ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
SCHOOL DISTRICT OF ELKHART LAKE-GLENBEULAH)
)
And)
)
ELKHART LAKE-GLENBEULAH EDUCATION ASSOCIATION)

CASE VII
NO. 31665
MED/ARB-2285
Decision No. 20950-A

Impartial Mediator/Arbitrator

William W. Petrie
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Hearings Held

November 28, 1983
Elkhart Lake, Wisconsin

Appearances

For the District

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BACKGROUND OF THE CASE

This interest arbitration arose from statutory mediation-arbitration proceedings between the School District of Elkhart Lake-Glenbeulah and the Elkhart Lake-Glenbeulah Education Association, with the matter in dispute the terms of a one year renewal labor agreement covering the 1983-1984 academic year.

During their preliminary negotiations, the parties were able to reach preliminary agreement with respect to all issues except the 1983-1984 salary schedule, certain paid personal leave rights and limitations, a credit reimbursement policy for teachers, extra duty policies covering hall or playground duty and inschool substituting, and whether or not the renewal agreement should provide for the 1984-1985 school year calendar. On June 2, 1983, the Association filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of mediation-arbitration in accordance with Section 111.70 of the Wisconsin Statutes. After preliminary mediation by a representative of the Commission had failed to result in a negotiated settlement, the Commission, on September 1, 1983, issued certain findings of fact, conclusions of law, certification of the results of its investigation, and an order requiring mediation-arbitration of the dispute.

The undersigned was selected by the parties and was appointed by the Commission to act as Mediator-Arbitrator of the dispute on September 15, 1983.

Unsuccessful preliminary mediation took place on November 28, 1983, after which the parties proceeded directly into arbitration on the same day. Both parties received a full opportunity at the hearing to present evidence and argument in support of their respective positions, and both subsequently filed both post-hearing briefs and reply briefs, after which the record was closed by the Arbitrator on February 7, 1984.

THE FINAL OFFERS OF THE PARTIES

In connection with their salary schedule dispute, the parties differed principally as follows:

(1) The Association proposed a $13,100 salary schedule base, with 4.5% increments from the lane bases, and lane differentials of $150.00 at the first step.

(2) The Board proposed a $13,450 salary schedule base, with 4.2% increments from the lane bases, and lane differentials of $150.00 at the first step.

In the area of personal leaves, the final offers differed as follows:

(1) The Association proposed one day per year of paid personal leave time, which would be granted upon request, with the teacher required to submit an adequate lesson plan for each such day of personal leave.

(2) The District proposed continuation of the current practice whereby the one day per year of paid personal leave is limited to situations where the teacher could not take care of the matter outside of the school day, where there has been twenty-four hours advance notification, where the District Administrator approves of the absence, and where the teacher has submitted an adequate lesson plan and reimbursed the District for the cost of a substitute teacher.

In relation to credit reimbursement, the offers of the parties differed as follows:

(1) The District proposed continuation of the previous

practice, which provided for $60.00 per semester hour graduate credit reimbursement, with a maximum reimbursement of $480.00 per year.

(2) The Association proposed an increase to $70.00 per semester hour and an increase in the maximum annual reimbursement to $560.00 per year.

In relation to the 1984-1985 school year calendar, the Association proposed a calendar entailing certain changes in the status quo, while the District proposed that no such calendar be provided for in the 1983-1984 collective agreement.

The Association proposed the addition of elementary hall and playground supervision, to the list of activities justifying extra duty pay, at the rate of $4.40 per one-half hour, and proposed payment for in-school substitute teaching at the rate of $8.75 per hour. The District proposed no additions to the prior extra duty assignments list.

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 DISTRICT

In support of its argument that the final offer of the District was the more appropriate of the two offers before the Impartial Arbitrator, the District initially presented the following principal arguments.

(1) In connection with the utilization of the comparison criterion it generally argued as follows:

(a) That the addition of several districts from the surrounding area, in addition to the utilization of the Central Lakeshore conference was appropriate in the case at hand.

(b) That comparison considerations were the most

important single factor in judging the reasonableness of the salary schedule dispute, but that comparisons should take a subordinate position relative to the status quo in connection with proposed changes in language items.

(2) In addressing the specific basis for the expansion of comparisons beyond athletic conference parameters, it submitted the following arguments.

(a) That Elkhart Lake-Glenbeulah is on the uppermost, northern edge of the athletic conference schools, and is not subject to the same urban influence as the more southern schools in the conference; in this connection, that Kohler, Oostburg, Cedar Grove, Random Lake and Ozaukee are directly influenced by the Sheboygan - West Bend - Port Washington labor market, while Elkhart Lake-Glenbeulah is somewhat removed from the same urban influence due to its location.

(b) That the additional comparisons urged by the District are relatively similar in size, annual school costs, levy rates, equalized valuations and labor market; that they share the same geographic area comprising CESA 10 and Calumet, Manitowoc and Sheboygan counties.

