ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
WILMOT UNION HIGH SCHOOL)
)
And)
)
WILMOT TEACHERS ASSOCIATION)
)
)

Interest Arbitration
WERC Case 17 No. 35257
MED/ARB - 3364
Decision No. 23113-A

Impartial Mediator-Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

March 24, 1986
May 21, 1986
Wilmot, Wisconsin

Appearances

For the District — WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.
By Karl L. Munson, Consultant
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Madison, WI 53703

For the Association — SOUTHERN LAKES UNITED EDUCATORS
By Mary M. Horton, Executive Director
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BACKGROUND OF THE CASE

This is an interest arbitration proceeding between the Wilmot Union High School District and the Wilmot Teachers Association, with the matter in dispute the terms of a renewal labor agreement covering the 1985-1986 school year. The matter originated under the statutory mediation arbitration processes provided for in the Wisconsin Statutes.

Following their preliminary negotiations, the parties remained apart on the regular salary schedule applicable for the 1985-1986 contract term and the placement of teachers thereon, in addition to differing relative to how to determine extra curricular salaries, whether the accumulated sick leave provisions should provide for an increase from 100 to 110 days, and whether the language of the renewal agreement should be modified in certain respects. On June 26, 1985, the Association filed a request for the initiation of mediation arbitration in accordance with Section 111.70 of the Wisconsin Statutes, and after preliminary mediation by a member of the Wisconsin Employment Relations Commission staff, the Commission on January 2, 1986 issued an order directing mediation arbitration. The undersigned was selected to act as mediator arbitrator, and was appointed to act in this capacity by the Commission on January 13, 1986.

A petition requesting a public hearing on the matter was appropriately filed on January 21, 1986, after which the proceedings took place on Monday evening, March 24, 1986. Each of the principal parties was given an opportunity to describe their positions during the course of the public hearing, after which all interested members of the public received a full opportunity to present their views in connection with the impasse. Unsucessful preliminary mediation took place immediately following the public hearing, after which the undersigned determined that it was appropriate to proceed to arbitration, and an arbitration hearing took place on May 21, 1986. All parties received a full opportunity at the hearing to present evidence and argument in support of their respective positions, and each followed with the submission of both post hearing briefs and reply briefs.

THE FINAL OFFERS OF THE PARTIES

The final offers of each of the parties were amended at the hearing to delete any reference to retirement contributions, and any reference to changes in medical or hospitalization insurance, and the amended final offers are incorporated by reference into this section of the decision and award.

In connection with the salary schedule dispute, the positions of the parties can be summarized as follows:

(1) The Employer proposes a salary schedule with ten experience steps and twelve lanes, with the BA 1 step carrying an annual salary of $16,030, and the MA +30 step an annual salary of $32,262.12. This offer would entail $1300 being added to each step and lane in the prior salary schedule, and would also freeze each teacher at their 1984-1985 placement in the salary schedule.

(2) The Association proposes a salary schedule with ten experience steps implemented in one-half year increments, and with twelve lanes, with the BA 1 step carrying an annual salary of $15,370 and the MA +30 an annual salary of $32,307.

The Employer's salary proposal would entail a $1300 salary increase for all eligible bargaining unit teachers, and an average increase in earnings of 5.84%; the Association's salary proposal would entail average salary increases of $2001 or 9.07%.

In connection with the determination of extra-curricular pay, the Association proposes that the pay continue to be based upon step 2 in the salary schedule, while the District proposes that the contract be modified to provide that it be based upon the BA base.

The Union's final offer requests the increase in sick leave accumulation from a current maximum of 100 days to a new maximum of 110 days. The Employer proposes no change in the current sick leave plan.

The final offer of the Association proposes the addition of the following new language to Article XIII, entitled Term of Agreement.

"2. This Agreement reached as a result of collective bargaining represents the full and complete agreement between the parties and supercedes all previous agreements between the parties. Any supplemental amendments to this Agreement shall not be binding upon either party unless executed in writing by the parties hereto. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any further breach of this Agreement.

3. In the event that the parties do not reach a written successor agreement to this Agreement by the expiration date of this Agreement, the provisions of this Agreement shall remain in full force and effect during the pendency of negotiations and until a successor agreement is executed; provided, however, that this Agreement shall not have a duration of more than three years.

4. Changes in Board decisions, rules, practices or policies which occur during the term of this Agreement and which affect employee wages, hours or conditions of employment shall be promptly transmitted to the Association in writing and the impact thereof shall be subject to negotiations between the parties at reasonable times during the term of this Agreement. When such negotiations are required, this Agreement shall be amended or modified to incorporate the agreement(s) reached in said negotiations. If said negotiations result in an impasse, the impasse shall be resolved pursuant to the provisions of section 111.70 (4) (cm), Wis. Stats."

The Employer proposes no such change in the language of the agreement.

