

NOV 26 1982

IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS
BETWEEN

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

SCHOOL DISTRICT OF KOHLER,)	
)	
Employer)	Decision and Award of
)	Arbitrator
and)	
)	Case IV No. 29533
KOHLER EDUCATION)	
ASSOCIATION,)	MED/ARB 1609
)	Decision No. 19674-A
Union)	
)	

MEDIATOR/ARBITRATOR: Jay E. Grenig
556 W23674 Maplewood Terrace
Waukesha, WI 53186

APPEARANCES:

For the Employer: Alvin R. Kloet, Attorney
Chase, Olsen, Kloet & Gunderson
602 North Sixth Street
Sheboygan, WI 53081

For the Union: Richard Terry, Executive Director
Kettle Moraine UniServ Council
3811 Kohler Memorial Drive
Sheboygan, WI 53081

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to the Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act. The 1980-83 collective bargaining agreement (Agreement) between the parties provided that Section D (Calendar), Section E (Salary Schedule), and Section I (Extra Curricular Duty Schedule) of Article VI could be reopened for negotiations upon the request of either party. Agreement, Art. X, § A. The Agreement expires August 15, 1983.

The Kohler Education Association (Association) is a labor organization that is the exclusive collective bargaining representative of 34.5 employees in the School District of Kohler (District). The bargaining unit consists of all regular full-time and part-time (one-half time or more) employees of the District engaged in teaching, including classroom teachers, librarians, reading specialists and guidance.

The Kohler Education Association (Association) requested that the Agreement be reopened for negotiations. Proposals were exchanged at an open meeting in January 1982. The parties met for several negotiating sessions. On March 29 the Association filed a petition requesting that the Wiscon-

sin Employment Relations Commission (WERC) initiate Mediation-Arbitration.

On May 6 and June 8 a WERC investigator conducted an investigation. On June 8, 1982, the parties submitted their final offers, as well as a stipulation on matters agreed upon. The investigator then notified the parties that the investigation was closed and advised the WERC that the parties remained at impasse.

On June 11, 1982, the WERC issued an order requiring that mediation-arbitration be initiated for the purpose of resolving the bargaining impasse between the parties. The WERC furnished the parties a panel of mediator-arbitrators for the purpose of selecting a single mediator-arbitrator to resolve the impasse. The parties selected Jay E. Grenig as the mediator-arbitrator and on June 22, 1982, the WERC appointed him as the Mediator-Arbitrator.

The Mediator-Arbitrator conducted a mediation session on August 23, 1982, which failed to resolve the impasse. The matter thus proceeded to arbitration. A hearing was held on August 23. The parties were given full opportunity to present relevant evidence and arguments at the hearing. Upon receipt of the parties' reply briefs, the hearing was declared closed on October 6.

The Association was represented by Richard Terry, Executive Director of the Kettle Moraine UniServ Council. The District was represented by Alvin R. Kloet, Attorney at Law, Chase, Olsen, Kloet & Gunderson.

II. FINAL OFFERS

A. THE ASSOCIATION

The Association's final offer is as follows:

1. SALARY: The current structure with a base of \$13,450.
2. LONGEVITY: A staff member will qualify for longevity when: (1) he/she reaches the 17th step (year) on the salary schedule and (2) he/she has accumulated six (6) years experience in the School District of Kohler.
3. SCHOOL CLOSINGS: If school is closed for any emergency situation, the first and third such days shall be made up on the first and second week days following the last regular day of school. The second and fourth days shall not be made up.

Additional days of emergency shall be made up at the discretion of the Board of Education. Any such days required by the Board shall be made up on days mutually agreed upon by the Board and the Association.

4. EXTRA DUTY PAYMENTS: Place Instrumental Music at Scale B.

B. DISTRICT

1. SALARY: Base salary of \$13,200.
2. LONGEVITY: No change from current contract language.

3. SCHOOL CLOSINGS: The first and third days that school is closed for any emergency situation will be made up on June 9 and June 10, 1983. The second and fourth days will be forgiven. Additional days of emergency closing will be made up at the discretion of the Board of Education on a date or dates selected by the Board after consulting with the KEA [Association]. Such determination of the Board is final.
4. EXTRA DUTY PAYMENTS: Add Instrumental Music to Scale D on the Extra Duty Payment Schedule.

