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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between SCHOOL DISTRICT OF NEW LONDON And NEW LONDON EDUCATION ASSOCIATION	Interest Arbitration Case II No. 29752 MED/ARB-1663 Decision No. 20101-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

Mediation Hearing
4:00 PM February 16, 1983
Arbitration Hearing
8:00 PM February 16, 1983
New London, Wisconsin

Appearances

For the Employer	MULCAHY & WHERRY, S.C. By James R. Macy, Esq. P. O. Box 1278 Oshkosh, WI 54901
For the Association	WINNEBAGOLAND EDUCATIONAL STAFF COUNCIL By Henry V. Krokosky, Jr. Executive Director 550 East Shady Lane Neenah, WI 54956

BACKGROUND OF THE CASE

This proceeding involves statutory mediation-arbitration proceedings between the School District of New London, Wisconsin and the New London Education Association, with the matters in dispute, certain aspects of a renewal labor agreement; the impasse items include the duration of the agreement, the number and amounts of salary adjustments during the period of the new agreement, longevity pay and salary indexing provisions, and the school year calendar for 1983-1984.

After preliminary negotiations between the parties had failed to result in complete agreement, the Association on May 17, 1982, filed a petition with the Wisconsin Employment Relations Commission requesting statutory mediation-arbitration. Following the completion of a preliminary investigation, the Commission on November 16, 1982, issued findings of fact, conclusions of law, certification of the results of investigation, and an order requiring mediation-arbitration. On December 1, 1982, the Commission appointed the undersigned to hear and decide the matter pursuant to the Wisconsin Statutes.

Mediation of the dispute began at 4:00 PM on February 16, 1983 and continued until 7:20 PM, at which time the Mediator-Arbitrator determined that a reasonable period of mediation had taken place, and that it was appropriate to move to arbitration. The arbitration hearing began at 8:00 PM at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties reserved the right to file briefs on or before March 23, 1983, with the right to file reply briefs by April 1, 1983. They additionally agreed at the hearing that any subsequent Bay Athletic Conference settlements could be submitted with the briefs of the parties.

After certain extensions of time for the filing of the briefs and reply briefs had been agreed-upon by the parties, the Employer and the Union briefs were submitted on April 14 and April 18, 1983, respectively. On April 20, 1983, the Employer requested that 1982-1983 settlements in the Pulaski and the Clintonville School Districts be received, submitting that both schools were in the Bay Athletic Conference; the Union registered no objection, and this evidence was received, after which the record was closed by the Arbitrator on May 3, 1983. On May 24, 1983, the Union requested that the hearing be reopened in accordance with the provisions of Section 111.70(4)(cm)7g of the Wisconsin Statutes, for the purpose of submitting evidence relative to the settlement in the Marinette School District, another athletic conference school.

The Employer waived any reopening of the hearing, reserving the right to object in principle to any reopening of the record. On this basis, the Association submitted summaries of settlements in the Marinette and the Seymour Districts on June 17, 1983, after which the District confirmed its position relative to the new evidence in a letter to the Arbitrator dated June 16, 1983 and received on June 21, 1983. In its letter, the District cited two primary reasons for its objection to the opening of the record and the admission of any additional evidence.

(1) That the data was submitted well beyond the closing of the record in the matter.
(2) That the data was incomplete and unverifiable.

In addition to the above cited objections, the Employer submitted that the two additional settlements submitted by the Union could not constitute a pattern of settlements, arguing that the proferred data should be disregarded by the Arbitrator.

THE FINAL OFFERS OF THE PARTIES

The Employer's final offer consists of the following summarized elements:

(1) Deletion of the following paragraph from Article II, Section H of the agreement:

"H. For this procedure, the term of the contract, with the exception of the school calendar, salary, and all other monetary items will be opened yearly, is to be continued until the settlement of the 1982-1983 school year. Failure to comply with the revision shall be considered a violation of the Master Contract."

(2) Revision of Article VIII, entitled Term of Agreement, to provide as follows:

"This Agreement shall be in effect on July 1, 1982, and shall remain in effect through June 30, 1983.

This Agreement reached as a result of collective bargaining represents the full and complete agreement between the parties and supercedes all previous agreements between the parties."

(3) Revision of Article IV, entitled Salary Schedule, and the following revised language:

"SALARY SCHEDULE

The SALARY SCHEDULE increases the BA base from the present $12,625 to $13,357. This increase raises the MA +24 lane at 13 years of service from $24,549 to $25,973. Each lane and grade step will be continued with the following exception:

Personnel in the MA, MA +12 and MA +24 lanes having 13 or more years of service will receive the salary specified at the top of their lane plus 1%.

For example, personnel in the MA +24 lane having 13 or more years of service will receive $25,973 + 1% or $26,233."