THE STATUTORY CRITERIA

The merits of the dispute are governed by the Wisconsin Statutes, which in Section 111.70(4)(cm)(7) direct the Mediator Arbitrator to give weight to the following 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 finanacial 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 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 aother 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 position that its final offer is the more appropriate of the two final offers, the Association emphasized the following principal arguments.

(1) That in applying the comparison criterion provided for in the Wisconsin Statutes, the Arbitrator should look primarily to the member schools in the Southern Lakes Athletic Conference, which consists of seven K-12 districts and five union high schools.

(2) That the Arbitrator should reject the District's use of various private sector wage information and comparisons for various reasons.

(a) That the information was so piecemeal and incomplete as to lack relevance. In this connection it submitted that there was no historical analysis of private sector settlements, no comparisons of contract language, fringes or wages patterns, no indication of whether the settlements involved professional salaries or non-professional wages, and no indication that the parties had utilized private sector comparison in their past negotiations.

(b) That arbitral decisions have consistently placed primary emphasis upon comparisons involving employees with similar levels of responsibility, similar duties, similar skills and training, and similar employment settings, and that this would require that primary arbitral attention be directed to similar school districts.

(c) That certain oral testimony presented at the hearing, relating to local private sector wage rates and to salaries paid at certain parochial schools, should not receive significant arbitral consideration; and that the District has made no showing that the jobs, tasks, responsibilities and working conditions of those referenced in this testimony, are comparable to those of teachers in the bargaining unit.

(3) That an analysis of the final offers of the parties with respect to the 1985-1986 salary schedule favors the adoption of the final offer of the Association.

(a) That the Association has proposed retaining the existing salary schedule, including the same number of lanes and steps and the same index, emphasizing that it was the product of a voluntary settlement reached by the parties in their 1983-1984, and in their 1984-1985 settlements.

That the only change proposed by the Association is an increase of $640 per year in the BA Base, with retention of the previously existing salary structure atop this base.

(b) That while the District is proposing an increase of $1300 in the BA Base, the size of the increase is misleading; that the District proposed freeze on teacher placement in the salary schedule would result in flat dollar increases for all teachers, would mean that new teachers would receive the same salary as those with one year of service, and would erode the ratio between the BA Base and the schedule maximum. In the latter respect, that the District's offer would operate to the significant disadvantage of the long service, career teachers.

(c) That the retention of the negotiated status quo is normally favored by arbitrators, who typically avoid any major changes in salary schedule resulting from the arbitration process.

(d) That the Association has used the cast forward method of costing its proposal, which entailed placing the 41 1984-1985 teachers on the proposed 1985-1986 schedules.

(e) That the District's proposed change in salary structure, which affects internal ratios and potential earning power for teachers, should only be adopted through the voluntary agreement of the parties.

(4) That an analysis of the record relating to extra-curricular pay, favors the adoption of the Association's rather than the District's final offer.

(a) That the parties presently use Step 2 of the BA lane to deter-extra-curricular salaries, and that the Association is proposing the retention of the status quo.

(b) That the present method of determining extra-curricular salaries was voluntarily adopted by the parties during their 1984-1985 negotiations, and that such agreement should normally not be modified through the arbitration process.

(c) That the Board, as the proponent of change, has the burden of establishing the basis for the proposed change, and that it has failed to meet this burden.

(5) That an analysis of the record relating to the accumulated sick leave issue, favors the adoption of the final offer of the Association.

(a) That the maximum accumulation of 110, rather than 100 days of sick leave would reward long service teachers in the District.

(b) That the proposed change would place Wilmot teachers at the average within the Southern Lakes Athletic Conference; that the average figure within the confrernce is 110.83 days, the median is 115 days, and that only East Troy has a lower accumulation of sick leave days than does Wilmot.

(c) That consideration of the comparables clearly favors the final offer of the Association.

(6) That the record supports the Association's proposal relating to continuing contract language.

(a) That the Association's language proposal would eliminate the possibility of a hiatus between collective agreements.

(b) That in the two previous rounds of negotiations between the the parties,settlements were not reached prior to the expirations of the agreements. That increasing difficulty in reaching renewal agreements prior to expirations of prior agreements, supports the concern with and need for the continuing contact language.

(c) That labor peace is a policy goal highly valued in Wisconsin municipal labor law, as is reflected in the declaration of policy which appears in Section 111.01 of the Wisconsin Statutes, and that the Association's proposal is supportive of this public policy.

(d) That both parties have everything to gain and nothing to lose in the adoption of the proposal. That they avoid the uncertainties in their respective rights during any contract hiatus, that the law governing a hiatus is neither as precise nor as predictive as the parties' own collective agreement, and with the inclusion of the language, the parties know exactly what their rights and responsibilities might be.