III. STATUTORY CRITERIA

In determining whether to accept the District's offer or the Association's offer, the Mediator-Arbitrator must give weight to the following statutory (Wis. Stats. § 111.70(4) (cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by the municipal employees, including direct wages compensation, vacation, holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. 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, factfinding, arbitration or otherwise between the parties in the public service.

IV. ISSUES

A. SALARY

The Association has proposed increasing the base pay for the 1982-83 school year from \$12,250 to \$13,450. The District has proposed increasing the base pay for the 1982-83 school year from \$12,250 to \$13,200. The salary schedules for 1982-83 as modified by the parties' offers are attached to this decision as Exhibits A and B.

1. POSITIONS OF THE PARTIES

a. THE ASSOCIATION

According to the Association, the "vast majority" of the District's exhibits deal with the District's ability to pay wage increases or the effect of such increases in its budgetary status. The Association argues that all of the District's exhibits dealing with ability to pay must be discounted or the District must assume the burden of proof in the ability to pay argument. It states the District is obligated to carry its case forward and prove it cannot pay the wage proposal demanded by the Association in its final offer. If the District fails to prove inability to pay, then the Association's offer must be adopted. It concludes that since the District has stated it is not making an ability to pay argument, the District's exhibits dealing with that issue must be totally discounted.

Citing numerous interest arbitration awards, the Association declares that the appropriate analysis of comparable data and cost of living increases is that of benchmark comparisons.

The Association submits that for the purposes of this proceeding, the parties' final offers should be weighed in comparison to the following school districts: Cedar Grove, Elkhart Lake, Fredonia, Howards Grove, Oostburg, and Random Lake. It states that not only are these districts geographically proximate and they have similar supportive data, such as number of pupils and FTE's. In addition, these districts are in the same athletic conference.

The Association argues that the Employer has not established a basis for its selection of comparable districts. It urges that the school districts listed by the Employer which are outside the athletic conference should be given no weight in assessing the parties' positions.

The Association used a three-year (1979-80 thru 1981-82) analysis of selected benchmark positions within the salary schedules of its comparable districts. It argues that its data demonstrates in a meaningful manner that the Association's offer is more reasonable than the District's offer. According to the Association, it is requesting only a slight improvement in salary ranking and a slight improvement in its position in terms of dollars earned in comparable districts.

The Association contends that the use of percentage increases would be grossly unfair. It states that the relative ranking of the District is not significantly changed by the increase requested by the Association. It says its demand is extremely reasonable in light of the needed catch-up to keep from falling farther behind the prevailing wage rate among the comparables.

It is the Association's position that its offer demand is more reasonable than the District's when viewed in light of average salaries in private industry and other public sector employment. It also claims that its offer is more consistent with the wage rate increases offered by other comparable school districts.

The Association urges the Arbitrator to reject the Employer's argument that the downward spiral of the Consumer Price Index is justification for the District's salary offer. The Association states that what is important is that the benchmark analysis places the Association's proposal right in line with the CPI, and, more importantly, directly in line

with the pattern of wage settlements among the comparable districts.

b. THE DISTRICT

Although the District states it is not contending it is financially unable to meet the economic costs of the Association's wage proposal, it does take the position that its relative position concerning its economic climate in comparison to other Wisconsin schools has changed appreciably due to the impact in changes in tax laws. It points out the Village of Kohler now has the highest tax rate among Sheboygan County villages and its rate is higher than the average of villages in the state. It also says Kohler's full value tax rate is higher than the other villages in Sheboygan County.

According to the District, it is faced with major budgetary increases involving roof repair, increased heating costs, and an increase in bonded indebtedness. Noting that the District faces a continuing decline in pupil attendance, it says it has a limited ability, if any, to cut its support services costs. These costs were the highest in CESA #10 and in the athletic conference. Because the pupil-teacher ratio in the District is much lower than other schools within the athletic conference and CESA #10, the District says that the cost per student hour in the District is much greater.

The District argues that its proposal more closely reflects the trend in the CPI based upon past package increases. It is the Board's position that the same relative comparison can be made based upon the wage only packages of both the Association and the Board.