(c) As a rural district, that Elkhart Lake-Glenbeulah has more in common with its northern than its southern neighbors.

(d) That the BA base at which the District will be competing for new teachers among comparable districts should be more closely attuned to the starting salary in the immediate geographic vicinity of Elkhart Lake-Glenbeulah.

(e) That it would be too limited to compare Elkhart Lake-Glenbeulah solely to the schools in the athletic conference, which are all located closer to and influenced more strongly by southern urban cities.

(3) That an analysis of the total costs of the two final offers favors the adoption of the final offer of the District. That the Board's final salary offer is actually higher than the final offer of the Association; that this is reflected in the fact that the Board's salary schedule is higher than the Association's at nearly every individual cell.

(4) That the Association is proposing certain fundamental changes in the status quo, which changes should not be imposed by the Arbitrator, but which rather should be the product of negotiations between the parties. In This connection it particularly cited the proposed change in the salary schedule structure, the proposed removal of administrative authorization and substitute teacher reimbursement from the personal leave provisions, and the request for bargaining one year in advance and for reducing the number of local in-service days in the school calendar.

(a) That what the parties have voluntarily agreed upon should not be modified or removed from the labor agreement without extremely persuasive and compelling reasons; that interest arbitrators have consistently adopted and followed this premise.

(b) That the deletion of controls on personal leave,

advance school calendar bargaining, and the payment of lower salaries in exchange for a higher percentage increment in the salary schedule, are not items which the Association could have received across the bargaining table. That three such marked departures from the status quo cumulatively compel the rejection of the Association's offer, particularly when it is realized that only a one year contract is in issue.

(c) That arbitrators generally recognize that the party proposing a change in the status quo bears a heavy burden of proof in substantiating the basis for the requested change, and that the Association has failed to meet the required burden of proof in the case at hand.

(d) That voluntary collective bargaining and not interest arbitration, is the proper forum for changes in the status quo, which changes would restructure the parties' relationship.

(e) That consideration of the bargaining history indicates that the parties have been able to reach negotiated settlements in the past, and this is the first instance of use of interest arbitration in the District; that illustrative of the parties' past negotiations success was the increase in salary schedule increments from 4.0 to 4.2 percent for 1981-1982.

(5) In connection with the salary schedule dispute, the District emphasized the following major points.

(a) That this is the most important of the impasse items before the Arbitrator in these proceedings; that the dispute consists of the Board's proposal to increase the BA base from $12,650 to $13,450, while preserving the integrity of the existing salary schedule, while the Association proposes to increase the BA base by $450.00 to $13,100, while modifying the salary schedule by increasing the increments to 4.5%.

(b) That the Board's final offer entails a higher salary at all but eight salary schedule cells, and that it would particularly benefit the lower paid, less experienced teachers.

(c) That consideration of the interests and welfare of the public criterion favors the adoption of the Board's final salary offer, in that it would facilitate the attraction and retention of qualified teachers through the payment of higher salaries.

(d) That the adoption of the Association's offer would create hiring problems for the District, and would lead to future bargaining conflict. Specifically, that the Association's gambit is an attempt to get its foot in the door with an enticing and artificially low BA base built on a revised percentage index, and that it would argue that the BA base was too low next year, and urge a catch-up increase; that such a ploy would create recruiting problems during the short term and bargaining conflict in the next round of negotiations.

(e) That the Board's final offer best matches the pattern of settlements reached in comparable districts. That even with the benchmark comparisons urged by the Association, the Board's offer ranks higher than the Association's at all but two

benchmarks. That in terms of dollar and percentage increases at the BA base, the Board's offer best matches the increases of other schools, while the Association's offer is inordinately and unjustifiably low.

(f) That salary schedules are unique, and are built to reflect the unique characteristics of the individual districts and its staff. In reviewing the salary schedule structures in comparable districts, none are identical, and a large variety of lanes, increments, and steps appear. That the District's schedule is based upon a 4.2 percent of lane base increment, which places additional incentive for a teacher to earn credits and to move horizontally on the salary schedule; that Elkhart Lake-Glenbeulah is one of five of seventeen comparable schools which utilize a percent of lane base approach to determine the experience increment on the salary schedule; that eight of seventeen use a percentage of the BA Base to generate a constant increment used throughout all educational lanes, while the remaining four use a flat dollar amount, and no percentages. That within the athletic conference, only Elkhart Lake-Glenbeulah uses the increment as a percentage of each lane base.

Regardless of the specifics of the salary schedule structure, that the District has presented evidence showing that the 4.2 percent increment exceeds the standardized increment in six schools, and is equal to or greater than portions of the schedule in four other districts. Accordingly, that no basis has been established for any change in the increment structure; that while other schools may appear to have a higher percent increment, it is important to consider whether the increment is built from the BA base or from the successively higher lane bases.