(e) Contrary to the normal principles governing arbitration during a hiatus between agreements, that the parties would be able to use the contract grievance-arbitration process to resolve any disputes; that such a procedure would be cheaper, less formal, and quicker than seeking redress in other forums, and that the grievance-arbitration process is the preferred forum for resolving labor relations disputes.

(f) That the continuation of union security provisions during any contract hiatus is a significant advantage to the Association and to the employees in the bargaining unit.

(g) That the proposal would eliminate any questions with respect to salary increments during a contractual hiatus. That the need for the language is illustrated by the Board's approval of educational increments on August 27, 1985, its rescission of this action on September 3, 1985, and the still pending prohibited practice charges filed on September 11, 1985.

(h) That the mediation-arbitration process is fraught with delays, both genuine and artificial, which factor would be minimized through adoption of the language in question.

(i) That disputes which arise during a contract hiatus are more susceptible to resolution under the contract, than through resort to external law, and that the number of such disputes will be minimized through adoption of the continuing contract language proposal.

In summary, that the language in question produces no disadvantages to either party, but rather will enhance labor relations stability, and will support labor relations public policy.

(7) That various additional considerations support the Association's salary proposal.

(a) That it is clearly favored by the pattern of settlements. That the pattern of settlements in the Southern Lakes Athletic Conference and among union high schools clearly shows that the Association's offer is more reasonable with regard to both the average dollar increases and the percentage increases, and that the comparison criterion is normally substantially relied upon by arbitrators.

(b) That various of the Board Exhibits and data are inconsistent, unreliable, and/or do not provide the degree of proof normally considered necessary to change the status quo. That Board Exhibits 6a, 7a, 22g, 23a, 23b, 23c, 23e, 23g and 28 are notable in these respects.

(c) That the record demonstrates that the Wilmot District has the financial ability to meet the prospective costs of the Association's final offer. While the Board has shown an unwillingness to pay, nothing in the record would support a finding of inability to pay. To the contrary, that the community places great value in its school system, is willing to support the cost of quality education, and is economically able to continue its past commitment to education; that recent high county unemployment is in the process of improving.

(d) That the Association's salary offer is supported by all of the relevant statutory criteria. That the Board is not precluded by law from implementing the final offer, that the interests and welfare of the public are served by a quality education and there is no inability to pay question, that the comparison criterion clearly favors the final offer of the Association, that cost of living considerations should not be determinative in this matter, and that the overall level of compensation currently received by those in the bargaining unit is competitive with that received in other districts.

In summary, the Association submits that the overriding issue is whether Wilmot teachers should be awarded their salary schedule. It urges that the Board offer would mean a salary schedule freeze at the 1984-1985 placement, which freeze should not be imposed at the hands of an arbitrator. It submits that the District has failed to meet its burden of proof in showing why the salary schedule should be changed by imposing a freeze, has failed to recognize the role and importance of the teaching profession, and has failed to offer competitive salary increases to its teachers. The Association's offer, it argues, addresses the demonstrated need to improve

teaching salaries, is within the District's ability to pay, satisfies the statutory criteria, is comparable to settlements in the Southern Lakes Conference and among union high schools, and should be selected by the Arbitrator.

In its reply brief, the Association characterized various of the District's arguments as being misleading and/or erroneous.

(1) It submitted that the District's argument relating to various benchmark comparisons should be disregarded by the Arbitrator. In this connection, it submitted tha the District had used a varying group of schools for comparison purposes, and that it was attempting to cite benchmark comparisons for schools with traditional salary schedules, against those with compacted schedules; in the latter connection, it submitted that six of the seventeen schools used for comparison purposes by the District had adopted compacted salary schedules.

(2) It urged that the District's comparison of average salary increases and total cost increases should not be regarded as persuasive, due to the fact that the District provided data on only ten or twelve of the seventeen comparable districts.

(3) It argued that the District's comparisons were further misleading in that in its benchmark comparisons, it had failed to adddress the fact that the offer of $1300 per cell was accompanied by a freeze for each teacher at their 1984-1985 salary schedule position; accordingly, it urged that the District's offer was cosmetic, in that it attempted to conceal certain real defects.

(4) It submitted that certain of the District's graphic exhibits created an illusion relative to the merits of its final offer, and that the impact of the apparent increase at the bottom of the wage structure, would be offset by loss of earnings potential thereafter.

(5) It argued that District attempts to cite total package costs in support of its position should not be regarded as persuasive, because all fringe benefits are not identical in the nine schools used by it for comparison purposes.

(6) It submitted that both final offers exceeded recent movement in the consumer price index, but argued that teachers' salaries in general are being increased in excess of the BLS index, due to the recognized necessity of provding increases to the teaching profession.

(7) It urged that the District's arguments relating to the state of the economy and to the rate of unemployment in Kenosha County, look backward rather than forward, and argued that unemployment is declining significantly, and that the County enjoys a comfortable economic position and a bright economic future.

