ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
SCHOOL DISTRICT OF VALDERS)
)
And)
)
VALDERS EDUCATION ASSOCIATION)
)

Interest Arbitration
Case II No. 29870
MED/ARB-1724
Decision No. 19804-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

November 15, 1982
November 17, 1982
Valders, Wisconsin

Appearances

For the Employer

WISCONSIN ASSOCIATION OF SCHOOL BOARDS
By William Bracken
Membership Consultant
P. O. Box 160
Winneconne, WI 54986

For the Association

BAYLAND TEACHERS UNITED
By Dennis W. Muehl
Executive Director
1540 Capitol Drive
Green Bay, WI 54303

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the School District of Valders and the Valders Education Association, with the matter in dispute the terms of the final year reopener in the parties' 1981-1983 labor agreement.

After preliminary negotiations between the parties failed to result in agreement, the Association, on June 3, 1982, filed a petition requesting mediation-arbitration pursuant to Section 111.70(4) of the Wisconsin Statutes. After preliminary investigation, the Commission, on August 6, 1982, issued certain findings of fact, certification of the results of investigation and an order requiring mediation-arbitration of the dispute. On August 19, 1982, the undersigned was appointed by the Commission to hear and decide the matter pursuant to the provisions of the Act.

A public hearing took place in Valders, Wisconsin on the evening of November 15, 1982, after which preliminary mediation took place between the undersigned and the parties. The Mediator-Arbitrator determined that a reasonable period of mediation had taken place and that it was appropriate to move to arbitration, and so notified the parties on the evening of November 15, 1982.

An arbitration hearing took place on November 17, 1982, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties closed with the filing of briefs and reply briefs, after which the hearing was closed by the Arbitrator.

THE FINAL OFFERS OF THE PARTIES

During their negotiations, the parties were able to reach preliminary agreement with respect to all but three open items. The three impasse items are the size of the adjustments to the 1982-1983 salary schedule, the amount of the Employer's monthly contribution for family health and dental insurance, and the amount of advance notice of layoff which should be provided to affected teachers.

The Salary Schedule Impasse

The Employer's salary schedule proposal would add a total of $475.00 per year to the BA base, and would increase the increments between the various steps by $25.00 per step. This would result in increases ranging from a minimum $475.00 adjustment, to a maximum increase of $850.00 per year.

The Association's salary schedule proposal would add a total of $800.00 per year to the BA base, and would increase the increments between the various steps by $50.00 per step. This would result in increases ranging from a minimum $800.00 per year adjustment, to a maximum increase of $1800.00 per year.

The Insurance Premium Impasse

The parties are in agreement that the District will contribute $56.50 per month for single coverage, but they are $3.00 per month apart on the Employer's monthly contribution for family coverage. The Association is proposing that the Employer contribute $163.00 per month for the family health and dental insurance premiums, while the District is proposing a monthly contribution of $160.00.

The Layoff Notification Impasse

The expired agreement provides that teachers receive advance notification of layoff by March 1. The Employer proposes that the normal notification date be moved to April 15 with recognition of the necessity of 60 days advance notification in energency situations; the Association proposes that notification continue to be provided to affected teachers by March 1 of each year.

THE STAUTORY CRITERIA

The merits of the dispute are governed by 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 EMPLOYER

In support of its contention that its final offer was the more appropriate of the two before the Arbitrator, the Employer presented the following principal arguments.

(1) It submits that the most comparable school districts for comparison purposes, consist of the members of the Olympian Athletic Conference and four other similarly sized school districts in the immediate geographic vicinity of Valders. (i.e., Chilton, Kiel, Elkhart Lake and Howards Grove)

(a) It argues that the eleven suggested schools range from 500 to 1500 students, with an average enrollment of 1008; Valders enrollment is approximately 1100 students.

(b) It submits that the comparable districts range from a low of 31 to a high of 89 teachers, with an average of 57; Valders, with a total of 60 teachers, falls in the approximate middle of the range.

(c) It submits that various of the Districts urged for comparison purposes by the Union were inappropriate from the standpoint of size; in this connection, it referenced the fact that the Manitowoc District is four times the size of Valders, the Two Rivers District twice as large, and the Plymouth District almost twice the size of Valders. It suggests that the Union has purposely selected large schools, which interferred with validity of conclusions based upon their comparisons.

(d) It cites various other factors favoring the utilization of the Board recommended comparables, characterizing these factors as community of interest considerations; it argues that all of the Board's comparables were in the same geographic area and competed in the same basic labor market. It argues against the inclusion of the Gibralter and Sevastopol Districts urged by the Union on the basis of their location in upper Door County, another labor market, and the fact that these districts received no state aids due to their high property taxes and high equalized valuations.

