-A (1983); *Arbitrator Kessler* in *Monona Grove School District*, Dec. No. 28339-A (1995); and *Arbitrator Dichter* in *Wittenberg-Birnamwood*, Dec. No. 31085-A (2002).

[5] Citing the contents of Board Exhibit #47, page 1, and Board Exhibit #48, page 1.

(iii) Oosburg has a policy that clearly states "...this agreement will not be negotiated, but will be reviewed annually between the Board, administration and support staff supervisors."[6] Wage rates are not reported in the document, but are summarized by a survey produced by the WASB for use in this hearing.[7] The data supplied are, however, unreliable and subject to unilateral determination by the District.

(iv) On the above bases, it is improper to compare employees at unionized districts with those employees without Union representation at the Cedar Grove-Belgium and Oostburg districts.

(c) The comparability set proposed by the District is too small and contains too few settlements.

(i) Even if all four had settled for 2002-03 and 2003-04, they would not be representative of the District's labor market.

(ii) Kewaskum, Northern Ozaukee, Plymouth and Sheboygan Falls are generally north and east of Random Lake; the district is not so isolated, however, that employees would not be willing to commute to support staff positions in West Bend, Port Washington, Germantown, and Hartford, and there is no reason to exclude Kohler, Sheboygan or Elkhart Lake-Glenbeulah.

(iii) The wage to be paid the support employees at the District should not be determined by the narrow and skewed comparability pool proposed by the District.

(d) Previous interest arbitration awards support the Association's comparables.

(i) Arbitrator Weisberger recognized Campbellsport, Cedar Grove-Belgium, Kewaskum, Northern Ozaukee, Oostburg, Plymouth, Random Lake and Sheboygan Falls as comparables, even though Campbellsport and Sheboygan Falls had not yet settled.[8]

(ii) Arbitrator Stern recognized and reviewed the earlier decision of Arbitrator Weisberger, opined that "...arbitrators may have to extend the geographic area beyond the athletic conference and to expand the size-range of districts to be considered", and he thus expanded the comparability pool.[9]

(iii) While it is not entirely clear from his award what comparables each party was advocating, Arbitrator Stern agreed to work with both sets of proposed comparables.

(iv) The Association proposed pool was developed after

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[6] Citing the contents of Board Exhibit #53, page 1.

[7] Citing the contents of Board Exhibits #51 and #52.

[8] Citing the contents of Association Exhibit #9, page 5.

[9] Citing the contents of Association Exhibit #10, page 3.

consideration of Arbitrator Stern's guidance, and it includes the contiguous districts of Kewaskum, Northern Ozaukee, Plymouth and Sheboygan Falls, with other districts referenced in his award, including Germantown, Port Washington, Sheboygan and West Bend.

(v) Since the Belgium and Oostburg support staffs are not represented, they were excluded from the Association proposed pool, but to maintain a balanced mix of schools, the area schools of Elkhart Lake-Glenbeulah, Hartford, Kiel and Kohler were added, which additions are comparable in size and finances to Random Lake.[10]

(vi) The thirteen comparables urged by the Association have unionized support staffs, sufficient numbers of settlements to discern a pattern, they include the mix of small, medium and large districts which comprise the labor market for Random Lake, they are consistent with the rationale of Arbitrator Stern, and they are supported by the evidence.

(5) This wage dispute favors the selection of the final offer of the Association.

(a) Analysis of the 2002-03 and 2003-04 wage increases for the Association proposed intraindustry comparables, disregarding the highest and the lowest each year, in the benchmark positions of *Initial Aide, Highest Level Aide, Cook, Initial Custodian and Intro. Secretary/Clerical* positions favor selection of the final offer of the Association.[11]

(b) The above described 2002-03 and 2003-04 average wage increases are as follows.

	2002-03 Inc.	2003-04 Inc.
Initial Aide	3.61%	4.08%
Highest Level Aide	3.09%	3.93%
Cook	3.19%	3.35%
Initial Custodian	3.17%	3.40%
Intro. Secy./Clerical	3.54%	3.43%

(c) The number of settled agreements for 2002-03 ranges from seven in the Cook Classification to ten in the Highest Level Aide classification.

(i) The settlement pattern for 2002-03 is clearly in excess of 3.00% for the five benchmark positions, and the Association proposed 3.25% increases for each year is well within the range of average increases for each benchmark.

(ii) The District proposed 1.00% increase for 2002-03 is well below the pattern for all benchmarks, and its additional 10¢ per hour supplement for the "16 year plus" lane would affect just seven of the sixty-two bargaining unit employees, and cannot be considered comparable to an across-the-board increase.

(d) The settled agreements for 2003-04, while fewer in number

[10] Citing the contents of Association Exhibits #4-#7.

[11] Citing the contents of Association Exhibits #13-#17.

than those for 2002-03, more strongly support the final offer of the Association.

(i) The Association proposed 3.25% increase for 2003-04 is not only well within the range of average increases, but is also below the average settlement for each position.

(ii) The District proposed 2.00% increase for 2003-04 is well below the pattern for all benchmarks, none of which is below 3.00% and more than half of which are at or above 3.5%; its additional 10¢ per hour supplement for the "16 year plus" lane would affect only eight members of the bargaining unit, and cannot be considered comparable to an across-the-board increase.

(e) The Board's final offer is a 1.00% first year and a 2.00% second year increase, while the Association proposes 3.25% increases each year. The settlement pattern is clearly in the 3.00% to 3.5% range in both years, and the Association's final offer is thus defensible, equitable and comparable, while the District's position is not.

(6) The *greatest weight factor* should not control the decision in this case.

(a) It was created by the Wisconsin State Legislature to require the arbitration process to consider whether a municipal employer is barred from paying the final offer of either party due to statutorily mandated expenditure limits.

(b) The District offered documents and testimony in support of the proposition that state revenue caps affect its ability to adequately fund operations and that this factor should control the outcome of these proceedings.

(c) The cost difference between the parties is small, and there is no evidence that Random Lake is in any different financial condition than even its proposed comparables.

(d) The position of the Association is consistent with various arbitration decisions.[12]

(e) The District's arguments relating to *falling enrollments* and *reduced state spending caps* have been rejected by other arbitrators for various reasons, including the fact that *similar situations face many school districts*, the *lack of specificity of such arguments*, and *small differences in the final offers of parties*.

(f) While the District urges that programs and other essential school functions would be severely impacted by the Union's final offer, Random Lake is no different than other school districts in Wisconsin, which have negotiated settlements in their staff support bargaining units. While the Association's proposal is in the mainstream of such settlements.

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[12] Citing the decision of *Arbitrator Eich* in Manitowoc Public School District, Dec. No. 30473-A (2003), wherein he cited, discussed and relied upon various other arbitral decisions.

(g) The Association's analysis of the cost of the dispute, including the impact of the offers upon FICA, WRS and LTD costs, shows that its final offer would, over the life of the agreement, cost $28,682 more than the final offer of the District, or twenty-one one-hundredths of one percent of the Districts' budget. The cost differential between the two final offers is thus an insignificant part of the overall budget.[13]

(h) The District has made no claim of *inability to pay*, and its ability to do so was confirmed at the hearing in the testimony of Mr. Gassert. The case, therefore, involves the *desire or willingness to pay* by the Board.

(i) The greatest weight based arguments of the Board, therefore, should be rejected on the following principal bases: the cost difference between the final offers is relatively small; revenue controls impact on all schools and the evidence is inconclusive; the District can afford the Association's final offer; and the legislative restrictions do not restrict the District's ability to fund the Association's final offer, and thus do not apply to this dispute.

(7) The *greater weight factor* should not control the decision in this case.

(a) This factor requires evidence to show that economic conditions in the Random Lake School District have deteriorated over time and are distinguishable from its comparables.

(b) The burden is upon the Employer to establish the above requisite conditions, and the evidence advanced by it does not support application of the greater weight factor in these proceedings.[14]

(8) There is no question about the District's *ability to pay*, and the *interests and welfare of the public* are not being served by its final offer.

(a) There is no question that the District has the ability to pay the cost of the Association's final offer. The Board's own exhibits depict a salary cost difference of $24,204 (*i.e.*, $836,767-$812,564) and a wage roll-up difference of $4,480 (*i.e.*, $154,862-$150,382).[15]

(b) When compared to the approximate $10,000,000 total of its Fund 10 and 27 balances, the District's ability to pay one-quarter of one percent of its budget should not be an issue.

(c) As noted earlier, the testimony of Mr. Gassert acknowledged that the District could fund the cost of the Union's final offer, and thus the question is one of willingness to pay rather than ability to pay.

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[13] Citing the contents of Table I at page 25 of its post-hearing brief, based upon the contents of Board Exhibits #3, #4, #10 and #14.

[14] Citing the contents of Board Exhibits #24-#29, #35-#38, and #64-#71.

[15] Citing the contents of Board Exhibit #3 and #4.

(d) The interests and welfare of the public are served by comparable wage increases, rather than reduced staff morale due to indefensibly low wage increases.

