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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between JOINT SCHOOL DISTRICT NUMBER 1 TOWNS OF WHEATLAND, BRIGHTON, RANDALL AND SALEM, WISCONSIN And WHEATLAND CENTER EDUCATION ASSOCIATION/SLUE COUNCIL 26	CASE 5 NO. 33613 MED/ARB-2869 **Decision No. 22190-A**

Impartial Mediator-Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

March 20, 1985
Wheatland School

Appearances

For the Board

Wisconsin Association of
School Boards
By Kenneth Cole
Director, Employee Relations
122 West Washington Avenue
Madison, WI 53703

For the Association

Southern Lakes United Educators
By Esther Thronson
Executive Director
202 East Chestnut Street
Burlington, WI 53105

BACKGROUND OF THE CASE

This is an interest arbitration proceeding between Joint School District Number 1, comprising the Towns of Wheatland, Brighton, Randall, and Salem, Wisconsin, and the Wheatland Center Education Association/ SLUE Council 26; the matter originated under the statutory mediation-arbitration processes provided for in the Wisconsin Statutes.

During their preliminary contract renewal negotiations, the parties reached tentative agreement with respect to all issues with the exception of the duration of the agreement, salary increases, the structure of the salary schedule, and the Association's proposal for long term disability insurance. On July 20, 1984 both parties 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 voluntary settlement, the Commission issued certain findings of fact, conclusions of law, certification of the results of its investigation, and an order directing mediation-arbitration. The undersigned was selected by the parties to serve in the matter, and was appointed by the Commission to act as Mediator-Arbitrator on January 21, 1985.

Unsuccessful preliminary mediation took place on March 20, 1985, after which the parties moved directly into the interest arbitration hearing. Both parties received full opportunities to present evidence and argument in support of their respective positions at the hearing and, by agreement of the parties, the record remained open to allow the introduction of certain supplemental material thereafter; each party closed with the submission of post-hearing briefs and reply briefs, after which the record was closed by the Arbitrator on May 31, 1985.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties were each submitted on September 19, 1984, and each is incorporated by reference into this opinion and award.

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

(1) The Employer proposed a salary schedule with eleven lanes and fourteen experience steps, with lane differentials ranging from $300.00 to $390.00, and increments between the steps ranging from $475.00 to $575.00. Under this proposal the salary at BA+0 would be $14,400 and the schedule maximum at MA+24 - 14 would be $25,250.

(2) The Association proposed a salary schedule with twelve lanes and ten experience steps, with lane differentials ranging from $419.00 to $653.00, and with step increments ranging from $750.00 to $959.00 at the BA lane, and $1,037.00 to $1,245.00 at the MA+30 lane. Under this proposal the salary at BA-1 would be $13,965 and the schedule maximum at MA+30 - 10 would be $28,884.

In connection with the proposed duration of the renewal agreement, the Employer proposed a two year agreement covering both the 1984-1985 and the 1985-1986 school years, with a second year reopener on the following monetary provisions: the salary schedule, the extra curricular pay schedule, health insurance premium contributions, dental insurance premium contributions, and the teacher retirement program. The Association proposed a one year renewal agreement covering the 1984-1985 school year.

In connection with long term disability insurance, the Association

proposed the addition of a program compensating employees for periods of non-occupational long term disability, at a level of 67% of prior income, with a sixty day qualification period and a monthly maximum benefit of $2,680. The Employer proposes no addition of such a program to the present benefits program.

During the course of the hearing and in their post-hearing briefs each of the parties argued that the salary schedule impasse was the major factor in dispute in these proceedings.

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 interest 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 communitites 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 ASSOCIATION

In support of its contention that its final offer was the more appropriate of the offers before the Arbitrator, the Association emphasized the following principal considerations and arguments.

(1) That the most appropriate group for comparison purposes consists of all public schools in Kenosha County, excluding the City of Kenosha; that this group consists of the Central High School District of Westosha and the elementary districts that feed into it, and the Wilmot Union High School District and the elementary districts which feed into it.

(a) That no other comparison group has been established in the prior arbitration proceedings of the parties, and that the Association is maintaining the same position with respect to comparables that it took during the parties' 1980 arbitration proceedings.