(2) It emphasizes that the parties are not in dispute with respect to the costing methodology of the final offers. In this connection it submitted that the Board's final offer entailed final package costs of 8.24% versus the Union's final offer costs of 11.98%. It urges that the Board's final offer reflected increases totaling $1719.00 per teacher versus Union final offer costs per teacher of approximately $2500.00.

(3) In specifically addressing the various statutory criteria, the Board emphasized the following considerations.

(a) It cites the interests and welfare of the public criterion in connection with an examination of the impact upon the public of the current recession. It argues that an arbitrator should not award a 12% package to those in the bargaining unit at a time when the economy is in the midst of the most severe recession since the 1930s.

(b) It argues that relatively few settlements have been reached in voluntary collective bargaining in 1982-1983, submitting that this factor reduces the persuasive value of the comparison criterion. In the same connection, it submits that comparisons with districts which were in the second year of two year agreements in 1982-1983 should be considered less persuasive, than comparisons with districts actually going to the table in 1982-1983.

(c) It cites the awards of four other arbitrators whose decisions were rendered shortly before the hearing in this matter, citing the fact that each had given substantial consideration to the economic conditions facing municipal employers in 1982-1983, and each had rejected union demands in the same general cost range as those in issue in these proceedings.

(4) It submits that comparisons, particularly those within the group urged by the Employer, support the District's final salary offer; in this connection it cites the relative salaries paid by the various districts at the BA Base, BA Maximum, MA Base, MA Maximum and Schedule Maximum

benchmarks. Apart from simple rankings, it references the fact that, except for the first ranked district, the remaining districts were very close to one another.

(a) It urges the conclusion that Valders properly ranked in the middle of the group urged by the District for comparison purposes.

(b) It suggests that even within the group urged for comparison by the Union, there has been no basis established for any catch up increase.

(c) It cites published sources summarizing private sector settlements in the State of Wisconsin, and indicating a very high percentage of employers making adjustments in workforce and/or compensation levels, as a result of the current economic situation.

It submits that the Board's offer was some .6% above the pattern of private sector settlements in the Valders area, while the Union's offer was 4.6% above the private sector pattern in the area. It submits that private sector settlements during 1982 assume greater importance than usual, due to the dearth of public sector negotiated settlements.

(5) It argues that cost of living considerations as reflected in the Bureau of Labor Statistics' Consumer Price Index more closely support the District's rather than the Association's final offer. In this connection it urges the conclusion that both of the final offers before the Arbitrator exceed the increases in the Consumer Price Index between mid-1981 and mid-1982; it additionally cited the decline in the rate of increase in the index since mid-1982.

It submits that long term comparisons between the movement in the Consumer Price Index between 1971 and 1982 support the conclusion that those in the bargaining unit have more than kept pace with inflation.

(6) It urges the conclusion that the overall level of compensation criterion favors the adoption of the final offer of the Employer. In this connection it cites the range of benefits and protection currently afforded those in the bargaining unit.

(7) It argues that changes in the rate of unemployment reflect a deepening of the recession since the arbitration hearing, which consideration favors the adoption of the final offer of the District.

(8) In the Health and Dental Insurance impasse, it referenced premium increases of 42%, which motivated its desire that employees share in the cost of insurance coverage. Under its proposal, the Board would contribute an increase in premium cost of 38%, with the remainder coming from those in the bargaining unit. It emphasized that the Board has historically negotiated a flat dollar contribution for health insurance, rather than a percentage formula, and that the Board's current proposal continues this practice.

(9) In connection with the Layoff Notification impasse, the Board emphasizes various factors in support of its final offer.

(a) It submits that the March 1 notification date for layoff, is a carry-over from the notification date for non-renewal decisions.

(b) It argues that the March 1 notification date for layoff purposes is simply too early to allow the Board to address such factors as enrollment figures, equalized valuations and the level of state and federal aids.

(c) It urges that the School Board has the statutory obligation to maintain the District in a reasonable and efficient manner, which demands certain measures of flexibility, and that critical decisions involving layoff cannot reasonably be made six to ten months in advance.

(d) It argues that Board flexibility is particularly necessary in these turbulent times.

(e) It submits that the March 1 notification requirement has necessitated poor management practices; specifically it references that last year, ten teachers were notified that they might be laid off which raised the anxiety of the staff and created morale problems. It argues that a later notification date would allow the Board to rely on accurate facts and layoff only the required number.