In comparing salaries with other districts in the athletic conference, the District urges the Arbitrator to take the District's longevity pay provision into consideration. Comparing the average salary for other districts in the conference, the District says its proposal would bring the compensation figure, including longevity, to \$22,930. The Association's offer would bring the figure to \$23,369. During the 1981-82 school year, the average salary in the District was \$20,988. The District concludes that if its proposal were accepted, the relative position of the District teachers in relation to teachers in other schools in the conference would remain the same.

2. DISCUSSION

a. **LAWFUL AUTHORITY OF THE EMPLOYER.** There is no contention that the District lacks the lawful authority to implement either proposal.

b. **STIPULATIONS OF THE PARTIES.** While the parties were in agreement on a number of facts, there were no stipulations on this issue.

c. **INTERESTS AND WELFARE OF THE PUBLIC AND FINANCIAL ABILITY TO PAY.** The statutory criteria expressly require the Arbitrator to consider the interests and welfare of the public and the employer's financial ability to pay. While the interests and welfare of the public may be reflected in an ability to pay argument, the interests and welfare of the public may also include the tax burden of the public as well as the effort made by the public to finance public services.

The Village of Kohler's gross general property full value tax rate for 1979 is higher than any other village in Sheboygan County. The exhibit also shows that Kohler's tax rate is higher than the any city in Sheboygan County and is

higher than the Wisconsin state-wide averages for towns, villages or cities. An examination of Kohler's net full value tax rate including the tax credit on real property for 1979 has the same result. The figures do not indicate what portion of the tax rate is the tax levy of the District.

In 1977 the District's tax rate was \$12.04 per \$1,000; in 1978 it increased by 9.5 percent to \$13.18; in 1979 it increased by 10.4 percent to \$14.55; in 1980 the tax rate increased by 11.5 percent to \$16.23 per \$1,000; and in 1981 it increased by 21 percent to \$19.64. Between 1977 and 1981 the District's tax rate increased by \$7.60 per \$1,000--an increase of 63 percent.

An examination of districts in the District's athletic conference, discloses the following per pupil budgeted costs for the 1981-82 school year:

Cedar Grove	\$3,141
Elkhart Lake	2,618
Fredonia	-----
Howards Grove	2,821
<u>KOHLER</u>	<u>3,831</u>
Oostburg	2,592
Random Lake	2,736

The average per pupil budgeted expenditure in the districts is \$2,781.50. The District exceeds this average by \$1,049.40.

The budgeted instructional costs per pupil for the 1981-82 school year relating to salaries and fringe benefits are as follows:

Cedar Grove	\$1,495
Elkhart Lake	1,344
Fredonia	-----
Howards Grove	1,322
<u>KOHLER</u>	<u>1,905</u>
Oostburg	1,308
Random Lake	1,446

The average instructional costs relating to salaries and fringe benefits is \$1,383. The District exceeds this average by \$522.

The difference between the costs of the parties' proposals (including increases in health and disability insurance) is approximately \$18,709.

Of course the public has an interest in keeping the District in a competitive position to recruit new teachers, to attract competent experienced teachers, to hold valuable teachers now serving the District, and to give recognition to advanced degrees and training. The public is presumably interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

d. COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT. The Arbitrator is required to give weight to the comparison of wages with other public and private employees in "comparable communities." Communities are comparable where they are substantially similar in geographic proximity, student attendance, number of employees, full-value taxable property, and state aid. Based on the information provided at the hearing, the following school districts appear to be appropriate "comparable communities:" Cedar Grove, Elkhart Lake, Fredonia, Howards Grove, Oostburg, and Random Lake. Not only do these districts satisfy the requirements for com-

parability, they also makeup the athletic conference of which the District is a member. Arbitrators have traditionally utilized athletic conference schools in comparability studies.

Elkhart Lake and Fredonia had not settled for the 82-83 school year at the time of the hearing. The 1982-83 salary increases in Cedar Grove (Cedar Grove's increases were approximately 10.8 percent at all benchmarks) and Random Lake (Random Lake's increases were approximately 9.14 at all benchmarks) were agreed to two years ago. Nonetheless, these earlier settlements must be considered in comparing the historical rank of the districts.