In essence, the Employer is proposing a one year labor agreement with an approximate 5.7% to 5.8% salary adjustment for academic year 1982-1983, with a 1% adjustment for those at the MA +12 and the MA +24 levels with 13 years of service.

The Association's final offer consists of the following summarized elements:

(1) Modification of Section H of Article II, to provide as follows:

"H. For this procedure, the term of the Master Agreement, with the exception of school calendar, salary, and all other monetary items which will be opened for the 1984-1985 school year, is to be continued until the settlement of the 1985-1986 school year Master Agreement. Failure to comply with the provision shall be considered a violation of the Master Agreement."

(2) Revision of Article VIII, entitled Term of Agreement, to provide as follows:

"This Agreement shall be effective as of July 1, 1982 and shall remain in effect through June 30, 1985. For the purpose of this Agreement, the term 'salary' shall be interpreted as a fixed compensation periodically paid to a person for regular work or services. This compensation includes all contributing factors such as basic salaries as listed on pages ___ of the Master Agreement; Co-curricular salaries as listed on pages ___ and ___ of the Master Agreement; fringe benefit payments made by the School District for the state

teachers retirement program, life insurance, health insurance and dental insurance.

Other factors which could contribute to the fixed compensation of an individual employee are included in the term 'salary'. All types of leaves are included in the term 'all other monetary items.'

This agreement reached as a result of collective bargaining represents the full and complete agreement between the parties and supercedes all previous agreements between the parties."

(3) A specific School Calendar for the 1983-1984 school year.

(4) A Cumulative Index, describing the calculation of Step 0 in each lane in the salary structure, with the calculation based upon the appropriate figure at Step 0 of the BA/BS lane.

A description of the Calculation of Steps 1-4 in the salary structure.

A description of the Calculation of Steps 5-12 or 13 in the salary structure.

(5) A Salary Schedule for the 1982-1983 School Year with the BA/BS Step 0 set at $13,509.

(6) A Salary Schedule for the 1983-1984 School Year with the BA/BS Step 0 set at $14,455.

(7) Longevity benefits for certain employees at the bachelor levels.

In essence, the Association is proposing a three-year labor agreement with 7% salary increases at the bases, in each of the first two years, and a wage and benefits reopener in the third year of the proposed agreement.

THE STATUTORY 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 criteria:

"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 emoloy-

ment through voluntary collective bargaining, mediation, fact-finding, or arbitration or otherwise between the parties in the public service or in private employment."

POSITION OF THE EMPLOYER

In support of its contention that the final offer of the District is the more appropriate of the two offers before the Impartial Arbitrator, the Employer emphasized the following summarized arguments.

(1) That an appropriate pool of comparable districts should include the Bay Area Athletic Conference, composed of the Ashwaubenon, Clintonville, DePere, Howard-Suamico, Marinette, Pulaski, Seymour, Shawano-Gresham, and West DePere Districts. That consideration of such factors as geographic proximity, size, per pupil operating costs, state aid, full value tax rates, and equalized value per pupil, support the use of such comparisons; and that persuasive arbitral authority also exists for the use of such athletic conference comparisons.

(2) That the District's economic offer is the more reasonable, when compared with salaries received in the comparable districts.

That benchmark comparisons of salaries paid within the athletic conference between 1980-1981 and 1982-1983, at the BA Minimum, the BA Maximum, the MA Minimum, and the MA Maximum and the Schedule Maximum, support the final offer of the District.

That the Board's offer is the more reasonable in light of comparable dollar and percentage increases for 1982-1983, at the minimum and the maximum of the salary schedules.

That the Board's final offer for 1982-1983 would retain the historical ranking of the New London District, within the comparison group, including the maintenance of recent improvements in ranking; that there has been no basis established for the further improvements in ranking, inherent in the Association's final offer.

(3) That the Association proposed changes in the salary structure are inappropriate, and represent an attempt to gain in arbitration that which was not gained in the negotiations process. That the Association proposed and dropped, similar salary schedule changes in 1981-1982 negotiations, that the matter was not raised again in 1982-1983 negotiations until the Association's third and final offer to these proceedings.

That the Association has also failed to justify its request for the extension of longevity increases to all teachers after 13 years of service, rather than limiting such increases to those in the MA lanes. That such a change would reduce the incentive for teachers to continue their education and attain a Masters degree.

That arbitral authority supports the conclusion that the proponent of changes in the negotiated status quo has the burden of showing persuasive reasons for such a change. That the District has demonstrated no need for changes in salary structure and longevity, and that the Association has failed to provide persuasive reasons for the proposed changes.

(4) That the Employer's final offer approximates an 8.0% increase in total package costs for 1982-1983, while the Association's offer would entail a 10.8% increase the first year with an additional 9.1% increase for the 1983-1984 school year

That the Employer's total package costs for a single year is more appropriate in light of the depressed state of the economy and the size of settlements in comparable districts. That both athletic conference comparisons, and those involving consideration of directly contiguous districts, favor the position of the Employer.