(f) It submits that current law provides for the issuance of teaching contracts by March 15, which must be returned by individual teachers by April 15, and those who do not return their contracts do not plan to return for teaching during the subsequent year. It argues that, the Board's proposal for an April 15 notification date ties in perfectly with the deadline date for the return of teaching contracts, would allow the Board to know exactly how much attrition would occur, would minimize staff disruption, and would allow minimizing and/or avoiding layoffs where possible.

(g) It argues that the interests and welfare of the public would be served by adopting the Employer's proposal, and that the sixty day notification provision would be used only as a last resort. It submits that when the interests of the teachers is balanced against the needs and interest of the public, that the latter consideration should prevail.

(h) It submits that the Employer's proposal is favored by the comparison criterion, in that five of the eleven comparable schools urged by the District have no layoff notification date, several have flexible procedures, and only three have specific notification dates.

(i) It argues that the present March 1 date is outmoded in light of recent court and WERC decisions. Further, it submits that the Board has clearly established the need for a change in the old policy, in that considerations of poor morale, the uncertainties of the economy, and the need for flexibility in adapting to changing conditions support the final offer of the District.

In summary, the Board argued that it has submitted persuasive evidence and argument in support of its final offer, which it characterized as fair and reasonable. It submits that the Union's 12% offer is not in the range of reasonableness, ignores the state of the economy, and cannot be justified; it argues that the Board's 8.24% increase represents a reasonable balancing of the interests and welfare of the teachers and the District. It also emphasized

the argument that it had justified the need for a change in the layoff notification date, and that such a change would recognize the distinction between layoff and non-renewal, and would allow the District the needed management flexibility.

In its reply brief, the District reiterated and emphasized many of the arguments and evidence referenced above. It additionally submitted that the argument that the tax levy was set, and that taxes would not be affected by the selection of either offer was a specious one, and that the approximate $50,000.00 difference in the costs of the two proposals would ultimately have to be paid. It additionally submitted that the Union had simply failed to justify the large increase in the negotiated salaries of 1981-1982, which represent the status quo in these proceedings, arguing that the Union's reliance upon salary schedule benchmarks ignored historical wage differentials, staffing differences, fringe benefits differences, and economic factors peculiar to each school district.

The Employer also cited settlements in certain comparable school districts which settlements had occurred subsequent to the hearing in this matter. In this connection, it argued that the Valders final offer came closest to the developing trend already taking shape for the 1982-1983 settlements.

POSITION OF THE ASSOCIATION

In support of its contention that its final offer is the more appropriate of the two before the Arbitrator, the Association presented the following principal arguments.

(1) It suggests that the Board has arbitrarily selected a narrow group of comparables to suit its own purposes, alternatively suggesting that the Association comparables are more broadly based and compatible with the statutory criterion.

(a) It urges consideration of all athletic conference schools plus certain other districts; it submits that there is no basis for concluding that the Gibraltar and Sevastopol Districts should be removed from consideration, and/or that the impact of Freedom should be minimized. It argues that the Employer is seeking the luxury of using the athletic conference, while excluding the three highest paying schools.

(b) It argues that the group of comparables urged by the Association is compatible with those used in other arbitrations involving certain of the same districts.

(c) It suggests that the sole criterion utilized by the District in its suggested group of comparables was geographic proximity; it submits that other factors such as population, real income, municipal budget, average daily pupil population, bargaining unit staff, full value taxable property and state aid, should also be considered.

(d) It argues that no basis, other than proximity, has been established for the Board's suggested inclusion of the districts of Reedsville and Howards Grove.

(2) It urges that the Association's position on the required notice of layoff, is much more reasonable than the Board's position on the matter.

(a) It emphasizes that the Association is merely seeking

retention of the status quo relative to notice, while the District is seeking a significant change.

(b) It urges that the party proposing significant modification of a past benefit, has the burden of persuasively establishing the basis of the proposed change, arguing that the Employer has failed to do so in the case at hand.

(c) It argues that the Association's notification position is compatible with the statutory requirements of Section 118.22 and is also supported by comparables.

(d) It argues that teachers need to know as soon as possible about any layoffs, so that they can pursue alternative professional educational placement opportunities in a timely manner.

(e) It submits that removal of the long standing benefit of March 1 notification would place affected Valders teachers at a severe disadvantage in terms of employment options, particularly with any use of the proposed sixty day option urged by the Employer.

(f) It references the fact that ten teachers received notification of potential layoff during the past year, but only one teacher actually suffered a reduction of hours during the 1982-1983 school year.

(g) It argues that the Board is attempting to get a self-serving benefit through the mediation-arbitration process, which it would be unable to receive across the table, and that this attempt to plow new ground should be rejected.

(3) It urges that the Association's offer relative to group insurance is supported by the parties' past practice, and also by the collective agreements of comparable employers.

