ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	
Between	
MISHICOT SCHOOL DISTRICT	Case 5 No. 37759 MED/ARB-4106 Decision No. 24245-A
And	
MISHICOT EDUCATION ASSOCIATION	

Impartial Mediator/Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearing Held

May 13, 1987
Mishicot, Wisconsin

Appearances

For the Board

WISCONSIN ASSOCIATION OF
SCHOOL BOARDS, INC.
By William G. Bracken
Director, Employee Relations
132 West Main Street
Box 160
Winneconne, WI 54986

For the Association

BAYLAND TEACHERS UNITED
By Lawrence J. Gerue
Program Director
1136 N. Military Avenue
Green Bay, WI 54303

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Mishicot School District and the Mishicot Education Association, with the matter in dispute the terms of the parties' 1986-1987 renewal labor agreement. Specifically, the parties are in disagreement with respect to the salary schedule to be applicable during the academic year in question.

Following preliminary negotiations, the parties remained apart on the salary schedule issue. On October 30, 1986, the District filed a petition with the Wisconsin Employment Relations Commission alleging the existence of an impasse and requesting the initiation of mediation-arbitration in accordance with the Wisconsin statutes. After a preliminary investigation of the matter by a member of its staff, the Commission on February 3, 1987, issued certain findings of fact, conclusions of law, certification of the results of the investigation and an order directing mediation-arbitration. The undersigned was thereafter selected by the parties to act as mediator-arbitrator, and was appointed to act in this capacity by the Commission's order dated March 2, 1987.

A public hearing was appropriately requested, and it took place in Mishicot, Wisconsin on May 13, 1987. Spokespersons for the District and the Association explained their positions at the public hearing, after which various members of the public received a full opportunity to present their views in connection with the impasse. Unsuccessful mediation took place immediately after the public hearing, after which the undersigned determined that it was appropriate to move to the arbitration step, and the arbitration hearing took place on the evening of May 13, 1987. Each of the parties received a full opportunity at the hearing to present evidence and argument in support of their position, and each closed with the submission of a post-hearing brief.

THE FINAL OFFERS OF THE PARTIES

A minor change in the Employer's final offer was agreed upon by both parties, to correct an apparent error in the originally submitted offer. The final offers of each party, which are hereby incorporated by reference into this decision and award, provide in summary as follows:

(1) The District proposes a salary schedule for the 1986-1987 school year which would provide for a BA Base of $15,800, a BA Maximum of $25,043, an MA Base of $17,696, an MA Maximum of $27,650, and a Schedule Maximum of $28,598.

(2) The Association proposes a salary schedule for the 1986-1987 school year which would provide for a BA Base of $16,235, a BA Maximum of $25,732, an MA Base of $18,181, an MA Maximum of $28,411,

and a Schedule Maximum of $29,385.

(3) The salary schedule for the 1985-1986 school year provided for a BA Base of $15,210, a BA Maximum of $24,108, an MA Base of $17,035, an MA Maximum of $26,618, and a Schedule Maximum of $27,530. The final offer of the District represents an approximate 3.88% increase in each step of the schedule, while the final offer of the Association represents an approximate 6.74% increase in each of the steps.

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 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 other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, or arbitration or otherwise between the parties in the public service or in private employment."

POSITION OF THE DISTRICT

In support of its contention that the Board's rather than the Association's final offer should be selected by the Arbitrator, the District emphasized the following principal arguments.

(1) Preliminarily it submitted that the case should principally be decided upon the overall economic and political environment, which includes two watchwords: property tax relief and spending restraint.

(a) It cited and emphasized the reports of the Wisconsin Expenditure Commission appointed by former Governor Earl, and the major conclusion reached by this body that Wisconsin should control state and local government spending by establishing as its goal that by 1992-1993, state and local spending as a percentage of personal income should be equivalent to the U.S. average.

(b) In accordance with the report, it submitted that Wisconsin's rank was in the low to mid-twenties among the fifty states in terms of personal income; it reached a peak of 18th in 1979 but then dropped to 27th in 1985, a figure some 5% below the U.S. average per capita personal income.

(c) In contrast with the above, it submitted that since 1959 the Wisconsin level of expenditures per $1000 of personal income has been from 9% to 19% above the U.S. average. For 1985, it submitted, it was 14% higher than the national average.

