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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
 Between)
)
 HUSTISFORD SCHOOL DISTRICT)
)
 And)
)
 HUSTISFORD EDUCATION ASSOCIATION)
 _____)

Case 20
 No. 37905
 MED/ARB-4159
 Decision No. 24380-A

Impartial Mediator/Arbitrator

William W. Petrie
 1214 Kirkwood Drive
 Waterford, WI 53185

Hearings Held

August 25, 1987
 Hustisford, Wisconsin

Appearances

For the District

WISCONSIN ASSOCIATION OF
 SCHOOL BOARDS, INC.
 By Ms. Shannon E. Bradbury
 Staff Counsel
 Box 160
 132 West Main Street
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For the Association

WINNEBAGOLAND UNISERV UNIT-SOUTH
 By Mr. Armin Blaufuss
 UniServ Director
 183 West Scott Street
 Fond du Lac, WI 54935

BACKGROUND OF THE CASE

This is a statutory mediation/arbitration proceeding between the Hustisford School District and the Hustisford Education Association, with the matter in dispute the terms of the parties' renewal labor agreement covering 1986-1987.

The parties were able to reach agreement on all items to be included in a one year renewal agreement for 1986-1987, with the single exception of teacher salaries during the contract term. On December 3, 1986, the Association filed a petition with the commission requesting mediation/arbitration and, after investigation by a member of the Commission's staff, they exchanged final offers and a stipulation as to the matters of agreement. On April 2, 1987, the Commission issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring mediation/arbitration of the dispute, and on April 20, 1987, it issued an order appointing the undersigned to act as mediator/arbitrator. Unsuccessful mediation took place on August 25, 1987, after which the parties moved directly into the arbitration process.

All parties received a full opportunity to present evidence and argument in support of their respective positions at the arbitration hearing, and each closed with the submission of post-hearing briefs and reply briefs.

THE FINAL OFFERS OF THE PARTIES

The Association proposes an eight lane salary schedule with twelve experience steps at the BA level and fourteen experience steps at the MA level. Under this proposal the BA lane at step one would carry an annual salary of \$16,350, the MA lane at step one an annual salary of \$18,150, and the MA 24 lane at the fourteenth step, an annual salary of \$30,979.

The District proposes an eight lane salary schedule with twelve experience steps plus half steps at the BS level and fourteen experience steps plus half steps above the MS/BS 36 level. Under this proposal, the BS lane at step one would carry an annual salary of \$15,900, the MS/BS36 lane at step one an annual salary of \$17,650, and the MS24/BS60 lane at the fourteenth step an annual salary of \$30,142.

THE ARBITRAL CRITERIA

The merits of the dispute are governed by the provisions of the Wisconsin Statutes in effect at the time the dispute arose, which in Section 111.70(4)(cm)(7) directed the Mediator/Arbitrator to give weight to the following factors:

- "a) The lawful authority of the municipal employer.
- b) The stipulations of the parties.

- c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d) Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e) The average consumer prices of goods and services, commonly known as the cost-of-living.
- f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacations, 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 arbitral 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, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE BOARD

In support of the position that its final offer is the more appropriate of the two offers before the Arbitrator, the Board cited a variety of arguments.

- (1) Preliminarily it cited certain explanatory considerations, including the following.
 - (a) That the Board's offer amounts to a salary increase of 5.03% or \$1,074 per returning teacher, for a package total increase of 5.11% or \$41,292 in new money spent.
 - (b) That the Union's offer represents a salary increase of 7.92%, or \$1,691 per returning teacher, for a package increase of 7.8% over last year or \$63,387 in new money to be spent.

- (2) That the final offer of the Board best meets the interests and welfare of the public criterion.
- (a) That while the District is foreclosed from arguing an absolute inability to pay due to its broad taxing authority under Section 120.12(3)(a) of the Wisconsin Statutes, its relative ability to pay should be a major consideration in these proceedings.
- (b) That recent levels of employment and recent tax collection data are the most reliable and current gauges of the area's economy.
- (c) That June 1987 unemployment data show Dodge and Jefferson Counties at 7.4%, a total of .6% above the State of Wisconsin average, and 3.3% above the Dane County figures. That the latter figure particularly influences the Deerfield, Cambridge, Marshall and Waterloo conference schools.

That for all of 1986 the unemployment rates of 7.8% in Dodge and 8.0% in Jefferson counties, were significantly above the 7.0% figures for the State of Wisconsin and 4.5% in Dane County.

- (d) That property tax and property value figures in the District support the adoption of the final offer of the Board. During the 1985-1986 school year the Hustisford School District had the highest tax levy in the athletic conference; that at \$16.64 per thousand this was \$3.51 ahead of the conference average. At the same time, that the District had the lowest pupil count and the highest cost per pupil. In 1986-1987, the levy in Hustisford rose 16% to \$19.32, still the highest in the conference, as pupil costs rose \$230.49 per pupil, to a whopping \$4,987.97 each.

That while receipt of state aid increased from \$784.08 per pupil in 1985-1986 to \$1,093.80 per pupil in 1986-1987, this is a form of tax relief that was sorely needed in the District.

- (e) That the equalized value of the District's property per pupil dropped from \$203,281 per

pupil in 1985-1986 to \$169,599 per pupil in 1986-1987, a drop of 19.8%!