(a) It submits that the parties have consistently increased both the percentage of the insurance premium and the dollar amount contributed by the Employer each year. Even though the dollar contribution urged by the Employer represents an increase, it would reflect a reduction in the percentage of the premium paid by the Employer from 96.8% in 1981-1982, to 94.9% in 1982-1983. It submits that the Association offer would maintain the Employer contribution at approximately the same percentage level as was the case in 1981-1982.

(b) It argues that the Board is attempting to reverse a pattern of benefit growth, and that the District is one of the few which does not pay the entire cost of medical and health insurance premiums.

(4) It submits that various resolutions submitted from the Village Boards of Valders and Liberty, and the Town Boards of Rockland, Cato, Newton, Liberty and Whitelaw should not be accorded significant weight in these proceedings; it argues that the documents represent an organized effort to influence the arbitrator's decision, that the signatories were not available for cross examination, and that the evidence is not material.

(5) It urges that various newspaper and magazine articles submitted by the Board, and purporting to represent a description of the economic climate should be disregarded, arguing that the writers of the articles were not subject to cross examination, that the articles themselves are time consuming to review, and have no probative value.

(6) It submits that the Association's final wage offer is not unreasonable, and does not place an unfair burden upon the District's taxpayers. It argues that the District of Valders' is lower in cost per member, receives more state aid than average, and even with a lower equalized valuation per member, has a lower than average levy rate than comparable districts.

(a) It references that Valders spent $2,024 per pupil on instructional programs in 1981-1982 compared to a statewide average of $2,685, and that it ranks 362nd of 373 PK-12 districts in the State of Wisconsin, spending an approximate 75% of the State average in costs per pupil.

(b) It argues that the District spends less, taxes less, pays less, and expects more from its teachers than comparable districts. Further, it submits that Valders taxpayers are not overtaxed on a comparison basis, arguing that the District apparently uses its higher aid level as a property tax relief measure rather than spending the aids on education programs and teacher salaries.

(c) It references that there has been no inability to pay question, that the tax levy and tax rates have been set for the 1982-1983 school year, and that the taxpayers will suffer no increase in taxes for the current year with the selection of the final offer of either party.

(7) It urges that the most valid comparison for salary purposes consists of an examination of relative salaries at various benchmarks within the salary structures of comparable districts, and that this approach is superior to mere package comparisons.

(a) It argues that the benchmark comparison approach has been adopted by a growing number of interest arbitrators in the State of Wisconsin.

(b) It submits that the use of benchmarks, rather than package costing comparisons, is less cumbersome, can readily be substantiated by date, renders moot various arguments relative to package costing, and lends predictability to the process.

(8) It argues that the wage rates in the bargaining unit have been eroded over a number of years in the Valders District, due to the ravages of increases in cost of living.

In its post-hearing brief, the Association emphasized the same considerations previously addressed by the Parties, but it particularly emphasized the following points.

(1) It characterized the Board suggested comparables as self-serving, unreasonable, and less persuasive than the comparisons urged by the Association.

(2) It reiterated its argument that the economic status of the "outside world" was not relevant to the outcome of these proceedings. In support of this conclusion, it cited the recent decisions of other arbitrators in two municipal arbitrations in Wisconsin, wherein the public sector comparisons were accorded primary importance over private sector comparisons and general economic considerations.

(3) It argued that Valders teachers had suffered for years in terms of wages, hours and conditions of employment, as compared to teachers in comparable school districts; it submitted that the teachers are in need of catch up, and would be disadvantaged and compromised by the selection of the Board's final offer.

(4) It urged that recent increases in tax delinquency figures reflected relatively low interest rates on the penalty charges, rather than taxpayer inability to pay.

(5) It urged that various arguments specifically relating to the economic situation of the farmer, did not support the adoption of the final offer of the Board.

(6) It argued that certain information submitted by the Employer was not verifiable, was self-serving, and should not be accorded significant weight.

(7) It reiterated its arguments that there is no inability to pay issue present in these proceedings, and that taxes for 1982-1983 will be unaffected by the outcome of this arbitration.

(8) It suggested that the Employer's arguments relative to dental and health insurance premium payments ignored the historic pattern of past settlements, and also ignored comparables.

(9) It addressed the legal dispute relating to teacher terminations in the layoff notification dispute of the parties; in light of the uncertain legal status at present, it reiterated its arguments relating to retention of the status quo.

(10) It submitted that the Board's attempt to compare movement in the consumer price index versus a hypothetical teacher moving incrementally through the salary structure, was inappropriate, and was inconsistent with arbitral precedent.