(9) *Internal comparisons* to administrators and teachers must be disregarded.

(a) The QED imposed on teaching staff and administrators which affected its wages, cannot be considered as a persuasive internal comparable, because District teachers "negotiate" under a different bargaining law than its support staff, and administrators and other non-represented employees should not be treated as comparables, as previously urged by the Association.[16]

(b) The District and the Association have not agreed to negotiate on a total package basis, and comparison or settlement on such basis would reflect a significant change in the status quo.

(c) The parties have not negotiated on a total package/cast forward costing basis, and the District is attempting to introduce this method of comparison through arbitration.[17]

(d) The parties have a wage dispute, and Board evidence relating to total package costing are not examples of negotiated settlements "generally in public employment in the same community" as contemplated in the Wisconsin Statutes.[18]

(10) *Changes have occurred during the pendency of these proceedings*.

(a) At the hearing it was agreed that the record would he held open to allow the Board to supplement its exhibits on comparables, which were to address comparables identified by the Association and not identified in its previous exhibits. These exhibits were properly provided to the Arbitrator.

(b) The parties also agreed to leave the record open to confirm whether a settlement had been reached with support professionals at the Plymouth School District.

(i) On June 11, 2003, the Association submitted a document containing the negotiated tentative agreements.

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[16] Citing the following decisions: *Arbitrator Tyson* in Sturgeon Bay School District, Dec. No. 30095-A (1991); *Arbitrator Baron* in Benton School District, Dec. No. 24812-A (1988); and *Arbitrator Krinsky* in Gillett School District, Dec. No. 26301-A (1991).

[17] Citing in this respect, the decisions of *Arbitrator Honeyman* in Wausaukee School District, Dec. No. 29976-A (2001), and *Arbitrator Dichter* in School District of Omro, Dec. No. 29313-A (1998).

[18] Citing the contents of Board Exhibits #6A and #56.

(ii) The District submitted an E-mail and two changes relating to Plymouth, and agreed to withdraw two exhibits.[19] The Association believes that Board Exhibit #75 goes beyond the scope of the parties agreement at the hearing, and reserves the right to address this matter in the reply brief.

In summary and conclusion the Association urges as follows: its final offer for the 2002-04 time period is broadly supported by the comparables; the comparables selected by it are consistent with guidance derived from previous arbitrators in past teacher arbitrations in Random Lake; the District proposed comparables are flawed because they include unrepresented employees, and they do not contain enough data to shed light on the pattern of wage increases for the 2002-04 time period; the District's final wage offer is both substantially below the external pattern of settlements, and misleading; the greatest weight and the greater weight factors are not applicable in these proceedings; the District is not in significantly different financial circumstances than other districts in Wisconsin or in the comparison group; the budgetary impact of the Association's proposal in comparison to the District's, is minimal in relation to the overall budget; the District is not precluded from funding the reasonable wage settlement requested by the Association; the Board has made a decision to levy less than they are entitled to under the law; the District has the ability to pay but they have made a conscious decision not to pay for the Association's proposal; the interests and welfare of the public are not served by the District's actions; and the bargaining law for teachers and other professional school employees is very different than the law governing support staff negotiations, and total package costing, QEO costing, and internal comparisons to teacher and administrator "settlements" are inappropriate. On these summarized bases, it urges arbitral selection of its final offer.[20]

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[19] Citing the contents of Board Exhibits #75 and #76, and the withdrawal of Board Exhibits #76 and #77.

[20] While *the reply brief* of the Association has been carefully considered by the undersigned, it is unnecessary to summarize it in detail in this decision.

POSITION OF THE DISTRICT

In support of the contention that its final offer is the more appropriate of the two before the undersigned, the District emphasized the following principal considerations and arguments.

(1) That the following factors are material and relevant in these proceedings.

(a) The Board's final offer, inclusive of all wage, retirement and insurance costs, increases employee total compensation by an average of 5.41% per hour in 2002-03, and an average of 4.29% per hour in 2003-04.[21]

(b) The above increases in total compensation far exceed the 1.38% increase the District received in state aid and property taxes under the State's revenue limit law in 2002-03, and the revenue limit increase is unlikely to increase in 2003-04.[22]

(c) District Administrator Joe Gassert testified that, although the Board has regularly levied the maximum allowable property taxes under the state-imposed revenue caps, its revenues have been adversely affected by its declining student enrollment, it has already been forced to make many cuts in staff, programs and other costs, and further cuts will be necessary in 2002-04 even under its final offer.[23] Accordingly, the Board's evidence demonstrates that its final offer is the best offer it could make while still performing its duty to act in a fiscally responsible manner.

(d) The Association's final offer has been justified on one basis alone. With no regard for the District's declining enrollment and associated revenue limit difficulties, it asserts that its final offer should fall in line with an asserted "pattern" of wage settlements reached in a group of selected school districts.

(e) The only justification for the Association's would be *proof* of the following: *first*, that Random Lake is actually comparable to the various school districts for which it has provided wage data; and, *second*, that among comparable districts, Random Like should be treated as an *average* district for purposes of wage increases. That its evidence does falls short of establishing these prerequisites.

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[21] Citing the contents of Board Exhibit #3.

[22] Citing the contents of Board Exhibits #7 and #11.

[23] Citing the contents of Board Exhibit #6-A.

(f) The District's revenue limit situation - the statutory "*greatest weight*" factor to be used in deciding between the parties' offers - is *alone* dispositive in this case: if the Board is forced to implement the Association's offer, it will require the expenditure of $48,000 that it does not have;[24] the evidence supports a conclusion that the Board's final offer reaches the more appropriate balance between labor costs and/or program reductions.

(g) The evidence presented on the other statutory criteria shows as follows: *first*, that Random Lake's local economic conditions do not favor the Association's offer; *second*, that the Board's final offer compares favorably to internal comparisons and to changes in the CPI; and, third, that there are sound reasons why the Board rejected the Association's invitation to line up various wage settlements and to accept the "pattern" wage increase solely because "everybody else is doing it."

(2) In connection with *revenue limits* and the *greatest weight factor*, the following factors should be determinative.

(a) In the revenue limits contained in Section 111.70(4)(cm)(7), the Legislature has directed arbitrators to give the greatest weight to any expenditure or revenue limit applicable to the municipal employer.

(b) Under the revenue limits applicable to public school districts, the district may only raise up to a certain amount of revenue per student (or "member") without going to a referendum.[25] The maximum allowable revenue per member is *the sum of* the District's per member revenue base from the prior year (a figure which differs substantially by school district), plus the statutory per pupil revenue limit increase (a fixed dollar amount determined by the state legislature that applies to all school districts), multiplied by the District's revenue limit enrollment or "revenue limit membership," which is calculated on a three-year rolling average."[26]

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[24] Citing the contents of Board Exhibits #3 and #4.

[25] It submits that while the state aid and property taxes that are subject to the revenue limit formula are not the only sources of revenue for school districts, they represent the greatest proportion of district operating expenses; citing the contents of Board Exhibits #7 and #10, it urges that 80% of the District's revenues in 2002-03 had come from sources subject to the revenue cap.

[26] Citing the contents of Section 121.91 of the Wisconsin statutes, it submits that while its general summary of the revenue limit formula does not include various credits, adjustments and exemptions defined by statute, declining enrollment over a period of time is reflected in the District's revenue limits.

(c) Three characteristics of the revenue formula stand out: *first*, because each school district's annual revenue limit is tied directly to student enrollment, the formula gives more money to those with growing enrollments and less to those with declining enrollments; *second*, because the base figure which determines a current year's revenue limit per pupil is tied to the prior year's revenue limit per pupil, low revenue districts have no means by which they can "catch up" to high revenue districts;[27] *third*, the state aid and property taxes that are subject to the revenue limit are sources of general revenue available to fund wage increases for the District's support staff employees, which in 2002-03 represented nearly 80% of the District's total operating budget, while other revenue sources such as special purpose grants and special education aid are not necessarily recurring and thus available for across the board increases for custodians, cooks and secretaries.[28]

(3) Random Lake's declining enrollments and deteriorating revenues are apparent in the record, and support selection of its final offer.

(a) Student enrollment for the purposes of determining state aid/revenue limits declined from 1117 during 1996-97 to 1010 in 2003-04, a decline of 9.57%.[29]

(b) The Random Lake Board has regularly levied the maximum amount of property taxes possible under the state-imposed revenue caps.[30]

(c) The District's total revenue limit declined/will decline by 0.41% between 1997-98 and 2003-04.[31] Had its revenue limit enrollment remained steady since 1996-97, it could have collected approximately $1.5 million in 2002-03 and 2003-04, in state aid and property taxes under the revenue limit formula; had it maintained its 2000-01 enrollments, it would have been able to gain approximately $450,000 in additional revenue. From either a short-term or long term perspective, therefore, the District's declining enrollment goes a long way toward explaining why it cannot afford to pay the additional $48,000 in compensation costs, contained in the Association's final offer.