The parties are in dispute with respect to whether the Arbitrator should consider the District's longevity pay provision in making comparisons. The Association claims that longevity should be disregarded because "many of the school districts already have a longevity provision." However, there is nothing in the record establishing that any of the comparable districts, other than Elkhart Lake, have longevity. The question of longevity will be considered further in the analysis of the selected benchmarks.

Arbitrators in public education interest arbitrations have generally found a comparison of salary schedule benchmarks to be a reliable and predictable measure of comparability. The Association has proposed a comparison of the following salary schedule benchmarks: BA minimum, BA maximum, MA minimum, MA maximum, Schedule maximum, BA 7th step, and MA 10th step. These benchmarks appear to be appropriate for comparison here. See Sch. Dist. of Port Washington, Dec. No. 18726-A (Kerkman, 1982).

BA MINIMUM. When settlements in the comparison districts are examined, the average percentage increase at the BA minimum level is 9.28 percent. The Association's proposal would result in a 9.79 percent increase while the District's would result in a 7.75 percent increase. The Association's proposal is .51 above the average increase at this level whereas the District's is 1.53 below.

The average dollar increase is \$1,125. The Association's offer would result in an increase of \$1,200, while the District's would result in an increase of \$950. The Association's offer is \$75 higher than the average and the District's offer is \$175 lower than the average.

The District has historically ranked first among the comparables at this benchmark. In 1981-82 the District ranked second, \$70 behind the first place District. Both the Association's and the District's offers would restore the District to first place at the BA minimum benchmark.

BA MAXIMUM. At the BA maximum level, the average increase in the comparison districts is 8.87 percent. The Association's proposal would result in a 9.79 percent increase and the District's, a 7.75 percent increase. The Association's proposal is .92 above the average and the District's is 1.12 below.

The average dollar increase at this benchmark is \$1,642.75. The Association's offer would result in an increase of \$1,919, while the District's offer would result in an increase of \$1,519. The Association's offer is \$276.25 higher than the average and the District's is \$123.75 lower.

At the BA maximum benchmark, the District's offer would result in a salary \$1,235 lower than the first place district's, while the Association's is \$835 lower.

In 1979-80 the District ranked first at this benchmark; in 1980-81 it was second, \$663 below the first place district; and in 1981-82 it was again second, \$884 below the first place district. Although both offers would maintain the District's second place ranking, the District's offer would cause the District to fall farther behind in actual dollars at this benchmark. Inclusion of longevity payments would not restore the District to its first place position.

MA MINIMUM. At the MA minimum benchmark, the average increase of the comparable districts is 9.11 percent. The Association's proposed 9.79 increase is .68 above the average. The District's proposed 7.75 percent increase is 1.36 below the average.

The average dollar increase in the comparables is \$1,233.25. The Association's offer would result in an increase of \$1,355.50, \$122.25 above the average. The District's offer would result in an increase of \$1,073, \$160.25 below the average.

During the 1979-80 school year, the District ranked second among the comparable districts at this benchmark, \$57 below the first place district; in 1980-81 it ranked second, \$198 below the first place district; and in 1981-82 the District ranked third, \$325 below the first place district. The District's offer would place the District in third place, \$208 behind the first place district. The Association's offer would place the District in first place, \$74 above the next district.

MA MAXIMUM. With respect to the MA maximum benchmark, the average increase in the comparable districts is 8.68 percent. (Ass'n Ex. 37 incorrectly calculated the Cedar Grove percentage increase as 7.82 percent rather than the correct 10.78 percent, resulting in a lower average increase than there actually was.) The Association's proposed 9.79 percent increase is 1.11 higher than the average. The District's proposed 7.75 percent increase is .93 below the average.

The average dollar increase at this benchmark is \$1,898.25. The Association's offer would result in an increase of \$2,170.50, \$272.75 more than the average. The District's offer would result in an increase of \$1,718, \$180.25 less than the average.

In 1979-80 the District ranked number one at this position on the salary schedule. In 1980-81 it ranked third, \$495 behind the first place district; in 1981-82 it ranked fourth, \$721 behind the first place district. The Association's offer would place the District in third place, \$642.50 behind the first place district. The District's offer would also place the District in third place, \$1,095 behind the first place district. Even if longevity were considered, the District's offer would still result in substantial slippage.