By way of overall summary, the Union emphasized the catch up position, argued that the District had attempted to confuse the issue through an improper paper barrage, submitted that there was no convincing evidence that Valders teachers received any "wealth" of benefits, reiterated that there was no inability to pay issue, suggested that taxation arguments consisted largely of rhetoric, and urged that the dairy farming arguments were not persuasive in this dispute. It further argued that no persuasive case had been made relative to the need for any change in the layoff language.

In post-hearing correspondence, the Union objected to the submission of certain settlement data, which was appended to the District's post-hearing brief. In the event that the disputed evidence was accepted by the Arbitrator over the objection of the Union, it provisionally submitted certain further evidence of settlements which had been reported to it through January 17, 1983.

FINDINGS AND CONCLUSIONS

Prior to addressing the substance of the selection process, it will be necessary for the Arbitrator to preliminarily deal with the extent of the record to be considered in the selection of the final offer. During the course of the hearing and/or during the briefing process, the parties differed with respect to two major questions

relating to the scope of the record.

(1) What is the admissability and/or the persuasive value of certain evidence dealing with the current state of the national and local economies, including data relating to 1982 private sector labor agreements?

(2) To what extent should the Arbitrator consider evidence relating to certain public sector labor settlements in the State of Wisconsin, which evidence was submitted during the briefing period?

The Evidence Relating to the State of The Economy

As might be predicted, the Employer emphasized the rather difficult current state of the national, state and local economies, while the Association attempted to minimize the impact on these proceedings of the state of the economy.

In support of its contention that the interests and welfare of the public criterion appropriately requires consideration of the adverse state of the economy in the selection of the more appropriate final offer, the Employer submitted various types of exhibits. It introduced into the record exhibits in the form of reproductions of newspaper articles and editorials, magazine articles and editorials, economic reports of banks, Bureau of National Affairs reports on private sector labor settlements during the first one-half of 1982, a U.S. Department of Labor report on private sector settlements during the first 9 months of 1982, newspaper comparisons of the relative sizes of public and private sector labor settlements during the first one-half of 1982, certain Manitowoc County employment information published by the Department of Industry, Labor and Human Relations, and various publications dealing with the particularly difficult economic situation in dairy farming in particular, and in farming in general. These exhibits were accepted into the record over the objection of the Association.

In the briefing process, the Union reiterated its objections to the acceptance into the record of the above material, and alternatively argued that the evidence was immaterial. In this connection, it emphasized that there was no inability to pay claim in this case, and that neither of the two offers would cause any increase in taxes during the short term.

As referenced at the hearing, although the evidentiary value of various individual exhibits may be minimal, the persuasiveness of the overall evidence relating to the state of the national, state and local economies is considerable. It simply cannot be denied that the continuing high level of unemployment, when coupled with falling inflation rates and low profits have combined to keep a damper on the size of private sector settlements; while profits are not a factor in the normal public sector labor agreement, settlements at the municipal level are also particularly affected by declining revenue sources, and increased resistance to local tax increases.

The Impartial Arbitrator has concluded that the above referenced evidence relating to the state of the economy was properly introduced into the record, and that it is a proper consideration in the selection of the final offer. The Union is entirely correct that the size of the private sector settlements is normally far less significant than evidence relating to school district settlements in comparable communities, but this evidence is properly before the Arbitrator.

Consideration of the Post-Hearing Evidence of Wisconsin Settlements

Appended to one of its briefs, the Employer unilaterally submitted certain evidence relating to settlements in other communities, which had become available subsequent to the hearing in this matter. The Union objected to the Employer's introduction of any additional evidence during the briefing process, and conditionally submitted certain additional evidence for consideration by the Arbitrator in the event that the Employer proferred evidence was received into the record.

The merits of this dispute are governed by the provisions of Section 111.70(4)(cm)(7) of the Wisconsin Statutes which describe the various criteria to be utilized by an arbitrator in the selection of the most appropriate final offer; sub-paragraph (g) of this section provides that the arbitrator shall give weight to:

> "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings."

While the above language specifically allows the submission of evidence into the record during the pendency of the proceedings, it does not justify the unilateral, ex parte submission of such material by either party. If the parties mutually agree to the submission of such additional evidence on a post-hearing basis, or if the hearing is properly reopened, such additional evidence may properly be introduced. In the absence of either mutual agreement of the parties, or any request to reopen the hearing, it would be inappropriate for the Impartial Arbitrator to consider additional evidence offered by either party. The additional, post-hearing evidence offered by the parties will not, therefore, be accepted into the record, and will not be considered in the selection of the final offer.