(d) Comparing the increases in the District's revenue to the costs of the final offers, shows an unsustainable situation. Annual increases in employee wages and benefits that far exceed annual increases in the revenue limit will, other things being equal, result in a budget imbalance that can only be addressed through reductions in staff, programs, and other costs, adding to significant cuts made by the District in 2001-02 and 2002-03, as well as those that may be

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[27] Citing the contents of Board Exhibit #68.

[28] Citing the contents of Board Exhibit #10.

[29] Citing the *testimony of Mr. Gassert* and the contents of Board Exhibit #6A.

[30] Citing the contents of Board Exhibit #6A, ¶14.

[31] Citing the contents of Board Exhibits #7 and #11, line 11.

necessary in 2003-04 due to revenue limit problems.[32]

(e) In 2001-02, the Board laid off a half-time social worker and eliminated the District's police liaison program; other cuts were avoided by the passage of a $4.3 million building referendum in April 2001 which temporarily permitted the District to shift money out of the maintenance budget and into salaries and instructional areas.[33]

[32] Citing the contents of Board Exhibit #6A,¶¶ 7-8, Board Exhibit #11, line 11, and Board Exhibit #14.

[33] Citing the *testimony of Mr. Gassert*, and the contents of Board Exhibit #6A, ¶15, and ¶¶16, 37 and 38.

(f) In 2002-03, the District enacted the following staff and budget cuts: a layoff of one position in the at-risk program; a resigning guidance counselor and vocational technology teacher were not replaced; a high school clerical position was eliminated through a retirement and transfer; two part-time custodial positions were eliminated; two professional assistants (teacher aides) resigned and were not replaced; a professional assistant (clerical) was reduced in hours; several maintenance projects were deferred; and purchases and maintenance were restricted to absolute necessities.[34]

(g) During the 2002-03 school year, the District became aware of several unexpected costs, including increases in its property/liability insurance premiums, roof replacement costs, and a stray voltage problem on its athletic fields.[35]

(h) The District has been able to reduce but not eliminate a significant gap between total support staff compensation costs and its ever-shrinking increases in the revenue limit. It will, however, be, in effect, *deficit spending* to pay for 2002-03 and 2003-04 support staff compensation increases.[36]

(i) The staff reductions to date are the only reason that the increase in support staff costs have been trimmed to 1.4% in 2003-04 under its offer and 2.2% under the Association's final offer.

(j) The average increases in actual hourly compensation under the Board's final offer would be 5.41% in 2002-03 and 4.29% in 2003-04, and wages alone will increase by 3.15% per hour.[37] The 1.4% increase under the District's offer is still more than three times the "best case" 2003-04 revenue limit increase, in spite of the staff cuts enacted to date.

(4) Random Lake's looming 2003-04 budget crisis supports selection of its final offer in these proceedings.

(a) Thus far the Board's brief has assumed what the District has assumed to be a "best case" scenario, which would generate a meager 0.41% increase in total monies, subject to the revenue limit. The District estimated in January 2003 that at least $289,000 would have to be trimmed from an already "absolute minimum" increase in budget, with most accounts frozen and money for staff development and supplies significantly reduced.[38]

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[34] Citing the contents of Board Exhibits #15 and #16, and Board Exhibit #6A, ¶¶20-21.

[35] Citing the *testimony of Mr. Gassert*, and the contents of Board Exhibit #6A, ¶36 and Board Exhibit #17.

[36] Citing the contents of Board Exhibit #6, ¶¶ 7-8 and Board Exhibits #19 and #4.

[37] Citing the contents of Board Exhibit #3.

[38] Citing the contents of Board Exhibit #21A.

(b) The next step in its 2003-04 budgeting process was to plan for the reductions in staff and programs that will balance the budget; the District anticipated losses of $41,000 in TEACH funds and over $30,000 in Title funds, then pushing total required cuts over $300,000. Many other contingencies, however, could further drive the required budget cuts to as much as $600,000.[39]

(c) Budget reductions of up to $600,000 would require significant additional reductions in jobs, programs and maintenance.[40]

(5) The Board's final offer is the more reasonable of the two offers.

(a) That its arguments relating to application of the "*greatest weight factor*" are consistent with the decisions of various Wisconsin interest arbitrators.[41]

(i) The above referenced arbitral decisions indicate that for an employer to prove that its offer is more reasonable requires it to show that it is *taxing at the maximum possible mill rate* and is *currently having financial difficulties*; it must show it will have to make significant staff and/or program cuts to fund a union's final offer.

(ii) The Board has shown a significance difference between the two final offers, with the Union proposing $48,000 more over the two contract years, than proposed by the Board, plus additional future costs. This economic difference *alone* exceeds the "best case" total decrease in the District's 2003-04 revenue limit.[42]

(iii) The Board has also shown that the state-imposed revenue limits have necessitated actual cuts to staffing and programs to balance the 2002-03 budget, and additional cuts will be required to balance it in 2003-04. The case is thus far from the situation where a union's proposal is argued to merely speed a district toward the day when expenditures would exceed permitted revenues and require program cuts.[43]

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[39] Citing the *testimony of Mr. Gassert*, and the contents of Board Exhibit #6A, ¶9, ¶¶10, 13, 30, 36, 40, and Board Exhibit #21A, 2.

[40] Citing the contents of Board Exhibit #6A, ¶¶26-29, and Board Exhibits #20 and #21B.

[41] Citing the following decisions: *Arbitrator Bilder* in Southwest Wisconsin College (Support Staff), Decision No. 29383-A (1999); *Arbitrator Vernon* in Black River Falls School District, Decision No. 29002-A (1997); and *the undersigned* in Waupaca County (Highway Department), Decision No. 28850-A (1997).

[42] Citing the contents of Board Exhibits #3, #4, #11 and #6A.

[43] Again referring to the decision of *Arbitrator Vernon* in Black River Falls School District, Decision No. 29002-A (1997).

(iv) With Random Lake's revenue limit situation, the Board's final offer clearly reaches the more appropriate balance between labor costs and/or program reductions: *first*, the revenue limits caused by its declining enrollment are exacerbated by the fact that its *per pupil revenue limit* has been and continues to be substantially below averages of the comparables;[44] *second*, the Board's offer is indicative of the effect that the revenue limits are having on the compensation of all District employees, but it allows step movement for support staff in both years of the contract and also adds money to the wage schedule in both years;[45] *third*, its offer considers wages in conjunction with overall employee compensation costs;[46] *fourth*, within the parameters of the Districts fiscal crisis, its offer attempts to address competitive wage concerns, by providing additional money at the highest paying step of the wage schedule for the Secretary I and the Professional Assistant II classifications;[47] *fifth*, the District Administrator testified to its fund balance situation, indicating that it was already substantially below the recommended level, that $110,000 of it represents WRS Act 11 "credit" rather than cash on hand, and that around $50,000 of the money it does not have in its fund balance will be needed to offset additional costs of the referendum project.[48] In other words, there is no pot of reserve money in Random Lake that the District can use to finance the Association's final offer.

(v) The Association's fund balance evidence is misleading and does not support its attempt to show *abnormally high increases* between 1993 and 2001; to the contrary, it shows a 1993-94 fund balance of $183,863, the lowest of the cited comparables.[49] Over the ensuing seven years it prudently was allowed to grow to $508,382, still paltry, in light of the fact that all of the similarly sized comparables had balances between $1 and $2 million.[50] It would simply be inappropriate for the District to use money from the fund balance to cover the cost of the Association's final offer.

(vi) In summary, the Random Lakes revenue limit problems and the statutory *greatest weight factor*, should be

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[44] Citing the contents of Association Exhibit #5 and Board Exhibit #28.

[45] Citing the contents of Board Exhibit #56, pages 2-3, and *Board Exhibit #3*, page 1.

[46] Citing the contents of Board Exhibit #3, page 3, and Board Exhibit #60.

[47] Citing the contents of Board Exhibits #41, #1, #3(8, 13), and #4(3).

[48] Citing *the testimony of Mr. Gassert* and the contents of Board Exhibit #6A,¶¶34-3 5.

[49] Citing the contents of Association Exhibit #3.

[50] Citing the contents of Association Exhibits #6 and #7.

decisive in these proceedings: the Board offer is a more appropriate balance between labor costs and further staff/program reductions; and in spite of meager revenue limit increases, and the fact that the Board has been cutting both staff and programs to balance its budgets, it has offered its support staff employees average total compensation increases of 5.41% per hour in 2002-03 and 4.29% in 2003-04, a fair and appropriate offer under the circumstances. The Association's offer does not present a choice between paying increased money and saving for a rainy day, or even a choice between paying increased wages and engaging in a little budget belt-tightening, but rather offers a choice between increased wages and jobs that are necessary for the District to implement its educational program.

(b) That arbitral selection of its offer is also favored by arbitral application of the "*greater weight factor*."