(d) In connection with control of local spending, the Commission concluded that limiting compensation was the best method to use, because a large percentage of local government costs are for compensation. The specific recommendation of the Commission was that when local salary negotiations go to arbitration, the maximum increase which should be allowed should be the same percentage increase allowed for the state budget that year. That this figure would fall in the range of 3% or 4% per year.

On an overall basis the District submits that the report should set the stage for any type of negotiated

increases for the 1986-1987 school year, and that in light of the economic turmoil faced by many Wisconsin taxpayers the political and economic environment can no longer support increases in the magnitude of 8% as demanded by the Association in this dispute. It urges that the Arbitrator pay strict attention to the Wisconsin Expenditure Commission's report with its documented explanation of the need to contain spending at the local government level.

(2) In preliminarily addressing the comparison criterion, the District submitted that there was an insufficient number of settlements within the primary comparison group, for appropriate arbitral consideration; in this connection it submitted that the normally comparable Denmark, Chilton and Kiel Districts have unique 1986-1987 settlements which render inappropriate any current comparisons to Mishicot.

(a) It emphasized that the three referenced districts had agreed as part of their 1986-1987 settlement that all teachers would be retained or frozen at the same yearly increment step in the salary schedule that they had occupied during the 1985-1986 school year. It urged that this agreement had allowed the parties to offer a flat dollar or percentage increase to each level on the salary schedule at a disproportionately higher rate than would have been allowed with the normal salary schedule movement.

(b) Since Mishicot has not adopted the same 1986-1987 increment freeze, it urged that it would be inappropriate for the Arbitrator to hold the parties to the same standards which normally would be employed in comparing the settlements.

(c) Further, the District urged that since the three referenced districts have departed from the traditional way of compensating teachers, it is inappropriate for the Arbitrator to use them as comparables.

(d) It cited with approval the opinions and awards of various Wisconsin interest neutrals who have addressed the difficulty in continued utilization of benchmark comparisons, in situations which no longer involve comparable salary structures or those which have significantly altered

teacher placement or movement within the salary schedule.

(e) With the removal from consideration of the 1986-1987 settlements within the Kiel, the Denmark and the Chilton Districts, urged the District, only one of the remaining eight comparable districts has settled. It submits that the dearth of comparables dictates greater arbitral attention being directed to other of the statutory criteria, rather than expanding the comparability pool to include more remote districts than used in the past. It cited the decisions of various Wisconsin interest neutrals in support of this approach.

(3) It submitted that the parties were in essential agreement with respect to the costs of the respective final offers, submitting that the Board's final offer would amount to a 5.2% increase or an average of $1570 per teacher, while the Association's final offer would aggregate 7.9% or $2376 per teacher. Looking at the salary increase alone, the District submitted that its offer amounts to a 5.0% increase or $1182 per teacher, while the Association's offer comes to 7.9% or an average of $1859 per returning teacher.

(4) It urged that the interests and welfare of the public would be best served by adoption of the Board's final offer.

(a) It urged consideration of the evidence addressing the existence of economic turmoil with the United States and the State of Wisconsin in general, and with the farm economy and with the Mishicot School District in particular.

(b) It alleged the existence of a slow economic recovery in the State of Wisconsin and urged arbitral consideration of a wide variety of state economic circumstances in support of rejecting the Association's final offer, which would entail an approximate 7.9% package increase.

(c) It urged that the data in the record shows taxpayers with average incomes being subjected to high and growing taxes.

(d) It emphasized the argument that Mishicot was a rural school district with substantial numbers of farmers residing therein, and it summarized and emphasized certain negative economic conditions which have impacted upon the farm economy and upon farmers.

(e) It urged that taxpayers in the district have spoken loudly and clearly that they simply do not wish their taxes to increase further, and they want to contain spending. That the Board had no choice but to propose a modest increase in teacher salaries and benefits, the largest single area of expenditures of the District.

(f) That the problem of high taxes on citizens with below average income is exacerbated by the fact that school spending has outpaced inflation and growth in personal income by a larger margin than ever before.

(g) It urged that various Wisconsin interest arbitrators have recognized the importance of the state of the economy on the taxpayers.

(h) That a 5.2% offer in the present economy and with inflation at 1.2%, clearly strikes a responsible and fair balance between the public interest and the needs of the District's employees.

(i) That various arbitrators have recognized the importance of the state of the economy in connection with the interests and welfare of the public criterion.

(j) Under all of the circumstances, that this criterion should be accorded more weight than the comparability criterion.

