ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

RIPON SCHOOL DISTRICT

And

RIPON TEACHERS ASSOCIATION

Interest Arbitration
Case V No. 30326
MED/ARB - 1897
Decision No. 20103-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

February 28, 1983
March 7, 1983
Ripon, Wisconsin

Appearances

For the Employer: WISCONSIN ASSOCIATION OF SCHOOL BOARDS
By William G. Bracken
Membership Consultant
P. O. Box 160
Winneconne, WI 54986

For the Association: WINNEBAGOLAND UNISERV UNIT-SOUTH
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BACKGROUND OF THE CASE

This is a statutory mediation-arbitration proceeding between the School District of Ripon, and the Ripon Teachers Association, with the matter in dispute the 1982-1983 salary structure covering those in the bargaining unit, and the amount of salary increase to be added to the salary structure.

After preliminary negotiations between the parties had failed to result in a voluntary settlement, the Association, on September 3, 1982, filed a petition requesting mediation-arbitration, pursuant to Section 111.70(4) of the Wisconsin Statutes. After completion of a preliminary investigation, the Commission, on November 22, 1982, issued certain findings of fact, conclusions of law, certification of the results of the investigation, and an order requiring mediation-arbitration of the dispute. On December 8, 1982, the Commission appointed the undersigned to hear and decide the matter pursuant to the Wisconsin Statutes.

A public hearing took place in Ripon, Wisconsin on the evening of February 28, 1983, after which preliminary mediation took place between the parties and the undersigned. After a reasonable period of mediation had taken place without settlement, the Mediator-Arbitrator determined that it was appropriate to proceed to final and binding arbitration, and the parties were so notified on the evening of February 28, 1983.

An arbitration hearing took place on March 7, 1983, 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 submission of post-hearing briefs, after which the hearing was closed by the Arbitrator on April 19, 1983.

THE FINAL OFFERS OF THE PARTIES

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

(1) An increase of $650.00 per year at the BA Base, bringing the salary at this level to $12,900 per year, exclusive of $100.00 per year in auxiliary pay.

(2) Experience increments for BA and MA lanes of $454.00 and $530.00 per year at steps 0-5 of the salary structure, $535.00 and $611.00 per year at steps 6-10, and $631.00 and $717.00 per year at step 11 and above.

(3) Training lane increments at Step 0 of the structure of $235.00 per year, between the BA and the BA +12, the BA +12 and the BA +24, the MA and the MA +12 and the MA +12 and the MA +24 lanes; lane increments of $560.00 per year between the BA +24 and the MA lanes at step 0 of the structure.

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

(1) An increase of $900.00 per year at the BA Base, bringing the salary at this level to $13,150 per year, exclusive of auxiliary pay.

(2) Experience increments for BA and MA lanes of $465.00 and $540.00 per year at steps 0-5 of the salary structure, $550.00 and $620.00 per year at steps 6-10 of the structure, and $650.00 and $725.00 per year at Step 11 and above.

(3) Training lane increments at Step 0 of the structure, identical to those proposed by the Employer, with changes above that level as occasioned by the differences in wage adjustments referenced above.

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 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, 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 its final offer is the more appropriate of the two before the Impartial Arbitrator, the District emphasized the following preliminary and statutory arguments.

(1) It emphasized the agreement of the parties that the athletic conference schools provide appropriate arbitral comparison data for use in these proceedings; additionally, it argued that primary reliance should be placed upon these data as opposed to other comparisons recommended by the Union.

(a) It argued that necessary data such as numbers of teachers, equalized valuation information, and annual school costs were available for conference schools, but not for various of the alternative comparisons urged by the Union.

(b) It submitted that any comparisons agreed to be valid by both parties should be accorded greater weight in the arbitration process.

(c) It urged that the Union had presented no persuasive evidence to justify comparison of the Ripon District with either similarly size districts on a statewide basis, or with CESA 13 districts in general. It submitted that use of such comparisons would involve significant variations in labor markets, state aids, annual school costs, and proximity to large urban centers; the lack of specific data in these respects, it argued, renders the proposed comparisons meaningless.