(8) It argued that the District should not be allowed by the Arbitrator to conceal its unwillingness to pay, by citing arbitration awards which have recognized exigencies in farm dominated districts, and submitted that the Wilmot District is not disproportionally impacted upon by declines in farm income. To the contrary, it urged that the District is a bedroom commmunity for Kenosha Racine and Chicago, and it enjoys one of the lowest levy rates of any district in the area.

(9) Contrary to the arguments advanced by the District, it suggested that the language proposals of the Association would preserve what the parties have agreed upon, by maintaining the negotiated agreement while successor language is being negotiated; it argued that such an approach supports public labor relations policy, allows for resolution of disputes through the grievance arbitration process, maintains union security provisions, reduces the adverse effects of the prolonged mediation-arbitration process, reduces litigation, and generally enhances labor relations stability.

POSITION OF THE DISTRICT

In support of its position that the final offer of the District was the more appropriate of the two offers before the Arbitrator, the District emphasized the following principal arguments.

(1) That analysis of certain of the Association's positions reveals that it is only concerned with the 1985-1986 school year, as in its argument that Wilmot must give to the teachers the same dollar and percentage amounts as is represented by the average settlements in the settled schools.

(a) That while there is almost no dispute over the comparable school districts to be used in this case, a study of the comparables over a period of time yields important information about the Wilmot salary schedule.

(b) That Board Exhibits 7a, 7b and 7c show Wilmot to be among the highest paying schools in terms of its 1983-1984 benchmark salaries. That it also has one of the most compact salary schedules, which means that teachers reach the top of their salary lanes faster than the average teacher in comparable schools.

(c) That Board Exhibits 8a, 8b and 8c show Wilmot to have ranked 5th at the BA Base, 3rd at BA 6, 2nd at the BA Maximum, 2nd at the MA Base, 2nd at MA 9, 3rd at the MA Maximum, and 2nd at the Schedule Maximum. That these comparisons are very good for a school that is among the smallest in student count and teacher FTE. That this higher salary schedule has existed at Wilmot for many years.

(d) That Board Exhibits 11 and 12 indicate that average salary increases and total cost increases for 1983-1984 are very significant ones.

(e) That Board Exhibits 13a, 13b, 13c, 13d, 14a, 14b and 14c show that the District ranks among the highest at the salary schedule benchmarks.

(f) That Board Exhibits 18 and 19 show that the average salary increases and the total cost increase per teacher were above average for the 1984-1985 school year.

(g) That Board Exhibits 20a through g show new benchmarks among comparable schools which have settled, which are considerably above the average for the other settled schools. Using the BA Base, BA +7, BA Max, MA Base, MA +10, MA Max and the Schedule Max for comparison purposes, shows the appropriateness of the District's, rather than the Association's final offer.

(2) On the basis of the arguments referenced immediately above, that the following conclusions are appropriate.

(a) That the salary offer made by the District is clearly comparable with the various benchmarks of the comparable schools.

(b) The the District, because of its historically higher ranking among comparable schools, does not have to match the increases of the schools which have been traditionally lower than Wilmot.

(c) That the District's offer of an increase of $1300 for each cell will accomplish a number of things. The BA Base will have been raised in the same amount as other positions in the schedule, and this will be important in the hiring of new teachers in the future; that raising the BA Base will meet media emphasis upon attracting the "best and the brightest" into education. That the uniform increase is equitable in that it costs each teacher the same amount of money to purchase basic goods and services.

(d) That the District has a history of having sometimes granted fixed dollar raises in the past, as referenced in Board Exhibit 36.

(3) That internal comparables favor the selection of the final offer of the District.

(a) That Board Exhibit 25 shows the internal settlements made within the District with other employee groups.

(b) That the District budgeted an approximate six percent settlement level for the administration employees, union represented support employees, non-union employees and teachers. That only the teachers have not settled within the six percent range.

(4) That consideration of certain other benefits levels favors the adoption of the District's final offer. That Board Exhibits 26 and 27 show the dental and health insurance premiums of the settled comparable schools, while Board Exhibits 3b and 4b show the Wilmot dental and health premiums. That this data shows the District to be in a very comparable position on these items.

(5) That cost of living considerations favor the selection of the final offer of the District, in that Board Exhibits 30a through d show the District's final offer to be above that required to keep even with consumer price increases.

(6) That Board Exhibit 31 shows a 4% growth rate in the national economy from the 4th quarter of 1985 to the 4th quarter of 1986. That this data does not support a 9.11% growth rate for teachers, when they cannot show that they were ever behind the majority of comparable teacher groups.

(7) That Board Exhibit 32 shows a 3.4% rise in first quarter productivity in the non farm business sector, and a 1% decline in unit labor costs during the same time frame. That there is no evidence in the record that the teachers are increasing productivity or lowering unit labor costs.