(5) Despite the normal predominance of the comparison criterion, that the current depressed state of the economy justifies greater or even controlling weight being given to this consideration, and that considerable arbitral authority supports this conclusion. That the current state of the local and national economies favors the adoption of the final offer of the Employer by the Arbitrator, for various reasons:

(a) That businesses have been experiencing huge financial losses, and workers have been experiencing cutbacks in benefits, reductions in hours, and unemployment.
(b) That there has been a serious decrease in real earnings for the private, non-farm worker.
(c) That public and private sector employees alike, are becoming increasingly aware that the financial resources necessary to sustain high wage and benefits payments are no longer available; that this is apparent from a high percentage of low wage increases and/or wage freezes in both the public and the private sectors. That through the third quarter of 1982, private sector wage increases totalled 7.1%, while through the second quarter of 1982 public sector settlements had average first year wage increases of 7.6%, with first year total compensation increases totalling 8.1%.

(6) That the current depressed state of the economy in the State of Wisconsin supports the adoption of the final offer of the Employer; that these effects are particularly felt in the private manufacturing, and the farm sectors of the economy. As a result of these considerations, that a trend toward lower wage and benefits levels is apparent in the public sector, in New London, and in other nearby Wisconsin counties.

(7) That the interest and welfare of the public criterion, especially in light of the troubled economic times, clearly supports the final offer of the Employer; that the Association's final offer is excessive, while the Employer's offer strikes a reasonable balance between the interests of the taxpaying public and the needs of the teaching employees in the District.

(8) That the Board's offer guarantees that the teachers in the bargaining unit will receive wage and benefits increases, which exceed increases in the cost-of-living. That consideration of the cost-of-living criterion favors the adoption of the final offer of the Employer.

(9) That the Association's calendar proposal is unreasonable, and that its adoption would be contrary to the public interest in New London. That the Associaton position relative to the calendar defies a DPI mandate, attempts to preempt the discretion of the District relative to early dismissal days, and creates problems with scheduled County fair dates.

(10) That the one year proposal of the District is more reasonable than the multi-year proposal of the Association, primarily due to the unsettled economic times. That the Employer's offer is supported by the uniform practice in the athletic conference, avoids a dangerous economic gamble during these uncertain times, and is indicated also by the evolving nature of the Wisconsin public sector bargaining law.

In its reply brief, the District took issue with various of the arguments advanced by the Association, and emphasized or reemphasized the following arguments:

(1) That the Association's references to a prior offer made by the Employer in negotiations, should be rejected by the Arbitrator. That ample authority exists for the rejection of such evidence and arguments on public policy grounds.

(2) That the Association's brief contains various specious and misleading arguments, and ones which are insensitive to the local economy; that the inability to pay arguments of the Association, its posture with respect to local settlements and its treatment of cost-of-living considerations are inappropriate.

(3) That wage analysis information offered by the Association is incomplete, and should not be regarded as persuasive; that no persuasive basis for catch-up has been established, and that consistency in ranking and the 1982-1983 dollar and percentage increases in comparable districts have been ignored by the Association.

(4) That certain additional evidence has been distorted in the arguments of the Association:

(a) That the nine month work schedule of the teachers must be considered in any private sector comparisons.
(b) That full wage and/or package costs must consistently be used in comparisons.
(c) That such factors as actual resources, equalized values, per capita income, and size, have been ignored by the Association.
(d) That the Employer has proposed no change in longevity language.
(e) That the evidence is clear and unrefuted that all athletic conference districts have one year agreements.
(f) That the Association's calendar proposal does involve various changes in the status quo.

(5) That the Association has failed to address the critical nature of the contract duration question, and has not justified tying-up the contract language for a three year period; that the parties' prior practices regarding multiple year agreements were established prior to the current flood of declaratory rulings in the education area, and when the economy was in a more stable and predictable condition.

That the Board is not proposing the type of change in the duration clause which necessitates persuasive justification; to the contrary, that the single "change" proposed by the District must be weighed against the various changes proposed by the Association, including the salary structure index, the longevity changes, and the calendar changes.

POSITION OF THE ASSOCIATION

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

(1) That consideration of the bargaining history criterion strongly favors the adoption of the final offer of the Association. In this connection, it referenced the fact that the Employer's initial offer in February 1982, was for a multiple year agreement, with wage increases of 8.6% and total package increases of 9.5% each year; it contrasts this initial offer with the Employer's final offer, five months later, approximating 7.9% to 8.0% total package costs for a one year agreement. It submits that the Employer's pattern of offers falls outside the normal realm of

negotiations, and argues that the Arbitrator, in attempting to adopt the offer closest to that which the parties would have reached had they been able to do so, should select the offer of the Association.