(5) In applying the above considerations to the situation at hand that the lines have been drawn for the 1986-1987 school year, with the associations seeking pay increases in the 8% range and the school boards offering increases in the 5% range. Four of eleven comparable districts have settled and seven have certified final offers pending. That the arbitrator must choose between the small number of uniquely derived voluntary settlements and the interest and welfare of the public as reflected in the general

economic conditions, private and public sector comparables, high recent settlements and a low rate of inflation.

(a) That the arbitrator should not allow four settlements to dictate to the remaining districts, and that comparability should not be the determining factor with only four of eleven districts having settled.

(b) That while the interest and welfare of the public is not as easily quantifiable as the comparability criteria, this does not mean that it should receive less weight.

(6) That certain comparability data favors the selection of the final offer of the Board.

(a) In analyzing 1985-1986 benchmark comparisons, that Freedom is an exception and it stands head and shoulders above the other districts in the primary comparison group. That inclusion of Freedom distorts the averages in the small group, due to the fact that they are so high at the schedule maximums.

(b) That the traditional benchmark comparisons are inappropriate because three of the four schools which have settled, have adopted non-traditional approaches to the salary schedule.

(c) That focusing upon benchmark comparisons distorts the true picture, which justifies reliance upon other statutory criteria in this matter.

(7) That consideration of historical data shows that Mishicot has maintained its rank within the comparables.

(a) That an examination of BX #25 shows that the salary schedule has maintained a stable ranking from the 1980-81 to the 1985-86 school years, and that Mishicot teachers have outdistanced increases in the consumer price index during this time frame.

(b) That in the parties' earlier interest arbitration Arbitrator Yaffe recognized that the District's comparables were basically low only at the MA and Schedule Maximums, both of which have been improved since the earlier time frame.

(c) That 1986-1987 increases in long term disability insurance and life insurance reflect the District's willingness to match other comparable school districts in this area.

(d) That Arbitrator Yaffe considered evidence relating to the local economy in his 1983 decision and award, which pattern should be followed by the Arbitrator in the case at hand.

(8) That BX #22 shows the dollar and the percentage increases at the salary schedule benchmarks for the 1985-1986 agreement, and it indicates that Mishicot's dollar and percentage increases were above comparable averages for the year. That BX #23 also indicates that the average salary increase per returning teacher was higher for Mishicot teachers than for the average teacher in comparable districts.

(9) That private sector and other public sector comparisons favor the selection of the District's final offer in the matter at hand.

(a) That the statutory comparison criterion includes far more than merely teacher to teacher comparisons.

(b) That the Board has introduced evidence showing that no other employee group in the area, the state or the country is obtaining settlements of the magnitude of the 7.9% increase demanded by the teachers in Mishicot. Indeed, that the data in the record shows that workers in Wisconsin and in the nation have experienced average wage increases in the 1% to the 5% range.

(c) That arbitrators have recognized the significance of such data.

(d) That the municipal wage settlement for Manitowoc County averaged 3.2%, those for the City of Manitowoc averaged 4%, and area private sector settlements were in the 0% to 5% range. While it may not be appropriately argued whether teachers should receive more or less than other public and private sector workers, it is proper to consider the level of wage increases being received by one group versus another.

(e) That last year's high settlement averaged 9.9% on a total package basis and when added to this years 5.2% increases averages out to a 7.6% average increase over the two year period; that the Association is seeking an unnecessarily high average increase of nearly 9% for each of the two years.

(f) That certain other settlements during the past several years support the adoption of the Board's rather than the Association's final offer in the matter at hand.

(10) That cost-of-living considerations as measured by movement in the consumer price index favor the adoption of the Board's rather than the Association's final offer.

(a) That cost-of-living has been held in check for the past six year period, and that during the July 1985 to July 1986 time frame, it increased only 1.2%.

(b) That the Board's final offer on a total package basis exceeds the CPI by 4.0%, while the Union's total package increase exceeds the CPI by 6.7%.

(c) Contrary to what certain other arbitrators have said, cost-of-living is not what other employers and employees have agreed upon, but rather is a completely separate factor measured by the CPI.

(d) That cost-of-living considerations should not be diluted in importance, but should in the case at hand, receive weight equivalent to that of the comparability factor.

(e) That recent settlements in the District have exceeded the movement in the CPI, and favor the selection of the District's final offer in the dispute at hand.