(b) That the 1984 negotiations history of the parties supports the use of Kenosha County settlements for comparison purposes. That the parties' early discussions with respect to the appropriate dollar and percentage increases for the renewal agreement were borne out in both the early and the late settlements within this group.

(2) That a one year duration would be more appropriate than a reopener on economics, due to the need of the Association to address some language issues during the renewal negotiations.

(a) That a declaratory ruling had been sought prior to the settlement of the 1983-1984 agreement, relative to eight items in the agreement. Ultimately, that the matter was settled by agreement of the parties that the items would not be included in the 1984-1985 agreement; that these items include: Article V(H), Non Discrimination; Article VI(A), Teaching Assignments; Article VI(B), Extra Curricular Assignments, 1st 3 paragraphs; Article VI(C), Teaching Day, 1st paragraph; Article VI(D) Curriculum, Gradation and Promotion, 2nd paragraph; Article VI(E), Inservice, 1st paragraph and last sentence; Article VI(G), Preparation Time; Article VII(E), Substitute Teaching, 1st sentence.

(b) That the impact of District policies on teaching and extra curricular assignments, the length of the teaching day, and preparation time need to be addressed for 1985-1986, and that selection of the final offer of the Association will allow the parties to bargain over any such provisions which deserve attention.

(3) That the salary offer of the Association is the more appropriate for a variety of reasons.

(a) It is more consistent with certain dicta of Arbitrator Stern in his 1980 arbitration award between the same parties; that the parties have recognized the advice of this Arbitrator in their subsequent agreements.

(b) That the Arbitrator in 1980 specifically recognized the need for comparable rewards for teaching experience within the district. That an examination of the evidence shows that both parties have allowed some erosion at entry and maximum levels of the BA lane and the MA Min since 1980-1981; that at all other benchmarks, however, the Association proposal improves the ranking of Wheatland teachers among the comparison group since 1980-1981.

(c) That a costing out of the proposals before the Arbitrator, supports the position of the Association. That the average dollar increase per returning teacher in Kenosha County for 1984-1985 is $1,772 and 8.63%; that the Association offer of $1,704 and 9.2% is $68.00 below the dollar average and .57 over the percentage average, while the Board offer is $288 below the dollar average and .63 below the percentage average.

(d) That the Association offer of a package increase of 8.8% is closer to the 8.3% to 8.4% that the

Board had indicated might be acceptable in negotiations, while the Board offer of a 7.7% package figure is .65 below the areas of settlement previously discussed.

(e) That available tax information indicates that the property tax burden in the Wheatland School District is no greater than the burden in other Wisconsin districts.

(4) That the compacted salary schedule voluntarily agreed to by the parties in 1983-1984 is the same structure proposed by the Association in these proceedings.

(a) That the negotiations minutes reflect a total of eighteen meetings between the parties during the 1983-1984 negotiations, at which time the new salary structure was fully discussed and considered by the parties.

(b) That the Association undertook various concessions in achieving its goal of a compacted salary schedule for the 1983-1984 school year.

(c) That arbitrators should hesitate to overturn the voluntarily negotiated status quo, as reflected in the compacted salary schedule.

(5) That the Association's proposal for long term disability insurance is justified and should be adopted.

(a) That six of eleven Kenosha County School Districts have long term disability coverage, and that only nine districts in Southeastern Wisconsin lack such coverage.

(b) That the cost of the proposal is low, that long term disability insurance is an important benefit, and that any future cost increases in the program will be recognized in the package costs of future settlements.

In summary, that the Association's selection of comparables reflects the parties' discussions and use during negotiations, that the one year duration will permit the parties to pursue language not addressed for two years, that its offer maintains the status quo on salary schedule and is closer to the average settlements in both dollars and percentages, and that its long term disability offer will cost the District little or nothing this year and will become part of the negotiated package in future contract renewals.