(2) That the "gloom and doom" arguments of the Employer relative to the current state of the economy, do not reflect any inability to pay on the part of the District; and, for various reasons, that these considerations should not be accorded controlling importance in these proceedings.

(a) That various general private sector economic difficulties are not persuasive indicators of economic problems in the New London area, and that these private sector problems should have little bearing on the selection of the most appropriate final offer in the case at hand.
(b) That in addressing specific attention to the New London District, it should be noted that there is no decline in enrollment, the cost of providing the educational service is relatively low, the tax levy is relatively low, and the teacher/pupil ratio is relatively high.
(c) That various of the exhibits dealing with the economy in general, do not support the conclusions urged by the Employer.

(3) That economic conditions in the public sector are less serious than those in the private sector, but that economics may be given controlling public sector weight where there is an inability to pay question present. That no inability to pay question exists in New London, and that this factor must be controlling. Further,that the record does not establish that local farm conditions should be given controlling weight in these proceedings.

(4) That the Bay Athletic Conference should be utilized as the primary comparison pool, and that these comparisons support the position of the Association. That the persuasive value of the athletic conference comparisons is justified by the close geographic proximity, the relatively close average pupil membership and the numbers of FTE Classroom teachers, the closely comparable per pupil operating costs, the tax levy per average daily membership, and the general acceptability of athletic conference comparisons in the interest arbitration process. That various possible non-athletic conference comparisons should be regarded as secondary in importance.

(a) That the Association proposed revision of the salary index and reduction of steps in the bachelor lanes are supported by comparisons with the average salaries paid at various benchmarks.
(b) That the Associations proposed 1982-1983 adjustments in salary are justified by analysis of comparables and by arbitral precedent. That best and worst case analysis of the comparable districts at various benchmark levels, supports the position of the Association, and that a persuasive case is made for some catch-up.
(c) That the Association's longevity proposal is fair, reasonable, and supported by comparables. That all comparable districts except New London, have longevity in the Bachelor's lanes.
(d) That various other items of evidence in the record support the final offer of the Association.
(e) Despite the lack of comparable settlement data for 1983-1984, that the Association's offer is exactly what was offered by the Employer during preliminary negotiations; that the figure reflects what the parties would have voluntarily agreed-upon had they been able to do so.

(5) That the parties past practice and negotiations history support the adoption of a multi-year agreement, with limited reopeners in the third year. That the Board's proposal for

a one year agreement would entail a return to a practice abandoned by the parties almost ten years ago. That both parties began the current negotiations process with three year proposals, but that the Employer back-tracked to a one year proposal in its final offer.

(6) That the Association proposed calendar, maintains the 1982-1983 status quo for 1983-1984, and that it should be adopted by the Arbitrator. That only minor and necessary changes were introduced into the proposed teaching calendar.

(7) That an appropriate measure of cost-of-living increases is the non-metro urban statistical data published by the Bureau of Labor Statistics; that this index shows an increase of 10.3% in cost-of-living between August 1981 and August 1982.

That increases due to additional experience and education, should not be considered in evaluating the impact of cost-of-living. That, although the cost-of-living in Green Bay and/or Appleton are similar to those in New London, the salaries for those in the bargaining unit are significantly lower.

(8) In summary that various of the specific statutory criteria favor the adoption of the final offer of the Association.

In its reply brief, the Association emphasized or reemphasized the following arguments.

(1) That the various secondary comparables argued by the Association should be given significant consideration in these proceedings, in that they are regional districts of comparable size, some of which have been cited for certain purposes by the Board.

(2) That while dollar and percentage increase comparisons at various benchmarks are normally persuasive considerations, the negotiations leading to the arbitration have not been normal. That the Employer retreated from its own original wage proposal, which is essentially the same as the final offer of the Association.

(3) That a persuasive case has been made for adjustments in the index and in the longevity stipend, and that there is no basis for concluding that the attempt to do so by the Association is an abuse of the mediation-arbitration process.

(4) That the Association's final offer is reasonable in light of the necessity of dealing with certain wage inequities, and when viewed in light of comparable settlements; that it is only 0.9% higher over two years than the Board's original offer, while the Board's one year offer is 1.5% less than its original first year offer.

(5) That the Board's economic arguments based upon purported public interest considerations, are simply unpersuasive.

(6) That the District's arguments relating to the proposed 1983-1984 calendar are unpersuasive, in that the Association's proposal was patterned almost exactly upon the Board's 1982-1983 calendar; that the Association is proposing the status quo in this area, rather than any significant change.

(7) That no persuasive case has been made for a one year agreement, rather than continuation of the past pattern of multiple-year agreements.

(8) That the Association's final offer is closer to that which would have been reached by the parties had they been able to reach a negotiated settlement.