(g) That the Board's offer exceeds relevant cost-of-living figures. In this connection, it submitted that the Board's final offer exceeded the 2.6% CPI-U increase between August 1982 and August 1983, by over 5 percent. In the same connection, the District objected to cost-of-living arguments predicated upon time periods prior to the parties' last negotiated agreement, and it also submitted that salary schedule movement of individual teachers must be factored into cost-of-living analysis rather than focusing merely upon the salary structure. Additionally, it suggested that use of the Non-Metropolitan, Urban Area material from the North Central Region CPI was less reliable than the use of the national CPI data.

(6) The Employer characterized the personal leave impasse as the second most important of the items in dispute, and emphasized the following major arguments.

(a) That the Association had not made a persuasive case for the abandonment of the status quo relative to leave authorization and reimbursement for substitute teachers. That the one page document submitted by the Association in support of its position is not comprehensive, and does not lend itself to either rigorous analysis or to firm conclusions.

(b) That there is no evidence that the present policy has been unfair, burdensome or unreasonable, despite evidence that approximately one-third of the staff utilized personal leave during the 1982-1983 school year.

(c) That the Association proposal would inappropriately entail elimination of administrative authorization, would remove a major constraint to misuse of the system, and would contain no check on the possibility of all employees taking the same day off at the same time.

(d) That comparable districts retain some balancing of interests between the employee's desire to secure a day off with pay, versus the employer's desire to minimize abuse and disruption to the district; that the Association's offer runs counter to these common, prevailing, and well-accepted principles.

(7) The District characterized the school calendar impasse as the next most important item in question, suggesting that the Association's offer was inappropriate for the following primary reasons.

(a) That providing a 1984-1985 calendar in a 1983-1984 agreement would be both unconventional and unorthodox.

(b) That the Association's proposal would completely modify existing components that comprise the 1983-1984 calendar.

(c) That the 1984-1985 calendar should be addressed in renewal negotiations, along with all other wages, hours and working conditions to be addressed at that time.

(d) That no logical basis has been presented for the reduction of local in-service days.

(e) That no comparables exist for such a demand.

(8) The Board urged that the remaining impasse items were of a lesser order of importance, but presented the following additional arguments relative to these items.

(a) That no persuasive basis has been advanced for the suggested increase from $60.00 to $70.00 in credit reimbursement. That the program was never designed as one providing full reimbursement, and that the 17% increase is not justified by the rate of inflation in educational costs; additionally, that eligible teachers are compensated by the $150.00 benefit of moving into new educational lanes in the salary structure, as appropriate.

(b) That no persuasive basis has been made for the proposed payment of $4.40 per one-half hour for hall and/or playground supervision; that the record is barren of evidence or justification for the demand.

(c) That no persuasive basis has been advanced for the Association's proposal relating to in-school substitution; indeed, that the Board's normal practice in the past has been to utilize principals for coverage, in those instances where substitute teachers have been unavailable. Additionally, that the Association's demand for $8.75 per hour is inconsistent with the fact that class periods are not sixty minutes in length.

In summary, the District submitted that its suggested list of comparables was more appropriate than the exclusive use of athletic conference comparisons, that the Association proposals

for change in the status quo were not supported by the requisite high degree of persuasive evidence normally required in interest arbitration proceedings, that the Board's 7.8% package increase was somewhat above the 7.64% increase proposed by the Association, that the Board proposed salary was higher at nearly all points in the 1983-1984 salary schedule, that no persuasive basis has been established for the attempted "buy in" of a new salary schedule in exchange for a temporarily lower starting salary; that the status quo on personal leave must be favored by the Arbitrator, that no logical or persuasive basis had been established for the advance establishment of a 1984-1985 calendar with the changes in in-service days requested by the Association, and that the final offer of the Association exceeded the "zone of reasonableness" established by the statutory criteria. Finally, it submitted that the Board's final offer was more equitable than the Association's, when measured against the requisite statutory criteria.

In its reply brief, the District reiterated and reemphasized many of the major arguments advanced at the hearing and in its original brief.

POSITION OF THE ASSOCIATION

In defense of its position that the final offer of the Association was the more appropriate of the two offers before the Arbitrator, the Association initially reviewed the various arbitral criteria and emphasized the following principal arguments.

(1) That neither of the parties raised the issue of ability to pay during the course of the proceedings and, accordingly, that the Arbitrator was principally dealing with willingness of pay.

(2) That the most appropriate method of consideration of the comparison criterion and cost-of-living factors is through the use of benchmark analysis, rather than total package cost comparisons. It cited the decisions of various arbitrators in support of this conclusion, emphasizing that various of those cited had originally used package costing comparisons in their earlier interest arbitration decisions and awards.

(3) That the most appropriate comparisons are those within the Central Lakeshore Athletic Conference, rather than among the broader list of school districts cited by the Employer. That the comparisons urged by the District are not comparable communities within the meaning of Section 111.70 of the Wisconsin Statutes; in this connection it cited the decisions of various Wisconsin Interest Arbitrators.

(4) That the comparison data cited by the Association supports the adoption of its final offer.

(a) That the benchmark ranking of the District in relationship to others in the Conference, place it below the mid-point of comparable districts, or in most cases dead last.

