STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

ELKHART LAKE-GLENBEULAH
EDUCATION ASSOCIATION

To Initiate Arbitration Between
Said Petitioner and

ELKHART LAKE-GLENBEULAH
SCHOOL DISTRICT

Case 17
No. 38913 ARB-4452
Decision No. 25005-A

Appearances:

Mr. Richard Terry, Executive Director, Kettle Moraine UniServ Council, appearing on behalf of Elkhart Lake-Glenbeulah Education Association.
Mr. William Bracken, Associate Executive Director, Employee Relations, Wisconsin Association of School Boards, Inc., appearing on behalf of Elkhart Lake-Glenbeulah School District.

ARBITRATION AWARD:

On December 22, 1987, the undersigned was appointed as Arbitrator, pursuant to Section 111.70 (4) (cm) 6. and 7. of the Municipal Employment Relations Act, to resolve an impasse existing between Elkhart Lake-Glenbeulah Education Association, referred to herein as the Association, and Elkhart Lake-Glenbeulah School District, referred to herein as the Employer, with respect to certain issues as specified below.

On January 5, 1988, the Chairman of the Wisconsin Employment Relations Commission advised the undersigned and the parties that a petition for public hearing was timely filed by at least five citizens of the jurisdiction of the Employer, pursuant to Section 111.70 (4) (cm) 6. b. of the Municipal Employment Relations Act.

Public hearing was set for 7:00 p.m. on March 9, 1988. The time was set pursuant to the agreement of the parties so as to provide the best possible attendance at the public hearing. Thereafter, Frank R. Schmidler, Clerk of Elkhart Lake-Glenbeulah School District, provided the following notice to the public:

NOTICE TO THE PUBLIC
ELKHART LAKE-GLENBEULAH SCHOOL DISTRICT

> Pursuant to a petition filed by citizens of the Elkhart Lake-Glenbeulah School District, arbitrator Jos. B. Kerkman will conduct a public hearing on Wednesday, March 9, 1988 at 7:00 p.m. in the high school library as pertains to the 1987-89 contract negotiations between the Elkhart Lake-Glenbeulah School District and the Elkhart Lake-Glenbeulah Education Association. The public hearing will provide an opportunity for both parties to explain or present supporting arguments for their respective positions and to members of the public to offer their comments and suggestions.
>
> An arbitration hearing will follow the public hearing.

Public hearing was conducted pursuant to the foregoing notice on March 9, 1988, at 7:00 p.m. in the high school library of the Employer in Elkhart Lake, Wisconsin.

During the course of the public hearing, the Employer and the Union explained their final offers to the public. Subsequent thereto, the Arbitrator provided an opportunity for the public to be heard. No one in attendance at the public hearing wished to speak.

After the conclusion of public hearing, arbitration proceedings were convened at the high school library of the Employer at Elkhart Lake, Wisconsin, on March 9, 1988. The parties were present at the arbitration hearing, and were given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs were filed in the matter. Briefs were exchanged by the Arbitrator on April 19, 1988.

THE ISSUES:

There are two issues in dispute between the parties: 1) the salary schedule, and 2) the calendar. With respect to the salary schedule dispute, the Employer proposes that each cell on the salary schedule which existed in the predecessor Collective Bargaining Agreement be increased by $1300 for each year of the Agreement being arbitrated. The Association proposes that each cell of the predecessor salary schedule be increased by 5.4% in the first year of the Agreement being arbitrated, and that each cell of the salary schedule be improved by 5.5% in the second year of the Agreement being arbitrated.

The parties impassed over the calendar issue based on the Employer proposal that the terms contained within the negotiated calendar of the predecessor Collective Bargaining Agreement for the school year ending June 4, 1987, be modified to read: "The first and second inclement weather days shall not be made up. Any additional inclement weather make-up days shall be moved to the end of the school year."

The Association proposes that the words contained in the predecessor calendar negotiated between the parties for the school year ending June 4, 1987, remain unchanged. That provision reads: "The first and second inclement weather days shall not be made up. Any additional inclement weather make-up days shall be moved to the end of the school year (if necessary to maintain state aid).

THE STATUTORY CRITERIA

The parties at hearing directed evidence toward certain of the statutory criteria contained at 111.70 (4) (cm) 7 of the Municipal Employment Relations Act. In their briefs, the parties directed argument to certain of the criteria as well. The criteria reads:

a. The lawful authority of the municipal employer.

b. 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. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. 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.

POSITIONS OF THE PARTIES:

POSITION OF THE ASSOCIATION:

The Association argues:

1. In this case, the appropriate comparable districts are those of the athletic association: Cedar Grove, Elkhart Lake-Glenbeulah, Howards Grove, Kohler, Oostburg, Ozaukee and Random Lake.

2. The Association's comparable data demonstrates in a meaningful manner that the Association's offer is more reasonable when viewed in light of the patterns of settlement among the comparable districts.

3. The fundamental changes in the status quo of the salary schedule as proposed by the Employer should not be imposed by the Arbitrator, but, rather, negotiated by the parties.

4. The internal comparables support the Association final offer.

5. The Employer's attempt to change the status quo relative to the calendar amounts to a fatal flaw in the Employer's final offer.