(d) It submitted that various of the comparisons urged by the Union involve multi-year contracts, which settlements were reached under different circumstances than those facing negotiators in 1982; it urges that comparison data can only be given primary weight, when the settlements reflected in the data were reached within the same time frame and in consideration of the same economic climate. It cited substantial arbitral authority in support of these arguments.

(e) It argued that arbitrators have generally rejected attempts to widen the scope of comparability beyond reasonable limits, generally as reflected in what the parties themselves have utilized in their past negotiated settlements. It cited substantial arbitral authority in support of this argument.

On an overall basis, it emphasized the various common factors within the athletic conference, such as enrollment, numbers of teachers, pupil-teacher ratios, annual school costs per student, tax rates, state aids, portions of schools cost assumed locally, labor market considerations, and the overall community of interests.

(2) It submitted that the Ripon School District has an auxiliary pay policy, which should be included in the salary comparisons. In this connection, it referenced the fact that each teacher in the bargaining unit receives $100.00 per year for unspecified additional duties, which auxiliary pay is added to each step in the salary schedule in accordance with the provisions of the 1980-1982 mast agreement; it argued that the negotiations history supports the conclusion that the auxiliary pay was intended by the parties to be an integral part of the teacher salaries.

(a) It argued that the auxiliary pay is separate and distinct from other specified extra-curricular pay provisions under the agreement, and submitted that it fell within the overall compensation criterion of the statute.

(b) It emphasized that while auxiliary pay was not included in the computation of retirement pay contributions, that this approach is identical to that undertaken with respect to compensation for professional duties provided in connection with longevity pay, extended teaching contracts, summer school teaching, and research and development days pay.

(3) It argued that an analysis of the total costs of the two final offers, clearly favored the adoption of the final offer of the Employer rather than that of the Union. In this connection, it cited the agreement of the parties that the final costs of the Employer offer were between 8.34% and 8.68%, while the final costs of the Unions offer reflected an increase of 10.1%.

(a) It submitted that the former staff moved forward method of costing, offers the best comparison, rather than consideration of any supplemental comparison data which would take into consideration fluctuations in the size of the teaching staff; it argued that a reduction from 111.64 FTEs during the 1981-1982 year to 107.44 FTEs during the 1982-1983 school year should not be considered in comparing the relative costs of the final offers.

(b) It urged that the cost comparison methodology urged by the Employer is consistent with that favored by other arbitrators.

(4) It argued that the Arbitrator should reject consideration of prior settlement offers made at an earlier investigative session, urging that the chilling effect upon future negotiations necessitates rejection of such information from consideration.

In connection with various of the specific arbitral criteria referenced in the Wisconsin Statutes, the Employer emphasized the following considerations:

(1) It argued that the stipulations of the parties criterion favors the Employer's position, in light of the wide scope of tentative agreements already reached between the parties in these negotiations. In this connection, it submitted that negotiated changes in the layoff procedures, the grievance procedure, education and child-bearing leaves, frequency of paychecks, increases in extra-curricular salaries, increased Employer contributions for health and dental insurance, a new long term disability plan, new internal substitution pay, and improved tuition reimbursement provisions favor the final offer of the Employer.

It contrasted the parties' actions in maintaining and in improving current benefits, with the currency of take-aways and union concessions in many contemporary bargaining contexts.

(2) It urged that the interests and welfare of the public criterion favored the adoption of the final offer of the Employer. In this connection, it cited the severity of the current recession, submitting that a 10.1% increase was out-of-line with economic conditions. In the same connection, it cited various specific indications of the economic difficulties of the State and the Nation, including the rates of business failures, the influx of concession bargaining, the declining size of wage increases in the private sector, prospects of a lagging U.S. economy until well into 1983, recent declines in the GNP, a low rate of utilization of productive capacity in the Country, a high rate of unemployment, and recent record high interest rates. It submitted that the Wisconsin economy had been harder hit in many respects than the Nation as a whole, and cited many specific factors in the State's economy.

