ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between SCHOOL DISTRICT OF NEW GLARUS And NEW GLARUS EDUCATION ASSOCIATION	)	Interest Arbitration Case IV No. 29733 MED/ARB-1660 Decision No. 19778-A

Impartial Mediator/Arbitrator

William W. Petrie
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Hearing Held

October 29, 1982
New Glarus, Wisconsin

Appearances

For the Employer — David R. Friedman
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the School District of New Glarus and the New Glarus Education Association. The parties' impasse arose over an economic reopener, relating to the final year of a multi-year labor agreement, which will expire on June 30, 1983.

After preliminary negotiations meetings between the parties had failed to result in agreement, the Association filed a petition with the Wisconsin Employment Relations Commission on May 13, 1982, requesting the initiation of statutory mediation-arbitration. The matter was preliminarily investigated, after which the Commission on July 26, 1982 issued the appropriate findings of fact, conclusions of law, certification of the results of investigation and an order requiring mediation-arbitration.

On August 5, 1982, the Commission issued an order appointing the undersigned to act as mediator-arbitrator, in accordance with the provisions of the Municipal Employment Relations Act. Preliminary mediation took place on the morning of October 29, 1982, but the parties remained unable to reach a negotiated settlement of the matter; at 1:05 PM of the same afternoon, the undersigned determined that a reasonable period of mediation had taken place and that it was appropriate to proceed to final and binding arbitration of the dispute, and the parties were appropriately notified of this determination.

The interest arbitration proceedings began at 1:20 PM on the afternoon of October 29, 1982, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties submitted post-hearing briefs, after which the hearing was closed by the Arbitrator on December 14, 1982.

THE FINAL OFFERS OF THE PARTIES

The parties reached preliminary agreement with respect to the appropriate levels of monthly premium contributions for hospital and medical insurance coverage for employees and their families; accordingly, both parties mutually agreed to the modification of their respective final offers, to delete any references to hospital and medical insurance. The only remaining impasse items were the appropriate levels of salary increases for the final year of the collective agreement, and the appropriate levels of additional compensation for various types of compensable extracurricular activities or duties. The parties were in agreement with respect to the continued use of the same basic salary structure employed in the past, with the exception of the Employer proposed addition of a BA +24 lane.

The final offer of the Employer (hereby incorporated by reference into this document) would provide salary increases to the following levels:

(1) At the entry level (Step 0), a teacher with a BA would receive an annual salary of $12,200.

(2) At the highest step (Step 12), a teacher with an MA would receive an annual salary of $20,764.

The final offer of the Association (hereby incorporated by reference into this document) would provide salary increases to the following levels:

(1) At the entry level (Step 0), a teacher with a BA would receive an annual salary of $12,650.

(2) At the highest step (Step 12), a teacher with an MA would receive an annual salary of $20,969.

The final offers of the parties differed as shown below, with respect to the appropriate levels of additional compensation for

the referenced extracurricular duties.

(1) Boys Head Football and Basketball Coaches, and Girls Head Volleyball and Head Basketball Coaches: Employer $1105.00, Association $1125.00.

(2) Boys Assistant and JV Football and Basketball Coaches, and Girls Assistant and JV Volleyball and Basketball Coaches: Employer $784.00, Association $800.00

(3) Boys Basketball and Junior High Basketball Coaches and Girls Softball and Junior High Basketball Coaches: Employer $647.00, Association $660.00.

(4) Driver's Education: Employer $7.40 per hour, Association $7.00 per hour.

(5) Yearbook: Employer $401.00, Association $410.00.

(6) Cheerleading: Employer $343.00, Association $350.00.

(7) Old Guard: Employer $320.00, Association $325.00.

(8) Forensics: Employer $160.00, Association $165.00.

(9) Dances, Chaperone, Scorekeeper and Clock: Employer $12.00, Association $13.00.

(10) Ticket Supervisor: Employer $9.00, Association $10.00.

(11) Announcer (Football): Employer $6.00, Association $7.00.

THE STATUTES

The merits of the dispute are governed by the provisions of the Wisconsin Statutes, which in Section 111.70(4)(cm)7 direct the Mediator-Arbitrator to give weight to the following factors:

"a) The lawful authority of the municipal employer.
b) The stipulations of the parties.
c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d) 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 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 of goods and services, commonly known as the cost-of-living.
f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holiday and excused time, insurance and pensions, medical and hospitalization benefits, and 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE ASSOCIATION

In support of its contention that its final offer was the more appropriate of the two before the Arbitrator, the Association presented a variety of evidence and arguments.