(b) That the District proposal would place the teachers well below those in comparable districts in terms of average annual salary rates.

(c) That the District is proposing the continuation of what amounts to an inferior indexing system; that continuation of the 4.2% vertical indexing structure would result in an ever increasing gap between the teachers in Elkhart Lake-Glenbeulah and those in comparable districts.

(d) That the District's offer will not afford the necessary catch-up, while that of the Association will afford some improvement in the indexing system; that even with the adoption of a 4.5% indexing factor, those in the unit will have the lowest percentage index factor among the comparable districts.

(e) That adoption of the Association's final offer will not constitute a significant departure from past practice, nor will it constitute a significant reduction in the authority or rights of either party. That adopting the final offer of the Association due to persuasive comparisons, would be consistent with the awards of other interest arbitrators in comparable situations.

(f) That the Association has made a clear showing of an unworkable situation and an inequity, in connection with the salary index question.

(g) That the need to modify salary structures has often been recognized by arbitrators when the need to achieve parity among comparables was in issue. In the situation at hand, that the index change can be accomplished without trauma or excessive cost to the District.

(h) That the Association proposal does little more than maintain the status quo and slow down the erosion of spendable income of those in the District versus teachers in comparable districts.

(5) That cost-of-living considerations clearly favor the adoption of the final offer of the Association. That regardless of which CPI index is used for comparison purposes, teachers in the District have experienced a dramatic loss of spendable income over the past five years.

(6) That the Association's offer is the more reasonable of the two offers when considered in light of the total compensation provided to District teachers. That while District teachers receive reasonably comparable benefits, this cannot offset the disparity in wages; that no increases in fringes proposed by the parties can offset the comparative wage disparity.

(7) That the Association's proposal for modification of the personal leave day provision in the labor agreement is clearly indicated by the prevailing practice among comparable districts. In this connection, that while administrative approval practices vary in comparable districts, none require the teacher utilizing a paid personal day to reimburse the District for the cost of a substitute.

(8) That the Association's proposed addition of payment for hall and playground duty and in-school substitution, is reasonable. That internal equities strongly support the adoption of this proposal, and that no major cost considerations are in issue in connection with this proposal.

(9) That the Association's increases from $60.00 to $70.00 per credit and from $480.00 to $560.00 per year in maximum graduate credit reimbursement are favored by the record. That the proposal is specifically supported by average cost per graduate credit in the geographic area, by recent increases in these costs, and the parties' historic practice of increasing the allowance by approximately ten dollars every two to three years.

(10) That the Association proposal for the adoption of the 1984-1985 calendar is supported by the facts, by the bargaining history, and by other evidence in the record.

(a) That in 1982, due to an expressed concern over deer hunting activities, the Employer unilaterally adopted a calendar which imposed parent-teacher conferences after school hours, and three in-service days during the Thanksgiving week; that prior to 1982, the parties had always negotiated and agreed-upon calendars, but that the Employer unilaterally abandoned this negotiations practice in 1982.

(b) That the recommendation of a school calendar which exceeds the length of the contract has been used by the parties in the past.

(c) That the Association's position seeks a return to the prior status quo, which was unilaterally modified by the Employer in the past; that the District must come forward with persuasive evidence as to why the prior negotiated status quo should not be adopted in this matter.

(11) That the interests and welfare of the public are better served by the adoption of the Association's final offer.

(a) That teachers are underpaid and that additional earnings are required to enhance the performance of the profession.

(b) That the public and the children can ill afford the adoption of the final offer of the District, in that it provides benefits below those available in comparable districts, and it reflects a lack of concern for District employees.

(c) That public interest considerations indicate the need for a fair and equitable wage increase, fair language for personal leaves, salary advancement in line with comparables, internal equity for hall duty, playground duty and in-school substitution, and fair dealing on mandatory subjects of bargaining.

In summary, the Association reemphasized the arguments that adoption of its offer provided a step toward parity with the average economic status of teachers in other districts, that its offer would not cause trauma or reduction in educational programs, and that the staff should receive a living wage and a comparable benefit package; it additionally submitted that the Association's offer might indeed be too low, but it urged that it was more reasonable than the Employer's final offer on various bases.

In its reply brief, the Association reemphasized certain arguments previously advanced by it, and urged certain additional arguments and considerations, including the following.

(1) It submitted that the Board's allegations relating to implementation and negotiations problems in connection with a salary structure indexing change are unjustified. It characterized the situation as one where the teachers are seeking a modest improvement in the salary indexing and are willing to pay for the change through a reduced salary offer. It additionally cited certain equitable arguments and bargaining history considerations in support of its salary structure demand.

(2) It took issue with the Board's argument that its salary structure offer was superior to that of the

Association. It minimized the Board's arguments relating to potential hiring problems, and emphasized the teacher's preference for a superior salary schedule rather than a few more dollars at the benchmarks.