(8) That Board Exhibit 33 shows a median 1985 wage increase of 3.7% for the unionized private sector labor agreements, which fails to justify the increase demanded by the Association.

(9) That Board Exhibits 34a through d show that Kenosha County has experienced higher unemplyment than the State of Wisconsin as a whole, during 1985 and 1986, which calls into question the justification for the Association's damands.

(10) That certain additional data supplied by the District on a post-hearing basis, also supports the selection of the final offer of the District rather than that of the Association.

(11) That the position of the District in these proceedings is consistent with the decisions and awards of various other interest arbitrators, who have considered the interests and welfare of the public criterion in connection with the significance of the state of the economy, the particularly serious difficulties facing rural school districts, and the necessity of considering taxpayer interests in the final offer selection process. On these bases, that an overriding concern is the public's difficulty to pay, given the tremendous declines in farm incomes over the past several years; also that modest increases in the public and private sector have also lessened other tax payers' abilities to pay. That this consideration should receive more or at least equal weight to that accorded the comparability factor.

(12) That the term of agreement changes proposed by the Association in paragraphs 3 and 4 of its proposal raise serious concerns relative to the collective bargaining relationship beween the parties.

(a) That it was stipulated at the hearing that no district within the comparables, has adopted language similar to that proposed by the Association.

(b) That paragraph 3 would create, among other things, grievance arbitration rights for the Association during a contract hiatus, as well as guaranteeing payment of salary schedule increments during such a hiatus. That such provisions should not be created by interest arbitration, but rather through voluntary collective bargaining.

(c) That paragraph 4 creates a condition where interest arbitration may be utilized during the term of the agreement, which was never intended, and that it also appears to conflict with paragraph 2 of the term of agreement article. Further, that it would effectively replace the grievance procedure, would establish an absurd relationship between the two provisions, and would create further contract administration problems for the parties.

(d) That paragraphs 3 and 4 are extreme, would substantially change the status quo of the contract, and are alone sufficient to make the Association's final offer unreasonable and unjustified.

(13) When considered collectively, that the evidence and arguments submitted by the District present a picture of a district which has been very fair and reasonable with its teachers in the past. In addition to the comparability factor, that every factor required to be considered by the Arbitrator favors the selection of the District's rather than the Association's final offer.

In summary, that the final offer of the District is more in keeping with the historical relationships with comparable school districts, while the Association has failed to justify its much higher demand. Further, that an award favoring the Association would seriously disrupt the historical relationship developed between the Association and the District through free collective bargaining.

In its reply brief, the District particularly emphasized the following arguments.

(1) That teacher wages and benefits constitute a majority of the school budget, which budget is responsible for the majority of the property tax.

(2) That certain incomplete data in the District's exhibits is due to non-reporting/non-availability of the missing data.

(3) Contrary to the arguments of the Association for its exclusion, that private sector comparisons are mandated by the legislature in Section 111.70 of the Wisconsin Statutes.

(4) That the freezing of the salary schedule as proposed by the District, is far from radical, and has been agreed upon by the parties on at least two prior occasions.

(5) That the past basis for the use of step 2 of the BA lane in determining extra-curricular pay, was the low BA Base; that this condition is reversed in the Employer's final offer, thus justifying a return to the system utilized from 1976 to 1984.

(6) That the Association's arguments relating to continuing contract language are misplaced, in that this issue is pending in a prohibited practice proceedings. That arbitral granting of salary increments during a contract hiatus would be a very significant departure from present practice, as would arbitral mandating of grievance arbitration during such a hiatus.

(7) Contrary to the arguments advanced by the Association, that the pattern of settlements at any given point in time do not tell the true or complete salary story of the School District and its teachers.

FINDINGS AND CONCLUSIONS

In their final offers, the parties differ on certain salary issues, on how to determine extra curricular pay, on the maximum amounts of sick leave accumulation, and on certain language proposals of the Association. In support of their offers the parties emphasized various of the statutory interest arbitration criteria, including the interests and welfare of the public, ability to pay, various comparisons, cost of living considerations the overall level of compensation presently received by those in the bargaining unit, and certain other factors such as the significance of the status quo. Prior to selecting the more appopriate of the two final offers, the Arbitrator will offer certain preliminary observatiosn relative to interest arbitration criteria, after which each of the impasse items will be considered and discussed.

Interest arbitration is not an exact science, and it is helpful to emphasize preliminarily that it is an extension of the bargaining process, with the role of the arbitrator directed toward arriving at the same decision that the parties would have reached, but for their inability to agree. This consideration is well described in the following extract from the widely cited book by Elkouri and Elkouri: 1./

> "In a similar sense the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibility the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination upon considerations of policy, fairness, and expediency,of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this board to determine what they should by negotiations, have agreed upon. We take then that the fundamental inquiry, as to each issue is: what should the parties themselves as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think that reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining.'..."