(11) That the tentative settlements already reached by the parties support the selection of the final offer of the Board rather than that of the Association. That these agreements include liberalization of personal leave days for teachers so that substitute pay will only be deducted when students are present, that jury duty pay was liberalized with the removal of the previous cap on the maximum number of days, and that fully paid life insurance and fully paid long term disability insurance were added by the parties.

(12) That various other considerations support the selection of the final offer of the Board, including the weak economic front faced by District taxpayers who operate farms, the relatively high taxes, the loss of some state aid, high school costs, the loss of income to citizens who support the District, and the state of other public and private sector settlements.

(a) That the Board has attempted to harmonize a diverse set of seemingly incompatible goals and has attempted to construct a final offer which recognizes the interests of those on both sides of the table.

(b) That various political considerations at the state level favor lowering the rate of increase in school costs to a more realistic level. That the Governor's budget calls for increases in funding for schools on the magnitude of approximately 3.9% or less.

(c) That property tax relief is on everyone's minds and in need of recognition; currently, that Wisconsin taxes are some 28% above average.

(d) That the Board recognizes the excellent calibre of its teaching staff, but that the economic and the political times dictate moderation and restraint in any wage and fringe package settlement.

On the basis of these other considerations, that a 5.2% package as proposed by the Board is a very equitable and reasonable increase.

POSITION OF THE ASSOCIATION

In support of its position that its final salary offer is the more appropriate of the two final offers, the Association emphasized the following principal arguments.

(1) That ability to pay considerations should not be an issue in these proceedings.

(a) Since the 1986-1987 tax levy was set a year or more ago and the tax rate has already been determined, that no taxpayer will experience any increase in taxes as a result of the arbitrator's decision.

(b) That the Mishicot School Board has historically maintained a parsimonious attitude toward education and toward teacher costs: as shown in AX #8, the Board has historically maintained a high pupil/teacher ratio; as apparent from AX #9, that the District has been very tight-fisted in expenditures per pupil among twelve comparable districts; while AX #10 shows that the amount of state aids will decline for 1986-1987 by about 5¼%, the District has had the second lowest tax levy rate increase among twelve comparable districts, and still has the third lowest levy rate among the comparable districts.

(c) Contrary to anticipated arguments from the District, that only a small percentage of the people who live in the District are engaged in farming; despite the rural nature of the District, approximately 80% of the residents earn their livelihood in manufacturing, construction, and service industries.

(d) In spite of various exhibits entered into the record by the District, that nothing has been introduced to refute the basic fact that the District is able to pay wage increases comparable to those paid in adjoining districts. While the District may prefer not to pay, it cannot and has not made any credible argument that they cannot afford to pay.

(2) That consideration of the comparison criterion favors the selection of the final offer of the Association.

(a) That the parties have both accepted the comparables used by Arbitrator Byron Yaffe in a 1983 decision involving the Mishicot School District, a copy of which was introduced in the record as BX #7.

(b) That the Arbitrator should not significantly credit certain comparisons urged by the District that fall outside of the established comparison pool.

(i) That the exhibits citing the comparisons consist of unverified second, third and fourth hand information, and that the information contained in them simply has no bearing upon the dispute at hand.

(ii) That the majority of the private sector comparisons offered by the Employer are located in either Manitowoc or Two Rivers. That a more valuable comparison would be a recent Two Rivers School decision in which the Arbitrator awarded a 6.5% benchmark increase or $1857 per teacher.

(iii) That the information offered by the Board consisted solely of percentage increases in wage rates, but omitted was reference to lump sum payments, year end bonuses and profit sharing, which are common in contemporary private sector contracts.

(iv) That the Employer urged comparisons also include some non-union firms; that such comparisons are generally accorded less weight by arbitrators.

(c) That the most relevant and persuasive comparables normally involve employees who perform similar services, who have similar educational requirements, and who have been historically used for comparison purposes by the parties. In the case at hand, that these comparables consist of teacher units utilized by the parties for comparison purposes in past negotiations and in past arbitrations.

(i) That various arbitration decisions in Wisconsin have consistently supported this principle.

(ii) Even in situations where the parties have bargained for an increment freeze, the comparisons remain valid.

(3) That benchmark analyses within the group of comparable schools persuasively support the adoption of the final offer of the Association.

(a) That Wisconsin interest arbitrators have, for several years, used benchmark comparisons in evaluating the final offers of parties.