(i) The Legislature intended that interest arbitrators give greater weight to the economic conditions than to comparisons of the wages, hours and conditions of other employees performing similar services.[51]

(ii) The Board has presented evidence to show that local economic conditions do not favor the Association's assertion that it should meet the increased financial burden of its final offer: in 2000, Random Lake's median household income was below the averages of both the Board and the Association urged comparables;[52] in 2001, Random Lake's average taxable income per tax return was $39,230, while the Association comparables averaged more than $45,000;[53] compared to all contiguous districts, the average taxable income per return was $41,432, with Random Lake last;[54] DPI data from 2002-03 shows that Random Lake's property value per student was below the averages shown in one list of comparables adjusted by the Board;[55]

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[51] Again referring to the decision of *Arbitrator Vernon* in Black River Falls School District, Decision No. 29002-A (1997), wherein he suggested that the *greater weight criterion* directed arbitrators to "...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."

[52] Citing the contents of Board Exhibits #38 and #71.

[53] Citing the contents of Board Exhibit #70, page 1.

[54] Citing the contents of Board Exhibit #37, page 2.

[55] Citing the contents of Board Exhibit #69.

(iii) The "*greater weight factor*" will often be less significant in arbitration cases involving school districts than other types of municipal employers, because most school districts, including Random Lake, regularly levy 100% of the amount permitted by revenue limits; the District's only other option under current law would be to ask the voters to support such excess revenues through a referendum.[56] For a variety of reasons, the Arbitrator should reject any Association based argument premised on the passage of a referendum to exceed revenue limits.

(iv) The Association has presented no evidence to show that local economic conditions favor the additional staff and program reductions that would be needed to balance the district's budget under the Association offer and, accordingly, it has waived any argument it may have had under the "*greater weight factor*."

(6) The greatest weight factor outweighs intraindustry comparisons, even considering the Association's comparisons in light most favorable to it.

(a) The Arbitrator would be completely justified in selecting the Board's final offer under the following rationale: assume for the sake of argument that the Association's set of comparable school districts are in fact comparable to Random Lake; further assume that the wage increases noted in the Association's evidence are valid indications of the wage settlement reached in those districts; conclude that the overwhelming evidence the District presented on the greatest weight factor, *combined with* evidence showing Random Lake's comparative enrollment disparity, and its 2001-02 disparity in per pupil revenue limits, clearly outweigh evidence on comparative wage increases, viewed in the light most favorable to the Association. In other words even if there is a "pattern" of wage settlements averaging between 3% and 4% per year among comparables, it should not be expected to pay the "pattern" increase due to its unique situation of declining enrollments, its meager annual increases in total revenue limit monies, and its comparatively low per pupil revenue limit.

(b) The alternative version of the Board's argument on *intraindustry comparisons* is really a two-pronged attack on the Association's comparative wage increase evidence: *first*, its asserted comparison group is not a valid one, on the bases of relative size, diverse locations, geographic dispersement; arbitral decisions which pre-date the current revenue law limit should not define subsequent comparables; and the Association's proposed comparisons should not be considered valid for either this or future bargains; *second*, a big picture view of the other district's revenue limit situations and a broader view of the agreements reached in other districts will show, regardless of which set of comparisons is used in this case, that the Board's final offer is more reasonable.

(7) The Board's comparison group is more appropriate than that proposed by the Association, and it should be selected by the undersigned in these proceedings.

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[56] Citing the contents of Section 121.91(3) of the Wisconsin Statutes.

(a) In determining comparability, arbitrators tend to look at factors such as size, geographic proximity, local economic conditions, and athletic conference membership.[57]

(b) The thirteen *Association proposed comparables* include ten districts utilized by Arbitrator Stern in 1990, plus three additional districts from the Central Lakeshore Athletic Conference. Each of its proposed comparables has at least one unionized support staff bargaining unit.

[57] Citing the following arbitral decisions: *Arbitrator Oestreicher* in Prentice School District (Support Staff), Dec No. 27459-A (1993), pages 33-34; *Arbitrator Rice* in Cornell School District, Dec. No. 23897-A (1987); and *Arbitrator Imes* in Lac du Flambeau School District No. 1, Dec. No. 20102-A (1983).

(c) The *size of districts* is an important indicator of comparability. Five of the Association proposed comparables are more than twice the size of Random Lake and one is ten times its size; by way of contrast, only one of the Board proposed comparables has an enrollment greater than 2,000 students. The Association proposed comparables also include the two smallest districts, with one less than one-half the size of Random Lake, and it simply goes too far in proposing that Kohler (432 students) and Sheboygan (10,163 students) are each comparable with Random Lake, and also that Kohler and Sheboygan are comparable to one another.[58]

(d) The *geographic proximity of districts* is an important indicator of comparability. The six Board proposed comparables include all of the districts contiguous to Random Lake.

(i) The Association proposed comparables are as far north as the Kiel district in Manitowoc County and as far south as the Germantown District in Washington County, and excludes various other districts which are similarly separated from Random Lake.[59]

(ii) The Association proposed comparables should not be selected merely on the basis of Arbitrator Stern's 1990 arbitration decision, principally in light of the different bargaining unit, the subsequently adopted state imposed revenue limits, and the lack of any rationale contained therein to justify exclusion of non-represented districts (i.e., Oostburg and Cedar Grove-Belgium).[60]

(iii) On the above described bases, the Board urges the undersigned to conclude that all of the districts contiguous to Random Lake should comprise the primary intraindustry comparisons in these proceedings. To the extent the Arbitrator is inclined to consider the Association proposed comparable group at all, its weight should be discounted to reflect the Association's failure to render data from a comparison group that is consistent with the rationale expressed by Arbitrator Stern in his 1990 decision.

(e) The *local economic conditions* in districts is an important indicator of comparability.

(i) The Association proposed comparables are very divergent on various characteristics relevant to the labor market.

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[58] Citing the contents of *amended* Board Exhibit #67.

[59] Citing the contents of Board Exhibit #40 and Association Exhibit #12.

[60] Citing the contents of Association Exhibit #10. Citing also the following arbitral decisions addressing comparisons with non-represented employees: *the undersigned* in Shiocton School District, Dec. No. 27635-A (1993); *Arbitrator Bilder* in Hawk School District, Dec. No. 27247-A (1992); *Arbitrator Gundermann* in Area School District (Bus Drivers), Dec. No. 20338-A (1983); *Arbitrator Bellman* in Monona Grove School District (Teaching Assistants), Dec. No. 28423-A (1996); and *Arbitrator Levine* in Oregon School District (Educational Assistants), Dec. No. 28724-A (1997).

(ii) The Kohler School District, for example, has unique economic circumstances which militate against comparability, including such factors as *income per tax return*, *property value per member*, and *revenue limit per pupil*.[61] It is simply not in the same economic ballpark as Random Lake, and should not be a comparable in these proceedings.

(iii) Other districts proposed by the Association significantly differ from Random Lake in their local economic conditions, including *average taxable incomes*, and *average property values*.[62]

(iv) By way of contrast with the above, the six comparables proposed by the Board are closely grouped within $4,000 of one another on average taxable income.[63]

(v) The burden is upon the Association to demonstrate comparability, and it has failed to do so.

(f) In summary, that the six comparables proposed by the Board should be selected on the following principal bases: they are contiguous to and similar in size to Random Lake; they are not influenced by any significant variables such as large population centers or other unique circumstances; the fortunate coincidence of geographic proximity and similar size makes it unnecessary to branch out into other potential comparison groups such as the athletic conference; and it excludes certain districts which clearly are not comparable. Conversely, the Association proposed comparables should be rejected because it creates a non-existent labor market, it excludes, without explanation, other equivalent comparables, and it compares districts operating on $10 million budgets with those operating on budgets of $50 million or more.[64] Accordingly, that the Board urged comparables should be selected as primary intraindustry comparables in these proceedings.

(8) The Board's final offer is more reasonable when compared to settlements reached in contiguous districts.

(a) Both parties have summarized their comparable wage data, using two benchmarks for each position, i.e., the starting wage rate and the maximum wage rate.

(b) On the above bases, the final wage offers are compared as follows:

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[61] Citing the contents of Board Exhibit #70 and Association Exhibit #5.

[62] Citing the contents of Board Exhibit #70. #37 and #69.

[63] Citing the contents of Board Exhibit #37, page 1.

[64] Citing the contents of *amended* Board Exhibit #67, page 1.

(i) Average of contiguous districts at the base and the maximum for 2002-03 = 2.28% and 3.93%; the Board offer is 1.00% and 2.05% for the two years, while the Association's offer is 3.25% and 3.25% for the two years.[65]

(ii) Despite various inherent problems with benchmark wage data, the Board submits that its data is relevant, useful and reliable, and establishes as follows: the Association's offer would require Random Lake to pay higher than average increases to its support staff employees; while the Board's final offer would offer lower than average wage increases, its evidence on *the greatest weight* criterion supports selection of its offer.

(c) Random Lakes declining enrollment demonstrates that the Board's wage offer is more reasonable.