In its reply brief, the Association emphasized the comprehensiveness of the parties' negotiations leading to the 1983-1984 agreement, denied any evidence of problems experienced with the compacted schedule, and argued (contrary to the position of the District) that the Association's salary proposal for the 1984-1985 renewal agreement, would give greater increases to fifteen of twenty-seven bargaining unit teachers. It additionally clarified certain arguments previously advanced by the Association, and argued that the Board's assertion that sick leave could be accumulated indefinitely was not factual; in the latter connection, it referenced the fact that the current agreement allows an accumulation of seventy-five sick days, with unused sick leave days in excess of seventy-five, accumulating in a reserve sick leave account to be granted by the Board for extended illness.

POSITION OF THE EMPLOYER

In support of its argument that the final offer of the Board of Education was the more appropriate of the two offers before the Impartial Arbitrator, the Employer emphasized the following principal considerations and arguments.

(1) It submitted that of the three impasse items, the salary schedule question was the dominant issue; in this connection, it identified the Association's demand for retention of a compacted salary schedule, rather than return to the traditional schedule format of the District, as the major item of contention in the salary area.

(2) It preliminarily indicated major reliance upon these general arguments:

(a) That the Board's offer best represents the status quo, thus preserving the long established status of the District among its peers in the areas of compensation for teachers, and in its ability to attract and hold new faculty.

(b) That the compacted salary schedule demanded by the Association was accepted reluctantly and with feasibility concerns by the Board, and that within a few months of its adoption the Board's fears were realized. That the Board's salary schedule offer compensates a majority of teachers in the District more favorably than that of the Association's which, it alleges, is strongly biased in favor of a few senior teachers.

(c) That a two year contract duration with a wage reopener best serves the needs of the parties, and that restricting bargaining in the second year to wages is necessary to permit the Board to devote proper time and energy to the governance of the District.

(d) That the Association's demand for long term disability insurance is not acceptable to the Board, and that no showing has been made that such coverage is necessary.

(3) That consideration of certain of the statutory criteria favors the adoption of the final offer of the Board.

(4) In connection with arbitral consideration and application of the comparison criterion, it urged as follows:

(a) That the most valid and persuasive comparisons can be found by comparing the District against all other K-8 school districts in the three southeastern counties of Wisconsin that formerly comprised CESA 18, which districts have between 200 and 900 students, and between 15 and 50 full time equivalent staff.

(b) In the above connection, that the comparison should be with like K-8 districts, that comparison with unified districts should be avoided due to high school considerations in such districts, and that Wheatland Center School should not be compared with schools that are either significantly larger or smaller.

(c) That the schools urged for comparison purposes by the Board are not a select sample drawn to make Wheatland Center look good, and that Wheatland Center is in about the middle of the group from a size standpoint. That in relative taxing power measured by assessed value per member, it ranks near the bottom of the group.

(5) In connection with the salary schedule dispute, the Board urged arbitral consideration of the following factors.

(a) That the Association's demand for a compacted salary schedule is not based upon the merits of such a plan within the Wheatland Center school, but rather is an attempt by the Union to arbitrarily force the schedule upon the teachers and the District, for the purpose of setting precedents for the adoption of similar schedules elsewhere in the region.

(b) That the Board originally agreed with the compacted salary schedule in the last contract, only after long and arduous negotiations.

(c) That the Association proposal does not fit the needs of the District and the teachers, that it has been unwieldy and out of relation to reality in the way in which teachers have been placed in the schedule, that it distorts the District's historic relationship to its peer districts, and it weakens the ability of the District to compete for capable new teachers.

(d) That the District should not be bound in perpetuity to an arrangement to which it agreed reluctantly, more out of fatigue than understanding, and which it soon found to be quite unsuited to its situation. That the status quo of the parties was established over a long period of years, and should not forever be changed by one reluctant and ill-advised act.

(e) That the negotiations history leading to the prior agreement supports the position of the District, in that it shows a lack of understanding of the full implications of the Association's proposal by both the District and the affected teachers.

(f) That difficulty in understanding and using the compacted schedule led to the decision to use the ten step schedule with every step cut into tenths.

(g) That the conclusion of the last negotiations resulted in each teacher's placement being derived from prior salary; in other words, each teacher's placement on the 1983-1984 schedule was derived from his or her predetermined salary rather than from being placed on the salary schedule.

(h) That the Board received no quid pro quo for its prior agreement to the compacted salary schedule, receiving no return concessions from the Association.