The Significance of the Status Quo

In utilizing the above principle in connection with the case at hand, it must be kept in mind that interest arbitrators are very reluctant to overturn an established benefit, to add new benefits or language, or to otherwise innovate, unless the statutory criteria are clearly met. Arbitral reluctance to modify the status quo without clear support for such a change, has been frequently recognized by public sector, statutory interest arbitrators in the State of Wisconsin.

The Comparison Criterion

While the legislature did not indicate a priority of importance as among the various statutory criteria, there is no doubt that the single most persuasive, and most widely relied upon criterion in interest disputes is comparisons. This point has also frequently been recognized by Wisconsin interest neutrals, and is also well described in the following additional extract from the Elkouris' book: 2./

> "Without question the most extensively used standard in interest arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis, in most interest cases. In a sense, when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."

Irving Bernstein in his excellent book on wages arbitration makes the same points, and expands upon the above rationale as follows: 3./

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made soltuion; they avoid the expenditure of time and money needed for working out one themselves. Arbitrators benefit no less from comparisons. They have the appeal of precedent and..awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public."

Enunciation of the principle that comparisons are the most extensively used criterion does not solve the more basic question of specifically what employers and employees furnish the most persuasive comparisons. As is normal in interest arbitration proceedings, each of the parties emphasized certain comparisons, and argued that these comparisons supported arbitral selection of its final offer. What is somewhat unusual in these proceedings, however, is the fact that there is no dispute between the parties as to the primary comparison group utilized by the parties in the past, which is the members of the Southern Lakes Athletic Conference, consisting of seven k-12 districts and five union high schools. The Employer also emphasized, however, internal comparisons with other employees working for the District, and external comparisons with certain private sector settlements in the same geographic area.

In addition to the above, the Employer also urged consideration of the bargaining history of the parties in connection with comparisons with comparable schools and districts; in this connection, it cited historically higher Wilmot settlements in prior negotiations, urging that Wilmot, having been historically high paying among the comparables, should not be required to match the increases of the schools which have been traditionally lower paying.

Although the bargaining history criterion is not specifically referenced in Section 111.70(4)(cm)(7), it falls well within the general coverage of sub-paragarph (h), and it is frequently cited in connection with the identification of the principal comparables for use in arbitration; those comparasons which the parties have utilized in their past settlements are extremely persuasive indications of which comparisons should be primarily relied upon in interest arbitration proceedings, for the purpose of attempting to arrive at the same settlement the parties might have reached across the bargaining table. The District's attempts to reevaluate and/or to second guess the relative size of past settlements is, however, entitled to little consideration! It is quite clear that an interest arbitrator's primary considerations start with the last time that the parties went to the bargaining table, or the last time that they completed the interest arbitration process; to go beyond such dates would amount to improper attempts to reexamine prior settlements and/or to relitigate prior arbitration settlements.

In essence then, an arbitrator will look to the bargaining history of the parties and will pay great deference to the settlements among comparable employers, which would maintain the relationships previously established by the parties. Comparisons with non-similar employers or employees are simply not nearly as persuasive unless, for example, they have been used for pattern setting by the parties in the past.

The State of the Economy and Ability to Pay Considerations

The District emphasized recent economic difficulties, cited the high unemployment rates in the District, and emphasized the particular difficulties which face the agricultural sector of the economy. It submitted that the Arbitrator must consider the plight of the taxpayer in selecting the final offer in these proceedings, and urged that moderation dictated the selection of the District's rather than the Association's final offer. The Association emphasized that there was no inabilitry to pay alleged by

the District, cited recent improvements in the economy, and urged that the District was not predominantly agricultural.

The District is quite correct that local economic conditions must be considered by interest arbitrators, and such considerations are normally given conclusive effect in situations which involve an absolute inability to pay. Frequently, however, arbitrators are dealing with a reluctance to pay rather than inability, and in such situations an arbitrator is particularly interested in economic comparisons with other districts, and with certain other criteria. Normally an arbitrator will be more easily persuaded to adopt a comparable final offer which also entails a comparable economic effort on the part of the community, rather than merely adopting the comparable offer without regard to the economic circumstances. In the situation at hand, the record indicates no significant differences between the economic considerations facing the Wilmot District versus the comparable school districts referenced earlier.

At this point the Arbitrator will merely observe that the statistics relating to the overall state of the economy, to rates of productivity, and to labor costs, are material and relevent, but are far too general to be accorded substantial weight in these proceedings.