6. The interest and welfare of the public are best served by the adoption of the Association's final offer.

POSITION OF THE EMPLOYER:

The Employer urges the following:

1. The adoption of its proposed comparables, which include the athletic conference (the school district of Kohler excepted), as well as certain school districts surrounding the Elkhart Lake-Glenbeulah District.

2. The Employer argues that fundamental changes in the status quo as proposed by the Association should not be imposed by the Arbitrator, but negotiated between the parties, contending that the Association proposes said changes in both the calendar and the salary schedule.

3. Longevity in the instant school district is a misnomer, and should be viewed as the maximum step of the salary schedule here for comparison purposes.

4. The interest and welfare of the public are best reflected in the Board's final offer.

5. The Board's salary schedule is superior to the Association at a clear majority of cells on the salary schedule.

6. The Board's final offer best matches the prevailing settlement trend among the comparable school districts, both for the 1987-88 patterns of settlement, as well as the 1988-89 patterns of settlement.

7. Private sector and other public sector settlements support the Board's offer.

8. Last year's above average settlement in Elkhart Lake-Glenbeulah favors adoption of the Board's final offer.

9. Since the Board's offer is above the cost of living it guarantees real income advances for teachers.

10. Other factors support the Board's final offer, referring to the legislative indecision with respect to cost controls which the Board anticipates will ultimately be imposed on local school boards; the Board arguing that the Arbitrator should be sympathetic to the political environment and recognize that the Board is attempting to balance the needs of the taxpayers with the needs of the employees.

DISCUSSION:

Prior to analyzing the parties' positions with respect to the disputed issues based on the evidence and the statutory criteria, the undersigned must necessarily consider two preliminary issues raised in this dispute. The undersigned refers to the parties' assertions that each of them maintain the status quo with respect to the salary schedule and the calendar, and the differences in the parties' proposed set of comparables. We will first consider the question of the appropriate set of comparables.

THE COMPARABLES

These parties have arbitrated a contract impasse in the past. Employer Exhibit No. 1 is an arbitration award by Arbitrator William W. Petrie involving the School District of Elkhart Lake-Glenbeulah and Elkhart Lake-Glenbeulah Education Association. On April 18, 1984, William Petrie issued an arbitration award setting the terms of wages, hours and conditions of employment in the parties' Collective Bargaining Agreement for the 1983-84 school year. In that dispute, at page 3 of his Award, Arbitrator Petrie identifies the Employer position as follows:

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

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

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

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

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

At page 7 of his Award, Petrie identifies the Association position with respect to the comparables as follows:

That the most appropriate comparisons are those within the Central Lakeshore Athletic Conference, rather than among the broader list of school

districts cited by the Employer. That the comparisons urged by the District are not comparable communities within the meaning of Section 111.70 of the Wisconsin Statutes; in this connection it cited the decisions of various Wisconsin Interest Arbitrators.

At page 11 of his Award, Arbitrator Petrie found the following with respect to the comparables:

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

Thus, Arbitrator Petrie established the comparables for the purpose of these parties in 1984 as the athletic conference. Arbitral opinion is quite consistent on the question of whether comparables, once established, should be determined. Arbitral authority holds almost without exception that unless there are compelling reasons for an Arbitrator to overturn an historic set of comparables, those comparables should remain in place. The foregoing authority is bottomed on the premise that stability of comparables will lead to predictable results at the bargaining table and enhance bargaining to a successful conclusion rather than resulting in impasse, causing parties to arbitrate in the future. The undersigned accepts the foregoing arbitral authority. The question, then, is presented whether this record presents any compelling reason to set aside the Petrie comparables and find new ones.

The record persuades the undersigned that the Petrie comparables should not be set aside, and that in this matter they should be relied on for the purpose of determining which party's final offer should be adopted. First of all, we note that Petrie found that the athletic conference was very valid and persuasive as comparables in connection with the impasse items before him. The undersigned notes that the impasse items before Arbitrator Petrie included the calendar and the salary schedule, among other items. These are the same issues over which the parties here have impassed in the instant proceedings. Consequently, there is no reason to set aside the Petrie comparables by reason of a different mix of issues before this Arbitrator than those which were before him.

Furthermore, the undersigned, in reviewing the position of the Employer before Petrie, concludes that the Employer position and arguments with respect to other comparable districts, other than the athletic conference, are the same arguments upon which the Employer relies here. Petrie rejected those arguments, and there is nothing in the record to persuade the undersigned to reverse Petrie's holdings with respect thereto.

Finally, the undersigned notes that the Employer argues that the southern most communities in the athletic conference are not comparable by reason of the "urban influence" of communities such as Sheboygan, West Bend, etc. The undersigned is perplexed that the Employer suggests that the southern most districts of the conference should be excluded because of the proximity to the "urban communities" when the Employer then proceeds to propose Sheboygan Falls and Kewaskum as comparables. Employer Exhibit No. 21 is a map setting forth the location of the Employer proposed comparable districts. From Employer Exhibit No. 21, it is clear that Sheboygan Falls lies immediately to the west of and adjacent to the School District of Kohler in the immediate proximity of the City of Sheboygan. Furthermore, the Employer also submits that Kewaskum should be considered a comparable, and Exhibit No. 21 shows that Kewaskum lies slightly to the north of the City of West Bend, and appears to be approximately as close to the City of West Bend as Northern Ozaukee, Random Lake,

Cedar Grove are to the cities of either Port Washington or West Bend. Based on the foregoing, it could be easily inferred that the Employer inclusion of Kewaskum and Sheboygan Falls, which reside in the same geographic area which the Employer argues is not comparable by reason of the "urban influence", smacks of comparable shopping in order to support its final offer.