(i) That the 1983-1984 schedule ends with the tenth step, and that there was no agreement to go beyond this step. That following the submission of final offers in this proceeding, the Association has tried to expand the parties' prior agreement to justify placement of teachers beyond the last step of the salary schedule, up to step 10.9; despite its request to modify its final offer to provide for placement above step ten, that the Board had not agreed to any such modification.

(j) That in agreeing to the 1983-1984 schedule, the Board simply made a mistake. That the resulting schedule now has only five low service teachers of twenty-seven teachers in the District, placed in positions comparable to their experience in the District, and that the new schedule has badly distorted the historic compensation pattern of the District and weakened its ability to attract capable new teachers.

Contrary to the historic pattern of offering relatively good beginning salaries, the Association's offer would drop the District to tenth lowest of twelve comparable districts; that the District's offer would maintain the past, relatively favorable beginning salaries for new teachers.

(k) That evidence in the record shows a distortion in historic relationships as a result of adoption of the compacted schedule.

That Wheatland Center has always ranked between sixth and eighth among comparable districts; that in 1983-1984 its nominal ranking for BA-10 went from eighth to second. That the average ratio of BA-10 to BA Base has historically been at about 137%, but would go to 155% under the Association's final offer, a ratio not in keeping with comparable districts and not in compliance with certification regulations of the State which now bar teachers from continuing past five years without completing at least the equivalent of six credits.

That similar distortions appear at the tenth step of the MA Salary lane, where the District would move from the lower half of the comparable districts to a position of number two.

That similar distortions appear at the tenth step of the MA Salary lane, where the District would theoretically move from the lower half among comparable districts to number two. That the Board's offer would restore traditional salary ratios between the MA tenth step and the BA Base to slightly below the average among comparable districts, rather than making the average the second highest among settled districts.

That similar distortions exist at the Schedule Maximum.

(l) That the Board's offer represents a substantial improvement over the District's traditional ranking, and it represents real gains. That adoption of the Board's offer will result in teacher placement on the schedule in direct relationship to their experience and education, while the Association's proposal both distorts the District's traditional position among comparable districts and presents illusory gains. That in its haste to fit Wheatland Center into a salary schedule fashioned for other locations, teacher placements have been distorted to make the schedule fit; further, that the Association has insisted upon adding a lane to the schedule (MA+30) for which there are no teachers on the present staff; that currently there are only three teachers at the MA+6 and MA+12 lanes,

with the remainder of the twenty-four teachers with less than a master's degree.

(m) That adoption of the Board's final offer will result in higher raises for sixteen of the twenty-seven teachers than does the Association's final offer. That the higher total figure for the Association's offer reflects a settlement with disproportionally large raises for a minority of teachers.

(6) In connection with the dispute of the parties relating to the duration of the collective agreement, the Board urged the following considerations:

(a) That over the past two years, the Board has spent an inordinate amount of time in contract negotiations with the Teachers' Union. By way of illustration, that the 1983-1984 negotiations spanned eighteen meetings over a period of seven months, and the 1984-1985 negotiations began in February, 1985 but will probably not be completed until near the end of the contract term.

(b) That it is not feasible to negotiate over the renewal agreement until the current dispute is settled, which means that such negotiations could not begin in earnest until the 1985-1986 school year is already underway.

(c) That restricting renewal negotiations to salary will permit the Board to give its attention to other pressing issues of the District, will give both the Board and the Association time to review their policies and needs for 1986-1987, and allow them to get back on a negotiations schedule which will permit advance agreement prior to the beginning of the contract term.

(d) That certain issues characterized as still open by the Association Representative at the hearing, have actually been settled by the parties. Accordingly, that these matters were neither put off for later bargaining by the parties, nor were they the quid pro quo for the Board's 1983-1984 salary schedule concession.

(7) In connection with the Association demand for long term disability insurance, that no persuasive basis has been advanced for the addition of this benefit.

(a) That such insurance is not necessary.

(b) That the Association has presented in support of its proposal, only two partial lists of those districts which do or do not have such insurance; of the districts listed by the Association, only six are of comparable size, and only two of the six carry disability insurance.