(i) Its decline in student enrollment exceeds the averages among the contiguous comparables.[66]

(ii) The *total revenue limit* of a hypothetical average contiguous district versus Random Lake, shows averages of $7,650,000 and $7,588,000, a difference of **-$62,000** for Random Lake.

(iii) When declining enrollment persists over a period of time, it compounds itself, and the ultimate result is Random Lakes possible $300,000 to $600,000 budget deficit for 2003-04.[67]

(iv) Because of declining enrollment it is more reasonable for the District to pay below average rather than above average wage increase in 2002-03 and 2003-04.

(d) Within the constraints of its revenue limit problems, the Board's final offer accounts for competitive wage concerns.

(i) The benchmark wage data presented by the Board indicates a trend regarding its starting and ending wages within the various classifications.

(ii) Its starting wages are generally very competitive when compared to contiguous districts, but its maximum rates are less competitive.[68]

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[65] Citing the contents of: Board Exhibit #3, pages 8, 13, Board Exhibit #4, pages 2,3; Board Exhibits #45 and #46; Board Exhibit #74, pages 2-3, and *post hearing* Association Exhibit #1.

[66] Citing the contents of Board Exhibit #62, and *amended* Board Exhibit #64.

[67] Citing the contents of Board Exhibit #62, and *amended* Board Exhibit #64 which, with an assumed 8% enrollment differential, would show an estimated $512,000 loss in annual comparative revenue between Random Lake and the average contiguous district.

[68] Citing the contents of Board Exhibit #41.

(iii) The Board's offer attempts to address competitive wage concerns by placing the largest increases at the highest end of the wage schedule in both years of the contract.[69]

(iv) Its attempt to address competitive wage concerns within the confines of its revenue limit problems reflects the reasonableness of the Board's final offer.

(e) The Board's final offer is more reasonable when compared to the Association's comparison group.

(i) The key distinction between Random Lake and Association's comparables, is that its revenues have been adversely affected by the revenue limit "*double whammy*" unmatched elsewhere in the group, reflected in a revenue limit $451 per pupil lower than the average comparables.[70]

(ii) Unlike Random Lake, no district in the Association proposed comparables had been simultaneously afflicted with its unfortunate combination of long term declining enrollment and a substantially below average revenue limit per pupil.[71]

(iii) Its long terms declining enrollment and substantially below average revenue limits per pupil demonstrate that Random Lake should not be expected to match the *pattern wage increase* urged by the Association.

(f) Various other reasons exist to question the weight given to the Association's benchmark wage data.

(i) The tentative agreement reached in the Plymouth School District, indicates that a wage increase was accompanied by a cost-saving concession in insurance coverage.[72]

(ii) The face of the 2001-03 Germantown contract indicates that the settlement included a health insurance change, which supports an inference that the insurance change was a cost-saving concession.[73]

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[69] Citing the contents of Board Exhibit #3, pages 3 and 8 and Board Exhibit #4, pages 2,3.

[70] Citing the contents of Association Exhibit #5.

[71] Citing the contents of Association Exhibit #5 and *amended* Board Exhibit #67.

[72] Citing the contents of *post-hearing* Association Exhibit #1, and *amended* Board Exhibit #75, page 4, ¶¶ 6-8.

[73] Citing the contents of Association Exhibit #19, page 13.

(iii) Some of the districts in the Association urged comparables settled three-year contracts covering 2003-04, but no data is submitted relative to the percentage wage increases for 2001-02. Random Lakes wage increase in 2001-02 approximated 3%.[74]

(iv) While some of the Board projected revenue limits in 2003-04 might be termed speculation by the Association, it has consistently used the "best case" revenue limit scenario among known alternatives.

(v) The Association presented no evidence suggesting that the District's revenue limit could increase in an amount greater than $236 per pupil, and there is nothing speculative about its 2002-03 revenue limit or the cuts enacted to date.

(vi) On the basis of the record as a whole, the Board submits that the greatest weight factor clearly predominates in this arbitration, and demonstrates that the Board's final offer is more reasonable.

(g) Arbitral consideration of the internal comparison criterion favor selection of the Board's final offer.

(i) The District implemented a Qualified Economic Offer within the teacher bargaining unit for 2001-02 and 2002-03, which exists when the employer: (1) maintains all fringe benefits and the employer contributions thereto; and, (2) increases or decreases salaries to result in a total package cost increase of 3.8% in each year of the contract as determined per statutory and WERC costing rules.[75]

(ii) Under the District's QEO, Random Lake teachers did not receive step increases in 2002-03, and the salary cell was decreased by 0.77% (*i.e.*, between $200 and $400 per cell). The salary reduction was necessitated by the extraordinary 35% increase in health insurance premiums for 2002-03, which drove total cost increases about the 3.8% level. The decrease in 2002-03 salaries was larger than the 0.43% increase in 2002-02, meaning that each cell on the 2002-03 salary schedule was less than the salary schedule in 2000-01.[76]

(iii) While a QEO is not a voluntary settlement, the compensation increases received by teachers and administrators in Random Lake are relevant in this arbitration. Certainly the internal comparison criterion does not favor selection of the Associations' final offer.

(h) Consideration of various other arbitral criteria also favor selection of the final offer of the Board in these proceedings.

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[74] Citing the contents of Board Exhibit #2, pages 18-19.

[75] Citing the contents of Section 111.70(1)(nc) of the Wisconsin Statutes, and Section ERC 33.10(3)(a), of the Wisconsin Administrative Code.

[76] Citing the contents of Board Exhibit #56, pages 3 and 6.

(i) That when total package costs are included and compared to the approximate 2.18% increase in the rate of inflation during the 2002-03 school year, the cost of living criterion favors selection of the final offer of the District rather than that of the Association.[77] Many arbitrators find that comparisons to *total compensation cost increases are* appropriate in applying the costs of living criterion.[78]

[77] Citing the contents of Board Exhibits #3, #4, #57, #60 and #61.

[78] Citing the following arbitral decisions: *Arbitrator Petrie* in Mayville School District, Dec. No. 27105 (1992); *Arbitrator Rice* in Shawano County (Highway Department), Dec. No. 26049-A (1989); *Arbitrator Slavney* in Janesville School District (Secretarial/Aides/Clerical), Dec. No. 26060-A (1990); *Arbitrator Zeidler* in Glenwood City School District (Support Staff), Dec. No. 26944-A (1992); and *Arbitrator Malamud* in Community School District, Dec. No. 27200-A (1992).

In summary and conclusion it urges that the final offer of the Board, inclusive of all wage, retirement and insurance costs, increases employee total compensation by an average of 5.41% per hour in 2002-03, and an average of 4.29% per hour in 2003-04.[79] These total compensation increases far exceed the 1.38% increase the District received in state aid and property taxes under the State's revenue limit law in 2002-03.[80] For 2003-04, the District's revenue limit increase is unlikely to be higher than 0.41%.[81] Mr. Gassert explained in detail that although it had regularly levied the maximum allowable property taxes under state imposed revenue caps, the District's revenues have been adversely affected by its declining student enrollment, it has already been forced to make many cuts in staff, programs and other costs due to the state-imposed revenue limit, and further cuts will be necessary in 2003-04 even under the Board's final offer.[82] In the above connections, it urges that the statutory "greatest weight" factor is dispositive in this matter, that other school districts have not experienced Random Lake's long term declining enrollment and relatively low pupil revenue limits, a combination which makes its economic circumstances unique. It thus urges that the Board's final offer is the more reasonable offer, and requests its selection by the undersigned. [83]

FINDINGS AND CONCLUSIONS

While the parties have only a single impasse item, *the wage increases to be implemented during the term of their renewal agreement*, they significantly disagree in the application of the various statutory arbitral criteria to the final offer selection process in these proceedings. The two major preliminary determinations to be made by the undersigned prior to applying the statutory criteria and selecting the more appropriate of the two final offers, are the

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[79] Citing the contents of Board Exhibit #3, page 1.

[80] Citing the contents of Board Exhibit #7.

[81] Citing the contents of Board Exhibits #7 and #11, line 11.

[82] Citing the contents of Board Exhibit #6A.

[83] While *the reply brief* of the Board has been carefully considered by the undersigned, it is unnecessary to summarize it in detail in this decision.

identification and application of the primary intraindustry comparables, and the *applicability of "the greatest weight" and/or "the greater weight" criteria* in these proceedings.

The Identification and Application of the Primary Intraindustry Comparables

While both parties emphasize comparisons in support of their respective positions, they disagree as to which school districts comprise the *primary intraindustry comparison group* in these proceedings.[84] In addressing the positions of the parties, it is first emphasized that Wisconsin interest arbitrators operate as *extensions of the collective negotiations process*, and their primary goal is to apply the various statutory criteria in such a manner as to put the parties, as close as possible, into the position they would have reached at the bargaining table, had they been able to reach a negotiated settlement. As noted by the undersigned in many prior interest proceedings, the Wisconsin Statutes identify various types of public and private sector comparisons for arbitral use in the final offer selection process and, *apart from legally mandated priorities and/or unusual circumstances*, it is widely recognized that *comparisons* in general are normally the most important arbitral criteria, and so-called *intraindustry comparisons*, are normally the most important of the various types of comparisons. These considerations are very well addressed in the following excerpts from the venerable but still authoritative book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter,

[84] While the "*intraindustry comparison terminology*" obviously derives from the private sector, its use in the public sector normally refers to *external comparisons with similar units of employees employed by comparable governmental units*.

any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.