It argued that the School Board cannot, in all good conscience, burden local tax payers with additional increases to cover a double-digit increase in wages and benefits in the bargaining unit. It cited Ripon's reliance upon the farm community, and referenced the specific impacts of the state of the economy upon farmers.

It submitted that arbitrators are increasingly recognizing the state of the economy in their interest arbitration awards, and it cited excerpts from several such awards. Indeed, it submitted that the interest and welfare of the public criterion has become the most important single factor in many such proceedings.

(3) It argued that consideration of the comparison criterion favors the adoption of the final offer of the Employer, in that various comparisons within the eight school group comprising the athletic conference, show a favorable comparison for Ripon teachers, indicate no erosion in earnings over the past four years, and show no need for any extraordinary catch-up.

(a) It urged that review of those districts which have already settled for 1982-1982, indicates that adoption of the Board's offer would maintain Ripon's relationship with other conference schools; conversely, it urged that adoption of the Union's offer would result in an unjustified leap in the salary rankings by Ripon teachers.

(b) It submitted that adoption of the Union's final offer woudl place the District in the position of being the only district to settle at the double digit level in 1982-1983, and would place the settlement significantly above the comparative settlement pattern; it argued that the Employer's final offer is comparable on either an overall percentage increase basis, a dollar increase per teacher basis, or when addressing the comparison on a salary schedule benchmark basis.

(4) It argued that consideration of the cost of living criterion favors the adoption of the final offer of the Employer.

(a) It submitted that the Board's offer exceeds the CPI increases between August of 1981 and 1982 by a full 2.5%, thereby insuring that the teachers would not suffer from reduction in spending power.

(b) It urged that a current and ongoing decline in the rate of inflation indicated the reasonableness of the Employer's final offer; it argued that the Union simply cannot justify a 10.1% increase, at a time when inflation is running at a modest 3% to 6% rate.

(c) It urged that the Union's arguments overstate the impact of inflation in the past, in that it has used a static view of teacher salaries, rather than considering movement through the salary structure by the teachers. Assuming adoption of the Board's offer, it argued that any teacher in the BA or the MA lane over the past ten years, with no additional credits, would have received salary increases totalling 143% or 148% respectively, against an approximate 130% increase in the CPI.

(d) It submitted that consideration of the CPI should not extend to a point prior to the last time that the parties went to the bargaining table; further, it argued that the imperfect nature of the CPI should be considered in the adoption of the final offer in these proceedings.

(5) It submitted that consideration of the overall compensation and other benefits criterion favors the adoption of the final offer of the Employer. It urged that an examination of the current fringe benefits, job security provisions, and other contract provisions, show an extremely competitive package, and indicate that Ripon teachers currently enjoy a rewarding and secure working environment.

(6) It argued that various other general considerations favored the adoption of the Employer's final offer; specifically, it cited the laws of supply and demand, the weak economic front, high taxes, and the reduced income of taxpayers. It urged that the Board's offer strikes a reasonable balance between the interests of the teachers and those of the other taxpayers.

POSITION OF THE ASSOCIATION

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

(1) Preliminarily, it submitted that the negotiated auxiliary pay benefit of $100.00 per year, should not be considered by the Arbitrator as tantamount to an additional $100.00 per cell in the salary schedule.

(a) It argued that auxiliary pay was agreed-upon in recognition of teacher services performed on an extra-curricular and/or an extra duty basis, and was unrelated to the teaching responsibilities which are recognized and addressed in the salary schedule.

(b) It urged that the addition of the auxiliary pay to the salary schedule, for final offer consideration purposes, would improperly distort the results in favor of the Employer.

(c) It submitted that the Employer's stance relative to auxiliary pay was inconsistent with the contract language, and was also inconsistent with the parties' negotiations history on this benefit.