FINDINGS AND CONCLUSIONS

Initially, the Arbitrator must reflect upon the rather complete jobs done by each party in the presentation and in the argument of their respective cases. With one hundred and forty separate exhibits containing several hundred pages, and with both briefs and reply briefs filed by each party, it is clear that the Arbitrator is faced with a rather comprehensive record from which to make the appropriate final offer selection.

Preliminarily, it should be noted that the bulk of the parties' major arguments relate to economic considerations; while proposed adjustments to the salary structure, longevity benefits, contract duration and the 1983-1984 school calendar were in dispute, internal and external economic considerations and arguments dominated the proceedings.

In addressing attention to Association Exhibits #61 through #70 and to Employer Exhibits #3(a) through (s), it is quite apparent that the major economic impact of the settlement will be attributable to the basic adjustments to the salary structure. While the parties differed slightly in their costing computations, they are approximately $79,000 apart in their 1982-1983 salary structure adjustments offers; of this difference, only an approximate $6,000 is attributable to the Association's longevity proposal. Clearly, therefore, the major considerations before the Arbitrator are the economic implications arising from the selection of one of the basic wage adjustment proposals. In terms of the "non-economic items", it seems clear that the item of greatest importance to the parties is the contract duration dispute.

The Arbitrator is statutorily required to consider various arbitral criteria, prior to selecting the final offer of either of the parties. During the course of the proceedings, the parties emphasized various arbitral criteria in arguing the merits of their respective final offers; those criteria particularly emphasized by the parties, included various comparisons, cost-of-living considerations, the negotiations history of the parties, the recent and present state of the economy, and certain public interests considerations.

The Comparison Criterion

While the Wisconsin Statutes do not prioritize the various arbitral criteria, it is clear and generally accepted that the comparison criterion is the most widely argued and persuasive of the criteria. Additionally, it is well established that so-called intraindustry comparisons (in this case comparisons with other public school districts), are the most important of the various types of possible comparisons. The parties to arbitrations will normally argue on the basis of the comparisons which they find to be the most advantageous to their individual positions, and arbitrators frequently have to address the relative persuasive values of the various possible comparisons. In the case at hand, however, both parties agreed that the primary comparison group before the Arbitrator was composed of the member school districts of the Bay Athletic Conference; the athletic conference consists of the Ashwaubenon, Clintonville, DePere, Howard-Suamico, Marinette, New London, Pulaski, Seymour, Shawano and West DePere Districts. Seven of the school districts have reached settlements for the 1982-1983 school year, with two having also reached agreement for 1983-1984.

Both parties cited certain benchmark salary comparisons for the 1982-1983 school year, and certain similar comparisons which they felt favored the merits of their final salary offer. The data contained in Association Exhibits #31 and #32, and in Employer Exhibits #42 - #46 have been particularly examined by the Arbitrator, along with the addition of the 1982-1983 settlement data from the Clintonville and the Pulaski Districts.

Initially, it seems appropriate to compare the final salary offers of the parties against the average benchmark increases in the seven settlements within the conference; in this connection it is helpful to use all of the 1982-1983 benchmarks used by the parties in their exhibits.

BA Min	MA Min
Conf Avg = +$ 699.00	Conf Avg = +$ 771.00
Assn Ofr = +$ 884.00	Assn Ofr = +$ 956.00
Dist Ofr = +$ 732.00	Dist Ofr = +$ 791.00
BA +0 Max	MA +0 Max
Conf Avg = +$1109.00	Conf Avg = +$1362.00
Assn Ofr = +$1341.00	Assn Ofr = +$1597.00
Dist Ofr = +$1108.00	Dist Ofr = +$1316.00
BA +5	MA +5
Conf Avg = +$ 838.00	Conf Avg = +$ 960.00
Assn Ofr = +$1443.00	Assn Ofr = +$1616.00
Dist Ofr = +$ 824.00	Dist Ofr = +$ 925.00
BA +10	MA +10
Conf Avg = +$1010.00	Conf Avg = +$1145.00
Assn Ofr = +$2019.00	Assn Ofr = +$1630.00
Dist Ofr = +$ 955.00	Dist Ofr = +$1125.00
	Sch Max
	Conf Avg = +$1374.00
	Assn Ofr = +$1746.00
	Dist Ofr = +$1424.00

In combining the comparisons shown above, the average 1982-1983 increase within the conference is $1029.78, while the average increase offered by the District was $1022.22, and the average increase inherent in the Association's final offer was $1470.22. The 1982-1983 salary increase comparison data, therefore, shows that the final offer of the Employer coincides almost exactly with the average increase within the conference, while the final offer of the Association exceeds the conference averages by an amount well in excess of $400.00! This consideration clearly and strongly favors the final offer of the Employer.

What then of the Association's arguments that the comparison data supports the need for an extraordinary catch-up increase in 1982-1983?