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A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[85]

What next of the identity of the *primary intraindustry comparisons* in these proceedings, in which connection the parties have urged as follows.

(1) The District proposes six primary comparables in these proceedings: Cedar Grove, an unrepresented district located 15 miles from Random Lake; Kewaskum, a union represented district located 15 miles from Random Lake; Northern Ozaukee-Freedonia, an union represented district and member of the Lakeshore Athletic Conference, located 7 miles from Random Lake; Oostburg, an unrepresented district located 11 miles from Random Lake; Plymouth, a union represented district and member of the Lakeshore Athletic Conference, located 16 miles from Random Lake; and Sheboygan Falls, a union represented district located 15 miles from Random Lake.[86]

[85] See Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54, 56, and 57. (footnotes omitted)

[86] See the contents of Board Exhibit #40.

(2) The Association proposes thirteen primary comparables in these proceedings: Elkhart Lake-Glenbeulah, a union represented district and member of the Lakeshore Athletic Conference, located 15 miles from Random Lake; Northern Ozaukee-Freedonia, a union represented district and member of the Lakeshore Athletic Conference, located 7 miles from Random Lake; Germantown, a union represented district located 32 miles from Random Lake; Hartford Joint 1, a union represented district located 33 miles from Random Lake; Hartford High, a union represented district located 33 miles from Random Lake; Kewaskum, a union represented district located 15 miles from Random Lake; Kiel, a union represented district located 27 miles from Random Lake; Kohler, a union represented district and member of the Central Lakeshore Athletic Conference, located 17 miles from Random Lake; Plymouth, a union represented district located 16 miles from Random Lake; Port Washington, a union represented district located 14 miles from Random Lake; Sheboygan, a union represented district located 22 miles from Random Lake; Sheboygan Falls, a union represented district located 15 miles from Random Lake; and West Bend, a union represented district located 16 miles from Random Lake.[87]

In formulating their respective recommendations it is recognized that each party has an incentive to urge arbitral consideration of those intraindustry comparables which best support selection of its final offer. In considering their recommendations, it is again emphasized that interest arbitrators operate as extensions of the collective negotiations process, and they are extremely reluctant to ignore *bargaining history* by abandoning the *wage and benefit comparisons which the parties themselves have relied upon in the past*. This principle is well described in the following additional excerpts from Bernstein's book:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practices in the face of an effort to remove or to create a differential. When Newark Milk Company engineers asked for a higher rate than in New York City, the arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.'
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> * * * * *
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> The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define, the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[88]

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[87] See the contents of Association Exhibits #11 and #12.

[88] See The Arbitration of Wages, pages 63, 66. (footnotes omitted)

The same principles discussed above are also addressed in the following excerpt from the widely cited and authoritative book originally authored by Elkouri and Elkouri:

> "In the public sector, many state statutes regulating interest arbitration direct the arbitrator to consider a comparison of the wages, hours, and conditions of employment of employees involved in the arbitration proceeding with those of other employees performing similar services in comparable communities. Comparison among comparable communities may also be made on such benefits as health and life insurance, retirement, holiday, sick leave accrual, retiree health insurance, longevity pay, and overtime opportunities.
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> As this is one of the factors the arbitrator is required to consider, it is not unusual for the parties to disagree on the list of communities to be considered. In such instances, the arbitrator may be required to resolve the parties' differences.
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>
> Where each of the various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons that the parties themselves had considered significant in free collective bargaining, especially in the recent past."[89]

In considering *the parties' negotiations history* in relationship to the composition of the primary intraindustry comparison group, the undersigned notes various inconsistencies in their current recommendations, with both departing from positions advanced by them in their earlier arbitrations, and from the earlier decisions of Arbitrators Weisberger and Stern.[90]

(1) *Arbitrator Weisberger* summarized the positions of the parties and decided as follows:

(a) *That the District*, relying upon "...the well accepted criteria of geographic proximity, size (pupil enrollment and full time staff equivalency), athletic conference membership, per pupil operating costs, and full value tax rate/equalized value" had urged the following thirteen primary comparables: Campbellsport, Cedar Grove-Belgium, Chilton, Elkhart Lake-Glenbeulah, Howards Grove, Kewaskum, Kiel, Kohler, New Holstein, Northern Ozaukee (Fredonia), Oostburg, Plymouth and Sheboygan Falls.

(b) *That the Association*, principally citing the effect of the Milwaukee metropolitan area, had urged the following eight primary comparables: Cedarburg, Cedar Grove, Northern

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[89] See Volz, Marlin M. and Edward P. Goggin, Co-Editors, *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Fifth Edition - 1997, pages 1109, 1113. (footnotes omitted)

[90] See the contents of Union Exhibits #9 and #10, the August 4, 1986, decision of *Arbitrator June Miller Weisberger*, pages 2, 3 and 5, and the October 3, 1990, decision of *Arbitrator James L. Stern*, pages 3-7.

Ozaukee(Fredonia), Grafton, Kewaskum, Oostburg, Port Washington, and West Bend.

(c) She then noted that both parties had agreed upon Cedar Grove-Belgium, Kesaskum, Northern Ozaukee and Oostburg, selected Plymouth from the District's recommendations, specifically excluded Campbellsport and Sheboygan Falls because they had not yet settled, and opined that there was *no need to consider* other members of the Athletic Conference (*i.e.*, Kohler, Howards Grove, and Elkhart Lake), or the more distant comparables urged by the District (*i.e.*, Chilton, Kiel and New Holstein) or the Association (*i.e.*, Cedarburg, Grafton, Port Washington and West Bend).

(2) *Arbitrator Stern* concluded that he was not limited to the primary comparables utilized by Arbitrator Weisberger, *noted* that she had used *only* the five contiguous districts which had settled, and *opined* that if other districts had settled and/or been agreed upon by the parties, she would have included them. He then specifically recognized the value of considering settlements in Sheboygan, West Bend, Port Washington, Cedarburg and Germantown, but indicated and described his utilization of both sets of comparables which had then been urged by the parties.

While neither of the above arbitral decisions includes a definite and complete articulation of the composition of the *primary intraindustry comparison group*, they are part of the *negotiations history* of the parties which provides sufficient evidence for such determination in these proceedings. In applying this evidence in conjunction with the arguments of the parties, the undersigned has determined as follows: *first*, the districts mutually recommended by both parties in these proceedings must be included; *second*, the districts *definitively selected as primary intraindustry comparables* by Arbitrators Weisberger and/or Stern will be utilized, unless rejected by both parties in these proceedings; and, *third*, the districts recommended by one party in these proceedings will be included, if they had been recommended by the other party in the prior arbitration(s), in the absence of *extremely persuasive evidence* to the contrary. When parties have previously considered such normal determinants as *geographic proximity, size, athletic conferences, operating cash*, and *full value tax rate/equalized value* in selecting comparables, it is very difficult to justify disregarding these same determinants when the same employer and the same union are again involved in an interest arbitration within another bargaining unit.

(1) The *districts currently agreed* upon by both parties are Kewaskum, Northern Ozaukee (Fredonia), Plymouth and Sheboygan Falls.

(2) The districts *definitively* determined to be applicable by *Arbitrator Weisberger* are Cedar Grove-Belgium, Kewaskum, Northern

Ozaukee (Fredonia), Oostburg and Plymouth.

(3) The districts identified as part of a larger applicable group of comparables by *Arbitrator Stern* are Sheboygan, West Bend, Port Washington, Cedarburg and Germantown.

(4) The districts *currently urged by the Association and previously urged by the Employer* are Kiel and Kohler.[91]

(5) Those *districts currently urged by the Employer and previously urged by the Association* are Cedar Grove and Oostburg.[92]

In applying the above considerations the undersigned, relying upon *the parties' negotiations history*, has determined that the following districts should comprise the *primary intraindustry comparisons* in these proceedings: Cedar Grove-Belgium; Kewaskum; Kiel; Kohler; Northern Ozaukee (Fredonia); Oostburg; Plymouth; Port Washington; and Sheboygan Falls. In making this determination the undersigned notes that Arbitrator Stern did not find it necessary to *definitively identify a conventional and discrete set of primary intraindustry comparables*, but rather applied basic economic principles in support of *utilization of all of the comparables urged by both parties*. The undersigned has concluded that while Sheboygan and West Bend are approximately 22 miles and 16 miles from Random Lake and they clearly impact upon the salary levels paid in neighboring school districts, their *significantly greater size* precludes their inclusion as *primary intraindustry comparables* in these proceedings.