SCHEDULE MAXIMUM. Nearly twenty-five percent of the bargaining unit members are at this position on the salary schedule. At the schedule maximum, the average increase is 8.65 percent. The Association's 9.79 percent offer is 1.16 higher than the average. The District's 7.76 percent offer is .88 lower than the average.

The average increase is \$2,022.50. The Association's offer would result in an increase of \$2,400, \$377.50 more than the average. The District's offer would result in an

increase of \$1,900, \$122.50 less than the average increase.

At the schedule maximum the District was in first place in 1979-80 and 1980-81. In 1981-82 it moved to second place, \$140 below the first place district. The Association's offer would place the District back in first place. The District's offer would keep the District in second place, only \$167 below the first place district. However, if longevity is considered, then the District's offer would also restore the District to first place.

BA 7th STEP. At the BA 7th step, the average increase is 9.0 percent. The Association's 9.79 percent offer is .79 higher than the average while the District's 7.75 percent offer is 1.25 lower.

The average increase is \$1,380.25. The Association's offer would result in an increase of \$1,619.50, \$239.25 above the average. The District's offer would result in an increase of \$1,282, \$98.25 below the average.

The District has ranked number one at this benchmark since the 1979-80 school year. Both offers would keep the District in first place at the BA 7th step. While the Association's proposed increase is closer to the average percentage increase than the District's, the District's offer is closer to the dollar increase and still maintains its first place ranking among comparables.

MA 10th STEP. At the MA 10th step, the average increase is 8.79 percent. The Association's 9.79 percent proposed increase is 1.0 higher than the average. The District's 7.75 percent proposal is 1.04 lower.

The average dollar increase in the comparable districts is \$1,650.75. The Association's offer would result in an increase of \$1,930.50, \$279.75 more than the average. The District's offer would result in an increase of \$1,528, \$122.75 less than the average.

The District has ranked number one at this benchmark since the 1979-80 school year. Both offers would keep the District in first place for the 1982-83 school year.

OTHER COMPARISONS. Because of fundamental differences in the requirements for movement on the salary schedules of the comparable districts, a comparison of career BA earnings and career BA/MA earnings is of little help here. Nor is a comparison with state averages entitled to much weight. Comparisons should be made with districts which are sufficiently similar so that an arbitrator can form a reasoned opinion. A state average necessarily contains numerous districts that are not comparable to the District.

While comparisons of private industry settlement patterns may be of some help, comparisons with salaries of selected state employees and persons in private employment are not as helpful as comparisons with the comparable school districts. The conditions of employment are simply too dissimilar to make meaningful comparisons possible. Comparisons of the average compensation paid teachers in the comparable districts are susceptible to distortion because of differences in length of service and education levels of teachers in the different districts.

e. CONSUMER PRICE INDEX. Increases in the cost of living reduce employee purchasing power. In the absence of compelling reasons there is little merit in asking employees to absorb reductions in their real compensation caused by cost increases over which they have no control. On the other

hand, there is no reason to limit wage adjustments to increases in the cost of living if the other statutory criteria indicate that a larger increase is justified.

The Consumer Price Index has been increasing at a declining rate throughout 1982. The Consumer Price Index for All Urban Consumers increased by 7.1 percent from June 1981 to June 1982. The CPI for Urban Wage Earners increased by 6.9 percent during the same period. The CPI For Urban Wage Earners from September 1981 to September 1982 increased by 4.9 percent. The Milwaukee Metropolitan Area CPI for the same period increased five percent.

Because cost of living increases are generally "catch up" in effect, the increase in the CPI during the twelve months preceeding implementation of the contract is considered to be applicable rather than estimated future increases. See Hartford Union High Sch. Dist., Dec. No. 18845-A (Zeidler, 1982).

Since both parties' offers provide for salary increases in excess of increases in the cost of living as measured by the CPI during the year preceeding the effective date (August 16, 1982) of the proposed contract reopeners, it is necessary to look to the other statutory criteria in determining the reasonableness of the proposals.

f. TOTAL COMPENSATION. Teachers represented by the Association have an average of 17.1 years experience and seventeen have masters degrees. Eight of the teachers are at the salary schedule maximum. None are at the BA minimum position. Sixteen are at the MA minimum or higher.