Again utilizing the material from Employer Exhibits #42 through #46, and adding 1982-1983 settlement data from the Clintonville and the Pulaski Districts, the following comparisons exist between New London and the conference averages.

	'80-'81	'81-'82	'82-'83(D)	'82-'83(A)
BA Min	-$ 10.00	-$130.00	-$ 42.00	+$ 110.00
BA+0 Max	+$ 63.00	+$374.00	+$ 302.00	+$ 535.00
MA Min	-$253.00	-$238.00	-$ 234.00	-$ 124.00
MA+0 Max	-$391.00	+$ 81.00	+$ 233.00	+$ 514.00
Sch Max	+$ 86.00	+$611.00	+$1005.00	+$1311.00
Avgs	-$101.00	+$140.00	+$ 252.80	+$ 469.20

In looking solely to the material emphasized by the Employer, the District appears to be historically competitive at the various benchmarks, and its 1982 wage offer would place it significantly above the conference averages.

In Association Exhibits #31 and #32, however, 1981-1982 and 1982-1983 salaries are compared at the BA Minimum, the BA 5th Step, the BA 10th Step, the MA Minimum, the MA 5th Step and the MA 10th Step; these comparisons support different conclusions than those referenced immediately above. These data reflect the following New London salary benchmark differences against the conference averages.

	'81-'82	'82-'83(D)	'82-'83(A)
BA Min	-$119.00	-$ 42.00	+$110.00
BA 5th	-$761.00	-$588.00	+$ 31.00
BA 10th	-$874.00	-$729.00	+$335.00
MA Min	-$264.00	-$234.00	-$ 69.00
MA 5th	-$625.00	-$540.00	+$151.00
MA 10th	-$446.00	-$378.00	+$127.00
Avgs	-$514.83	-$418.50	+$114.17

On the basis of the above data advanced by both parties, it is apparent that those in the bargaining unit would progress an average of approximately $100.00 against the various benchmark averages, with the adoption of the District's final offer. While the employees would then be ahead of their athletic conference counterparts at certain of the benchmarks, they would remain behind at various other points in the salary structure. If the Association's final offer were adopted, those in the bargaining unit would move to a position substantially ahead of their average athletic conference counterparts, at the vast majority of the benchmarks.

The above figures support the conclusion that some degree of 1982-1983 catch-up could be justified, even beyond that included in the District's final offer, but the comparison data simply does not establish a persuasive basis for the significant relative improvements embodied in the Association's final offer.

In addressing the comparative merits of the Association's 1983-1984 salary proposal, it should be noted that no definitive conclusions can be drawn from the recent settlements in the Marinette and the Seymour Districts. While the settlement data for these districts were presented to the Arbitrator in a summary manner only, the 1983-1984 Seymour salary structure appears to incorporate increases ranging from 4.75% at the BA base to approximately 6.0% at higher levels; the 1983-1984 Marinette settlement reflects an approximate 8% salary structure increase. These figures cannot be regarded as a pattern, and they neither support nor detract from the merits of the Association's second year proposed increase of 7.0% at the BA and the MA bases.

In briefly addressing the comparative merits of the Association's longevity proposal, the Arbitrator will reference the fact that the District is somewhat out of step with the athletic conference practice of offering some measure of longevity to teachers at the Bachelor levels. As referenced above, however, the parties are only an approximate $6,000 apart on this item for 1982-1983, and it cannot be assigned the same level of economic importance as the more comprehensive overall salary increase and indexing differences of the parties.

Finally, the Arbitrator will observe that both parties have offered considerable additional comparison data relating to other city employees, other school districts, and other public and private sector settlements. While this information has been carefully examined and considered by the Arbitrator, the athletic conference comparisons discussed above, have been found to be the most persuasive comparisons.

The Negotiations History Criterion

While the earlier referenced portion of the Wisconsin Statutes does not reference negotiations history considerations among the specific arbitral criteria, this factor is frequently of significant importance in the resolution of interest disputes; certainly the factor falls well within the general coverage of paragraph (h) of Section 111.70(4)(cm)(7).

In support of its position in this dispute, the Association cited the often advanced principle that the proper role of an arbitrator should be to put the parties in the same position they would have reached, had they been able to reach a negotiated settlement. It referenced the fact that the Employer's initial offer during negotiations was for a multi-year agreement with wage increases closely akin

to those contained in the Association's final offer. It argued that the "normal" negotiated settlement typically lies between the initial offers of the parties, suggesting that the Employer's retreat from its initial offer brings its final position outside the reasonable expectations of the parties; for this reason the Association urges arbitral rejection of the position of the Employer, and the adoption of the Association's final offer.

The Employer urged the Arbitrator to reject the negotiations history arguments of the Association, and to disregard any prior settlement offers of the parties on public policy grounds. If arbitrators are going to use offers of settlement against the proponent, argued the District, the practice will militate against the ability of the parties to reach voluntary settlements.