(d) It submitted that auxiliary pay has never been added to the salary schedule, and that the Employer does not pay the employee portion of the STRS contributions on this benefit; it cited the same STRS practice in connection with other extra-curricular and extra duty pay amounts.

(e) It submitted that the Employer's arguments relative to inclusion of auxiliary pay was a blatant attempt to gain advantage, without regard to the bargaining process and the bargaining history.

In consideration of the above, the Association requests that the $100.00 per year auxiliary pay be deducted in examining and considering various Employer exhibits and arguments.

(2) It urged various specific arguments in support of the suggested conclusion that consideration of the public interest and the ability to pay criteria favored the position of the Association.

(a) It urged that the composition of the group which appeared at the public hearing of February 28, 1983, necessitate the Arbitrator not according measurable weight to their comments and recommendations; in this respect, it referenced the argument that only one citizen from the City of Ripon spoke at the hearing.

(b) It alleged the existence of a trend of Ripon teacher salary decline from recent average benchmark levels, suggesting that the public interest is best served by a reversal of this trend.

(c) It emphasized that the Arbitrator is not faced with any arguments or evidence relating to an ability to pay question.

(3) It argued that consideration of the comparison criterion favored the position of the Association, suggesting that the Arbitrator should consider comparisons within the East Central Athletic Conference, among similarly sized school districts within the State of Wisconsin, and among CESA 13 school districts.

(a) It urged the fact that the Employer had chosen to emphasize only comparisons within the athletic conference, submitting that this practice had not been agreed-upon by the parties, and arguing that such comparisons were too narrow for exclusive use in these proceedings.

(b) It urged that consideration of CESA 13 districts offered more valid comparisons, due to the larger number of such settlements, and the close proximity of the districts to Ripon. It urged that the seven settlements in this group were more persuasive than mere guesswork and conjecture as to prospective settlements within the athletic conference.

(c) It argued that persuasive comparisons also existed among similar sized Wisconsin districts, varying between 20 FTEs above and below Ripon. It submitted that such statewide consideration also offered more valid results than mere consideration of the four athletic conference settlements.

(d) In addressing the relative merits of the two final offers versus average salaries at various benchmarks within the conference, for those districts which have settled, it cited the following considerations:

-The Employer's offer would decrease bargaining unit salaries versus the benchmark averages, at the BA Min, BA +7 and BA Max, while showing slight increases at the MA Min, the MA +10, the MA Max and the Schedule Maximum.

-The Union's offer would afford relative improvements in salaries for those in the bargaining unit in all benchmark categories.

-Over 60% of bargaining unit teachers fall in the BA categories on the salary schedule, thus illustrating a further negative impact in the adoption of the Employer's final offer.

(e) In considering the relative merits of the two final offers against benchmark comparisons within the CESA 13 group, the Union referenced the fact that the Employer's final offer would reflect both a dollar and a percentage decline at each benchmark, while the Association's final offer would result in percentage increases at all levels, and dollar increases at three of the five benchmarks. It additionally submits that the final offer of the Employer would result in a decline in ranking at three of the five benchmark levels.

(f) In considering the two offers versus similarly sized districts throughout the State of Wisconsin which have settled for 1982-1983, the Association argued that its offer was clearly supported. In this connection, it submitted that the Employer's offer would result in sub-standard salaries at all benchmark levels, while the Association's offer would result in slight average dollar advantages for Ripon teachers at six of seven benchmarks.

(4) It argued that the adoption of the Association's final offer was indicated by consideration of the cost-of-living criterion.

(a) It argued that there had been erosion in purchasing power at all seven benchmark levels, between the 1978-1979 and the 1981-1982 academic years, submitting that this erosion amounted to between $1,351 and $2,299 per year; it argued that the Board's offer would continue the decline, while the Association's would somewhat reverse the trend.

(b) It submitted that the recent moderation in the rate of inflation should allow Ripon teachers to "catch up" a bit on the past salary losses to inflation.