- (f) That the total real estate values in the municipalities contributing to the District (Village of Hustisford, Town of Clyman, Town of Hubbard, Town of Hustisford, Town of Lebanon) dropped from a total of \$188,463,900 in 1985 to a total of \$151,580,600 in 1986, a decline of 19.5% during a single year. That this reduced by almost 20% the amount of taxable property available to pay a levy which increased 16%.

That the agricultural real estate values in the same municipalities dropped from a value of \$82,552,500 in 1985 to \$45,197,100 in 1986, a drop of 42.5%! That as agricultural land values decline, the burden falls upon residential and commercial property to pick up the difference. With no property income, and 7.4% unemployment, that the increased burden is particularly felt by homeowners.

- (g) That the impact of rising tax levies upon the farm economy is particularly devastating. That farm property taxes rose 221% between 1973 and 1985, when the total property tax in the state was rising 142%.
- (h) That many problems exist for rural schools, and their ability to finance high quality education is declining at the same time that a high quality education is becoming increasingly important for the future success of rural children.

- (3) That the final offer of the Board is the more reasonable when considered in light of the wages and settlements of other similarly situated employees.

- (a) That the primary comparison group for the District should consist of other districts in the Eastern Suburban Conference: Cambridge, Deerfield, Dodgeland, Johnson Creek, Marshall, Palmyra-Eagle and Waterloo. That Williams Bay, although included in the Conference, should be excluded due to the fact that it is in Walworth County, a zero aid district, and is otherwise sufficiently distinct from other conference schools to be excluded as a comparable. That Lake Mills

should be excluded because it is significantly larger than Hustisford, and because it has since joined the Capital Conference, which includes the suburban Madison communities of DeForest, McFarland, Verona and Waunakee.

- (b) That various of the schools offered for comparison purposes by the Union should be rejected because they are dissimilar.
- (i) That the first comparison group by the Union would include various districts surrounding Hustisford, which have settled: Beaver Dam, Hustisford UHS, Mayville, Neosho, Saylesville, Slinger and Watertown.

That the Neosho and Saylesville districts are K-8 feeder schools which feed into the Hartford Union High School, and that an elementary only district can hardly be compared with a district which must operate K-12. Similarly, that a district which operates a high school only is significantly different in character from a K-12 district for the same reasons.

That Arbitrator Haferbecker excluded Hartford UHS on size grounds on 5/20/86 and, for the same reason, that Beaver Dam, Slinger and Watertown must be excluded this year. Further, that Mayville should be excluded due to the fact that it is part of another athletic conference, even though it is only 2.5 times the size of Hustisford.

- (ii) That the second comparison group suggested by the Union would include Dodge County Districts, only two of which have settled, Beaver Dam and Mayville. That these two districts should not be used for comparison purposes, as outlined above.
- (iii) That the third comparison group suggested by the Union includes schools utilized by Arbitrator Haferbecker in his 1986 decision. Of this group, there have been settlements in Lake Mills, Marshall, Richfield #2 and Richmond, but the latter two are elementary school districts which were used last year due to the lack of settlements among the true

comparables. That elementary school districts differ greatly from K-12 districts, and should not normally be used for comparison purposes.

- (iv) That the fourth comparison group urged by the Union would include all of the K-8 schools which feed the Hartford UHS, which should be excluded as discussed above.

- (c) That the school districts comprising the Eastern Suburban Conference have historically compared with one another in the labor negotiations area, and this stability should be preserved by utilizing the same comparisons in these proceedings. That with settlements in effect in Deerfield, Marshall, Palmyra and Waterloo, there is no need to go beyond the conference for additional, secondary comparisons.

- (4) That the final offer of the Board is favored when the total package is taken into consideration.
 - (a) That the Union prevailed in arbitration for the 1985-1986 school year, which resulted in the imposition of a salary increase of 9.2 percent and a package increase of 9.4 percent.

 - (b) That the previous arbitration "windfall" should be taken into account in subsequent decisions.

 - (c) That the total package costs of the 1985-1986 and the 1986-1987 years should be considered by the Arbitrator, and that they show a 15.75% average increase over the two year period for Deerfield, Marshall, Palmyra and Waterloo, versus a two year average increase of 14.5% with adoption of the Board's final offer, and 17.2% with the adoption of the Union's final offer.

That the Union's final offer would result in a two year increase of 1.45% above the average, and in a 1986-1987 increase of 1.2% above the average. That the 17% plus increase is simply incompatible with the drop in property value and the increase in the tax levy referenced earlier.

- (d) That an anticipated post-hearing exhibit from the Union relating to the costing data from the

Waterloo, the Deerfield and the Palmyra-Eagle school districts should be discounted. That the Board's investigation indicates that the latter used a standard approach to costing, that of casting forward last year's staff for the one year period.

- (5) That consideration of certain private and public sector comparisons favor the adoption of the final offer of the Board.
 - (a) That average increases for Wagner Products, U.S. Marine Power Corporation, John Deere, Brandt, Broan Manufacturing, Universal Foods and Hartford Memorial Hospital favor the adoption of the final offer of the Board. That these settlements reveal open market influences on industries not protected under government, and they also reveal the extent of increased ability to pay among working people in the area.
 - (b) That statewide industry increases of less than 5% are shown in the economic indicators of the Department of Industry, Labor and Human Relations.