(b) That an historical analysis of benchmark positions from the 1981-1982 through the 1985-1986 school years supports the adoption of the final offer of the Association.

(c) That a comparison of Mishicot benchmark salaries against those of comparable schools for the 1985-1986 school year shows that they are below the average for comparable schools at all seven benchmarks.

(d) That in considering the four comparable districts which have settled for 1986-1987, benchmark comparisons show that the adoption of either final offer would result in below average salaries for Mishicot teachers. Further, that regardless of which offer is selected by the Arbitrator, Mishicot teachers will fall further behind the four districts which had reached a settlement at the time of the hearing.

(e) That in looking to 1985-1986 average settlements among comparable schools, Mishicot salaries are below average at six of the seven benchmark levels.

(f) When comparing only with the settled schools (i.e., Chilton, Denmark, Freedom and Kiel), that adoption of the Association's offer will show significant dollar and percentage differential erosion of Mishicot earnings. In comparison with the same schools, that adoption of the District's final offer will very significantly erode the earnings of Mishicot teachers.

(4) That benchmark comparisons based upon average dollar increases per teacher clearly support the adoption of the final offer of the Association. That such an approach will answer potential arguments relating to increment freezes, which were agreed upon in the Chilton, the Denmark and the Kiel settlements.

(a) That the average dollar increase per teacher for 1986-1987 in the four districts which have settled is $1811. That the Association's offer would entail an average increase of $1858 while the Board's final offer would generate average increases per teacher of $1181.

(b) Contrary to possible arguments to the contrary, that average salary increases for Mishicot teachers in 1984-1985 and 1985-1986 were comparable with those provided elsewhere. That Mishicot teachers received 1984-1985 increases averaging $151 above the average for comparable schools, and in 1985-1986 received increases averaging $2 less than the comparables.

(5) That cost-of-living data should be given relatively little consideration in these proceedings.

(a) That Wisconsin interest arbitrators have placed little weight on CPI data, when the offers of both parties exceed increases in the index. Rather, that they have placed great reliance upon settlement patterns under such circumstances.

(b) That even if the Arbitrator finds cost-of-living considerations to be relevant, primary weight should be placed upon the pattern of settlement rationale.

(6) That various Board exhibits relating to the general state of the economy are of little value and should be disregarded by the Arbitrator.

(a) Speaking within the framework of the statutory criteria, that the selection of the final offer of the Association would not adversely affect the welfare or the interest of the public in any way, particularly in light of the ability to pay considerations addressed earlier.

(b) That the position of the Association with respect to the interest and welfare of the public criterion is consistent with various published awards of Wisconsin interest arbitrators. That these neutrals have generally dismissed or placed little weight upon "state of the economy" or "gloom and doom" arguments.

(c) That if the District is to successfully rely upon evidence addressing the general state of the economy, it must also distinguish itself from other districts by advancing and supporting arguments relating to ability to pay and/or to other factors economically distinguishing Mishicot from comparable districts.

(7) That the Board is really attempting to establish the principle that the public interest is served by low teacher salaries.

(a) That the public has an interest in attracting and retaining competent teachers, and that authoritative studies suggest that this interest is best served by higher teacher salaries.

(b) That the public interest cannot be equated with or simplified to a comparison of teacher salaries and property taxes.

FINDINGS AND CONCLUSIONS

While the parties differ only on the appropriate salary increases to be applied within the bargaining unit for the 1986-1987 school year, there is a considerable volume of exhibits in the record and a variety of comprehensive arguments were advanced by the parties in support of their respective final offers. In summary, the Association has emphasized the statutory comparison criterion, and it urged that the final offer selection be based primarily upon the alleged 1986-1987 pattern reflected in settlements within the Chilton, Denmark, Freedom and Kiel districts. The District emphasized various other public and private sector comparisons, and it advanced various other arguments, including arbitral consideration to the stipulations of the parties, to their bargaining history, to cost-of-living considerations, and to the perceived interests and welfare of the public as reflected in a variety of economic factors and considerations.

Prior to moving to individual consideration of the various factors emphasized by the parties, it is helpful to place into perspective the role of an interest neutral. The interest arbitration process is not an exact process where certain data and arguments can be appropriately weighted, plugged into a precise formula, and a mathematically "correct" answer determined. Rather it is an extention of the bargaining process begun by the parties, with the role of the arbitrator directed toward arriving at the same decision that the parties would have or should have reached, had they been able to arrive at a voluntary settlement. This consideration is well addressed in the following extract from the 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. Possibly 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 out 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'..."