Certain General Considerations

Perhaps at this point, it is appropriate for the Arbitrator to emphasize the fact that the mediation-arbitration process in Wisconsin is not an exact science, where the evidence and the arguments of the parties can be inserted into a formula and the correct answer determined. Despite the limitations of the final offer process, the arbitration phase consists of an attempt to reach the same decision, or one which is closest to that which the parties themselves would have reached had they been successful in bargaining to a satisfactory conclusion. These considerations were rather well addressed in the following excerpts from the book by Elkouri and Elkouri: 1./

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts

> fundamental inquiry, as to each issue, is: What should the parties themselves, as reasonable men have agreed to? ...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...." (emphasis supplied)

In applying the above principles to the case at hand, and as argued by the Union, it should be kept in mind that arbitrators are reluctant to overturn an established benefit, and/or they are loath to add new benefits or to innovate, unless the statutory criteria are rather clearly met. The reluctance of interest arbitrators to disturb provisions or benefits contained in prior agreements, which is not as pronounced in the public sector, is discussed as follows by the Elkouris: 2./

> "Arbitrators may require 'positive reason' for the elimination of a clause which has been in past written agreements. Moreover, they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement."

The above factors are frequently characterized as either negotiations history or past practice criteria, and they fall well within the scope of Section 111.70(4)(cm) of the Statutes.

The Negotiations History and the Past Practice Criteria

Two of the three impasse items involved arguments of the parties relating to the above considerations. The Association invoked arbitral reluctance to modify provisions of prior agreements, or to plow new ground, in support of its position on the insurance impasse and the layoff procedure dispute; it submitted that no basis had been established in the record to justify modification of the negotiated layoff provision, and it argued that the increase in the required employee percentage contribution for family insurance coverage premiums was inconsistent with the negotiations patterns in the past. The Employer disagreed, particularly emphasizing the fact that past monthly insurance premium contributions had been negotiated on a flat dollar basis, rather than on a percentage basis.

In first addressing the layoff notification dispute, the Arbitrator has concluded that the Association's points are well taken. The March 1 notification date was negotiated across the table by the parties, and when an arbitrator is asked to modify such a past agreement, a persuasive case must be made. Although ten teachers were notified during the last school year, of their possible layoff, no real difficulties were apparently encountered, and there was actually only a partial reduction of less than one full time equivalent teacher. It cannot be denied that a more flexible notification procedure would be helpful to the Employer, and such a change would facilitate its planning and budgeting functions; additionally, persuasive arguments were advanced at the hearing relative to possible future difficulties with the March 1 notification date. These arguments, however, fall far short of the requisite positive reasons normally required for the modification or elimination of a negotiated provision, in the interest arbitration process. Although there are some pending legal questions with respect to the bargaining status of this item, no persuasive case has been made as to why the previously negotiated March 1 notification procedure should be changed during this arbitration.

In next addressing the past practice and the negotiations history arguments of the parties relative to the insurance premium impasse,

the Arbitrator finds the matter clearly distinguishable from the dispute relating to layoff notification. If the Employer had historically agreed in past contracts to pay the full cost of medical and dental insurance and was proposing a change in this practice, the negotiations history and the past practice considerations would impact significantly upon the arbitral merits of the proposal; if the Employer were proposing a reduction in the previously negotiated dollar premium contributions, the same considerations would apply. Neither of these situations is present, however, and this impasse item simply involves a dispute with respect to the flat dollar amount that the Employer will be required to contribute each month for family dental and health insurance premiums. Despite the fact that each party presented certain philosophical arguments as to the underlying motivations for their respective final offers, the issue before the arbitrator is simply one of $3.00 per month difference in the required premium contribution.

Despite the fact that certain other employers pay the full costs of dental and health insurance, the parties have followed a past practice of negotiating the flat monthly dollar premium contributions to be paid by the Employer, and the final offers of each party would continue this past pattern. Under the circumstances, neither the past practice nor the negotiations history criterion favor the selection of the final offer of either party with respect to the required monthly insurance premium contribution. In light of the fact that the sole difference in this area is $3.00 per month, it is obvious that this impasse item is of far less economic importance than the salary impasse, which represents a far greater dollar difference.

The Comparison Criterion

There can be no dispute that the comparison criterion is the most influential factor in the interest arbitration process. Additionally, there is no doubt that normally, the intraindustry comparison (In this case comparisons with other comparable school districts) is the most important of the factors; indeed it far outweighs various other of the factors addressed by the parties in this proceeding. These considerations are reather well addressed in the following excerpts from the book by Irving Bernstein: 3./

> "a. Intraindustry comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight 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 in the wage-determining standards.
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> * * * * * *
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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....."