(c) That there is no evidence relative to the likelihood of teachers being stricken by disability, and no evidence relative to past incidences of such disability within the district.

(d) In light of the fact that teachers in the Wheatland Center District may accumulate sick leave indefinitely, that the proposal for disability insurance is a cost without a benefit.

(e) That the proposed carrier of the insurance is a subsidiary of the Association's parent organization.

In summary, that the final salary offer of the Board is best addressed to maintenance of the long standing status quo of the District, that it better reflects the norms within comparable districts and actually improves the District's overall standing, and that it benefits a majority of the teachers in the District. That a two year contract duration will better enable the parties to get their negotiations back into the proper time frame for 1986-1987, and that no convincing case for the addition of long term disability insurance has been presented.

In its reply brief, the District addressed certain corrections or clarifications in its previous costing out of the final offers of the parties, which matters had been addressed by the Association in its post-hearing brief. Additionally, the Employer took issue with Association arguments relative to which of the salary offers could best be characterized as maintaining the status quo.

FINDINGS AND CONCLUSIONS

During the course of the hearing and in their post-hearing briefs, the parties addressed each of the three impasse items, and each argued the significance of various arbitral criteria in support of their respective final offers. As a practical matter, however, both parties conceded that the salary schedule dispute contained in the final salary offers of the parties was the most significant of the impasse items, and both spent a disproportionate amount of time addressing the significance of the prior status quo in the selection of the more appropriate of the two final offers. Because of the importance placed upon the matters by the parties, the Impartial Arbitrator will preliminarily address the status quo arguments relating to the salary schedule question, prior to considering the remaining impasse items and the other arbitral criteria addressed by the parties.

The Salary Schedule and Status Quo Elements

Although there is no reference to significance of the status quo ante in the Act, this consideration falls well within the coverage of sub-paragraph (h) of Section 111.70(4)(cm)(7) of the Wisconsin Statutes. The factor is frequently argued by parties, and with equal frequency is addressed and cited by interest neutrals. The normal role of an interest arbitrator, including his hesitancy to modify past agreements of the parties, is apparent in the following excerpt from a frequently cited interest decision rendered several years ago by Arbitrator John Flagler: [1/]

> "The role of interest arbitration in such a situation must be clearly understood. Arbitration, in essence, is a quasi judicial not a legislative process. This implies the essentiality of objectivity--the reliance on a set of tested and established guides.
>
> In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
>
> The arbitrator attempts to accomplish his objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute

> before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table."

The same principles described above have been recognized in the widely quoted book by Elkouri and Elkouri:2./

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

The significance of the above principles to interest arbitration in the State of Wisconsin was also addressed by the Wisconsin Association of School Boards in a 1984 publication. In a section entitled "Selected Quotations from Med/Arb Awards", this publication referenced the thinking of various Wisconsin Arbitrators as follows: 3./

"J. Changing the Status Quo

1. 'In reviewing the competing arguments on this issue alone, we do not believe the Association has shown a persuasive enough case for the change. While the comparables favor the Association in some respects, they are distinguished from the instant situation in other respects. Moreover, more weight should be given to the desire of the Board to maintain a status quo rule which enhances the quality of education. The decision in this respect is based on the recognition and endorsement of the arbitral principle that arbitrators should not change working language except for an affirmative showing by the moving party . . . . Arbitrators should be reluctant to establish or overturn work rules that impact on the quality of public services for which there is history of an expressed need or desire. In conclusion, it is the finding of the Mediator/Arbitrator that the final offer of the Board as it relates to credit requirements is most reasonable.' Gil Vernon, Hilbert School District, WERC Dec. No. 19198-A, 5/21/82

2. 'In this regard because the Association is proposing a major change in the agreement, it has the burden of demonstrating not only that a legitimate problem exists which requires contractual attention, which it has done herein, but that its proposal is reasonably designed to effectively address that problem. It is in the latter regard that the Association has failed to make its case on this issue. Not only has it not specifically addressed the issue, but it has proposed rather unique solutions to class size problems which it has not even demonstrated are unique to this District, Byron Yaffe, La Crosse School District, WERC Dec. NO. 19714-A, 1/19/83