Initially, the Association submitted that in the application of the comparison criterion, the Arbitrator should give primary consideration to comparisons with certain other schools in the State Line Athletic Conference and with other school districts in the State, of the same approximate size.

(1) It argued that the use of the comparisons suggested above, closely conformed with the intent of the legislature, when it provided in Section 111.70(4)(cm)7(d), for comparisons among "...employees performing similar services...in comparable communities." In connection with this argument, it submitted that the size of the district in terms of the number of students and the number of teachers was a strong equalizer, and that districts in communities of the same size, with similar demographic features, have similar educational needs, staff requirements, economic needs, and resources.

(2) It submitted that only the Association's suggested comparables, offered a reasonable number of settlements for comparison purposes, alternatively submitting that the five comparisons emphasized by the Employer were not broad enough.

(3) It urged that the larger numbers and the broader geographic base relected in the Association urged comparables, better reflect trends throughout the State, and avoid undue attention to the geographically restrictive group urged by the Employer.

(4) It suggested that the Association's selection of school districts on the basis of size, was more in conformity with the purpose and intent of the State Constitution, the Laws of Wisconsin, the rules of the Department of Public Instruction and the law governing interest arbitration in the State of Wisconsin.

(a) In connection with the above, it referenced material from a 1975 publication of the Wisconsin Department of Public Instruction, Division for Financial Aids Services. The publication, which was introduced as Union Exhibit #2, references the 1949 creation of the Equalization Aid Formula in Wisconsin, contains excerpts from the State Constitution providing for the establishment of School Districts which are as uniform as practical, and references various statutory provisions which refer to education being a State function.

(b) Referring to Union Exhibit #1, it referenced the existence of thirteen statewide educational standards, and certain uniformly applicable rules and regulations of the Department of Public Instruction.

(c) It suggested that each time the Legislature adjusts the formula for state aids and/or increases the State's share of education costs, it reaffirms the commitment to uniformity in education in Wisconsin. In this connection, it referenced the fact that the State share of of the costs of education had increased to 46.6% during the 1981-1983 biennial budget.

(d) It cited the practices of the Department of Public Instruction in allocating and distributing State aid in a manner designed to equalize the ability to pay of each school district.

(5) It submitted that an examination of settlements and employer final offers as reflected in Union Exhibits #6 through #6SS, favors the Association's final offer in the case at hand, and shows that the settlements in the State Line Athletic Conference are outside the mainstream of 1982-1983 collective bargaining.

(6) It argued that there is nothing in the record to support a conclusion that New Glarus and the surrounding communities are an economic island; to the contrary, it urged that the New Glarus economy is neither more nor less severely depressed than those in other communities throughout the State.

Apart from the question of which districts should more properly be used for comparison purposes, the Association submitted that various other factors also significantly favor the final offer of the Union.

(1) It submitted that the New Glarus teaching staff must be allowed to achieve a measure of catchup. In support of this conclusion it submitted that New Glarus salaries at several benchmark levels have been slipping, relative to state-wide salaries, since the 1979-1980 school year. Under either of the final offers, this slippage would continue, it argued, but under its final offer the disparity would not grow as much as under the Employer's final offer.

It argued that even within the State Line Athletic Conference, the New Glarus teachers have suffered a relative erosion in their salary rankings; in this connection, it cited Union Exhibits #39, #40, #43 and #45, which offered rankings comparisons at the BA +7 and the BA +10 steps.

It submitted that comparisons with other school districts with 30 to 40 FTE teachers also showed an erosion of salary ranking since the 1979-1980 school year, as referenced in Union Exhibits #11, #12 and #13.

Finally, it submitted that catchup was a legitimate and recognized arbitral criterion in interest arbitration disputes.

(2) It submitted that consideration of the 1982-1983 settlements among school districts of comparable size was the best comparison for arbitral considerations, and argued that the Employer's final offer would continue the inappropriate slippage.

(a) It submitted that the Employer's final offer at the BA minimum would leave the New Glarus teachers last among the ten comparable districts, continuing their slide from fourth to eighth which occured during the 1979-1982 time frame, while the adoption of the Association offer would return New Glarus to sixth among the comparable districts. (Union Exhibits #11, #12, #13 and #14).