In 1979-80 the District began paying a set dollar amount toward dental insurance for employees. Longevity pay was added to the contract in 1980. In addition, the District pays the premiums on long term disability benefit insurance for employees.

When increases in base salary, longevity, health insurance, dental insurance, long term disability insurance, social security, and STRS are calculated, the total package value of the Association's proposal is 12.4 percent and the value of the District's package is 10.4 percent. However, comparison of benchmarks is a better method of comparing the parties' final offers.

g. CHANGES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS. In its reply brief the District noted several contract settlements reported after the hearing was concluded. Since evidence of these settlements was not subject to cross examination, this evidence cannot be considered. See Hartford Union High School Dist., Dec. No. 18845-A (Zeidler, 1982).

h. OTHER FACTORS. This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining occurs. Cudahy Schools, Dec. No. 19635 (Gundermann, 1982); see also Madison Schools, Dec. No. 19133 (Fleischli, 1982). As pointed out by Arbitrator Gundermann, the general state of the economy has been variously characterized as in a state of severe recession, even depression. At least 10 percent of the workforce is unemployed nationally, the highest unemployment in the last forty years.

The Kohler Co., the largest employer in the District, has laid off approximately 400 workers. Other Kohler employees are working reduced work weeks.

There is, however, no evidence that the District has had to or will have to reduce or eliminate educational programs, that it will have to engage in long term borrowing, or that it will have to raise taxes significantly. There is nothing to show that the District cannot continue to provide its teachers with a salary schedule and increase competitive with comparable districts.

3. CONCLUSION.

The Association's 9.79 percent average increase is .88 more than the average of the average percentage increases (8.91 percent) in the comparable districts. The District's 7.75 percent average increase is 1.16 less than the average. The Association's offer is closer to the average percentage increases of the comparables at five of the seven benchmarks.

Several recent decisions indicate that greater weight is being placed upon the monetary average of the salary increases being paid to teachers as opposed to the percentage increases. Waukesha County Technical Inst., MED/ARB-1182 (Gundermann, 1982); Hartford Union High Sch. Dist., Dec. 18845-A (Zeidler, 1982). The District's offer is closer to the average dollar increases of the comparables at five of the seven benchmarks.

The District's offer would result in the District ranking first at four of the seven benchmarks (including longevity at Schedule Maximum). Although the District's offer would cause the District to fall farther behind the first place district in dollars at BA maximum, the District would still be in second place. At MA maximum the District would continue in third place while slipping further behind the first place district with respect to dollars. The District would improve its ranking at BA minimum and Schedule Maximum and close the dollar gap with the first place district at MA minimum.

The Association's offer would result in the District's ranking first at five of the seven benchmarks. The Association's offer would improve its ranking at three of the benchmarks: BA minimum, MA minimum, Schedule Maximum. Although not changing the District's ranking, the Association's offer would reduce the dollar erosion at BA maximum and MA maximum.

While both offers appear to be reasonable, the District's proposal appears to be more reasonable. The District's offer increases the number of benchmarks at which the District ranks first from two in 1981-82 to four in 1982-83. The District's offer closes the dollar gap with the first place district at MA minimum. Only at two benchmarks does the District's offer fail to improve the District's ranking. Its proposal also exceeds the increases in the CPI from June 1981 to June 1982 and from September 1981 to September 1982. Finally, the District's tax rate has been increased 63 percent since 1977 and the District continues to spend far more per pupil than any other comparable district on instructional costs relating to salaries and fringe benefits.

In summary, the District's proposal improves the District's ranking among the comparables, although with a smaller percentage increase than the Association proposes but with a dollar increase closer to the average dollar increase than the Association's. Accordingly, it is concluded the District's salary offer is more reasonable than the Association's.

B. LONGEVITY

The Association proposes that a staff member will qualify for longevity when: (1) he/she reaches the 17th step on the salary schedule and (2) he/she has accumulated six years experience in the District. The District proposes that there be no change in the present contract language.