3. 'An arbitrator should be very reluctant to change an existing salary structure and pattern that has been reached by agreement of the parties. The Employer's proposed freeze of the increment places a teacher with no experience in the same position on the salary schedule as a teacher with one year of experience. If the freeze was implemented, comparison of the Employer's bench mark positions with comparable positions on the salary schedules of other schools would have less validity because the Employer's teachers would have one more year of

experience as teachers in their bench mark positions as a result of the freeze than the teachers in the other schools. Such fundamental changes in salary schedule should take place in the voluntary bargaining process. The give and take at the bargaining table is the proper place to achieve such results . . . . Salary indexes reflect the relationships between teachers with various amounts of experience and training. The existing salary index was agreed upon by both parties and its purpose was to reflect the relationships between teachers with various amounts of experience and training. Freezing all teachers at the existing incremental steps distorts that relationship in a number of ways.' Zel S. Rice, II, Baldwin-Woodville School District, WERC DEc. No. 19850-A, 12/10/82.

4. 'It is axiomatic in interest arbitration that the party proposing to change existing language must demonstrate a 'need' for modification. In the instant case, the current language regarding Staff Reduction was voluntarily agreed by the Parties approximately three or four years ago. During this time the provision has never been implemented since the School District has not laid off any teachers. The Association, therefore, has not met its burden of need as the language is untested and the Association has not been subjected to any abuse by the School District or administrative imperfections in its utilization.' R. J. Miller, Greenwood School District, WERC Dec. No. 20350, July 1983."

The past decisions of the undersigned as well as those of many other arbitrators have been fully consistent with the above expressed preference in interest arbitration for the maintenance of the status quo, unless an extremely persuasive case has been made by the proponent of change.

What then of the arguments of the Employer that its agreement to a compacted salary schedule in negotiations for the 1983-1984 agreement does not represent the status quo, that the agreement was reached out of fatigue rather than conviction, and that the negotiations history showed a lack of understanding of the full implications of the compacted salary schedule at the time of the agreement? What of the countervailing arguments of the Association that the compacted schedule does represent the status quo, that it was agreed upon only after full discussion and explanation between the parties, and that the new salary schedule was the product of considerable give and take in the negotiations process?

After a full examination of the record in these proceedings, the Arbitrator has reached the preliminary conclusion that the compacted salary schedule which was voluntarily agreed upon by the parties in the negotiations leading to the 1983-1984 renewal agreement, was the product of full discussion between the parties, did not evolve from any apparent misconceptions or mistakes, and apparently represented compromise by the parties in the normal give and take of bargaining. These conclusions are rather clearly indicated by the comprehensive minutes of the parties' eighteen negotiations meetings that preceded the 1983-1984 agreement. In reviewing these minutes the Arbitrator particularly noted the fact that the Association's salary schedule proposal was first presented to the Employer on April 20, 1983 and, after many intervening meetings, was adopted on October 3, 1983; the minutes clearly indicate certain changes of position by the parties, predicated upon acceptance or non-acceptance of the proposed salary schedule.

Having preliminarily concluded that the compacted salary schedule properly represents the previously negotiated status quo, has the Employer presented the requisite persuasive case for arbitral revision of the schedule? The District urged comparisons dealing with percentage relationships at various points in its proposed salary schedule, are simply unpersuasive in the dispute at hand, as are the relative rankings within the suggested comparison group. Had the ranking and the percentage

figures been presented at a point in time where the Employer was protesting a suggested movement into a compacted salary schedule, the data would have been material and highly relevant to the outcome. In the situation at hand, however, the Arbitrator is called upon to deal with a situation where the parties comprehensively modified the salary schedule during a series of eighteen negotiations meetings just a single year prior to the effective date of the renewal negotiations leading to the matter in dispute in these proceedings. It simply would take a far more persuasive case than the arguments advanced by the District, to justify arbitral abandonment of the negotiated settlement of the parties from the prior year.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the failure of the Employer to present strong and persuasive evidence of the need for a change in the negotiated salary schedule strongly favors the selection by the Arbitrator of the salary schedule contained in the Association's rather than the Employer's final offer.