(c) It submitted that the parties are only a total of $46,595 apart in their final offers, or approximately 1.8% of total 1981-1982 costs; it submits that this difference is not significant on an overall basis, due to the Employer's ability to pay, and that adoption of the Association's offer is needed to afford some measure of catch-up.

(d) It argued that the Employer furnished cost of living data, which also considers assumed teacher progression at the BA and MA lanes, should be disregarded; it submits that not enough data is presented to allow validation of either the figures or the suggested conclusions.

(5) It submitted that the Employer's arguments relative to the overall level of compensation criterion were not persuasive. In this connection, it submitted that the data submitted by the Employer showed merely that teacher benefits in Ripon were generally comparable to those received in other districts. It urged that the adoption of LTD benefits during current negotiations merely brought the District into line with six of the eight conference schools, and was introduced at a cost of only $5,333 per year, based upon adoption of the Association's final offer.

(6) It urged that changes in circumstances several months after negotiations by the parties, should not properly operate to either delay or to burden the mediation-arbitration process.

(7) It argued that the other factors criterion of the Statute, should not be utilized to address the vast quantities of material presented by the Employer relative to the state of the economy in general; in this connection, it urged the conclusion that neither the City of Ripon nor its taxpayers are in any different positions than their counterparts in other communities. It additionally emphasized the fact that there is no ability to pay issue in the case at hand.

FINDINGS AND CONCLUSIONS

The major statutory criteria addressed by the parties in their arguments includethe various comparisons of the District with other school districts, the current state of the economy as it bears upon the interest and welfare of the public, certain cost of living considerations, the overall level of compensation currently received, and miscellaneous catch up arguments introduced in connection with various of the criteria. The parties are also in dispute with respect to the salary significance of the $100.00 per year auxiliary pay benefit, which is applicable to all reachers within the bargaining unit. For clarity purposes, the auxiliary pay considerations will be preliminarily addressed, after which each of the various arbitral criteria will be discussed.

The Status of Auxiliary Pay

The parties disagreed on the significance of the fact that all of the teachers in the unit receive $100.00 per year in auxiliary pay, with the Employer arguing that this benefit is tantamount to a $100.00 increase at all steps in the salary schedule, and the Association taking issue with this position. The basis for the dispute is the Employer's utilization of the added auxiliary pay in various of its exhibits, and in its arguments comparing salaries paid in the bargaining unit with those paid in other districts.

Although the role of an interest arbitrator normally does not include the interpretation and application of the parties' collective agreement, that is essentially what is necessary in connection with this dispute; in essence, the Arbitrator is being asked to determine the intent of the parties in connection with the auxiliary pay benefit. The benefit has been in existence for a period of several years, during which time the parties have treated it as separate and distinct from the base salary itself; as argued by the Association, the intention of the parties to accord separate treat-

ment to the benefit is quite apparent from the two following considerations:

(1) The salary structure is included in Appendix I of the agreement, where the parties separately list the base salaries and the STRS contributions at each step, with the auxiliary pay listed after the computation of the retirement contributions.

(2) The underlying rationale of the auxiliary pay benefit is described in Appendix III, where the parties describe it as payment for various duties "..not connected with the regular classroom assignment nor specifically itemized in the teaching assignment."

Although Appendix III goes on to provide that the amount is included in the payment made to the teacher at each step in the salary schedule, it is apparent to the undersigned that there was never any mutual intention on the part of the parties to fold it into the salary rates for all purposes. The non-payment of retirement benefits is alone sufficient to justify the conclusions that it is improper to consider the $100.00 per year as tantamount to a $100.00 per cell increase in salary at all levels. In this connection, it should also be noted that the Employer could have proposed in negotiations, that the auxiliary pay be discontinued, and the $100.00 added to the salary structure; not having done so, it is simply inappropriate to allow the $100.00 to be unilaterally added to the salary schedule for comparison purposes in these proceedings.

The fact that the benefit cannot properly be added to the salary schedule by the Employer does not, of course, detract from the fact that it is part of the overall compensation package currently received by those in the bargaining unit, and it falls within the interest arbitration criteria referenced in the Statute.