Of course, merely reciting the importance of intraindustry comparisons over other types of comparisons and other criteria does not resolve the problem of which school districts should be used for comparison purposes. As is the case in almost all interest arbitrations, both parties emphasized the comparisons which they perceived as being most favorable to their own position in the dispute; in point of fact, however, there was a substantial overlap in the schools urged for comparison purposes by the parties. Both parties submitted comparison data for the districts of Brillion, Chilton, Denmark, Freedom, Hilbert, Kiel, Mishicott, Reedsville, Valders and Wrightstown; the Employer suggested the additional

districts of Elkhart Lake and Howards Grove, while the Association urged the addition of Gibraltor, New Holstein and Sevastopol.

The Arbitrator feels that appropriate and valid comparison data can be generated through the use of the athletic conference plus the addition of the Districts of Chilton, New Holstein and Kiel as urged by the Association. The substantial similarities between these districts, including relative geographical proximity, student populations, and faculty size are persuasive, as is the fact that similar groups have been used by other arbitrators in interest arbitrations involving certain others of the districts. In any event, the substantial overlap between the districts urged for comparison purposes by both parties makes the selection of an appropriate comparison group easier.

This case is highly unusual in that no 1982-1983 settlements had been reached within the comparable school districts, prior to these proceedings, and no such settlements are available for arbitral consideration. Thus the most persuasive single consideration normally used by Arbitrators is lacking in this dispute.

Under the circumstances the Employer has submitted that the most appropriate consideration was the fact that the Employer's final offer would represent an overall increase of 8.24% in final package costs, versus the 11.98% overall increase represented in the Association's final offer. It submitted that the proposed increases of both parties were above the average private sector settlements for 1982-1983, and that the Employer's final offer was the more appropriate, in light of the lack of any 1982-1983 settlements in comparable school districts.

The Association took issue with any private sector comparisons being considered, and argued that the overall percentage cost of the total package was of less significance than data comparing Valders with other comparable school districts, at various salary benchmarks, over the past three years. It argued that those in the bargaining unit had suffered an erosion in their salaries in recent years, at least partly due to cost of living considerations, and that a catch up increase was justified for 1982-1983.

There is no dispute that municipal interest arbitrators in Wisconsin place much greater reliance upon intraindustry, public sector comparisons, than upon private sector wage settlement data. When there is no such intraindustry data available, however, the private sector data gains in relative importance. Without unduly belaboring the point, the Arbitrator must recognize that the final offers of each of the parties is higher than would be indicated by looking only to private sector comparisons. On this basis, the Employer's final offer is favored over that of the Association.

> working out a quite generally accepted rule: the base for computing cost of living adjustments shall be the effective date of the last contract.....The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a relitigation of every preceding arbitration between the parties and reexamination of every preceding bargain concluded between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost of living in their negotiations."

In accordance with the above considerations, an interest arbitrator would normally look to cost of living and to related catch up arguments, only from the date that the parties last reached a negotiated settlement. Cost of living arguments in recent years have been most persuasively advanced in those situations which involved multi-year agreements with no wage reopener and no cost of living escalation. Catch up arguments are most persuasive when recent rounds of negotiations in comparable communities have resulted in a relative erosion of wages since the last time the parties went to the table.

In initially addressing the cost of living changes which have occurred since the parties last went to the table, it should be noted that the Consumer Price Index increased a total of 5.9% between August 1981 and August 1982, but it is generally conceded that this figure somewhat overstates the actual impact of cost of living increases, particularly with respect to the prior method of computing housing costs.

It is clear that the 5.9% movement in the C.P.I. during the above time frame falls between the final offers of the two parties, even when the Employer's responsibility for increases in health and dental insurance premium payments is factored into the final offers of the two parties. It seems equally clear that cost of living considerations between August 1981 and August 1982 do not definitively favor the adoption of the final offer of either of the parties.

Despite the fact that arbitrators are not normally persuaded by catch up arguments based upon data that antedates the parties' last negotiated agreement, the Arbitrator will offer the observation, by way of dicta, that there has been some recent erosion in average salaries for bargaining unit teachers between the 1979-1980 and the 1981-1982 school years. In computing and comparing the average salaries at the various benchmarks, as reflected in Association Exhibits #23 through #29, the following conclusions are apparent.

(1) At the BA Base, those in the bargaining unit lost an approximate $206.00 per year versus the group average.

(2) At the BA 7 Level, those in the unit suffered an approximate $176.00 reduction in annual salaries, versus the group average.

(3) At the BA Maximum, those in the unit experienced an approximate $232.00 per year increase in salaries, versus the group average.

(4) At the MA Base, those in the unit suffered an approximate $305.00 reduction in annual salaries versus the group average.