The Comparison Criterion and the Bargaining History

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. The use of comparisons, of course, is specifically referenced in the Act, and it is generally regarded as the single most persuasive of the various statutory criteria.

As is quite normal in interest proceedings, each of the parties to this dispute selected those comparisons which it felt were most favorable to its final offer, and argued that these comparisons were the ones deserving of primary reliance by the Arbitrator. The Board cited all K-8 school districts located in the three southeastern counties of Wisconsin which formerly comprised CESA 18, including therein only districts with between 200 and 900 students, and between 15 and 50 FTE staff. The Association urged that the most appropriate comparisons consisted of all public schools in Kenosha County, excluding the City of Kenosha; more specifically, the Association urged comparisons consist of the Central High School District of Westosha and the elementary schools which feed into it, and the Wilmot Union High School District and the elementary districts which feed into it.

The persuasive nature of the comparison criterion is best understood when viewed in light of the role of an interest arbitrator. The goal of the neutral is not to impose upon the parties his or her view of what the settlement should have been, or to impose the settlements of others upon the parties to the proceeding; rather, the interest arbitrator attempts to arrive at the settlement the parties would have reached, but for their inability to arrive at a meeting of the minds. The voluntary settlements of similarly situated employers and unions are generally regarded as excellent indications of the settlement which might have been reached in voluntary negotiations, and the settlements within districts which the parties themselves have regarded as comparable are particularly persuasive!

During the course of their past voluntary negotiations, the parties addressed attention on various occasions to which other school districts they regarded as providing useful comparison data. On June 8, 1983, June 11, 1983 and September 27, 1983, for example, they discussed various specific school districts for comparison purposes. During the course of their most recent negotiations, they again discussed specific comparisons on April 9, 1984 and on July 11, 1984. In these meetings they essentially agreed that the appropriate comparisons included various K-8 districts in Southeastern Wisconsin including: Brighton, Randall, Paris, Twin Lakes, Silver Lake, Trevor, Bristol, Salem Graded, Yrokville, Wilmot Graded and Union Grove Graded. While the District did not specify what additional districts it might regard as comparable, it indicated that it did not look to Brookwood or Waterford, and it did regard Lake Geneva graded as comparable. On the July 11, 1984 date, the parties were looking to the total package costs of voluntary settlements in Riverview and Randall, with the Board citing the merits of a settlement within the 8.3% to 8.4% increase range, on a total package basis.

While the package settlement percentages were not available in the exhibits for all of the above districts, Union Exhibit #8 included such data for various of the referenced districts. Specifically it provides 1984-1985 salary data for Brighton, Randall, Twin Lakes, Silver Lake, Trevor, Bristol and Salem Graded; additional LTD data is provided for Paris and for Wilmot Graded.

In averaging the dollar increase and percentage increase figures for the comparisons provided, the arbitrator has arrived at an average dollar increase figure of $1,799.42 and an average percentage increase figures of 8.69% On the basis of these figures it is apparent to the Arbitrator that the Union proposed, average annual dollar increase of $1,704.00 is far more appropriate than the Board proposed increase of $1,503.00, and the parties' percentage increase figures of 9.2% for the Association and 8.2% for the Board are approximately equidistant from the 8.69% average for the districts reported in Union Exhibit #8.

In looking to comparisons for guidance with respect to the LTD question, it is apparent that the districts are about evenly split, with no such coverage provided by Paris, Twin Lakes, Silver Lake or Trevor, and with some form of coverage provided by Brighton, Bristol, Salem Graded and Wilmot Graded.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the comparisons, when considered in light of the parties' negotiations history, favor the final salary increase offer of the Association, and favor neither party with respect to the question of the addition of LTD coverage.

The Remaining Considerations

While the major considerations are those discussed above, various other considerations were cited by either or both of the parties.

(1) The Employer urged that the 1983-1984 salary schedule ended at step 10, and argued that there was no basis in the record for placement of teachers above the top step in the schedule; in support of its position, it cited the Association's attempt to modify its final offer to justify placement at up to a step 10.9 in the schedule.