That the average wage increase in Wisconsin's nonfarm manufacturing industries (excluding canning) was 1.3%, wages in durable goods rose 1.3%, those in nondurable goods rose only .95%. In the Milwaukee-Ozaukee-Waukesha-Washington area wages actually sank .7%.
 - (c) That the wage increases of 4% to 5% in and around Hustisford are much closer to the 5% offered by the Board than to the 7.9% requested by the teachers.
 - (d) That Dodge County has given a 2% increase to its non-union personnel, a 2% increase to public health nurses, and has taken back .25¢ per hour from nursing home employees in 1987.
- (6) That the final offer of the Board is very generous in consideration of recent increases in cost-of-living.
 - (a) That cost-of-living considerations are most appropriately measured by fluctuations in the consumer price index, rather than by the weight placed upon this factor in other settlements.

- (b) According to national consumer price data, that the index rose 3.7 points from June 1986 to June 1987, for a fiscal year percentage increase of 1.9%. That this increase is significantly below both the 5% and the 8% increases proposed by the parties.
- (c) That the non metropolitan index shows a rise of 2.8 points from June 1986 to June 1987, reflecting a fiscal year percentage increase of 0.8%.

In conclusion, that the adoption of the Board's final offer is clearly indicated by various considerations. That as equalized property values fall, increased tax effort is required to keep up existing standards; that Hustisford had the highest tax levy in the athletic conference in 1985-1986, and the levy rose 16% in 1986-1987. That comparable settlements, the cost of the two year increase which would result from adoption of the Union's final offer, cost-of-living considerations, the amount of delinquent taxes in the County, and an unemployment rate of 7.4% strongly support the adoption of the final offer of the Board.

In its reply brief, the Board emphasized the following additional arguments:

- (1) That the Union's arguments that the District had failed to show itself worse off than other districts should not be credited by the Arbitrator.
 - (a) That a district cannot hope to collect all of its own employment and tax data, as the availability of such data is limited by the nature of the collecting agency.
 - (b) Contrary to the arguments of the Union, the District has been able to show a significant farm dependency, which has been declining only if the precipitous drop in farm land values is considered. That in 1985 farmland in the townships in the Hustisford School District represented \$82 million of a total of \$188 million; in 1986 that farm values had dropped 45%, and represented only \$45 million of a total of \$151 million.
- (2) Contrary to the arguments of the Union, that the District has not made an inability to pay argument, and there is no basis for the use of so-called actual costs rather than projected costs.
 - (a) That the cast-forward method of costing is a standard tool which has been consistently

approved and used by other arbitrators.

- (b) That there is no basis for any Union attempts to use budget-impact figures in this dispute, as there is no inability to pay argument being made.
- (3) That the catch-up arguments of the Union should not be persuasive in these proceedings.
 - (a) That this argument is inconsistent with the fact that last year's salaries were determined by a union win in arbitration, and the previous year's salaries were the result of a voluntary settlement.
 - (b) If there were to be serious consideration of so-called catch-up, the total package amounts would have to be emphasized rather than merely wage data.

POSITION OF THE ASSOCIATION

In support of the argument that its final offer is the more appropriate of the two offers before the Arbitrator, the Association cited a number of arguments.

- (1) Preliminarily and by way of introduction, it urged as follows:
 - (a) That the Association has proposed a salary increase of 6.0% at each salary cell, while the District is proposing to increase each cell by either 3.1% or 3.2%.
 - (b) That in 1985-1986 the parties submitted their negotiations impasse to Arbitrator Gordon Haferbecker, who sustained the use of comparisons with school districts in the same economic-geographic area.
 - (c) That during the period from 1983-1986 the parties' settlements have been influenced more by the settlements in the Dodge County school districts, than settlements within the Eastern Suburban Athletic Conference.
 - (d) In the case at hand, that the Arbitrator should consider benchmark salary comparisons within Dodge County and also within the Eastern Suburban Athletic Conference. That the use of these

comparables is supported by the actions of Arbitrators Christenson and Haferbecker in past proceedings for the District and the Association, by the parties' negotiations history, and by the actions of the School Board in the use of such comparables in determining pay for substitute teachers.

- (e) That the District's offer would diminish Hustisford's salary position among comparables, while the Association's offer would essentially maintain or slightly improve the situation.
 - (f) That there is no inability to pay issue present in these proceedings, and no evidence that the economic conditions in Hustisford are any different than those affecting other school districts in the economic-geographic area. That the interests and welfare of the public are better served by adoption of the Association's offer, which is well within the pattern of settlements established through collective bargaining for the 1986-1987 school year.
 - (g) That the principal statutory arbitral criteria that should be relied upon by the Arbitrator in reaching a decision and award are the interests and welfare of the public, comparisons, and various other factors normally or traditionally taken into considerations in negotiations and impasse proceedings.
- (2) That the comparisons recommended by the Association are the most persuasive of the comparables in evidence in these proceedings.
- (a) That Arbitrator Arlen Christenson in 1970 interest proceedings between the parties, determined that both geographic proximity and size were relevant, and he combined for consideration purposes the school districts emphasized by both the Association and the District.
 - (b) That athletic conference schools located near Madison tend to pay less than those districts contiguous to Hustisford or in the area surrounding Hustisford.
 - (c) During their 1983-84 and 1984-85 negotiations, that the parties settled voluntarily in a manner very consistent with other Dodge County settlements, rather than following the athletic conference.