Both parties have offered theoretically valid arguments in connection with the negotiations history criterion, but the application of the principles inherent in the arguments, depend upon the specific fact situations before an arbitrator.

The Employer's objections have merit in the typical grievance arbitration situation, where evidence of preliminary offers of settlement by either party are routinely rejected by arbitrators. Settlement offers in interest disputes which occur in mediation, or others which immediately precede the interest arbitration process, are also normally disregarded by arbitrators. In a situation such as the one at hand, however, where the offer was publicly extended and remained on the table for a six month period, there is no persusive basis for rejecting it from arbitral consideration.

The degree of persuasive value of the negotiations history will vary with circumstances. If the events had occurred within a very restricted time frame, or if the final employer offer had been seriously out of step with comparables, or if there had been evidence of bad faith, the negotiations history factor could be quite persuasive. In the situation at hand, however, the change took place after an extended period of time, during which time the state of the economy and the pattern of settlements were evolving and changing considerably. Indeed, the ultimate settlement offered by the Employer immediately prior to the mediation-arbitration process, was quite close to the pattern of settlements within the athletic conference.

If the parties decide to reach an early settlement, each is taking their chances upon subsequent events. The Union may seek too little in an early settlement and live to regret the decision; alternatively, the Employer may offer too much, and may regret the settlement at a later time. During the pendency of negotiations in the situation at hand, the rate of inflation was coming down, the economy was beset with declining economic indicators, and the cost of labor settlements within the athletic conference, the City, the State, and the Nation were declining. Under these circumstances, a rational basis has been presented for the Employer's rather unusual decision to modify its earlier proposal by reducing its final offer.

In the situation at hand, the Union rationally expected that the Employer's initial offer would set a floor under the ultimate settlement, and this assumption would normally be a valid one. Changed circumstances subsequent to the initial negotiations, however, invalidated the Association's early assumption, to its possible disadvantage; in this connection, it must be noted that the Legislature specifically directed arbitrators in paragraph (g) of Section 111.70 (4)(cm)(7), to consider changes in the various criteria "...during the pendency of the arbitration proceedings."

Based upon the above, the Arbitrator has preliminarily concluded that the evidence relating to the negotiations history was properly admitted into the record, and appropriately argued by the Association. For the reasons discussed above, however, it cannot be assigned definitive importance in the resolution of the matter at hand.

The State of The Economy and the Interests and Welfare of the Public Criteria

Public interest considerations and the state of the economy were largely argued on an interrelated basis by the parties. The Employer referenced and relied upon the undisputed decline in the economy, citing the interest and welfare of the members of the taxpaying public, while the Association cited the District's undisputed ability to pay, and the obvious and undisputed public interests inherent in an effective educational system.

The significance of the state of the economy criterion varies considerably with individual circumstances; the factor may be the dominant consideration in an arbitral decision, or it may merely be one of several factors considered in arriving at a decision. If, for example, a school district is unable to pay and is bereft of revenue and revenue sources, an arbitrator would normally have no choice but to reject demands for any increases in wages and benefits; this would be true regardless of such other factors as comparisons, negotiations history, cost-of-living considerations, etc. On the other hand, where a community has the ability to pay and/or the ability to generate additional revenue, economic conditions would not normally justify a sub-standard labor agreement.

In applying the above considerations to the situation at hand, certain preliminary conclusions are in order. The District has the ability to fund the increases in wages and benefits demanded by the Association; indeed, it certainly would not have made its initial offer of settlement if it lacked the ability to pay. Accordingly, the District cannot properly be excused from a competitive labor agreement as indicated by the arbitral criteria referenced earlier. On the other hand, the District's ability to pay cannot properly be considered as requiring it to accept a higher labor settlement, without regard to the various statutory criteria.

While the state of the economy has had a considerable impact upon the size of comparable settlements, and is already reflected in the comparisons addressed above, this factor and the related public interest arguments cannot be assigned definitive independent significance in the situation at hand. The recent and current state of the economy has had a significant impact upon the nature and the size of both public and private sector labor settlements; this factor has had its primary recognition, however, in the comparison criterion discussed above.

The Cost-of-Living Criterion

This factor became one of the most significant of the arbitral criteria during the recent period of rapid escalation in prices. Due to the recent decline in the rate of inflation over the past year and one-half, cost-of-living considerations have declined somewhat in their impact upon the interest arbitration process.

Both parties cited certain evidence in support of arguments that cost-of-living considerations favored the adoption of their final offer. In Employer Exhibits #32 and #34, the District cited the U.S. City Average Consumer Price Index Progression for 1982 of 3.9%, and Personal Consumption Expenditure data showing a 5.8% rate of increase as of the end of the third quarter of 1982. The Association cited Non-Metro Urban Index figures purporting to show a 10.3% rate of annual inflation as late as August of 1982.