(b) At the BA 7th year the Employer's offer would

complete movement from fifth to seventh between 1979 and the 1982-1983 year, while the Association's offer would move New Glarus to fourth among the districts. (Union Exhibits #15, #16, #17 and #18)

(c) At the BA Maximum, the Association offer would retain New Glarus at the fifth ranking of ten districts, while the Employer's offer would result in dropping one level in the ranking. (Union Exhibits #19, #20, #21 and #22)

In summary, it submitted that the relative dollar rank, and the resulting purchasing power of New Glarus teachers had not been maintained over the past several years, relative to other teachers in the State, and that this ranking would be further eroded under the Employer's proposal.

(3) Reiterating its suggestion that only the Association urged comparisons provided a reasonably sized comparison group, it argued that the Association's final offer was much more compatible with meeting a developing trend in both voluntary and arbitrated settlements. In this respect, it cited arbitrated settlements in the Cities of Cudahy and Westby, which were issued in October and November of 1982; it cited salary and total compensation increases of 8% and 9.7% in Cudahy, which it characterized as more closely supporting the Association's final offers of 9.26% and 9.75%, rather than the Employer's final offer which would entail salary and total compensation increases of 6.48% and 6.78% respectively. It also argued that the Westby decision was more closely attuned to the Association's than to the Employer's final offer.

(4) Citing the interests of the public and the ability to pay criteria in the statute, it submitted that the Association's final offer was quite reasonable. In this connection, it cited Union Exhibits #73 and #74 which, it claimed, did not indicate major financial problems in the adoption of the Association's final offer. In the same connection it cited dicta in the November, 1982 decision accompanying the Arbitrator's award in Madison Area Technical College; it argued that the Arbitrator had conditioned his thinking upon a showing that the employees had not suffered inequities in their relative salaries and benefits. In the case at hand, it argues that both the New Glarus teachers, and those in the State Line Athletic Conference had been disadvantaged, and despite the condition of the economy, it urged the conclusion that the record showed an unwillingness to pay, rather than any suggestion of inability to pay.

(5) In connection with consideration of the level of fringe benefits as related to total compensation, the Association suggested that its final offer was favored. In this respect, it referenced the variances in fringe benefits costs among the schools in the State Line Athletic Conference, and argued that New Glarus and Barneveld had the most limited fringe packages. It also referenced New Glarus' lack of such typical benefits as dental insurance, LTD, vision insurance, and full retirement benefits, in support of its asserted need for catch up in its salary offer.

(6) In connection with the extracurricular and extra duty pay offers of the parties, the Association characterized its offer as approximating an 8%

increase with the Employer's offer approximating a 6% increase. It submitted that the application of the comparison criterion within the athletic conference, and consideration of certain equitable criteria favored the Association's rather than the Employer's offer.

In summary, the Association emphasized the importance of what it characterized as the intra-industry trend as reflected in voluntary settlements, arbitration awards and certified final offers, arguing that this trend must be considered on a basis broader than the athletic conference. It argued that the Employer has failed to provide positive reasons for its proposed structural modification of the salary schedule, asserted and emphasized the need for catch up in the District, and alleged a growing disparity between statewide salary benchmarks and those of State Line Athletic Conference schools including New Glarus. Finally, it asserted that the real costs of its proposal to the District, particularly when considered in light of the need for catch up and the ability to pay, was reasonable.

POSITION OF THE EMPLOYER

In support of its contention that its final offer was the more appropriate, the Employer presented the following principle arguments.

(1) Initially, it submitted that a comparison of the analyses of the parties as reflected in Union Exhibit #73 and Board Exhibit #9 shows only a difference of approximately $222.00 per year between the final offers of the parties relative to co-curricular or extracurricular duties. It argued that while these items are important to both parties, the differences in question should not determine the outcome of the arbitration proceedings, and are deserving of relatively less consideration than the salary dispute.

(2) In connection with the application of the comparison criterion to the dispute, it submitted that the State Line Athletic Conference comparisons should be used.

(a) It cited the equivalency of the conference schools on the bases of numbers of students, faculty size on a FTE basis, and geographical proximity.

(b) It argued that, except for conference schools Pecatonica and Albany, the remaining schools urged for comparison purposes by the Association were geographically scattered throughout the state and were not comparable.

(c) It referenced the statutory reference in Section 111.70(4)(cm)7(d) to "...employees.. ..in the same community and comparable communities....", arguing that if the legislature had intended statewide comparisons, it would have so provided in the statutes.