- (d) That other arbitrators have departed from athletic conference comparisons in Dodge County interest arbitration proceedings.
 - (e) That the School Board itself, on June 12, 1986, utilized surrounding districts in deciding to increase substitute teacher pay.
 - (f) That Arbitrator Gordon Haferbecker in the parties' 1985-86 interest arbitration proceedings, utilized a group of comparables which included both Dodge County Districts, certain K-8 feeder schools, and Cambridge, Lake Mills and Marshall from the athletic conference.
 - (g) That the Hustisford teachers live largely within the district and in adjacent, contiguous districts; that these residential patterns support the use of comparisons in the immediate economic-geographic area.
 - (h) That the settlements within the immediate economic-geographic area should be the primary focus of the Arbitrator in these proceedings.
- (3) On the basis of the evidence in the record and consideration of the most important arbitral criteria, that the final offer of the Association should be selected by the Arbitrator.
- (a) That an appropriate method of comparison is to use salary benchmarks at the BA Min, the BA 7, the BA Max, the MA Min, the MA 10, the MA Max and the Schedule Max. That benchmark comparisons with comparables on the basis of average 1986-1987 salary increases, average 1986-1987 percentage increases, benchmark ranking for 1986-1987 versus the prior year, and 1986-1987 percentage and dollar deviations from average versus the prior year, all favor the adoption of the final offer of the Association.
 - (b) That the above comparisons for 1986-1987 favor the adoption of the final offer of the Association when comparisons are made with settled districts contiguous to Hustisford or in the surrounding area. That these comparisons indicate that the Association's final offer is closer when measured in terms of percentage increases per teacher, in terms of average dollar increase per teacher, or on the basis of ranking at the benchmarks.

- (c) That the same comparisons as above, within the Hartford K-8 feeder schools favor the selection of the Association's final offer.
 - (d) That the evidence in the record actually demonstrates the need for catch-up increases for Hustisford teachers. In looking to percentage and dollar deviations from average salaries at the various benchmarks, it is apparent that the adoption of the Association's offer would more or less maintain the status quo, while the selection of the District's final offer would further erode the average salary paid within the District.
 - (e) That the final offer of the Association is favored by consideration of the comparable districts used by Arbitrator Haferbecker's award for the 1985-1986 school year, which have settled for 1986-1987.
 - (f) That Hustisford has generally held a superior relative position within the athletic conference, but there has been a significantly different settlement pattern between Dodge County school districts and the Eastern Suburban Athletic Conference.
 - (g) That the Association's final offer of 6% benchmark increases is in line with the settlement pattern in the immediate economic-geographic area, and it is higher than the pattern within the athletic conference. In the latter connection, however, it is closer to the conference settlement pattern than is the District's final offer; that on a salary only basis the Association offer is \$47 or .89% higher than the athletic conference settlement pattern, while the district offer is \$580 or 2.0% lower than the conference settlement pattern.
- (4) That the pattern of settlements in school districts in the economic-geographic area is the most appropriate indicator of the statutory cost-of-living criterion.
- (a) That various arbitrators have subordinated cost-of-living considerations to the comparison criterion.
 - (b) That cost-of-living comparisons are flawed by District calculations which include teacher experience increments, and flawed also by the

makeup of the market basket by which CPI movements are measured.

- (c) That the District selected a period where inflation has averaged under 4%; during the period between August 1977 and August 1981, however, inflation averaged over 9%, and between August 1976 and August 1986, the dollar lost 46.8% of its purchasing power.
 - (d) That using the vertical and horizontal increments in the teacher salary structure for cost-of-living considerations would deny teachers the opportunity to increase their purchasing power.
 - (e) That teachers will have received only a 2.3% real value increase between 1976 and 1986 at the BA Minimum, and only a 3.6% increase over the same time frame at the MA Maximum. That such increases over a decade are but a drop in the bucket toward needed higher teacher salaries. That adoption of the District offer for 1986-87 would not restore the 1976-77 BA base purchasing power.
- (5) That the interests and welfare of the public are best served by the adoption of the final offer of the Association.
- (a) That the District has indirectly raised a question of ability to pay, while stating in the hearing that ability to pay was not in issue.
 - (b) That if the District wishes to show that its citizens are economically depressed, it has the obligation to show that such is clearly the case.
 - (c) Only if the District presents credible evidence that Hustisford is in a significantly worse economic situation than school districts in the economic-geographic area, would it be appropriate to consider an award of less than that adopted in these other districts.
 - (d) That in Hustisford and in the general geographic area, the overall economy has been affected to some degree by the farm problems, but there is simply no evidence in the record that Hustisford is any worse off than any other district in the economic-geographic area in this respect.

Indeed, that Association exhibits show that Hustisford's economic factors are generally similar to those in Dodge County and in the State of Wisconsin in general.

- (e) Despite the existence of farm problems, the impact of the farm economy upon Hustisford is not nearly as great as the District implies. That exhibits introduced by the Association show that the District is not "farm dependent" in that only 16.3% of the population in Hustisford is engaged in farming, and this figure compares to 10.7% in Dodge County. That 38.2% of the District's land value is in agriculture as against 56.6% in Dodge County as a whole.

That property taxes represented only 5.5% of farm expenses, that local farmers can take advantage of the Farmland Preservation Act, and that there is no evidence in the record that the wage increase sought by the Association will have any real impact upon the Hustisford farmer.