(2) In connection with the proposed contract duration, the Association argued that a one year contract would be more equitable and appropriate, and would allow the Association to address some necessary language items that had been deferred during the most recently completed negotiations. The Employer cited the extensive amount of time spent in negotiations, and the further delay occasioned by the completion of the preliminary mediation and the mediation-arbitration process; it submitted that the two year duration with a reopener on certain economics would allow both parties to return to a reasonable timetable for future negotiated settlements prior to the beginning of the contract terms.

(3) The Employer submitted that the Union had failed to make a convincing case for the need for long term disability insurance and it cited the present program which allowed extensive accumulation of sick leave, submitting that this met the current needs of those in the bargaining unit. The Union cited the low initial cost of the proposed program, and it cited and relied upon other districts which already provided such coverage.

(4) Both parties briefly addressed the tax considerations within the school district.

These considerations are discussed below.

During the course of the hearing testimony was offered relative to the parties' practice of fractional placement of teachers between the salary steps included in the 1983-1984 agreement, but no evidence was offered that any teacher had been placed above step 10 in the past. The Arbitrator will merely reference the fact that there is nothing in the final offer of the Association that would support the conclusion that adoption of the Association's final offer by the Arbitrator would require the Employer to place anyone above the top step. If the Association feels that the contract language, rather than its final offer, supports such an interpretation, it would have to pursue the matter in a forum other than interest arbitration.

In connection with contract duration, the Arbitrator will observe that each of the parties has presented strong equitable arguments in support of their respective positions, but the record does not strongly favor the position of either party. As discussed previously, the contract duration issue simply does not command determinative weight in these proceedings.

In connection with the question of whether or not to add LTD insurance to the parties' labor agreement, the Arbitrator must agree with the Employer that the Association has failed to make a clear and convincing case for the addition of this non negotiated benefit to the parties' labor agreement. Despite the fact that a number of comparable districts have adopted such insurance, many districts have not done so, and there is nothing in the record to indicate the practices of other districts with respect to the accumulation of unused sick leave. If the sole item contained in the final offer related to long term disability insurance, the Arbitrator would simply adopt the final offer of the Employer, but in these final offer proceedings the Arbitrator is limited to the selection of the final offer of one of the parties without modification.

Finally, the Arbitrator will observe that while it is apparent that the District has made a substantial tax commitment, there is nothing in the record to indicate that this commitment is seriously out of line with comparable districts, or that an ability to pay question exists, within the meaning of the Act.

Summary of Preliminary Conclusions

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

(1) The salary schedule question has been identified by the District, the Association, and the Arbitrator as the most important component in the final offers of the parties.

(2) Interest arbitrators normally require clear and convincing evidence and reasons to support arbitral modification of the negotiated status quo, and this principal has been followed by interest neutrals in Wisconson.

(3) The compacted salary schedule included in the Union's final offer represents the previously negotiated status quo, and the District has failed to establish a persuasive basis for arbitral modification of this salary schedule in the renewal agreement. This preliminary conclusion strongly favors the adoption of the final offer of the Association.

(4) Arbitral consideration of the 1984-1985 average dollar increases in salary and the average increases in comparable districts, significantly favors the selection of the final offer of the Association.

(5) No persuasive evidence in the record indicates that adoption of the final offer of the Association would require teacher placement above Step 10 in the salary structure.

(6) The evidence and arguments in the record fail to significantly favor the position of either party on the contract duration component of the final offers.

(7) The evidence and the arguments in the record favor the position of the Employer with respect to the long term disability insurance component of the impasse.

Selection of Final Offer

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

The selection of the Association's final offer is based in large part upon the normal arbitral preference for maintenance of the negotiated salary schedule status quo, and upon salary comparisons with comparable districts. While various of the arguments advanced by the District were individually persuasive, the final offer of the Association is clearly the more appropriate of the two final offers before the Arbitrator.

1./ Des Moines Transit Company, 38 LA 666.

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

3./ The Negotiator's Handbook, Wisconsin Association of School Boards, April 1984, pp. 71-72.

AWARD

Based upon a careful consideration of all of the evidence and argument, and all of the various arbitral criteria provided in Section 111.70 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Wheatland Center Education Association is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

July 8, 1985