With the above preliminary consideration in mind, the Arbitrator can next move to an individual consideration of the various statutory criteria.

The Comparison Criterion

Nowhere in the Wisconsin Statutes did the legislature prioritize the various statutory criteria referenced in Section 111.70(4)(cm)(7), but there is no doubt that the single, most important factor in face-to-face negotiation and in mediation, fact-finding, and interest arbitration is comparisons. This point has been widely recognized by interest neutrals in Wisconsin and elsewhere, and is also well described in the following additional excerpt 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."

The same points that are addressed above are also rather well described in the outstanding book by Irving Bernstein: 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 solution; 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."

In light of the fact, as referenced earlier, that interest neutrals should operate as an extension of the bargaining process, the most persuasive comparisons are normally those which the parties have previously utilized in arriving at negotiated settlements, or those that have been

identified as the primary comparables in previous interest arbitration proceedings. On February 7, 1983, Arbitrator Byron Yaffe rendered a decision and an award in previous interest arbitration proceedings between the parties, at which time he identified the primary comparables from amongst several groups proposed by the parties. In his decision, the Arbitrator indicated in part as follows: 4./

> "As the undersigned has indicated in several previous arbitration awards, at least up until the present time, absent an ability to pay issue - which is not present herein - it would appear that the most objective criteria to utilize in selecting comparable employer-employee relationships are:
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> 1. Similarity in the level of responsibility, the services provided by, and the training and/or education required of such employees
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> 2. geographic proximity
>
> 3. similarity in size of the employer.
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> While it is true that the undersigned and other arbitrators have indicated that Mishicot is an appropriate comparable for all of the districts the Association has proposed, utilizing the aforementioned criteria, the undersigned believes it is more appropriate in this instances to utilize the following list of districts, which are the most similar in size geographically proximate districts to Mishicot:
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> Algoma, Kewaunee, Southern Door, Sturgeon Bay, Denmark, Brillion, Chilton, Kiel, Valders, Freedom and Reedsville."

On the basis of the above, the Impartial Arbitrator has preliminarily determined that the primary comparables for the District and the Association should normally consist of the eleven districts referenced by Arbitrator Yaffe. The Association urged that the final offers of the parties should be principally compared to the four districts within the group which had settled (i.e., Chilton, Denmark, Freedom and Kiel), while the Employer challenged the use of and/or primary emphasis being placed upon these four districts for two principal reasons. First, it referenced the fact that only four of the eleven comparables had settled and, secondly, it urged that salary schedule benchmark comparisons at three of the four districts would be distorted by virtue of the fact that the Denmark, Chilton and Kiel settlements had been accompanied by a salary schedule increment freeze for the 1986-1987 school year.

If settlements offered for comparison purposes are only isolated or singular in numbers, they may be entitled to little or no weight in

arbitration; on the other hand, when the number of settlements reaches a significant level, the comparisons derived therefrom are entitled to signficant weight. The Arbitrator will initially observe that four negotiated settlements within a primary comparison group of eleven is a signficant number! This level of settlement within the primary comparison group is entitled to considerable weight in these proceedings.

What next of the impact of the salary schedule increment freeze at the Denmark, Chilton and Kiel districts? The District is quite right that it would be inappropriate to use traditional salary benchmark comparison standards without taking into consideration the impact of the increment freezes. The fact that the three districts have elected to utilize an increment freeze does not, however, constitute such a departure from traditional methods of compensating teachers as to necessitate disregarding them for comparison purposes; rather, it merely means that some districts in the primary comparable group have elected to spend their available salary increase dollars for 1986-1987 in a manner that is not fully consistent with the past. While the increment freeze must be taken into consideration in assessing the comparative levels of the 1986-1987 settlements, there is nothing to persuasively suggest to the undersigned that the three settlements in question should be disregarded in these proceedings.