(d) It argued that the schools of the State Line Athletic Conference were in the same labor market and, accordingly, that they faced the same kind of demands for skills, and found the same economic underpinnings in their communities. It urged the conclusion that consideration of districts on a statewide basis would ignore local labor market considerations.

(e) It cited scholars and published arbitration awards in support of the conclusion that comparisons should normally be limited to the consideration of school districts in the same geographic area. It cited arbitral decisions in the Marshfield and in the Kimberly area school districts, in support of the conclusion that the athletic conferences offer appropriate groups of schools for comparison purposes.

(3) In general terms, it argued that the result of the interest arbitration process should, ideally, be the same settlement that the parties would have reached through voluntary agreement; in this connection, it submitted that the Employer's final offer more closely approximates the settlement that would have been reached across the table, had the parties been able to do so.

(a) It cited the history of the salary relationships among the schools of the athletic conference, submitting that the dollar spreads between the top and the bottom ranked schools has been narrowing for several years.

(b) It urged that the very narrow dollar differences in annual salaries at the various salary levels, rendered meaningless any numerical ranking.

(c) It cited the normal rotation of three schools at the BA maximum of the athletic conference salary schedules, in support of the argument that the districts are closely aligned and competitive with one another.

(d) It suggested that selection of the Employer's final offer would more closely maintain the historic dollar spread in average salaries, between the top ranked athletic conference schools and New Glarus.

(e) It urged the conclusion that the Association had failed to justify any increase in the average dollar spread, the actual dollar amounts paid to the teachers, or the rankings within the conference.

(4) It submitted, in consideration of the cost-of-living criterion, that selection of either of the final offers of the parties would meet or beat the recent and current increases in the Consumer Price Index. It argued that the percentage settlements of other conference schools reflect cost-of-living considerations, and indicate the greater reasonableness of the Employer's final offer.

(5) It maintained its argument that the small dollar difference between the parties' extracurricular pay offers must be considered by the Arbitrator, but urged that this item should not tip the scale one way or the other in the selection of either of the two final offers. Additionally, it argued that its dollar pay levels for the extra services was competitive, and that the proposed 6% increase was a reasonable one.

In its concluding arguments, the Employer drew extensively upon the thoughts of another Arbitrator as reflected in a recent decision, and it cited such additional factors as the current state of the economy, the absence of any positive showing of

inequity, disadvantage, or compromise through adoption of the Employer's final offer, and continuity and stability of employment considerations.

FINDINGS AND CONCLUSIONS

Initially, the Impartial Arbitrator will observe that both parties have put forth substantial evidence and persuasive arguments in support of their respective positions.

Although the Legislature did not see fit to indicate any relative importance among the various criteria spelled-out in the statutes, the parties' emphasis upon comparisons is consistent with the views of practitioners, scholars and neutrals, as to the preeminence of comparisons in wage determination. Mere enunciation of the relative importance of the comparison criterion does not, however, address the basic question of which employees and employers should be used for comparison purposes, and in this area the parties differed significantly from one another.

(1) The Association urged the adoption by the Arbitrator of broader comparisons; it introduced into evidence average settlements on a statewide basis, argued for specific consideration of comparisons based upon both geography and school size, and urged the Arbitrator to move beyond the parameters of athletic conference comparisons. It also argued that statewide comparisons were more justified in Wisconsin in educational contexts, citing various statutory and constitutional provisions.

(2) The Employer cited arbitral precedent and the historic salary relationships between the schools in the State Line Athletic Conference, in support of the argument that conference comparisons should be the most persuasive to the Arbitrator. It argued that the law in Wisconsin did not favor statewide comparisons in educational unit interest disputes.

While the Association's constitutional and statutory arguments in favor of statewide comparisons in educational settings are both innovative and persuasive in a number of respects, the Arbitrator cannot agree with their basic premise. There is nothing in Section 111.70(4)(cm)7 which would persuasively indicate the intention of the legislature to require or to prefer statewide comparisons in educational interest arbitration proceedings; additionally, there is no indication in the application of the statute, that either the Courts, the WERC or individual arbitrators have adopted such an interpretation. The Wisconsin criteria for the resolution of interest disputes closely parallels those used in other jurisdictions, and the undersigned is also unable to find persuasive support for the Association's arguments in these other jurisdictions. It seems clear that the legislature could have mandated statewide comparisons in Wisconsin educational interest disputes, but it has apparently elected to leave the matter open for flexible interpretation and application.