The Comparison Criterion

While the legislature did not see fit to indicate any priorities of relative importance among the various arbitral criteria in the Statute, there is no doubt that comparisons are the most extensively used and the most persuasive factors in resolving interest disputes. The mere enunciation of the importance of comparisons does not, however, resolve the question of which comparisons are the most important and persuasive. Predictably, each party normally presents and emphasizes those comparisons which it regards as being most favorable to its position.

(1) The Employer argued that the only mutually agreed-upon comparisons were those within the East Central Athletic Conference. Citing various other factors contributing to the comparability of this group of schools, it urged major, if not exclusive consideration of the athletic conference comparisons.

(2) The Association argued that a broader group of comparisons is appropriate, citing salary schedules and settlement data in connection with groups composed of CESA 13 schools, and statewide comparisons with districts similar in size to Ripon Schools.

What of the arguments of the Association that the historically used comparisons should be expanded to include the two additional groups? In arguing against the consideration of these two groups, the Employer argued the lack of specific evidence of comparability as between the Ripon Schools and thos schools in the two additional comparison groups urged by the Association. In support of its position, the District cited excerpts from the decisions of various arbitrators, including the following thoughts of the undersigned in a prior decision. 1./

> "...it is clear that a Wisconsin Interest Arbitrator has the basic responsibility to adopt the final offer which reflects what the parties would have agreed upon, had they been able to do so. In so doing, the neutral should not lightly disregard or cast aside the comparisons historically selected and relied upon by the parties; a neutral does, however, have both the responsibility and the authority to innovate and/or to look beyond traditional comparisons, when a persuasive case is made for such action. It is obvious from the

record, that the Association would prefer a statewide application of the comparison criterion, and it feels that such a comparison would favor its position in this dispute; without undue elaboration, however, the Arbitrator will reference the conclusion that no persuasive basis has been established for giving primary consideration to comparisons beyond the parameters of the State Line Athletic Conference."

Without additional, detailed consideration of the individual circumstances of the various districts, and without information relative to when the settlements were reached, the CESA 13 and the proposed statewide comparisons must be considered far less persuasive than those within the athletic conference. Certainly, there has been no persuasive case made for the wholesale addition of the two new comparison groups; the Arbitrator will merely add at this point that a persuasive case might more easily have been made for the selective inclusion of various individual districts which were found to be significantly comparable to the Ripon District.

Implementation of the Board's final offer would result in salary increases very close to those within the athletic conference, while selection of the Association's final offer would place the settlement somewhat above those of comparable conference schools.

(1) In addressing the matter from the persuasive perspective of average dollar and average percentage increases within the conference, the Employer's brief at page 37, references dollar decreases of $31.00 and $87.00 at the BA base and the BA Max, with dollar increases of $12.00, $33.00 and $35.00 at the MA base, the MA max, and the Schedule Maximum. The Board's final offer was within three tenths of one percent of the average 1982-1983 increase within the conference.

The final offer of the Association would be above the average dollar increases at all of the above referenced conference benchmark levels, with the amounts ranging from $219.00 at the BA base to $412.00 at the Schedule Maximum. The Association's final offer ranged from 1.7% to 2.3% above the average settlement figures within the conference.

(2) In addressing the matter from the perspective of historical dollar differentials at page 17 of its brief, the Association dealt with seven benchmarks. In reviewing the Employer's offer, it referenced decreases in dollar differentials versus the average 1982 conference settlement at the BA Min, the BA +7 and the BA Max, with increases at the MA Min, the MA +10, the MA Max, and the Schedule Maximum.

The Association's final offer would offer relative salary improvements at all benchmark levels, reaning from $175.00 to $322.00!

In considering the athletic conference comparisons, the Arbitrator must conclude that the 1982-1983 settlement and final offer data significantly favor the adoption of the final offer of the Employer. The final offer of the Association would be significantly higher than those of the other athletic conference districts, while the Employer's offer is very close in terms of both percentages and dollar increases, at the various benchmark levels addressed by the parties.