1. POSITIONS OF THE PARTIES

a. THE ASSOCIATION

The Association asserts that none of the comparable districts has a residency requirement for achieving longevity. The Association says it is merely attempting to move the longevity provision more in line with all the other comparables. Stating that a reduction from ten to zero years would have been more appropriate, the Association declares that its offer of six years is an attempt to compromise.

b. THE DISTRICT

The District asserts that of the comparable school districts only one, Elkhart Lake has a longevity provision. It argues that the Association has presented no data in support of its reduction of the waiting period from ten years to six years.

2. DISCUSSION

Longevity payments for staff members who are beyond the maximum salary schedule step was first provided in the 1980-83 collective bargaining agreement. The provision requires a staff member to accumulate ten years experience in the District in order to qualify for longevity payments.

Presently sixteen teachers in the District receive longevity payments. If the Association's offer were implemented, one additional teacher would receive a longevity payment of \$300 for the 1982-83 school year.

Although none of the comparable districts have a residency requirement for qualifying for longevity, the record indicates the only comparable other than the District with a longevity provision is Elkhart Lake. At the benchmarks discussed previously Elkhart Lake ranked last or near last among the comparable districts.

3. CONCLUSION

Generally the party seeking to change previously negotiated contract language has the burden of justifying the change. See Sch. Dist. of Howards Grove, Dec. 18941-A (Yaffe, 1982).

The Association has not supported its proposal with any persuasive comparisons. On the other hand, the District points out that only one of the comparable districts even has a longevity provision. Under these circumstances it is concluded that the District's offer on this subject is more reasonable.

C. SCHOOL CLOSINGS

The parties are in agreement that if school is closed for an emergency, the first and third closure days must be made up the first and second week days following the last regular day of school (June 9 and 10, 1983). The second and fourth days of closure are not to be made up. The parties disagree with respect to how the additional emergency closure

days, if any, are to be made up. However, the parties did agree upon the school calendar prior to the mediation.

The Association proposes that the additional makeup days shall be made up on days mutually agreed upon by the District and the Association. The District proposes that the additional makeup days shall be made up on days selected by the District after consulting with the Association, the determination of the District being final.

1. POSITIONS OF THE PARTIES

a. THE ASSOCIATION

The Association contends that additional makeup days should be scheduled by mutual agreement, which is completely consistent with the process of collective bargaining, the public interest and public policy. It points out that the calendar and the days that make up the calendar are mandatory subjects of bargaining.

b. THE DISTRICT

The District is concerned that the Association's position could inevitably lead to no agreement for makeup days and therefore frustrate the necessity for such a makeup. It says the interest and welfare of the public is served by the parties agreeing to a school calendar as well as the certainty that the school will comply with the necessary statutory requirement in providing an education for students in the District.

2. DISCUSSION

In three of the comparable districts, the school board may determine whether or not there will be makeup days and on what days they will occur. In two of the districts, the collective bargaining agreements do not specifically address the issue.

The collective bargaining agreement presently provides that the determination of makeup days will be made at the District's discretion after consultation with the Association.

3. CONCLUSION

The District's offer would give it virtually unfettered power (subject to the requirement that it "consult" with the Association) to schedule makeup days. On the other hand, the Association's offer is consistent with the philosophy of collective bargaining. While there is a possibility that negotiations could be "dragged out," it must be recognized that the parties have already agreed on how to schedule makeup days for the first four days that school is closed. Thus, the possibility that an impasse could frustrate the scheduling of makeup days is remote. Accordingly, it is concluded that the Association's offer on this subject is more reasonable.

D. EXTRA DUTY PAYMENTS

The Association proposes that the Instrumental Music Instructor be placed at Scale B (7.7 percent of base) of the Extra Duty Payment Schedule. The District proposes that the Instructor be placed at Scale D (3.3 percent of base) of the Schedule.

1. POSITIONS OF THE PARTIES

a. THE ASSOCIATION

The Association has proposed Scale B for the music instructor, the same Scale as the coaches of golf, boys' baseball and tennis. It claims that the hours put in by the employees are substantially equal to those of the other employees at Scale B.

b. THE DISTRICT

The District alleges that the reason for the dispute is the extraordinary activity involving the band during the last school year because the the boys and girls basketball team participated in the State Basketball Championship in Madison. It says that extra duty payments for any of the extra duty positions do not increase because of extra work resulting from tournaments or other competitions.