(3) It cited the fact that a small percentage of teachers have been required to give up their guaranteed lunch time and preparation time to substitute for absent teachers, in support of the need for some form of reimbursement in this area. In this connection, it alleged that two teachers have been required to cover for sixty percent of such substitutions.

(4) It took issue with various of the District's arguments relative to the personal leave and the school calendar issues. In these connections, it cited the past need to go to arbitration over the leave of absence issue, and it cited the prospective loss of bargaining rights on the school calendar due to reasonably anticipated delays in the conclusion of bargaining on renewal agreements, and the prospect for additional unilateral action by the District in the future.

FINDINGS AND CONCLUSIONS

Initially, the Impartial Arbitrator will observe that this is a rather unusual arbitration proceeding in various respects. While the individual impasse items are not that out-of-the-ordinary, certain aspects of the final offers are atypical of the interest arbitration process.

(1) The Association is seeking a lower salary increase for the year in question than is being offered by the Employer; it feels that the best long-term interests of the affected teachers will be served by the structural changes in the wage structure which are requested in its final offer.

(2) The Association proposal for a one year, 1984-1985 school calendar, which will cover the first year of the next renewal labor agreement is highly unusual.

Also noteworthy in the proceeding is the degree of preparation reflected in the presentation of each of the parties. Although the parties are not extremely far apart from an immediate economic cost standpoint, each submitted a large number of exhibits in support of their final offers, and each presented comprehensive, well-organized and thoughtful briefs and reply briefs. Those arbitral criteria emphasized by either or both of the parties included the following.

(1) Comparison of wages, benefits and policies in the District with certain other school districts.

(2) Cost-of-living considerations.

(3) The interests and welfare of the public.

(4) Certain negotiations history considerations.

(5) Various equitable considerations.

For the purpose of clarity, the Impartial Arbitrator will offer some preliminary comments relative to the overall application of the arbitral criteria, after which the specific impasse items will be discussed.

The Comparison Criterion

Without unduly belaboring the point, it is quite clear that parties at the bargaining table and interest neutrals, generally find

comparison considerations to be much more persuasive than other criteria. This does not, however, settle the sometimes difficult question of which comparisons should be given primary attention in a given proceeding.

In school district interest arbitration proceedings, each of the parties will generally urge the comparison or comparisons which tend to favor the adoption of its own final offer and, in the process, they frequently stress such factors as geographic proximity, student enrollment, size of teaching staff, level of state aid and total value of taxable property. Generally, the comparison groups argued by the parties consist of schools within a particular athletic conference, those within a certain number of miles of one another, those geographically contiguous to one another, and/or those within a Cooperative Education Service Agency. The parties to this dispute differed with respect to the comparisons to be considered by the Arbitrator with the Association urging Althletic Conference comparisons, while the District urged consideration of the Athletic Conference in addition to nine other CESA #10 schools.

Despite the fact that athletic conference groupings are not designed for collective bargaining purposes, they are the most frequently cited and commonly the most persuasive comparisons used in interest arbitration; this is due to the fact that many of the factors which make them comparable for athletic competition purposes are the same factors which make them comparable for collective bargaining purposes.

While the broader comparisons urged by the Employer are entitled to arbitral consideration in this matter, there is nothing in the record to detract from the normal persuasive value of athletic conference comparisons. Neither the immediate financial costs of the 1983-1984 contract nor any ability to pay questions are major issues in these proceedings, and it should be noted that consideration of the average total enrollments, average number of teachers and average pupil-teacher ratios strongly and clearly favor the primary utilization by the Arbitrator of athletic conference comparisons. Employer Exhibit #17, for example, analyzes these considerations for the seventeen districts urged by the Employer; when the data are separately averaged for the broader group and the athletic conference, the following figures result:

	Total Enrollment	F.T.E. Teachers	Pupil-Teacher Ratio
Elkhart Lake-Glenbeulah	821	49.50	16.6
Athletic Conference Average	830	50.84	16.2
Total Group Average	1075	63.07	16.9

As is apparent from the above, the District is much closer to the Central Lakeshore Athletic Conference averages than to the broader group urged by the Employer for comparison purposes.

As argued by the Employer, the Athletic Conference may not be the "best fit" in all instances, as the Kohler District, for example, may be distinguished from other conference schools on various grounds. As indicated above, however, there are many areas where the schools are quite comparable, and in connection with the impasse items before the Arbitrator in these proceedings, they offer very valid and persuasive comparisons. Accordingly, the Impartial Arbitrator has preliminarily concluded that the athletic conference comparisons are the most persuasive comparisons before me in these proceedings.

Cost-of-Living Considerations

Despite the importance of this factor during recent contract negotiations and interest proceedings in the State of Wisconsin and elsewhere, it must be emphasized that changes in cost-of-living are only material and relevant to the extent that they have taken

place since the parties last went to the bargaining table. Arbitrators will normally not consider movement in consumer prices occurring prior to the last time that the parties went to the table due to the fact that the most recent settlement is presumed to have settled all of the outstanding issues between the parties, and to go beyond this date would constitute the reopening of matters previously settled by the parties.