The Union addressed certain historical salary relationships within the athletic conference, which it argued indicated an erosion of the relative salary positions of those in the bargaining unit at certain benchmark levels; in so doing, it traced changes in relative salaries between 1978-1979 and 1981-1982. The ability to catch-up is frequently advanced and argued in arbitrations, but it must be recognized that the parties are discussing settlements reached through their own give and take negotiations in the past. The Arbitrator has no unqualified charter to review the basis for the past negotiated settlements of the parties and, accordingly, it is a much more formidable task to establish the need for an extraordinary catch up increase, than to merely establish the basis for a competitive increase for the current year. The difficulty in establishing the basis for extraordinary increases is also significantly more difficult at the present time, due to the difficult economic situation discussed below.

Based upon the above, the Impartial Arbitrator has preliminarily concluded that consideration of the conference comparison data favors the selection of the final offer of the Employer, rather than that of the Association. While the data from the CESA 13 and the statewide groups appear to favor the position of the Association, there is insufficient evidence of district comparability, and no indication as to the timing of various of the negotiated settlements.

Cost of Living Considerations

Because of the very high rate of inflation in recent years, the significance of movement in the Consumer Price Index has been widely debated and argued in the interest arbitration process. Because of the recent decline in the rate of inflation, this arbitral criterion has assumed somewhat less importance over the course of the past year and one-half.

The Association referenced salary erosion arguments due to inflation between the 1978-1979 and the 1981-1982 years, presenting the logical argument that the recent decline in the rate of inflation would furnish an opportunity for those in the bargaining unit to regain some of the salary ground lost over the past five years.

The Employer cited the approximate 5.8% increase in the CPI between August 1981 and August 1982, submitting that the Board's final offer exceeded the rate of inflation by 2.5%, and the Union's final offer exceeded the CPI figures by more than 4%. In consideration of these figures, and in light of the further decline in the rate of inflation this year, it submitted that the Board's offer was the more reasonable on cost of living grounds.

The Board also addressed attention to the past ten years and, assuming normal movement through the salary schedule, concluded that those in the baegaining unit had kept pace with inflation in their individual salaries.

It is unnecessary for the Impartial Arbitrator to comprehensively address the historical arguments of the parties relative to past inflation, due to the fact that they last negotiated a settlement across the table in July 1981, and it is highly unusual for an interest arbitrator to be asked to consider matters predating the parties' last settlement. The basis for arbitrators thus limiting their inquiry, is rather well discussed in the following excerpt from a book by Irving Bernstein, which has been referenced by the undersigned in a number of prior decisions, and is cited in the Employer's brief. 2./

> "Base period manipulation..presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule; the base for computing cost-of-living adjustments shall be the effective date of the last contract. (that is, the expiration date of the second last agreement). The justificaton here is..the presumption that the most recent negotiations disposed of all the factors of wage determination. To go behind such a date, ... would require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them..."

In light of the fact that the last negotiated salary settlement was reached in July 1981, and became effective the following month, there is no basis for major consideration of the historical arguments of the parties relative to cost of living and salary relationships prior to August of 1981.

Even assuming the direct applicability and accuracy of the CPI data, both 1982-1983 offers exceed the rate of inflation since the parties last went to the table, but the Employer's final offer is closer to the rate of inflation than the Association's final offer.

The Current State of the Economy

The interests and welfare of the public criterion was addressed by both parties, each of which devoted considerable attention to this factor in their exhibits, their statements at the hearing, and their arguments. There was a significant turnout at the public hearing which immediately preceded the mediation, and which reflected public concern with the quality and the costs of the educational process.

As referenced earlier, the Employer presented much material and advanced many argument relating to the severity of the recent and continuing recession, and the fact that the Wisconsin economy has been harder hit than many other areas, by the economic decline. It argued that additional taxes and significant additional increases in spending simply could not be justified at the present time, suggesting that the size of the overall increase represented in the Union's final offer was simply not justified.