- (f) That unemployment figures in Dodge County were at 5.5% in June of 1986, down from higher figures earlier. That the state of the economy in Wisconsin is also showing marked improvement.
- (g) That there is no inability to pay issue present in these proceedings, and that any settlement will come out of already budgeted monies.
- (h) That Hustisford property taxpayers do not bear any extraordinary property tax burden or any unusual economic conditions that would warrant the arbitral selection of the District's final offer.
- (i) That the District actually spends less in salary and fringe benefit costs per pupil than do comparable districts.
- (j) If there were an inability to pay question raised, that actual costs should be used to evaluate the situation; that the actual cost of the Association offer is well within the District's ability to pay.
- (k) That a compelling argument can be made that even the Association's offer is too low, and that compensating teachers at an appropriate salary

level meets the interests and welfare of the public.

- (1) That various external publications and reports, copies of which are part of the record in these proceedings, emphasize the need for more realistic teacher salaries.
- (m) That teacher turnover in the District reflects low salaries. That between 1980-81 and 1985-86 twenty-six teachers left the District out of an average FTE of thirty-four; that in one year alone there was a turnover of 23.5%. That the final offer of the Association provides more improvement for entry and career level salaries for teachers, than does the District's offer.

In summary, that the Association's final offer is clearly supported by consideration of the relevant arbitral criteria. That benchmark and relative position analysis, comparison of dollars per returning teacher, the settlement pattern in comparable school districts, and the interests and welfare of the public all support the Association's final offer in the dispute.

In its reply brief, the Association restated many of the points made in its initial brief, but it emphasized a number of additional arguments, including the following:

- (1) That the use of full steps in the final offer of the Association was agreed upon at the hearing to be a "non-difference." Further, that the use of half steps was found by Arbitrator Haferbecker not to be a major deviation from past practice, and not a very important issue. That the half-step factors should not bear upon the final offer selection process in these proceedings.
- (2) That the Arbitrator should accept at face value the contents of Association Post-hearing Exhibit 3. That the record was kept open for the submission of this material, and that the District submitted no additional costing evidence on the matter.
- (3) That the terms of Arbitrator Haferbecker's award for the 1985-86 school year cannot appropriately be considered a "windfall," and its terms should not be re-arbitrated in these proceedings.
- (4) That the District's arguments based upon the Consumer Price Index, something less than an absolute inability to pay, and other public and private sector settlements

cannot be used to offset the demonstrated need for higher salaries in teaching.

- (5) That Hustisford has a high levy, but that this is partially due to its size and to its debt service, with \$618 of the cost per pupil going to pay for the new buildings. That these factors are substantially due to the District's election to remain small and to build new buildings.
- (6) That while the Hustisford tax levy increased 16% in 1986-87, the average tax levy increase in the District's comparables was 19.65%, as reflected in District Exhibits 7 and 8.
- (7) That the state has pumped an enormous amount of money into the District in the form of state aids, which is not reflected in tax levy reductions.
- (8) That other public and private sector salary comparisons should not be accorded the same weight as comparisons of salaries paid to teachers within comparable school districts. Further, that much of the evidence introduced by the District with respect to local private sector comparisons was lacking in proper foundation, was non specific, and was suspect, in that there is no indication that it included all measureable compensation.
- (9) That while the District has argued that the municipalities in the District do not represent a diverse economy, there is no evidence in the record to support this conclusion.
- (10) That retaining and attracting competent educators requires competitive wages, that sufficient funds have already been budgeted by the District to pay the increase sought by the Association, and that adoption of the Association's final offer would better insure quality education in the District.
- (11) That evidence in the records shows a relatively high level of compensation for District Administrators.

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and selecting one of the two final offers in these proceedings, it will be necessary for the Impartial Arbitrator to consider the positions of the parties relative to the various arbitral criteria. The principal arguments advanced by the parties addressed the comparison criterion, cost-of-living considerations, and the interests and welfare of the public (including ability to pay considerations.) The Arbitrator will separately address each of the

various criteria argued by the parties, prior to arriving at a decision in this matter.

The Comparison Criterion

Although the legislature did not see fit to prioritize the various arbitral criteria which appear in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is a well established principle in both labor negotiations and in interest arbitration that comparisons are the most frequently relied upon, and normally the most persuasive of the various criteria. Interest arbitration is an extension of, rather than a substitute for across the table bargaining by the parties. Rather than utilizing his or her judgment for what constitutes the correct or the ideal settlement, an interest neutral should attempt to place the parties in the same position that they should have reached in face-to-face bargaining, had they been able to achieve a negotiated settlement. For this reason, the interest neutral will normally place the greatest weight upon those considerations that are normally most persuasive to the parties in the collective negotiations process.

Merely articulating the principle that comparisons are the most important single factor in interest arbitration does not, however, answer the sticky questions of which comparisons to use, which should receive the greatest weight if more than one set of comparables is used, and what types of comparisons should be utilized; the parties differed with respect to all three of these preliminary considerations.

- (1) The Association urged arbitral use of comparison with settled school districts in Dodge County, with Hartford K-8 schools, with surrounding schools which had been used by the District in determining substitute teacher pay, and with settled districts which had been utilized by Arbitrator Haferbecker in his decision and award governing the 1985-1986 school year.

The District emphasized arbitral consideration of certain settled districts within the athletic conference, and with certain other public and private sector employees within Dodge County.

- (2) The Association primarily utilized benchmark comparisons with other settled districts, which comparisons took the form of comparisons of dollar salary levels, dollar increases, percentage increases, and ranking of school districts at the various benchmarks.