2. DISCUSSION

The music instructor has not previously been compensated on the extra duty payment schedule. During the negotiations for the 1982-83 contract, the parties agreed to add the music instructor to the schedule beginning in the 1982-83 school year.

An examination of the comparable districts shows the the average compensation for a band position is 3.75 percent of base salary. The District's offer is .45 less than the average and the Association's is 3.95 more. The highest percentage is six percent in Random Lake.

3. CONCLUSION

Based on the evidence regarding the compensation of music instructors in the comparable districts, it is concluded that the District's offer is more reasonable than the Association's.

E. TOTAL FINAL OFFER

Based upon the foregoing discussion of all the individual issues in dispute, it is concluded that the District's total final offer is the more reasonable of the two. Of the four basic issues, the most critical issue to both parties under the contract reopener is clearly salaries. The salary issue affects more teachers than any of the other issues and involves more money than any of the others. The longevity issue and the extra duty payments issues, while important, only involve one teacher each during the 1982-83 school year.

V. AWARD

Having considered all the evidence and arguments submitted in this matter in light of the statutory criteria, it is the decision of the Arbitrator that the District's final offer is to be incorporated into the parties' collective bargaining agreement.

November 22, 1982


Jay E. Grenig, Arbitrator

KÖHLER B2-B3 ASSOCIATION OFFER

STEP	A	B	C	D	E	F	G	H
1	13,450	14,257	15,064	15,198	15,467	15,871	16,274	16,678
2	14,257	15,064	15,871	16,005	16,274	16,678	17,081	17,485
3	15,064	15,871	16,678	16,812	17,081	17,485	17,888	18,292
4	15,871	16,678	17,485	17,619	17,888	18,292	18,695	19,099
5	16,678	17,485	18,292	18,426	18,695	19,099	19,502	19,906
6	17,485	18,292	19,099	19,233	19,502	19,906	20,309	20,713
7	18,158	18,965	19,772	19,906	20,175	20,579	20,982	21,386
8	18,831	19,638	20,445	20,579	20,848	21,252	21,655	22,059
9	19,369	20,176	20,983	21,117	21,386	21,790	22,193	22,597
10	19,907	20,714	21,521	21,655	21,924	22,328	22,731	23,135
11	20,445	21,252	22,059	22,193	22,462	22,866	23,269	23,673
12	20,983	21,790	22,597	22,731	23,000	23,404	23,807	24,211
13	21,521	22,328	23,135	23,269	23,538	23,942	24,345	24,749
14		22,866	23,673	23,807	24,076	24,480	24,883	25,287
15			24,211	24,345	24,614	25,018	25,421	25,825
16						25,556	25,959	26,363
7								26,901

KOHLER BOARD OFFER

STEP	A	B	C	D	E	F	G	H
1	13,200	13,992	14,784	14,916	15,180	15,576	15,972	16,368
2	13,992	14,784	15,576	15,708	15,972	16,368	16,764	17,160
3	14,784	15,576	16,368	16,500	16,764	17,160	17,556	17,952
4	15,576	16,368	17,160	17,292	17,556	17,952	18,348	18,744
5	16,368	17,160	17,952	18,084	18,348	18,744	19,140	19,536
6	17,160	17,952	18,744	18,876	19,140	19,536	19,932	20,328
7	17,820	18,612	19,404	19,536	19,800	20,196	20,592	20,988
8	18,480	19,272	20,064	20,196	20,460	20,856	21,252	21,648
9	19,008	19,800	20,592	20,724	20,988	21,384	21,780	22,176
10	19,536	20,328	21,120	21,252	21,516	21,912	22,308	22,704
11	20,064	20,856	21,648	21,780	22,044	22,440	22,836	23,232
12	20,592	21,384	22,176	22,308	22,572	22,968	23,364	23,760
13	21,120	21,912	22,704	22,836	23,100	23,496	23,892	24,288
14		22,440	23,232	23,364	23,628	24,024	24,420	24,816
15			23,760	23,892	24,156	24,552	24,948	25,344
16						25,080	25,476	25,872
17								26,400