The Association emphasized the fact that there was no inability to pay argument advanced by the Employer, suggesting that the interests and welfare of the public criterion should, accordingly, give way to more persuasive considerations.

Despite the lack of any inability to pay question, the current state of the State and National economies simply cannot be downgraded or disregarded in these proceedings, and the difficult recent economic situation has put a significant damper on the size of both private and public sector settlements. While the salary erosion and the catch up arguments fall well within the general criteria referenced in the Statute, these considerations are particularly difficult to effectively argue and justify during a severe economic downturn.

Based upon the above considerations, the Impartial Arbitrator has concluded that the interest and welfare of the public criterion somewhat favors the position of the Employer in these proceedings.

The Overall Level of Benefits Criterion

An unusually high overall level of wages and fringe benefits may be argued in mitigation of the lack of specific benefits, or relative deficiencies in certain areas. This factor can be quite important and persuasive when the negotiations history shows conscious trade-offs by the parties between the various benefit and salary alternatives.

In the situation at hand, the Employer cited the overall level of wages and fringes, including various concessions made during the current round of negotiations. The Association argued that no comprehensive comparisons had been undertaken and submitted that the level of benefits did not justify a salary that was not fully competitive.

While thr record shows that the overall level of wages and benefits received by those in the bargaining unit is competitive, the observations by the Association are well taken. While, as referenced above, the evidence in the record shows that the parties' auxiliary pay benefit is highly unusual, the overall record is simply not comprehensive enough to assign major significance to this factor, in the selection of the final offer.

The Catch Up Arguments

As this point, the Arbitrator will briefly address the catch up arguments which were advanced by the Association in connection with several of the other arbitral criteria.

There is certain evidence in the record suggesting a relative erosion of salary position in recent years, and the Association shows understandable concern at this turn of events. On the same basis discussed in connection with the cost of living criterion, however, the Arbitrator has no authority to rewrite the parties' prior contracts, and it must again be noted that there was a negotiated salary settlement effective in August of 1981. Also as referenced above, the current economic conditions make it particularly difficult from a timing standpoint, to justify extraordinary increases, beyond those indicated by current comparisons.

Without unduly belaboring the matter, the Arbitrator will merely reference the conclusion that a persuasive basis for an extraordinary salary increase has not been made at this time.

Summary of Preliminary Conclusions

On the basis of the considerations addressed in greater detail above, the Impartial Arbitrator has reached the following summarized preliminary conclusions:

(1) The auxiliary pay benefit cannot properly be added to the salary schedule by the Employer, for salary benchmark comparison purposes.

(2) No persuasive basis has been made for the wholesale addition of CESA 13 and statewide comparisons based upon size; comparison data between these groups and the Ripon schools must be considered far less persuasive than the normal athletic conference comparisons.

(3) Consideration of the conference comparison data favors the selection of the final offer of the Employer. While the data from CESA 13 and the statewide comparison groups appear to favor the position of the Association, there is insufficient evidence of individual district comparability, and no indication as to the timing of various of the negotiated settlements.

(4) Consideration of recent cost of living considerations favor the selection of the Employer's final offer. There is no persuasive basis for consideration of the historical cost-of-living data which predates the parties' last negotiated settlement.

(5) Consideration of the interests and welfare of the public criterion, primarily as reflected in the current state of the economy, favors the final offer of the District.

(6) The overall level of benefits criterion cannot be assigned major significance in the selection of the final offer.

(7) No persuasive basis has been established for an extraordinary current salary increase, based upon catch up considerations.

Selection of the Final Offer

After a careful review of the record against all of the arbitral criteria referenced in the statute, including those particularly addressed above, the Impartial Arbitrator has preliminarily concluded that the final off of the Employer is the more appropraite of the two final offers.

1./ School District of New Glarus, Decision No. 19778-A, 1/83.

2./ The Arbitration of Wages, University of California Press, 1954, 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

June 11, 1983
L.H., CA