In consideration of the above, the Arbitrator finds the most compelling comparisons to be those which contrast the average 1986-1987 salary dollar increase per returning teacher within the four settled districts in the primary comparison group, against the average salary dollar increase represented in the final offers of the Association and the District. These figures are represented in Association Exhibits #25 and #41, and were also emphasized in the Association's post-hearing brief; they consist in material part of the following:

Average 1986-1987 Salary Increase
Per Returning Teacher

Chilton = $1795
Denmark = $1754
Freedom = $1937
Kiel = $1757
Average for the four districts = $1810.75

Average Salary Increase Under District's Offer = $1181
Average Salary Increase Under Association's Offer = $1858

As urged by the Association, adoption of the final offer of the District would entail selection of an average salary increase for Mishicot teachers which is almost $630 per year below the average increase in comparable districts, while the selection of the final offer of the Association would result in a settlement only $47.25 per year above the average figure for the four comparable districts. Indeed, even if the Freedom District were disregarded in the computations, as urged by the Board, the Board's final

offer would be $586.67 below the average settlement in the remaining three districts, while the Association's offer would be $89.34 higher.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the most persuasive comparison consists of consideration of the average salary increase per returning teacher for 1986-1987 under the Association's and the District's final offers. On the basis of this consideration it is clear that the adoption of the Association's final offer is clearly favored.

Without a great deal of elaboration, the Arbitrator must recognize that the District has presented a wealth of information relating to the size of private and public sector settlements outside of the education area and/or outside of the primary comparables group, and these settlements are quite clearly more supportive of the District's rather than the Association's final salary offer. This conclusion is clear, despite the fact that much of the evidence is anecdotal in nature, and much refers to settlements involving employees who are both geographically and functionally remote from the Mishicot teachers. While this evidence favors the selection of the final offer of the District, it is entitled to much less weight in these proceedings than the primary comparables.

The Interests and Welfare of the Public Criterion

The District emphasized the undisputed recent economic difficulties within the State of Wisconsin and the Mishicot District, and in this respect it particularly emphasized the plight of the property taxpayer in general, and that of the agricultural sector of the local economy in particular. It submitted that current economic circumstances should necessitate the Arbitrator placing greater weight upon these considerations in selecting the final offer in these proceedings. It also emphasized in support of its final offer, the report of the Wisconsin Expenditure Commission, which has proposed certain standards to limit and to contain spending at the local government level within the State.

The Association emphasized that there was no inability to pay question before the Arbitrator, submitted that the vast majority within the District did not earn their livelihood in farming, urged that nothing in the record supported the conclusion that the District was less able to fund increases than were comparable school districts, and urged that the District had failed to make a case for itself on economic grounds. It submitted that the interests and welfare of the public are well served by an effective and well funded educational system, rather than merely by a comparison between teacher salaries and property taxes.

While true inability to pay may be the single determining factor in appropriate cases, the Association is quite correct that there is no inability to pay question present in these proceedings. Arbitrators are more easily persuaded to select a comparable final offer where the

offer also represents a comparable economic effort on the part of the community, rather than merely making such a selection without regard to the underlying economic circumstances. The Association is also quite correct, however, that there is nothing in the record to persuasively suggest that the Mishicot District is faced with significantly different economic conditions or capabilities than are comparable districts; accordingly, there is nothing in the record to suggest that the local economic circumstances should be given determinative weight in these proceedings.

What then of the Employer's impressive economic and political arguments centering upon the Wisconsin economy, and the investigation and the report of the Wisconsin Expenditure Commission? As a citizen I find myself strongly in agreement with the need to keep expenditures in line with the long range ability of the taxpayers to fund such increases. As an interest arbitrator, however, my statutory charter is to attempt to place the parties into the same position they would have occupied had they been able to reach a negotiated settlement; in the final offer selection process I must consider the statutory criteria, and must apply them in accordance with the weight normally placed upon such criteria in the negotiation and/or in the interest arbitration process. The findings, conclusions and recommendations of the Wisconsin Expenditure Commission, including its recommendations relative to the control of local government expenditures, is a matter which may be ripe for executive and legislative branch consideration; despite certain flexibility afforded interest neutrals in the application of the statutory criteria, an interest arbitrator does not have the authority to utilize unspecified criteria unless and until they have been normally or traditionally utilized in the negotiations and/or the interest arbitration process as specified in Section 111.70 (4)(cm)(7)(h) of the statutes. There has been no showing of such utilization.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that there is no inability to pay in question in these proceedings, no indication of a disproportional economic commitment being required of the District, and no basis for affording determinative weight in these proceedings to the report of the Wisconsin Expenditure Commission. Accordingly, the interests and welfare of the public criterion, including ability to pay considerations, cannot be afforded determinative weight in these proceedings.