Without detailing the relative merits of the various methods of measuring inflation and their impact upon those in the bargaining unit, the Arbitrator will merely reference the fact that none of the various indexes are completely applicable to the situation at hand, and none of the data can be directly translated into salary adjustment equivalents. Certainly, the rate of inflation falls below the overall percentage increase demanded by the Association for 1982-1983, and the projected rate of inflation would also fall below the projected second year increase in the Association's offer for 1983-1984.

On the other hand, there is nothing in the record to definitively establish that the rate of inflation since the parties last went to the table is below the overall increases proposed by the Employer for 1982-1983.

The Arbitrator has preliminarily determined that the offers of each of the parties reasonably reflect current cost-of-living considerations. Due to the general nature of the data and arguments presented by the parties, the Arbitrator is unable to ascribe definitive importance to the cost-of-living criterion, in the resolution of the dispute at hand.

The Non-Economic Items

Disregarding for the moment, other aspects of the final offers of the parties, it is appropriate to consider the relative merits of the Employer's one year offer for the 1982-1983 school year, versus the Association's three year offer with a wages and benefits reopener for the 1984-1985 school year.

Despite the explanations offered by the Employer, the Association's multiple year offer is supported by the negotiations history of the parties, in that such agreements have been favored by the parties in the past. It may well be that other members of the athletic conference, including the District, have decided that their best interests currently lie in the negotiations of one year agreements, but this does not eliminate the persuasive value of the practices of the parties in years past. Additionally, it should be noted that the purported three year agreement is really only a two year agreement on language and a one year agreement on salary and benefits, in that the first of the three years is the 1982-1983 academic year which has been substantially completed at this time.

What then of the Employer's arguments relating to the unstable and unpredictable nature of the economy, and the potential changes in the interpretation and application of the law as reflected in the current backlog of requested declaratory rulings relating to educational bargaining units? First of all, it must be noted that both parties share the risk of changes in the interpretation and application of the law; while the Employer feels that it would derive a potential advantage from an almost immediate return to the bargaining table, it is difficult to regard such a rationale as a persuasive basis for rejecting a multiple year agreement.

It is interesting to note that multiple year agreements with reopeners, arose as a result of the desire by parties to continue stable collective bargaining relationships while, at the same time, insulating both parties against the impact of uncertainties in the economy. Certainly the Association's offer of what really amounts to a two year contract with a wages and benefits reopener during the second year, is a reasonable proposed accomodation to the uncertain state of the national and local economies.

In looking solely to the issue of contract duration, the final offer of the Association is favored over that of the District. The Employer's proposal for a one year agreement for the 1982-1983 school year and an immediate return to the bargaining table, cannot be justified solely on the basis of what other districts may have done during the past year; the Association's suggestion of what amounts to a two year working agreement, with a wages and benefits reopener during the second year is favored by various considerations, including the parties' negotiations history.

Finally, it will merely be indicated that the Arbitrator is unable to ascribe major importance to the dispute of the parties relative to the proposed 1983-1984 school calendar. The calendar, as proposed, substantially corresponds with the prior status quo, and many of the Employer's arguments raise theoretical rather than practical objections. If the Association's final offer were favored on other grounds by the Arbitrator, the calendar proposal would not pose a major impediment to the adoption of the total offer. In the alternative, the calendar proposal does not independently support the merits of the Association's final offer.

The Selection of the Appropriate Final Offer

Based upon a careful consideration of all of the statutory criteria, including those addressed in greater detail above, the Impartial Arbitrator has reached the following summarized preliminary conclusions with respect to the impasse items.

(1) The 1982-1983 salary offer of the Employer is strongly supported by the athletic conference comparisons at various salary structure benchmarks; the Employer's final salary offer closely corresponds with the 1982-1983 settlements within the conference.

(2) Negotiations history considerations cannot be assigned definitive importance in the selection of the more appropriate wage offer.

(3) Except as the considerations are already reflected in the comparison data, the state of the economy and the interests and welfare of the public criteria cannot be assigned independent definitive importance in the resolution of the matter before the Arbitrator.

(4) Due to the general nature of the data and the arguments presented by the parties, the Arbitrator is unable to ascribe definitive importance to the cost-of-living criterion in the resolution of this dispute. The offers of each party reasonably reflects current cost-of-living considerations.

(5) In looking solely to the issue of contract duration, the Association's multi-year proposal is favored by various criteria, including consideration of negotiations history and past practice.

(6) The Association's 1983-1984 school calendar proposal cannot be assigned definitive weight in these proceedings.

In light of the greater importance of the economic items contained in the respective final offers of the parties, the Arbitrator has preliminarily determined that the final offer of the Employer is the more appropriate of the two final offers.

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 final offer of the School District of New London, herein incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

June 29, 1983