The District principally emphasized the two year, total package costs of the 1985-1986 and 1986-1987 academic years, as compared to the two year

comparisons with the Deerfield, Marshall, Palmyra and Waterloo settlements within the athletic conference. It also cited percentage wage increases for certain other public and private sector employees in the geographic vicinity of Hustisford.

In first addressing the matter of the employees with whom to compare in this dispute, the Arbitrator will first observe that so-called intraindustry comparisons or, in this case, comparisons with other school districts are far more persuasive than are comparisons with other types of public or private sector employers.

In next addressing which of the school districts should be used for comparison in these proceedings and/or which should receive principal weight, the Arbitrator will reiterate the earlier observation that the interest arbitration process is an extension of the bargaining process, and arbiters should strive to arrive at the same settlement the parties would have reached but for their inability to agree. Arbitrators will normally, therefore, place great weight on those comparables which the parties themselves have utilized in prior bargaining, and/or in prior interest proceedings. With these considerations in mind, the Arbitrator has found the following considerations to be determinative in the selection of comparables.

- (1) Fact-finder Arlen Christenson issued a decision and recommendations on September 8, 1970, in connection with the parties' first negotiations, and a copy of this document was accepted into the record as Association Exhibit #3. The decision indicated in part as follows:

"The Board and the HEA have both urged the fact-finder to consider salary schedules proposed by the parties in comparison with those in effect in other school districts with which Hustisford may be appropriately compared. The parties disagree, however, on the issue of what constitutes a comparable school district..."

* * * * *

"...Such schools are defined by the Board as those schools with which Hustisford competes in athletics. To some extent this is true. As the HEA points out, however, the Hustisford District is also in competition for teachers with other schools in the immediate geographic area. Certainly from the standpoint of competition the salary schedules in Horicon and Hartford, located 10 and 11 miles respectively from Hustisford, are at least as relevant, although these schools are outside the conference, as the salaries in conference schools Green Lake and Palmyra located 55 and 46 miles away..."

* * * * *

"What all this means is that the sampling of school districts presented by the HEA, stressing geographic proximity, and the sampling used by the Board, stressing size similarly, [sic] are both relevant and useful in establishing an appropriate salary schedule for the Hustisford district. What I have done for comparison purposes is to combine the two groups of schools. In addition I have considered some statewide figures which may be useful to compare with the sample chosen."

- (2) Arbitrator Gordon Haferbecker issued an interest arbitration award to the parties on May 20, 1986, governing the 1985-86 school year, and a copy of the decision and award was accepted into the record as Association Exhibit #5. In connection with the selection of comparables to use for comparison purposes, the Arbitrator indicated in part as follows:

"On the basis of past arbitral practice, and on the basis of geographic proximity and similar economic conditions, both parties agree that Dodge County comparables should be considered. However, the District notes size differences between Hustisford and the settled Dodge County districts. The union thinks that comparables east of Hustisford are close-by and should be given weight. The Board stresses the Athletic Conference as being most comparable. Salary schedules are lower in the Eastern Suburban Conference (schools near Madison) than the Hartford area east of Hustisford (closer to Milwaukee).

One difficulty that the parties and the Arbitrator face in this case is the small number of settlements in Dodge County (only 2) and in the Athletic Conference (only 3). While there have been more settlements in the Hartford area east of Hustisford, there is some question as to their comparability.

For the purposes of this arbitration only, and in view of the limited number of settlements for 1985-1986, the Arbitrator has selected 7 school districts that have settled for 1985-1986 and which either have been used by the parties in the past, or are similar in size and economic conditions.....These comparables include: the Dodge County settled districts of Lomira and Horicon; the Athletic Conference settled districts of Cambridge, Lake Mills, and Marshall; and two comparable Hartford area districts, Richfield and Richmond...."

- (3) Association Exhibit #29 compares the negotiated settlements in Hustisford with those in other Dodge County

school districts, and with districts within the Eastern Suburban Athletic Conference, covering the three year period between the 1983-1984 and the 1985-1986 school years. It rather conclusively shows that the parties have not confined their past comparisons in the voluntary negotiations process to athletic conference comparisons.

- (4) Association Exhibit #1 is a copy of the minutes of the School Board meeting for June 12, 1986, at which time the Board addressed the question of an increase in daily pay for substitute teachers. In its deliberations the Board considered the rates paid by districts in surrounding areas, including the Hartford, Watertown, Horicon, Dodgeand, Mayville, Beaver Dam, Neosho, Saylesville and Slinger districts.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the parties, in their past negotiations, interest arbitration and fact-finding, and the School Board in its deliberations relative to substitute pay, have recognized a set of comparables outside of the Eastern Suburban Athletic Conference. Accordingly, there is simply no basis for confining, or for addressing primary arbitral attention to athletic conference comparisons. As had been the case in the past, the Impartial Arbitrator will consider all of the comparisons previously utilized by the parties, and those utilized by previous interest neutrals.

Having determined the principal group of comparables to use for comparison purposes, the Arbitrator must next address the time frame within which the comparisons should be applied. In this connection the Employer argued that it should, in effect, be credited with having adopted an excessive or windfall settlement for 1985-1986, due to the arbitrator's selection of the Union's final offer. In this connection, it urged a comparison of the total package settlement costs for the four districts which it regarded as comprising the primary comparables for the two year period comprising the 1985-1986 and the 1986-1987 school years. The Association, on the other hand, focused its attention on 1986-1987, and argued against any arbitral reexamination of the decision and award governing 1985-1986.