Cost-of-Living Considerations

In this connection the District urged that the final offers of both parties exceed recent and anticipated increases in cost-of-living, emphasized that the District's rather than the Association's final offer is closer to the rate of consumer price index movement, and urged that this factor be given substantial weight by the undersigned. The Association emphasized that in stable times arbitrators place greater importance upon other criteria such as comparisons; it urged that even if the arbitrator finds cost-of-living considerations to be relevant, little weight should be placed upon this arbitral criterion.

Cost-of-living considerations are one of the more volatile of the statutory criteria, in that their importance will vary sharply with the state of the economy. During periods of rapidly rising or rapidly decreasing prices, the cost-of-living criterion may be the most important or at least one of the most important of the interest arbitration criteria. During periods of stable prices, however, the cost-of-living factor is not separately emphasized as frequently, and it tends to decline sharply in its relative importance.

In the situation at hand it must be emphasized that the previously discussed settlements within comparable districts were all negotiated under the same economic circumstances, and they already represent and include the weight placed upon cost-of-living considerations within these districts. While cost-of-living considerations favor the selection of the final offer of the Employer, they simply cannot be assigned determinative weight in these proceedings.

The Stipulations of the Parties Criterion

The District emphasized that various items had been agreed upon by the parties during the negotiations leading to the present proceedings, citing improvement in deductability of substitute pay, liberalization of jury duty pay, extension of fully paid life insurance and long term disability insurance and improved extracurricular duty pay. It submitted that these considerations reflect positively upon the Board's intention to improve wages, hours and working conditions, and urges that these considerations, rather than viewing salary schedule alone, favor the selection of its final offer rather than that of the Association.

Where the parties have agreed upon a substantial number of wages and/or benefits during the negotiations process, it may be an important factor in the final offer selection process. In the situation at hand, the stipulations of the parties was not comprehensively addressed at the hearing, and there is no indication that the value of such adjustments is sufficient to offset the significant level of difference between the salary offers of the parties. While consideration of the stipulations of the parties indicated realistic and good faith bargaining on these items by the parties, it does not definitively favor the selection of the final offer of either party in these proceedings.

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 process, and the role of an arbitrator should be directed toward arriving at the same settlement that the parties should have reached across the bargaining table had they been able to do so.

(2) The most persuasive of the statutory criteria in cases of this type is comparison with other comparable school districts, and the best comparisons for arbitral use are those which the parties have previously utilized in connection with their negotiated settlements and/or in interest arbitration proceedings.

(3) The primary comparables in the case at hand should normally consist of Algoma, Kewaunee, Southern Door, Sturgeon Bay, Denmark, Brillion, Chilton, Kiel, Valders, Freedom and Reedsville.

(4) The four 1986-1987 negotiated settlements among the eleven districts comprising the primary comparables, represent a significant number of settlements and they are entitled to considerable weight in these proceedings. Due to the fact that three of the four settlements involved a salary increment freeze for 1986-1987, traditional benchmark comparisons should not be accorded the normal arbitral weight in the final offer selection process; comparison of the average 1986-1987 salary increase per returning teacher within the four settled districts, against similar figures for the Mishicot teachers clearly favors the selection of the final offer of the Association.

(5) Consideration of public and private sector settlements outside of the primary comparables group somewhat favors the selection of the final offer of the District, but it is entitled to far less weight than the primary school district comparables.

(6) The state of the economy and the plight of the local taxpayer and the local farmer are entitled to consideration in the matter at hand, but no inability to pay has been shown to exist, and there is nothing in the record to persuasively suggest that the Mishicot District is faced with significantly different economic conditions or capabilities than are comparable districts. Accordingly, the interests and welfare of the public criterion, including ability to pay considerations cannot be afforded determinative weight in these proceedings.

(7) There is no appropriate basis for assigning determinative weight in these proceedings to the findings of the Wisconsin Expenditure Commission.

(8) Cost-of-living considerations somewhat favor the selection of the final offer of the District, but they cannot be assigned determinative weight in these proceedings.

(9) Consideration of the stipulations of the parties criterion indicates realistic and good faith bargaining between the parties, but favors neither final offer.

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 appropriate of the two final offers. The choice is principally based upon arbitral consideration of the 1986-1987 average teacher salary increases within comparable districts; while certain of the criteria emphasized by the District were individually persuasive, the final offer of the Association is the more appropriate of the two final offers.

1./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105.

2./ Ibid, p. 804.

3./ Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, p. 54.

4./ Board Exhibit #7, pp. 3-4.

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 Mishicot 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

October 21, 1987