The total package costs and the salary increases in the two final offers before the Arbitrator are quite close, and each reflect percentage increases in excess of recent increases in cost-of-living. Accordingly, cost-of-living considerations cannot be assigned definitive weight in the resolution of this impasse.

Bargaining History Considerations

Although bargaining history is not specifically referenced in the Act, it falls well within the general coverage of sub-paragraph (h) of Section 111.70(4)(cm)(7), and it is frequently argued by parties and utilized by interest neutrals.

As was argued by each of the parties in their extensive briefs, interest arbitrators will seek to operate as an extension of the negotiations process, and will attempt to arrive at the settlement that the parties would have reached across the bargaining table, had they been able to do so. In this process, it is normal for neutrals to resist innovation, and to avoid giving either of the parties what they would not have been able to reach across the bargaining table. In certain public sector disputes, however, neutrals will more freuqently be innovative, and will look beyond past comparisons and depart from past bargaining history, when a very persuasive case is made for such action.

The remaining criteria addressed by the parties, including the interests and welfare of the public, and various equitable considerations, will be addressed in connection with the various specific impasse items.

The Salary Impasse in Light of Athletic Conference Comparisons

As referenced above, the major criterion argued by the partie in connection with the salary increase/salary structure impasse consisted of comparison considerations, and the most persuasive comparisons in these proceedings are those within the athletic conference. The elements of comparison before the Arbitrator are the following.

(1) Comparison of 1983-1984 salary increase proposals of the parties, versus other conference schools.

(2) Comparison of 1983-1984 salary structure proposals of the parties versus other conference schools.

In first looking to the dollars reflected in the salary proposals of the parties, it must be noted that the Employer's offer is higher than that of the Union when measured solely in dollar amounts. This conclusion is also reflected in comparisons of the salaries which would be paid at various benchmarks in the salary structure and in the athletic conference rankings at the same benchmarks. Association Exhibit #24, for example, shows the following 1983-1984 salary comparisons for the two offers, at various benchmarks:

BA Min = $13,450 (B) vs. $13,100 (A)
BA Max = $21,393 (A) vs. $20,795 (B)
MA Min = $14,200 (B) vs. $13,850 (A)
MA Max = $22,607 (A) vs. $21,948 (B)
Sch Max = $23,104 (A) vs. $22,417 (B)
BA 7 = $16,840 (B) vs. $16,640 (A)
MA 10 = $19,654 (B) vs. $19,457 (A)

The above data rather clearly shows the final offers of the parties at various benchmarks in the salary schedule selected by the Association, and it must be noted that the final offer of the Board is higher than that of the Association at four of the seven benchmarks, particularly those in the lower levels in the salary structure, and at the BA Base.

Association Exhibit #30 shows the following final offer rankings of the parties, within the athletic conference, for schools for which 1983-1984 data is available.

BA Min = 5th of 5 districts on either basis
BA Max = 4th of 5 districts on either basis
MA Min = 5th of 5 districts on either basis
MA Max = 4th of 5 for Association Offer
5th of 5 for Board Offer
Sch Mx = 4th of 5 for Association Offer
5th of 5 for Board Offer
BA 7 = 4th of 5 districts for Board Offer
= 5th of 5 districts for Association Offer
MA 10 = 4th of 5 districts for Board Offer
5th of 5 districts for Association Offer

An examination of the relative rankings within the athletic conference shows no major difference between the final offers of the two parties. There would be no change in the ranking with the adoption of either offer at three of the benchmarks, with the Association offer being ranked higher at two benchmarks and the Board offer being higher ranked at two benchmarks. As was apparent in the dollar comparison referenced above, the Board offer somewhat favored those teachers in the lower steps of the salary structure, while adoption of the Association offer would favor certain teachers in the higher steps of the structure.

An examination of the athletic conference salary schedules comparisons for the 1983-1984 academic year (or for the prior year where necessary) indicates that there is no generally utilized structural pattern. District Exhibits #35 and #36, for example show the following information.

(1) Cedar Grove in 1982-1983 used a structure with nine educational lanes with the differences between the lanes at .025 of the BA Base, and the experience steps computed at .05 of the BA Base.

(2) Howards Grove in 1983-1984 used a structure with five educational lanes, with a BA Base of $13,700 and $400 between lanes and $510 between the experience steps.

(3) Kohler in 1983-1984 used a structure with eight educational lanes, with a BA Base of $14,000; it used 6% of BA Base on the lanes and through the sixth experience step, with a 5% of BA Base thereafter.

(4) Oostburg in 1983-1984 used a structure with nine educational lanes, with a BA Base of $13,700, with 5% of BA Base on the experience steps and .03 to .065 of BA Base between the educational lanes.

(5) Ozaukee in 1983-1984 used a structure with nine educational lanes, with a BA Base of $14,105, with approximately .03 of BA base, and with experience step increases of approximately .05% of BA base.