Cost of Living Considerations

Cost of living considerations vary in their importance in interest proceedings depending upon the degree of movement in consumer prices. During periods of rapidly increasing prices, cost of living may be the most important or one of the principle criteria cited by arbitrators in the final offer selection process. In periods of stable prices, the cost of living factor is not emphasized as frequently, and it tends to decline in relative importance.

In the situation at hand, movement in consumer prices since the parties last went to the table is a valid consideration, but its importance must be considered in conjunction with various other criteria.

The Overall Level of Compensaton Criterion

The overall level of compensation is frequently an important factor in the final offer selection process. While the District emphasized the health and the dental insurance of the District in comparison with other comparable districts and schools, any such comparison of other benefits should normally be both comprehensive and complete to command significant arbitral weight. This is apparent from an examination of Section 111.70, which describes the use of the overall level of compensation criterion and speaks in terms of"..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."

While the data supplied by the District is material and relevant, it must receive far less weight than would more comprehensive and overall comparisons.

The Salary Adjustment Component of the Final Offers

It seems clear from the record that the major dispute of the parties relates to the proposed changes in salary for the 1985-1986 school year, and in applying the arbitral criteria to this element of the final offers, various considerations are apparent.

The percentage and the average dollar increases granted within other Southern Lakes Athletic Conference schools are summarized in Association Exhibit #8, and the data presented therein significantly and persuasively favor the selection of the final offer of the Association. The average dollar increases per teacher within the conference is $1990, representing average percentage increases of 8.28%; clearly these figures are much closer to the Association's proposed dollar and percentage increases of $2001 and 9.02%, than to the the District's proposed increases of $1300 and 5.89%! Even in looking solely to the union high school data, the salary component of the Association's final offer is closer to the average increases in comparable union high schools of $1852 and 7.86%. As referenced earlier,

the persuasive value of this comparison data is significantly enhanced by the negotiations history of the partries, reflecting past reliance upon the same comparions by the parties.

What then of the comparison arguments advanced by the District which were supported by its use of alternative benchmarks? It urged that the use of these benchmarks called into question the District's historic salary relationship with other districts and with other union high schools within the same athletic conference. While such strategic benchmark selections may appear to indicate the necessity of either extraordinarily high or extraordinarily low increases, such an approach is a worst a misuse of the data, and at best simply unpersuasive. The size of the proposed salary increases as compared against those applied in comparable districts is simply the most persuasive comparison criterion.

What next of the Employer urged comparisons with various private employer wage and benefits settlements in the area? This information favors the District's rather than the Association's final offer and, as urged by the District, the Wisconsin Statutes specifically provide for arbitral consideration of the data. While the private sector comparison data favors the position of the District, it is, by its nature, much less persuasive that the athletic conference comparisons. There are various reasons for the lower relative weight placed upon private sector comparisons, including the dissimilarity of the employers, the non-comparability of the employees and duties, and the lack of any indication of the parties having relied upon such data in their past negotiations.

The District was also quite correct in its arguments relating to the necessity of looking to internal comparables, but these comparisons also do not carry the same weight as those involving comparable school districts and comparable union high schools.

In next considering the salary offers in light of cost of living considerations,the District is quite correct that both final offers exceed recent and prospective increases in cost of living. Accordingly, it is also correct that cost of living considerations favor the adoption of the District's rather than the Association's final offer. As referenced earlier, however, the relative stability in recent cost of living data generally reduces its current weight in interest proceedings to a level well below that accorded to comparisons. Also it should be noted that both parties referenced the need for some adjustment in teaching salaries, for the purpose of attracting and holding capable individuals within the teaching profession. This need exists separate and apart from cost of living considerations.

As referenced earlier, there is no inability to pay alleged in the case at hand, and nothing to persuasively indicate that the state of the local economy and the dilemma of the local taxpayer is more acute in the Wilmot District than in the comparable districts. Accordingly, the state of the economy and the tax effort within the District cannot be assigned as significant weight as the comparison data addressed earlier.

In next considering the District's proposed schedule, and the freezing of incumbent teachers in the salary schedule at their 1984-1985 levels, and the method of computing pay for extra curricular activities, it must be emphasized that the District is the proponent of a change in the previously negotiated status quo. As emphasized earlier, the party proposing a change from the status quo has the burden of clearly establishing the basis for such change, and the Employer has simply failed to make a persuasive case! The parties previously negotiated the use of step two in the salary schedule for determining extra curricular pay, and their most recent agreement continued the practice of moving teachers within the agreed upon salary schedule. Even though the District indicated that the parties had previously used step one for extra curricular pay, and on some past occasions had negotiated teacher freezes in salary schedule movement, there is no persuasive basis in the record for arbitral reversal of the parties most recently adopted status quo.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the salary components of the final offer of the Association are rather clearly prefereable to those of the District. This is principally due to the comparison data within the comparable districts, which the parties have historically used in their negotiations. Although

certain individual arbitral criteria favor the District's wage proposal, the Association's position is favored on an overall basis.