As has been referenced by the undersigned in prior interest disputes, and as argued by the District, the basic goal of an interest arbitrator should be to put the parties in the same position they would have occupied had they been able to reach a negotiated settlement. The historically close relationship between districts, in the salaries paid to teachers in the State Line Athletic Conference, indicates clearly that the parties themselves have used and applied these comparisons in their past salary negotiations, and an arbitrator should hesitate to upset such a relationship. Although certain logical considerations militate against the grouping by athletic conference, for wage and salary comparison purposes, such practices appear to be rather widespread.

What then of the Association's argument that the conference itself is failing to meet salary trends which exist throughout the state, to the disadvantage of the teachers in the districts? The Arbitrator must agree that a comparison group cannot exist in a vacuum, to the significant disadvantage of its employees. A group of school districts could not conscionably expect to restrict comparisons to schools within the group, without regard to events outside the group, and in the process of so-doing, prevent fair and equitable collective bargaining settlements. Due to the lack of ability to strike, public sector employees are more dependent upon the use of neutrals, and these neutrals must be more inclined to innovate and/or to expand the horizons of comparisons, than their private sector counterparts. These factors, and the rationale behind them, are rather well described in the following extracts from an excellent article by Arbitrator Howard S. Block. 1./

> "...the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiations practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt."

In clarifying his thinking with respect to the flexible application of the comparison criterion in the public sector, Arbitrator Block added the following thoughts:

> "...Wage comparisons, it must be added, are not to be taken as an assortment of mirrors in a closed circle endlessly reflecting one another without a primary image. In each of the basic categories of our economy - manufacturing, service trades, building and construction, etc. - primary settlements are reached which provide guidelines or reference figures for other negotiations that take place in these respective categories. The term 'guideline' or 'reference figure' is just that: an approximation, not an inflexible figure. It might be useful to take an overview of our experience with wage patterns, guidelines, and reference figures in the private sector during the past three decades because it seems quite likely that administrative guidelines and reference figures will play an even larger role in the public sector than they have in the past."

In consideration of the above, it is clear that a Wisconsin interest arbitrator has the basic responsibility to adopt the final offer which reflects what the parties would have agreed upon, had they been able to do so. In so doing, the neutral should not lightly disregard or cast aside the comparisons historically selected and relied upon by the parties; a neutral does, however, have both the responsibility and the authority to innovate and/or to look beyond traditional comparisons, when a persuasive case is made for such action. It is obvious from the record, that the Association would prefer a statewide application of the comparison criterion, and it feels that such a comparison would favor its position in this dispute; without undue elaboration, however, the Arbitrator will reference the conclusion that no persuasive basis has been established for giving primary consideration to comparisons beyond the parameters of the State Line Athletic Conference.

The Comparisons Within the Conference

In evaluating the offers of the parties on the basis of comparisons within the athletic conference, it is apparent that New Glarus teachers would be relatively high at some levels in the salary structure and relatively low at other levels,

regardless of which final offer was selected by the Arbitrator.

When looking solely to the overall 1982-1983 percentage settlements within the conference, as reflected in Board Exhibit #10, it is apparent that the Employer's final offer is quite competitive with other settlements, while the Association's final offer would place it well above any other settlements. Specifically, the Employer's final offer reflects a percentage increase of 7.33%. The Association's final offer reflects an increase of 9.69%, is well above the average, and is higher than any other conference settlement.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the application of the comparison criterion to the 1982-1983 percentage increases within the State Line Athletic Conference strongly favors the adoption of the final offer of the Employer.

The Catch Up Argument

The Association is quite correct that salary erosion can create a persuasive case for catch up, and the catch up factor falls well within the general criteria in Section 111.70(4)(cm)7(n) of the statute. In this connection, it submits that there has even been an erosion of salary paid within the New Glarus District, even when compared to other districts within the athletic conference. The Employer's comparisons dating back to the 1978-1979 academic year do not, however, support the conclusion that any such significant erosion in relative salaries has occurred.