(6) Random Lake in 1982-1983 used a structure with nine educational lanes with lane differentials of approximately .03 0f BA base, and with experience step increases of approximately .05% of BA base.

In contrast to the above, Elkhart Lake-Glenbeulah has used a structure with eight educational lanes, with $150.00 between the

lanes, and with experience steps based upon 4.2% increments of each lane base, and the Association is seeking an increase to 4.5% increments for the 1983-1984 school year. As is referenced in District Exhibit #27, this is the only district in the athletic conference which bases the experience increment from the lane bases.

An examination of the above, rather clearly indicates that there is no salary structure pattern within the Athletic Conference. While the Association would like to arrive at a situation where the steps between the experience lanes would have the intervals computed at .045 rather than .042 of the lane bases, no basis for such a change is indicated by an examination of the practices of other conference schools. In light of the lower BA Base proposed in the Association's final offer, it is also apparent that the benefits to the teachers in the bargaining unit from the structural change in question would not be immediate, but rather would depend upon future adjustments to the salary structure. Accordingly, it must be concluded that consideration of the comparison criterion within the Athletic Conference simply does not favor the Association's proposed change in salary structure during the 1983-1984 academic year. While comparisons are difficult due to variations in salary structures within the conference, the Employer presented certain computations and submitted in its reply brief that the District already had higher than average increments at the 4.2% level, and these data and arguments are quite persuasive.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the comparison data within the athletic conference favors the adoption of the District's rather than the Association's final offer. While the rankings at various benchmarks within the athletic conference may show the need for some improvement in the District, it must be emphasized that the Impartial Arbitrator is limited in authority to the selection of the final offer of either of the parties without modification. The Employer's dollar offer is clearly favored, while the Association's request for an increase to 4.5% increments from the various lane bases is simply not supported by comparisons with other salary structures within the athletic conference.

At this point in time, the Impartial Arbitrator will merely reference the arguments of the Association relating to the interests and welfare of the public criterion, and the perceived need for greater salary increases for teachers to meet the increased current educational needs of society. Ironically, these arguments support the adoption of the District's salary proposal, which would result in somewhat higher salaries for those in the bargaining unit during the 1983-1984 school year. While the Association argued for structural changes which might result in larger future salary increases, the primary focus of these arbitration proceedings must be upon the terms of the 1983-1984 collective agreement.

The School Calendar Impasse

The Employer is quite correct that it is highly unusual for the parties to be negotiating a calendar which would run for a one year period beyond the terminal date of the renewal labor agreement. Practically speaking, however, this is the only way in which the Association can gain significant negotiations input into the makeup of the calendar, when contract negotiations are likely to continue beyond the date by which a calendar will have to be established. Conceptually, there is nothing wrong in at least tentatively projecting a calendar which should apply for the first year of a renewal agreement if, in point of fact, the parties are unable to agree upon a full renewal agreement in a timely manner. Thereafter, the parties would have the ability to either negotiate a new agreement around such a renewal agreement calendar, or to make such changes in the calendar as are mutually agreeable to both parties. If the renewal agreement negotiations continued into the new school year, the prior school year calendar would furnish a previously negotiated basis for the new year.

What then of the District's arguments relating to the innovative nature of the Association's demand, and the need for relatively strong proof in support of the requested change from the status quo? While these arguments have some merit in connection with the proposed teacher workday and in-service days changes, they do not apply equally to the proposed negotiation for a future calendar. There is nothing new or innovative in seeking collective bargaining input in the development of a school calendar, when the possible alternative is the unilateral implementation of such a calendar by the other party; although the form of bargaining on a calendar covering the first year of a renewal agreement may be unusual, the substance of collective bargaining on the school calendar is normal, practical and equitable.

Because of equitable considerations, practicality and the desirability of ensuring the give and take of collective bargaining, the concept of advance bargaining on a school calendar has considerable potential merit. The negotiations history does not, however, favor the adoption of a calendar by a neutral, which contains an item such as convention days off, which had been jointly negotiated out of the agreement by the parties during the 1981-1982 school year.

The Remaining Impasse Items

Contrary to the comprehensive data presented in connection with the salary impasse item, the parties presented relatively little data in connection with the personal leave of absence dispute, the credit reimbursement impasse, and the question of reimbursement for in-school substitution and elementary hall and playground supervision.

The Credit Reimbursement Impasse

The Union cited the cost per graduate credit in the three campuses of the University of Wisconsin, at Cardinal Stritch College and at Marquette University, in support of its demand for an adjustment in credit reimbursement. Additionally, it cited negotiations history considerations, whereby the parties had periodically increased the benefit in the past, and it presented comparison material from within the athletic conference.

The Employer characterized the dispute as relating to a 17% increase in benefit level, without evidence of inflation in educational costs. It argued that teachers received credit reimbursement and were also compensated by the $150.00 increase in each educational lane in support of the conclusion that no basis had been established for the proposed increase.