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[91] As noted above, Arbitrator Weisberger recognized the District's reliance upon *various well accepted criteria*, including *geographic proximity, size (pupil enrollment and full time staff equivalency), athletic conference membership, per pupil operating costs, and full value tax rate/equalization value*, in defense of its then proposed thirteen comparables, which included Kiel and Kohler. Since none of the "*well accepted criteria*" advanced by the District in the prior arbitration have changed, no persuasive basis exists to justify the exclusion of these two districts from the *primary intraindustry comparables* in these proceedings.

[92] Contrary to the arguments advanced by the Union no appropriate basis exists for the arbitral exclusion of comparable but non-represented employees within the Kiel and the Cedar Grove Districts from the primary intraindustry comparisons, particularly when these two districts had been urged as comparable by the Association in previous negotiations/arbitration with the District (albeit within another bargaining unit).

Since the parties principally differ only on the *general wage increases* to be applied within the bargaining unit during 2002-03 and the 2003-04, it is appropriate to merely examine the comparable percentage increases applied within the primary intraindustry comparison group for same periods.[93] The following data comparing the 2002-03 and the 2003-04 general wage increases granted within the primary intraindustry comparables, at the base rates, was extracted by the undersigned from the contents of Association Exhibits #13-#17 and Board Exhibits #41-#46.

COMPARABLES AND GWI - 2002-03 and 2003-04

	GWI 2002-03	GWI 2003-04
(1) **Cedar Grove-Belgium**		
Bldg. Custodian	1.96%	N/S
Genl. Cleaner	2.94%	N/S
Secretary	2.81%	N/S
Cook	2.78%	N/S
Cook Hlpr.	3.57%	N/S
Spec. Educ. Aide	2.94%	N/S
Teacher Aide	3.23%	N/S
(2) **Kewaskum**		
Maintenance	3.52%	3.5%
Bldg. Custodian	3.5%	3.47%
General Clnr.	3.53%	3.54%
Bldg. Secretary	3.52%	3.5%
Clerk Typist	3.55%	3.53%
Head Cook	3.5%	3.47%
Cook	3.5%	3.5%
Cook's Hlpr./Srvr.	3.51%	3.5%
Teacher Aide	3.54%	3.52%
(3) **Kiel**	N/S	N/S
(4) **Kohler**	3.4%-3.5%	3.4%-3.5%
(5) **Northern Ozaukee (Fredonia)**	N/S	N/S
(6) **Oostburg**		
Maintenance	3.03%	N/S
Bldg. Custodian	3.5%	N/S
Genl. Cleaner	3.02%	N/S

[93] While parties may disagree in the costing of final offers, sound results can only be achieved by comparing the size of general wage increases in multiple districts in a *uniform manner*.

Secretary	2.37%	N/S
Head Cook	3.5%	N/S
Cook	2.78%	N/S
Cooks Hlpr./Srvr.	3.01%	N/S
Special Educ. Aide	2.94%	N/S
Teacher Aide	3.0%	N/S

(7) **Port Washington**

Initial Aide	1.0%	N/S
High Aide	1.0%	N/S
Init. Custodian	3.0%	3.0%

(8) **Sheboygan Falls**

Maintenance	2.42%	7.87%
Bldg. Custodian 2.34%		7.87%
Genl. Cleaner	2.31%	7.89%
Bldg. Secretary	2.37%	7.85%
Clk. Typist	2.30%	7.91%
Cook	2.36%	7.91%
Cook's Hlpr./Srvr.	2.38%	7.87%
Spec. Educ. Aide	2.44%	7.94%
Teacher Aide	2.44%	7.94%

(9) **Random Lake**

Board Final Offer	1.0% 10¢ & 20¢	2.0% 10¢ & 20¢
Association Final Offer	3.25%	3.25%

No detailed analysis or refinement of the figures shown above are necessary to establish the obvious fact that the final offer of the Association in these proceedings is significantly closer to the wage increases within *the primary intraindustry comparables* than that of the Board.[94] The Board proposed 10¢ and 20¢ per hour adjustments to remedy admitted inequities at the top of the wage structure for a small number of bargaining unit employees, while commendable, does not offset the disparity between its proposed general wage increases and those of the Association. On these bases, the undersigned has determined that consideration of the intraindustry comparison criterion *clearly and persuasively* favors the position of the Association in these proceedings.

The Applicability of the Greatest Weight and/or Greater Weight Criteria in these Proceedings

The situation addressed by the legislature in creating *the greatest*

[94] In this connection it is noted that the second year wage increase percentages shown for Sheboygan Falls were apparently attributable to the elimination of the lowest steps in its wage structure, the impact of which is obviously not the same as a general wage increase.

weight and *the greater weight* criteria, the *normal weight traditionally accorded primary intraindustry comparisons*, and the matter of *actual versus professed inability to pay* in public sector interest disputes, was authoritatively and presciently addressed by Arbitrator Howard S. Block, in part as follows:

"**Ability to Pay: The Problem of Priorities**

> Nowhere in the public sector is the problem of interest arbitration more critical than in the major urban areas of the nation. Municipal governments are highly dependent, vulnerable public agencies. Their options for making concessions in collective bargaining are at best limited, and are often nullified by social and economic forces which command markets, resources, and political power extending far beyond the city limits. City and county administration are buffeted by winds of controversy over conflicting claims upon the tax dollar. On the federal level, the ultimate source of tax revenues, the order of priorities between military expenditures and the needs of the cities are a persistent focus of debate. On the state level, the counterclaims over priorities in most states seem to be education over all others.
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> * * * * *
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> ...How does an arbitration panel respond to a municipal government that says, 'We just don't have the money'?
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> Pioneering decisions of interest neutrals have assigned no greater weight to such an assertion than they have to an inability-to-pay position of private management. An arbitration panel constituted under Michigan's Public Act 312 rejected an argument by the City of Detroit which would have precluded the panel from awarding money because of an asserted inability to pay. What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber-stamp the city's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations? While the panel considered the city's argument on this point, it was not a controlling conclusion.
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> Inability to pay may often be the result of an unwillingness to bell the cat by raising local taxes or reassessing property to make more funds available. Arnold Zack gives a realistic depiction of the inherent elasticity of management's position in the following comment:
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> > 'It is generally true that the funds can be made available to pay for settlement of an imminent negotiation, although the consequences may well be depletion of needed reserves for unanticipated contingencies, the failure to undertake new planned services such as hiring more teachers, or even the curtailment of existing services, such as elimination of subsidized student activities, to finance the settlement.' "[95]

The long standing and traditional arbitral handling of wage disputes

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[95] See Arbitration and the Public Interest, *Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators*, Bureau of National Affairs, Inc., 1971, pages 169, 171-172. (footnotes omitted)

indicating the traditional primacy of *intraindustry comparisons* over *financial impairment* in the arbitration of wages, is described as follows by Bernstein:

> "Most arbitrators incline to give more influence to the intraindustry comparison than to financial hardship, provided that both are of roughly equivalent validity. That is, a tight comparison tends to carry greater weight than a clear showing of distress. If one is not substantiated, of course, the other gains relatively in force. An illustration of the general rule is the Triburo Coach case. The company demonstrated that it operated at a deficit and the union showed that wages were low for transit in the city. 'The inability of the company to pay,' the board held, 'should not prevent the employees from receiving fair compensation for their work. It cannot be a justification for fixing its employees' wages below the lowest wages presently paid for comparable services by comparable employers within this area.' "[96]

How has the application of the intraindustry comparison criterion in situations involving professed inability or impaired ability to pay situations been modified by the Wisconsin Legislature's mandate that interest arbitrators apply two specific statutory criteria on prioritized bases: it first mandates that such arbitrators place ***the greatest weight*** upon "...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations upon expenditures that may be made or revenue that may be collected by a municipal employer."

(1) It first mandates that such arbitrators place ***the greatest weight*** upon "...any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations upon expenditures that may be made or revenue that may be collected by a municipal employer."

(2) It then mandates that such arbitrators place ***greater weight*** upon "...economic conditions in the jurisdiction of the municipal employer" than to the remaining arbitral criteria contained in Section 111.70(4)(cm)(7r) of the statutes.

If either or both of the above criteria apply to a particular dispute, Wisconsin interest arbitrators must accord them the statutorily described weight. Conversely, if neither of the factors is applicable to a particular dispute, the remaining criteria will carry their normal weight in the arbitral decision making process.

The legislature clearly conditioned application of the *greatest weight criterion*, upon presence of the *requisite limitations on expenditures or*

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[96] See The Arbitration of Wages, page 83, citing Triburo Coach Corp., 8 LA 489 (1947).

revenues. The *greater weight criterion* apparently applies in at least two ways: *first*, by ensuring that an employer's economic condition is fully considered in the composition of the primary intraindustry comparison group; and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the "...economic conditions in the jurisdiction of the municipal employer." In other words, *like employers should be compared to like employers*, and *undue and disparate economic burdens should not be placed upon an employer significantly and comparatively affected by the requisite limitations*. Application of these criteria, however, do not *alone* require arbitral selection of the least costly of two alternative final offers, without consideration of their reasonableness and the remaining statutory criteria.