(5) At the MA 10 Level, those in the unit suffered an approximate $187.00 reduction in annual salaries versus the group average.

(6) At the MA Maximum, those in the unit experienced an approximate $25.00 per year increase in annual salaries versus the group average.

(7) At the Schedule Maximum, those in the unit suffered an approximate $58.00 reduction in annual salary versus the group average.

While it is impossible to determine how the selection of a final offer in the case at hand will affect future annual salary comparisons at various benchmarks, it should be noted that the final offers of the parties in this case are substantially apart. The Association's final offer exceeds the Employer's by some $325.00 per year at the BA Base, and is $950.00 per year above the Employer's final offer at the Schedule Maximum. The above referenced comparisons would not support the size of the Association's final offer even on the basis of a full consideration of the Association's catch up arguments. If the post hearing 1982-1983 settlements in comparable districts reflect the need for catch up this should be addressed by the parties in their next negotiations.

The Current State of the Economy

The interests and welfare of the public criterion was addressed by both parties and by various members of the public during these proceedings. The large turnout and the information submitted at the public hearing was a strong indication of the public concern with both the quality of education in the community and with the cost of public services to the taxpayers.

Despite the fact that there was no inability to pay question raised in these proceedings, and regardless of the prospects of an immediate tax increase, the current depressed state of the national and state economies is a proper consideration. The continuing high levels of unemployment, the falling inflation rates, the declining revenue sources for local units of government, and the difficulties inherent in local tax increases, are all factors which favor the adoption of the final offer of the Employer. These factors, along with declining profits, have combined to significantly reduce the size of private sector settlements, and it clearly must also have an impact upon public sector employees. While the signs of recovery are appearing at present, it must also be remembered that the parties will soon be returning to the table for contract renewal negotiations.

Summary of Preliminary Conclusions

On the basis of the considerations addressed above, the Impartial Arbitrator has reached the following summarized preliminary conclusions.

(1) The evidence offered at the hearing relative to the state of the national, state and local economies is appropriately before the Arbitrator, and is a proper consideration in the selection of the final offer; evidence relating to the size and nature of 1982

private sector settlements was also properly received into the record.

(2) In the absence of either mutual agreement of the parties, or a request to reopen the hearing, it is inappropriate to consider post-hearing evidence unilaterally submitted by either party. Evidence proferred by either or both of the parties, relating to certain labor agreements reached during the briefing period were not considered in the selection of the final offer in this proceeding.

(3) No persuasive justification has been advanced to support the proposed change in the layoff notification procedure. Consideration of the negotiations history and the past practice criterion particularly favor the Association's rejection of this proposal.

(4) No persuasive basis has been advanced which would justify either the acceptance or the rejection of the final offer of either party on the insurance premium impasse. Apart from the philosophical arguments of the parties, the dispute consists solely of a $3.00 per month difference in the final offers of the parties, which is of relatively less importance than the salary impasse.

(5) The intraindustry comparison data does not definitively favor the adoption of the final wage offer of either party, due to the fact that no comparable 1982-1983 settlement data are before the Arbitrator.

(6) Consideration of movement in the Consumer Price Index since the parties last went to the table does not definitively favor the adoption of the final offer of either party.

(7) The circumstances in the case at hand do not justify major weight being accorded to the catch up arguments of the Association, although there does appear to have been some erosion in the earnings of those in the bargaining unit at various benchmark levels during the past three years.

(8) In consideration of the dearth of 1982-1983 intraindustry comparison data, general private sector settlement comparisons must be accorded greater weight in these proceedings. Consideration of these settlements favors the adoption of the final offer of the Employer.

(9) The current state of the national and the state economies favors the adoption of the final offer of the Employer, particularly in light of the fact that the contract will be open for renewal negotiations at the conclusion of this year.

Selection of the Final Offer

After a careful review of the entire record, the Arbitrator has preliminarily concluded that the final offer of the Association is favored on the layoff notification impasse, while the final offer of the Employer is favored on the salary impasse; the position of neither party is significantly favored on the insurance premium impasse.

Since the Impartial Arbitrator is limited to the selection of the final offer of one of the parties without modification, and in

consideration of the far greater relative importance of the economic considerations inherent in the salary impasse, the final offer of the Employer is the more appropriate of the two final offers.

1./ How Arbitration Works, Bureau of National Affairs, Third Edition 1973, page 54. (footnotes omitted)

2./ Ibid. page 788. (footnotes omitted)

3./ The Arbitration of Wages, University of California Press, 1954 pages 56, 67. (footnotes omitted)

4./ Ibid. page 75. (footnotes omitted)

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

March 23, 1983