In first addressing attention to comparison considerations, it is apparent that no persuasive basis has been made for the increase in educational reimbursement. Association Exhibit #42 shows that only three of the eight schools in the athletic conference have educational reimbursement at the present time, with the Kohler District paying $75.00 per credit and the Howards Grove and Elkhart Lake-Glenbeulah Districts reimbursing at the rate of $60.00 per graduate credit. While it is true that present reimbursement practices do not fully pay for the actual cost of each graduate credit, it is equally true that this is true of those other schools which have credit reimbursement policies.

While an equitable argument can be mounted relative to the proposed increase in credit reimbursement, neither comparisons nor cost-of-living increases since the parties last went to the table justify the requested change in benefit level. While there is some evidence of past increases in reimbursement, no specifics were advanced relative to the circumstances surrounding such past increases.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that no persuasive basis has been established for the requested increase in credit reimbursement.

The Personal Leave of Absence Impasse

In addressing the personal leave impasse, it should be noted that the parties differ in two major respects:

(1) The matter of teacher reimbursement for the cost of a substitute.

(2) The manner and degree of advance administrative approval required in connection with utilization of the personal leave day.

The athletic conference comparison data submitted by the Association in its Exhibit #38 show that the District is out-of-step with other conference schools in connection with requiring teachers utilizing the personal leave to reimburse the District for the cost of a substitute, in that it is the only district with such a requirement. While three of the six schools offering the personal leave day(s) require some form of administrative approval, there are no details in the record relative to either the form or the nature of the approval process.

The District raised significant questions relating to the elimination of all administrative controls, particularly relating to situations where a large number of teachers could select the same day off, within a relatively small teacher group. It additionally cited the fact that the present benefit and language evolved from the give and take of negotiations by the parties, which factors are normally entitled to significant respect by an interest neutral.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that comparison considerations favor the elimination of substitute reimbursement, but do not support the requested elimination of administrative controls and approval requirements. Both logic and the negotiations history support the retention of some administrative control over the utilization of personal leave days by teachers. Accordingly, the Impartial Arbitrator has preliminarily concluded that the record does not definitively favor the position of either party with respect to the personal leave component of the impasse; this preliminary conclusion favors the status quo over the requested change.

Reimbursement for Elementary Hall and Playground Supervision, and for In-School Substitute Teaching

Although there is no agreed-upon priority of importance in connection with the various individual components of the final offers, these items rather clearly are of a lower order of importance, on balance, than such matters as teacher salary, school calendar, and personal leave. The amount of material in the record relating to the reimbursement issues, is also considerably less than was submitted in connection with the other impasse items. The Association relied primarily upon various internal equity arguments in support of the demands, particularly stressing the relatively small number of teachers in the District who have been repeatedly called upon to perform the required in-school substitution; Association Exhibit #80, for example, shows that 25% of the teaching staff covered 100% of the in-school substitution, with nine of the fifteen in-school substitutions being assigned to two persons.

Although the Association has presented some significant equitable considerations which should and undoubtedly will be addressed by the parties in their future negotiations, no persuasive case has been made for the changes, through the use of normal arbitral criteria.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following basic preliminary conclusions.

(1) The comparison criterion is the most important of the arbitral criteria in the case at hand, and the most persuasive comparison data is that relating to the various member schools in the appropriate athletic conference.

(2) Cost-of-Living considerations cannot be assigned definitive weight in these proceedings.

(3) Bargaining history is an important element in the resolution of this impasse, particularly in connection with the degree of proof required to justify departure from certain bargained-for elements in prior labor agreements.

(4) The interests and welfare of the public criterion and various equitable considerations have important applications in connection with certain of the impasse items.

(5) An examination of athletic conference comparisons favors the selection of the District's rather than the Association's salary offer. While rankings at various of the salary benchmarks show a possible basis for future improvement, no persuasive case has been made for the requested change in salary structure.

(6) The record does not definitively favor the position of either party with respect to the school calendar component of the impasse.

(7) No persuasive basis has been established for the requested change in credit reimbursement.

(8) The record does not definitively favor the position of either party with respect to the personal leave component of the impasse.

(9) Although certain equitable considerations favor future changes, no persuasive case has been established for the requested changes in the areas of reimbursement for elementary hall and playground supervision and for in-school substitute teaching.

Selection of Final Offer

After a careful consideration of the entire record before me, including a review of all of the statutory criteria, the Arbitrator has determined that the final offer of the District is the more appropriate of the two final offers.

The selection of the District's final offer was based in large part upon the preliminary determination that athletic conference comparisons clearly favored the Employer's salary offer for the 1983-1984 school year. While various of the arguments and underlying considerations advanced by the Association were persuasive in connection with certain of the impasse components, it must be remembered that the proponent of change from the negotiated status quo bears a significant burden of persuasion; in those instances where the record does not definitively favor the position of either party on a particular item, the proponent of change has normally failed to meet the requisite burden of persuasion.

AWARD

Based upon a careful consideration of all of 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 District is the more appropriate of the two final offers.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

April 18, 1984