(1) In looking to the BA Base, those in the bargaining unit were approximately $159.00 per year above the average, during the 1978-1979 academic year; this figure would move to either $208.00 over the average, or $241.00 below the average, with the adoption of either the Association's or the Employer's final offer for the 1982-1983 academic year. (Board Exhibits #12 and #12A)

(2) In looking to the BA Max, those in the unit were approximately $700.00 per year above the average of other schools during the 1978-1979 academic year; they would remain at least $1,000.00 to $1,700.00 above the average salaries, with the adoption of either the Employer's or the Association's 1982-1983 final offer. (Board Exhibits #13 and 14A)

(3) In looking to the MA Base, those in the unit were approximately $11.75 per year below the average during the 1978-1979 academic year; they would range from at least $258.00 to $398.00 above the average with the adoption of either the Employer's or the Association's final offer for 1982-1983. (Board Exhibits #16 and #16A)

(4) In looking to the MA Max, those in the unit were approximately $434.35 above the average during the 1978-1979 academic year, and they would remain at least $618.00 to $823.00 above the average during the 1982-1983 academic year. (Board Exhibits #18 and #18A)

(5) In looking to the Schedule Max, unit teachers were approximately $575.00 above average for the 1978-1979 school year, and would remain between at least $116.00 to $329.00 above the average for the 1982-1983 school year. (Board Exhibits #20 and #20A)

In directing attention to overlapping Union Exhibits covering salaries paid by athletic conference schools between

the 1979-1980 and the 1982-1983 school years, these is also no evidence of significant erosion.

(1) At the BA Min, bargaining unit teachers went from $94.00 above the average salary in 1979-1980 to a position where the adoption of the Employer's offer would place them $92.00 below the average in 1982-1983, while adoption of the Association's final offer would place them $358.00 ahead of the average figure. (Union Exhibits #39, #40, #41 and #42)

(2) At the BA +7 level, bargaining unit teachers received $68.00 above the average salary during 1979-1980. Adoption of the Association's offer would place the teachers $701.00 above the average for 1982-1983, while the Employer's final offer would place them $143.00 above the average. (Union Exhibits #43, #44, #45 and #46)

(3) At the BA Max, the teachers would go from $603.00 above the average in 1979-1980 to $1179.00 above average under the Employer's offer, and $1827.00 above the average under the Association's final offer. (Union Exhibit #37, #38, #39, and #50)

(4) At the MA Min level, those in the unit were $160.00 below average in 1979-1980, and would progress to either $448.00 above average under the Employer's offer or $556.00 above average under the Association's offer. (Union Exhibit #51, #53, #53 and #54)

(5) At the MA +10 level, the New Glarus teachers were $72.00 above average in 1979-1980, and would progress to either $1,140.00 or $1,327.00 above average in 1982-1983. (Union Exhibits #55, #56, #57 and #58)

(6) At the MA Max level, unit teachers were $212.00 above average in 1979-1980 and would either be $939.00 or $736.00 above average in 1982-1983. (Union Exhibits #59, #60, #61 and #62)

(7) At the Schedule Max, unit teachers were $70.00 below average in 1979-1980, and would be either $475.00 or $270.00 above the average in 1982-1983. (Union Exhibits #63, #64, #65 and #66)

In considering the above figures, it is clear to the Arbitrator that, while there have been some movements in the relative salary positions of those in the bargaining unit, there is no persuasive evidence in the record of any need for an extraordinary, catch up increase for 1982-1983. To the contrary, with the single exception of those at the bottom of the structure, teachers in the bargaining unit have improved their salary positions considerably, relative to the averages paid within the State Line Athletic Conference.

Cost-of-Living Considerations

Until recent months, due to rapid increases in the Consumer Price Index, interest arbitrators throughout the State and the Country have been faced with arguments based upon cost-of-living considerations. In the case at hand, the Employer referenced the fact that either of the two salary offers exceeded the most recent rate of inflation, and the Union did not pursue the cost-of-living criterion in detail.

The Arbitrator will merely reference the fact that the Employer's argument is persuasive, and the fact that only the 1982-1983 school year is in question, minimizes cost-of-living considerations playing a major role in the selection of either of the final offers.

The Addition of the BA +24 Lane

What of the Association's arguments that the Employer has failed to justify its proposed addition of a BA +24 Lane, nd its argument that a proposing party must provide persuasive evidence in support of such a change in the wage structure? In support of its position, the Association cited arbitral principles described in the widely referenced book by Elkouri and Elkouri. 2./

The Association has cited a correct and a widely accepted principle used by fact-finders, mediators, and arbitrators. The principle is, however, normally applied when either or both of the parties are proposing significant departures from past contract provisions, and/or significant reductions in the authority or rights of the other party. In Minneapolis-Moline Power Implement Co., 2 LA 227, the case cited by the Elkouris in the above connection, a fact-finding panel was dealing with an immediate post-World War II contract, in which the parties were proposing wholesale changes and additions in such areas as union shop, checkoff, management rights, no strikes - no lockouts provisions, seniority preovisions in the areas of layoff, promotions and transfers, training programs, grievances, premium pay, holidaypay, vacations, and various other matters. In framing its recommendations, the fact-finding panel generally opted for continuation of those items provided for in the old agreement, unless the proposing party could demonstrate persuasive reasons for elimination or modification of the provision or practice.