Both *the greatest weight* and *the greater weight* criteria are intended to apply to current disputes which involve actual *ongoing impediments*, in the form of legal limits on expenditures or revenues, and/or to *current economic conditions* before an arbitrator or a panel; in other words they do *not* directly apply to *possible* or even to *probable* future situations which may or may not involve such factors.

Despite Mr. Gassert's candid admission that the District did have the *ability to pay* the costs of the final wage offer of the Association, this does not negate the potential application of either *the greatest weight* or *the greater weight criteria*. This principle, in addition to other observations which also apply to the case at hand, are well described in the following excerpt from a Board cited decision by Arbitrator Gil Vernon:

> "...The 'Greatest Weight Factor' is not simply an ordinary ability-to-pay consideration by some other name. The 'ability to pay' has been one of the criteria under Wis.Stats. 111.70 long before the 'Greater Weight Factor' was added to the list of factors arbitrators are to consider. Ability to pay arguments under the prior indications of Wis.Stats. 111.70 never held much weight with arbitrators because a municipality always had the ability to pay a salary demand because they always had the right to raise revenues through taxation. This, of course, with respect to school districts has changed. Districts have state-imposed revenue limitations, save approval by local referendums. With revenue caps came the 'Greatest Weight' factor.
>
> Clearly, the legislatur had something more in mind when this factor was written into the statute than the garden variety 'ability to pay' arguments particularly since 'ability to pay' was retained as one of the 'Other Factors'. In this regard the Union's attempt to stiff-arm the 'Greatest Weight' factor because the District can 'afford' to pay

> the salary demand of the Union, leaves the Arbitrator's analytical craw a bit empty. Of course, the District can always make other financial choices freeing up money for employees. ...
>
> Certainly a district in this strict sense can almost always 'afford' a raise for its employees. However, it seems more reasonable that the relevant question under the 'Greatest Weight' factor seems to be 'If the District can afford a salary increase, at what cost to the educational mission will this increase come?' This Arbitrator believes that the 'Greatest Weight' factor as related to revenue limitations was meant to have arbitrators, in individual cases and in appropriate circumstances, take into account the financial and budgetary influence, impact and pressures that come to bear under legislative revenue limitations (wise or as unwise as they be).
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> * * * * *
>
> In this case the Arbitrator believes Factor 7 is relevant because the District has provided convincing evidence that revenue limitations in combination with the cost of the Union's salary request will have a substantial and palpable adverse effect on the operations of the District, particularly in 2001-02. I don't think the ship is sinking but it is hard to say that it isn't taking on some water to an extent sufficient to put Factor 7 into play. For example the District has been taxing at the maximum allowable rate for several years and has been experiencing declining enrollments for several years. As a result, the amount of revenue the District will be allowed to raise had declined in 1999-00 and 2000-01. In 2001-02 the District, based on a continued trend of declining enrollment, anticipates receiving only 1 to 1 1/2% of new dollars. The revenue cap is expected to increase only $250,000. ...The District is faced with depleting its fund balance and making budget cuts. ...It is noteworthy that instructional and athletic budgets were frozen, user fees were established and/or increased among a list of many other budget adjustments.
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> In the face of this evidence, it is impossible to say that revenue limitations haven't affected the District..."[97]

While precise measurement of the District's *relative* economic condition and its *relative* efforts is difficult, because of the diverse positions of the parties relative to the composition of the primary intraindustry comparables, the undersigned is convinced that it faces serious, disproportional and continuing financial difficulties due to its *substantial ongoing decline in enrollment* and its *revenue limit situation*, which have thus properly triggered application of *the greatest weight* factor in the case at hand.

The application of the greatest weight factor does not alone mandate the selection of the lowest final wage offer before an arbitrator, without consideration of the reasonableness of such offer. Without unnecessary elaboration, the undersigned has concluded that the District proposed wage

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[97] See the decision of *Arbitrator Vernon* in Tomahawk School District, Dec. No. 30024-A (2001), pages 12-14.

increases of 1% and 2% in 2002-03 and 2003-04, as supplemented by the 10¢ and 20¢ per hour increases to a portion of the wage structure, is both balanced and reasonable.

For the purpose of clarify, the undersigned will add four additional observations at this point: *first*, contrary to the arguments advanced by the District, the statutory presence of *the greatest weight* and/or *the greater weight* criteria, does not *alone* require revision of *primary intraindustry comparables* established by parties in their prior negotiations or interest arbitrations; *second*, application of these arbitral criteria cannot *alone* require arbitral selection of the least costly of two alternative final offers, without consideration of the remaining statutory criteria; *third*, while the District could apparently utilize a *public referendum* to increase taxes in the event of a future crisis, it is correct in arguing that such a step would not be a condition precedent to arbitral assignment of determinative weight to either *the greatest weight* or *the greater weight* criteria, if the statutory prerequisites for such application had been present; and, *fourth*, while the Association is quite correct that the cost differential between the two final offers is small in relationship to the size of the District's budget, this consideration cannot *alone* justify arbitral disregard of an otherwise appropriate application of *the greatest weight* or *the greater weight* criteria.

On the above described bases, the undersigned has determined that *the greatest weight* criterion must be applied to the final offer section process in these proceedings, which takes precedence over application of the intraindustry comparison criterion, and which thus *clearly and persuasively* favors selection of the final offer of the District.

The Remaining Arbitral Criteria

Although the *intraindustry comparables* and *the greatest weight* and *the greater weight* were the items primarily emphasized by the parties in these proceedings and are essentially determinative of the outcome, various other statutory criteria were also addressed.

(1) The weight placed on the *interests and welfare of the public criterion* varies greatly with individual circumstances. It normally has received determinative weight in the final offer

selection process in two situations: *first*, where an employer has established an *absolute inability to pay*, where it takes precedence over all other criteria; and, *second*, where the selection of one of the final offers would necessitate a relatively disproportional or unreasonable effort on the part of an employer. As previously noted, the District has the present ability to fund the wage offer of the Association; and the second situation was addressed by the Legislature in introducing *the greater weight factor*, the application of which was discussed earlier. On these bases the interest and welfare of the public criterion does not significantly favor the position of either party in these proceedings.

(2) In the area of *internal comparisons*, the undersigned will note that while the wage increases undertaken by the District for certain unrepresented employees supports the reasonableness of its final offer in these proceedings, the statutorily mandated settlement within the teachers bargaining unit cannot be assigned any significant weight.

(3) The relative importance of the *cost of living criterion* varies with the state of the economy and during periods of rapid movement in prices it may be one of the most important factors in wage determination. In the case at hand it must be emphasized that the same cost of living considerations faced the primary intraindustry comparison group when they negotiated or unilaterally implemented their wage increases for 2002-03 and 2003-04, which comparisons already reflect changes in the cost of living considerations. On these bases, the cost of living criterion cannot be separately assigned significant weight in the final offer selection process.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) While the parties have only a single impasse item, *the wage increases to be implemented during the term of their renewal agreement*, they significantly disagree in the application of the various statutory arbitral criteria to the final offer selection process in these proceedings.

(2) Wisconsin interest arbitrators operate as *extensions of the contract negotiations process*, and their normal goal is to attempt, as closely as possible, to put the parties into the same position they would have occupied had they been able to reach full agreement at the bargaining table.

(3) The Wisconsin Statutes identify various types of public and private sector comparisons for arbitral use in the final offer selection process and, apart from legally mandated priorities and/or unusual circumstances, it is widely recognized that *comparisons* in general are normally the most important arbitral criteria, and so-called *intraindustry comparisons*, are normally the most important of the various types of comparisons.

(4) Two major preliminary determinations will be made by the undersigned prior to applying the statutory criteria and selecting the more appropriate of the two final offers, the *identification of the primary intraindustry comparables*, and the *applicability of "the greatest weight" and/or "the greater weight" criteria* in these proceedings.

(a) Principally based upon the parties' *negotiations*

/arbitration history, the undersigned has determined that the following districts should comprise the *primary intraindustry comparisons* in these proceedings: Cedar Grove-Belgium; Kewaskum; Kiel; Kohler; Northern Ozaukee (Fredonia); Oostburg; Plymouth; Port Washington; and Sheboygan Falls.

(b) Arbitral application of the *intraindustry comparison criterion clearly and persuasively* favors the position of the Association in these proceedings.

(c) The *greatest weight criterion* must be applied to the final offer section process in these proceedings, which *clearly and persuasively* favors selection of the final offer of the District.

(5) The *interests and welfare of the public* criterion does not significantly favor the position of either party in these proceedings.

(6) The *internal comparison criterion*, reflected in the wage increases undertaken by the District for certain unrepresented employees, supports the reasonableness of its final offer in these proceedings.

(7) The *cost of living* criterion cannot be separately assigned significant weight in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has concluded that the final offer of the District is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the District is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the District, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

October 9, 2003