Which base period to use is a potential problem in addressing various arbitral criteria and, understandably, each party may attempt to use a base period which best supports its position. To avoid potentially misleading and inappropriate manipulation of base periods, arbitrators have consistently refused to go beyond the last time that the parties went to the bargaining table, and either reached a negotiated settlement or completed the process through the use of interest arbitration. To go beyond the effective date of the last settlement would entail, in effect, relitigating past settlements. It must be noted, however, that if a past settlement was either excessively high or low, this factor may become apparent from current benchmark comparisons.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that principal consideration of comparables must be based upon what has happened since the parties' 1985-1986 settlement. Even if it had been concluded, therefore, that the principal comparables should have consisted of the Deerfield, Marshall, Palmyra and Waterloo districts from the athletic conference, as argued by the Employer, arbitral consideration of these comparisons would be principally directed to their settlements for 1986-1987 and thereafter.

The next question before the Arbitrator is what figures should be used for comparison purposes, the total package costs as urged by the Employer, or the various types of benchmark and other comparisons which were urged by the Association. The benchmark comparison approach is probably the easiest understood and most widely used approach but, as emphasized below, the choice of figures to be used for comparison purposes will not alter the application of the comparison criterion in the matter at hand.

With the above preliminary determinations in mind, the Impartial Arbitrator has found the following 1986-1987 comparisons to be the determining factors with respect to the comparison criterion.

- (1) If the 1986-1987 comparisons are based upon total package costs, as urged by the District, and are limited to the four athletic conference members urged in the District's brief, the following figures would result.

<u>District</u>	<u>1986-1987 Increase</u>
Deerfield	5.4%
Marshall	8.1%
Palmyra	6.7%
Waterloo	6.5%
Average	6.6%
Hustisford	
Board	5.1%
Association	7.8%

On the above basis, the District is offering the lowest increase in the comparable group, an increase some 1.5% below the average. The Union, conversely, is requesting the second highest percentage increase in the group, an increase only 1.2% higher than the average 1986-1987 increase within the group.

If, as urged by the Association, the Williams Bay increase of 7.52% and the Lake Mills increase of 7.14% is added, the group average increase moves to approximately 6.9%, which is .9% below the Union's final offer and 1.8% above the District's final offer.

On the above bases, it is apparent that the athletic conference comparisons for 1986-1987 favor the selection of the Association's, rather than the District's final offer.

- (2) As reflected in various of the Association's exhibits, consideration of average 1986-1987 percentage increases at the BA Min, the BA 7, the BA Max, the MA Min, the MA 10, the MA Max and the Schedule Max favor the adoption of the final offer of the Association.
 - (a) Association Exhibit 33 shows benchmark percentage increases ranging from 5.4% to 5.9% in the contiguous or surrounding districts, of Neosho, Watertown, Hartford UHS, Slinger, Beaver Dam, Saylesville and Mayville; this compares with the Association proposed increase of 6.0% at each of the levels and with the District proposal for a 3.1% or 3.2% increase.
 - (b) Association Exhibit 41 shows average increases at the various benchmarks ranging from 5.6% to 6.4% in the Hartford K-8 contiguous districts, versus the Association proposed 6.0% and the District proposed 3.1% or 3.2%.
- (3) The record also favors the adoption of the final offer of the Association when comparisons are made on the basis of average 1986-1987 percentage and dollar increases per teacher.
 - (a) Association Exhibit 22 shows average dollar and percentage increases per teacher in contiguous and surrounding districts of 7.23% and \$1,807, versus Association offer figures of 7.94% and \$1,682, and District offer figures of 4.98% and \$1,055.
 - (b) Association Exhibit 24 shows dollar and percentage increases per teacher in Hartford K-8 feeder districts. It shows average increases of 7.58% and \$1,888 per teacher within settled districts, versus the referenced figures for the District and the Association.

On the basis of all of the above, the Arbitrator has preliminarily concluded that consideration of the comparison criterion in connection with comparable school districts, clearly and strongly favors the adoption of the final offer of the Association.

If the Employer's evidence relating to other public and private

sector settlements is taken at face value, it supports the arbitral adoption of the final offer of the District. Not only are salaries paid to teachers in comparable districts far more persuasive than other general private and public sector comparisons, however, but the Association is also quite correct that much of the evidence in the record relating to these other comparisons is indirect, anecdotal and incomplete. On these bases, the Impartial Arbitrator has preliminarily concluded that while the other private and public sector comparisons favor the final offer of the District, they are entitled to relatively little weight in these proceedings.

The Cost-of-Living Criterion

In addressing cost-of-living considerations, the District urged that the final offer of either party was in excess of recent and anticipated increases in the cost-of-living as reflected in Consumer Price Index figures published by the Bureau of Labor Statistics. Accordingly, urged the District, arbitral consideration of the cost-of-living criterion favors the selection of the final offer of the District.

Contrary to the above, the Association urged that cost-of-living considerations were also reflected in the settlements reached in other school districts. It urged that primary arbitral attention should not be directed merely to movement in the consumer price indices, and argued that cost-of-living considerations as reflected in the settlements of others, favored the adoption of the final offer of the Association.