The Proposed Change in Sick Leave Accumulation

The next component of the final offers for arbitral consideration, is the Association's proposed increase from 100 to 110 days in maximum sick leave accumulation, and the basic arguments and evidence advanced by the parties relating to comparisons, bargaining history, cost of living, state of the economy and taxes, significance of the status quo, and etc., are equally appicable to the sick leave benefits question.

The major argument for increasing maximum sick leave accumulation to 110 days, consists of the athletic conference comparisons, which are depicted in Association Exhibit 12. This exhibit shows only two of twelve districts (including Wilmot), with less than 110 days of sick leave accumulation, and shows six districts providing maximum accumulations of 120 days. While the significance of this comparison data must be considered in conjunction with the fact that the Association's salary proposal would already provide for increases somewhat above average, and the economic and cost of living arguments previously cited by the Employer, it is still quite persuasive.

Practically speaking, the proposed change in sick leave accumulation is not the major cost consideration, and it is significantly lower in order of importance to other elements in the final offer. While the comparison data favors the selection of the final offer of the Association rather than that of the District, the Arbitrator cannot assign determinative importance to this consideration.

The Proposed Addition of Language to Article XIII, Term of Agreement

The contract continuation language changes proposed by the Union are, franky, difficult to justify on the basis of consideration of normal arbitral criteria. There is no persuasive basis for the total proposals in the comparisons, as only three of twelve comparable districts have even some similar language. The District is quite correct in its assertion that such innovative changes in the status quo should normally come from agreement across the bargaining table, rather than through the interest arbitration process, and if this language were the only impasse item, the Arbitrator would select the District's final offer.

One of the difficulties in the final offer selection process in the State of Wisconsin is the fact that an arbitrator is required to select the final offer of one of the parties in its entirety, without the opportunity to modify or change the offers in any respects. If the Arbitrator had the ability to do so, it would be much easier to adopt the Association's salary proposal and to refuse to adopt the requested additional contract language. In light of the fact that the matters under consideration relate to a one year agreement, however, and in consideration of the fact that the parties will almost immediately be back at the bargaining table, it is easier to adopt the contract language than would have been the case with a wholly prospective and/or a multiple year agreement. In any event, it must be concluded that a persuasive case has not been made for the additional language proposed by the Union.

Summary of Preliminary Conclusions

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

(1) Interest arbitration is an extension of the bargaining process rather than a judicial proceeding, and the role of an arbitrator should be directed toward arriving at the settlement the parties would have reached across the bargaining table, had they been able to do so.

(2) Interest arbitrators are reluctant to overturn an established benefit, to add new benefits or language, or to otherwise modify the status quo, unless the statutory criteria are clearly met. The proponent of change has the obligation to establish the basis for any requested changes, and runs the risk of non-persuasion.

(3) The most persuasive of the statutory criteria is comparison with other comparable school districts. In the situation at hand, the most persuasive comparisons are those against other members of the Southern Lakes Athletic Conference.

(4) The bargaining history of the parties, and the past relationship between the Wilmot District and the other comparable districts and schools, are proper and persuasive considerations in the case at hand.

(5) The state of the economy and ability to pay considerations are appropriate for consideraton in the matter at hand, but reluctance to pay must be distinguished from inability to pay.

(6) Cost of living considerations are appropriate for arbitral consideration in the matter at hand, but they are accorded less weight due to recent stability in the economy.

(7) In considerating the salary adjustment component of the final offers, the athletic conference comparisons and the status quo considerations significantly and persuasively favor the selection of the final offer of the Association; certain private sector comparisons and cost of living considerations favor the final offer of the District, but these factors cannot be assigned equivalent weight. The economic data, the tax data and the willingness to pay considerations also cannot be assigned as significant weight as the comparison data.

In summary, the salary component of the final offer of the Association is clearly prefereable to that of the District, including the structure, the basic salary adjustment, the proposed 1985-1986 freeze on schedule movement, and the basis for the determination of extra curricular pay.

(8) While a case has been made for the proposed increase in sick leave allowance on the basis of comparisons, it cannot be assigned determinative weight in the selection of the final offer.

(9) The Association has not made a persuasive case for the proposed addition of language to Article XIII of the Agreement, and such changes should normally come from agreement across the bargaining table.

Selection of Final Offer

After a careful consideration of the entire record before me and a careful review of the statutory criteria, the Arbitrator has determined that the final offer of the Association is the more approriate of the two final offers. The choice is primarily based upon arbitral consideration of salary comparison with comparable districts and schools; while various of the criteria and the arguments cited by the District were individually persuasive, particularly those dealing with the proposed changes in Article XIII of the agreement, the final offer of the Association is clearly the more appropriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and argument, and a review of 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 Wilmot Teachers' Education Association is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

September 17, 1986