While, as referenced above, the principle is sound, the Impartial Arbitrator finds some difficulty in rationalizing the application of the principle to the simple addition of a BA +24 Lane in the salary structure; the new lane would result in additional compensation for those who qualify, and would have little impact upon those who do not qualify. Under the circumstances, the Arbitrator is unable to assign definitive weight to the principle cited by the Association.

The Level of Pay For Extracurricular Activities

Each of the parties presented arguments in support of their respective final offers in this area, but the fact remains that the parties are only approximately $222.00 per year apart on the total costs of the two offers. The Employer's offer is slightly higher in the area of driver education, while the Association's offer is slightly higher in the bulk of the remaining areas.

In consideration of the fact that the Association's final offer reflects an approximate 8% increase, while the Employer's offer approximates a 6% increase, it might be concluded that the Association's offer is slightly closer to the 7%+ average percentage increase in the athletic conference, as referenced earlier. Due to the far greater significance of the overall salary impasse, however, and in light of the closeness of the parties final offers in the extracurricular pay area, the Arbitrator cannot assign definitive weight to this factor.

Miscellaneous Remaining Considerations

While no interest proceedings today can be completely free of the negative influence of the current state of the economy, and such related factors as declining revenues, rising taxes, ability to pay, and high unemployment, these factors did not significantly impact upon these proceedings. There was no affirmative argument advanced by the Employer of inability to pay, and there were no persuasive arguments that the resolution of the impasse would have a major negative impact upon the interests and welfare of the public.

While brief arguments were advanced by the Association

relative to the overall level of compensation currently received by those in the unit as compared to other schools in the athletic conference, this argument was not pursued in detail. While there may be various individual benefits present at some schools and lacking at others, there was no comprehensive overall analysis of the levels of compensation and benefits among conference schools, and this criterion cannot be assigned definitive weight in the selection of the final offer of either party.

Summary of Preliminary Conclusions

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

(1) In connection with the parties' wage impasse:

(a) The most persuasive comparison data are those which compare salaries paid in the bargaining unit with those paid by other Districts in the State Line Athletic Conference.

(b) A comparison of the percentage increases for 1982-1983, within the athletic conference, strongly favors the selection of the final offer of the Employer.

(c) No persuasive basis has been established relative to the need for an extraordinary, catch up increase in 1982-1983, for those in the bargaining unit. To the contrary, with the exception of those at the bottom of the salary structure, those in the unit have significantly improved their salary positions in recent years, relative to the average salaries paid within the athletic conference.

(d) The addition of the BA +24 Lane does not significantly favor the final offer of either party.

(2) The final offers of the parties in the area of pay for extracurricular activities are so close, that this impasse item does not significantly bear upon the selection of the final offer of either party.

(3) Cost-of-Living considerations do not significantly favor the selection of the final offer of either party.

(4) The overall level of benefits criterion does not significantly favor the selection of the final offer of either party.

(5) While certain changes in the economy and in the collective bargaining climate have taken place during the negotiations process, and during the pendency of these proceedings, consideration of these criteria do not significantly favor the selection of the final offer of either party.

(6) No basis has been established for the assignment of significant weight in these proceedings to either the interests and welfare of the public or the ability to pay criteria.

Selection of Final Offer

In consideration of the entire record before me, including the above referenced preliminary conclusions, the Arbitrator has

determined that the final offer of the Employer is the more appropriate of the two final offers. The Employer's final offer was particularly favored by the application of the comparison criterion within the State Line Athletic Confere ce.

1./ Criteria in Public Sector Interest Disputes, Institute of Industrial Relations, University of California at Los Angeles, Reprint No. 230, 1972, pp 165, 166.

2./ How Arbitration Works, Bureau of National Affairs, Third Edition - 1973, p 788.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to 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 Employer is the more appropriate of the two final offers;

(2) Accordingly, the Employer's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Mediator-Arbitrator

January 25, 1983