Cost-of-living considerations are one of the most variable and volatile of the arbitral criteria. In periods marked by rapid increases in consumer prices, the cost-of-living criterion can be one of the most important factors in the final offer selection process, but during periods of stable prices it declines in relative importance. The cost-of-living criterion is generally regarded as of less relative importance than the comparison criterion, at least partially due to the fact that the settlements of other parties already include some consideration of cost-of-living.

In the situation at hand, it must be recognized that the settlements discussed above in comparable school districts, were all negotiated under the same general economic circumstances, and they reflect the weight placed upon cost-of-living considerations by the negotiating parties within these districts. Since the final offers of both parties exceed cost-of-living considerations as measured by recent and anticipated movement in any of the various consumer price indices, it must be concluded that cost-of-living considerations favor the adoption of the final offer of the District in these proceedings. In light of the relative stability in the economy, however, and in consideration of the weight placed upon this factor in settlements in comparable districts, cost-of-living considerations simply cannot be assigned determinative weight in these proceedings.

The Interests and Welfare of the Public Criterion

Each of the parties emphasized different arguments in connection with arbitral consideration of this criterion, and each urged that arbitral consideration of the interests and welfare of the public should favor the selection of its final offer.

- (1) The District emphasized such factors as high unemployment, reduced property valuations, increases in the tax levy, the impact of rising tax levies upon an already hard pressed agricultural sector, and a lower private sector rate of wage and salary increases for those who must pay the taxes to fund any increases in the cost of government. It submitted that while there was no inability to pay per se, the overall state of the economy indicates the need for lower levels of increases in teacher salaries than might otherwise be justified.
- (2) The Association emphasized the lack of an inability to pay question, stressed that the economic factors cited by the District were common to the situation in comparable districts, urged that Hustisford was not farm dominated in the normal sense of these terms, cited a recovery in the area and the state economy, and urged that an adequate salary for teachers was in the interest and welfare of the public.

While the District is quite correct that adverse economic circumstances must be taken into consideration by interest neutrals, such considerations are normally given determinative weight only under two sets of circumstances. First, where the record indicates an absolute inability to pay on the part of the governmental entity and/or, second, where selection of a final offer would entail a significantly disproportional or unreasonable effort on the part of the employer. In the situation at hand, the parties are in agreement that there is no absolute inability to pay and, as emphasized by the Association, the record simply does not support a finding that the Hustisford School District is facing unique or distinctive adverse economic circumstances, that are not also being faced by comparable school districts.

The Association is quite correct in its assertion that the interests and welfare of the public are also served by educational excellence, and the concomitant need for various types of improvements, including the payment of fair and adequate salaries to teachers. Such considerations are, however, difficult to either quantify or to prioritize in relationship to other arbitral criteria.

If the economic considerations emphasized by the District could be viewed in isolation, the Arbitrator would be very strongly inclined to agree that the overall increase proposed by the District

was a reasonable one. The decision in these proceedings cannot, however, be arrived at without consideration of the various statutory arbitral criteria, including consideration of what comparably situated districts have done when faced with the same circumstances facing the Hustisford District. When this broader perspective is adopted, the economic circumstances cited by the District simply cannot be assigned determinative weight. As referenced above, there is neither an absolute inability to pay, nor persuasive evidence of a disproportionate impact upon the Hustisford School District.

Principally in light of the absence of any indication of inability to pay on the part of the District, and in consideration of the lack of evidence of a significantly disproportional impact upon the District, the Arbitrator is unable to assign determinative weight to the interests and welfare of the public criterion 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) The comparison criterion is normally the most important of the various arbitral criteria provided for in the Wisconsin Statutes, and clearly the most important type of comparison in this case is with the salaries paid other teachers in comparable school districts.
- (2) Interest arbitration is an extension of the bargaining process and, in selecting appropriate comparables, *interest neutrals will normally adopt comparisons used by the parties in their past negotiations, or in their past impasse proceedings.* In the situation at hand it must be noted that the parties themselves, in past negotiations, in past interest arbitration and fact-finding, and in School Board deliberations with respect to substitute pay, have used a broad range of comparables outside of the Eastern Suburban Athletic Conference. Accordingly, the Arbitrator will consider all of the comparisons previously utilized by the parties.
- (3) In determining the base period to use for comparison purposes, interest arbitrators should not go beyond the effective date of the parties' most recent negotiated or arbitrated settlement; to go beyond this date would entail, in effect, relitigating any or all past settlements. Accordingly, the appropriate base period for comparison purposes in the case at hand, must begin with the 1986-1987 school year.

- (4) Consideration of the comparison criterion, clearly and strongly favors arbitral selection of the final offer of the Association.
- (5) Cost-of-Living considerations somewhat favor the adoption of the final offer of the District, but this criterion cannot be assigned determinative weight in these proceedings.
- (6) The interests and welfare of the public criterion cannot be assigned determinative weight in these proceedings.

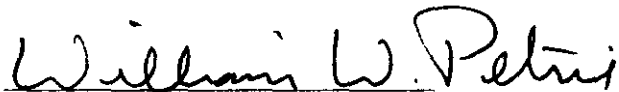
Selection of Final Offer

After a careful consideration of the entire record, including consideration of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Association is the more appropriate of the two final offers. This conclusion is particularly indicated by arbitral consideration of the parties' final offers in comparison with the 1986-1987 settlements in comparable school districts.

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 Hustisford 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
Impartial Arbitrator

January 14, 1988