For all of the foregoing reasons, the undersigned rejects the Employer argument that the athletic conference alone is not the appropriate set of comparables, and adopts the athletic conference schools as the comparable group.

THE STATUS QUO ISSUE

Both parties cite authority holding that the status quo should not be disturbed, unless the proponent for changing the status quo meets a high burden of proof establishing a good and sufficient reason for the necessity of the change. On both disputed issues, then, the parties accuse each other of changing the status quo, and, therefore, argue that the other party's offer should be rejected.

The undersigned agrees with the arbitral authority cited by both parties that a change in the status quo requires a high burden on the part of the party proposing the change. The problem, here, is that a determination needs to be made as to which party's offer represents the status quo. The undersigned will undertake that determination.

Turning first to the question of the salary schedule, the Employer here offers an across the board increase per cell of $1300 per cell. The Association here proposes that the cells be improved by a percentage of 5.4% the first year and 5.5% the second year. The Employer argues that the Association proposal constitutes a change from the status quo, because in the last voluntary settlement between the parties, which resulted in the predecessor Agreement to the one presently being arbitrated, the parties voluntarily bargained a salary schedule increase that was based on dollars per cell. The Employer likens the Association percentage per cell increase to the Association proposal in the arbitration before Arbitrator Petrie in 1984, where the Association had proposed an increase in the vertical increment from 4.2% to 4.5%. Petrie rejected the Association proposal to the change in the salary schedule, emphasizing his belief that the arbitrator should not alter the status quo unless there was a compelling persuasive reason to do so. The undersigned disagrees with the Employer position. The present offer of the Association, in the opinion of this Arbitrator, does not alter the status quo of the salary schedule. What is at issue here is merely the age old difference between parties as to how a general increase should be applied. Should it be applied as a percentage to the wage rates, or as a flat dollars and cents increase across the board. These types of dispute are as old as collective bargaining. It does not represent, in the opinion of the undersigned, a change in the status quo, but merely how the application of a wage increase should be applied.

It follows from the foregoing that neither party is departing from the status quo when it proposes either an across the board increase to each cell or a percentage increase to each cell. Therefore, a modification of the status quo with respect to salary schedule will not be a determinative factor in determining which party's final offer to adopt.

THE CALENDAR ISSUE

We now consider the dispute with respect to the calendar. The primary dispute on the calendar is whether the parenthetical language on make-up days should be included in the calendar being litigated in this matter. There is also an issue as to the beginning date of the school year, but neither party addresses evidence or argument with respect to that disparity. The focus of the dispute goes to the question of make-up days. Both parties maintain that their offer maintains the status quo. The Association offer specifically mirrors the language of the predecessor calendar when it includes in parenthesis the words (if necessary to maintain state aid). The Employer, however, adduces testimony in the record attempting to show that the foregoing parenthetic language which appeared in the predecessor calendar was there in error. Thus, it is clear to the undersigned that if the Employer position is to prevail that its offer maintains the status quo, it is

necessary that the language of the predecessor calendar be reformed so as to eliminate the terms in the parenthesis "if necessary to maintain state aid".

Reformation of the terms of a contract has been effectuated in the courts as well as in arbitration proceedings, providing certain evidentiary burdens are met in order to establish that the contract should be reformed. Arbitrator John F. Sembower in ARO Corp., 54 LA 1265, page 1268, sets forth the following dicta establishing what is required in the way of proof in order to reform the terms of an agreement. He opines as follows:

> With reference to the "mistake" which the Company acknowledges, the law long has had to contend with dilemma created by the assertion on the part of one party or the other to a contract that he entered it because he was "mistaken". The rule which has been hammered out through centuries of litigation is that if the alleged "mistake" is on the part of only one of the parties to the agreement, and it is not so gross as to indicate to the opposite party that an error has been made, no relief can be accorded the mistaken party. So, in this instance, a crucial question is whether or not the standard assigned to Part No. 36968 was so fantastic that the grievant was put on notice constructively that an error had been made. This also partakes of the provision in the agreement that "obvious clerical errors" are a basis for vacating a standard. However, in this instance, it is plain that while the parties are quite opposed to each other concerning whether or not the standard is proper, the degree of error, if such existed, is not such as to put an opposing party on notice that a mistake was made.

From the foregoing, it is clear that Arbitrator Sembower determined that the essential ingredients necessary to reform the terms of the contract were missing, because: 1) there was no mutuality of the error alleged; and 2) the mistake or error was not of such a gross nature that the opposing party was put on notice constructively that an error had been made. Sembower refused to reform the contract at issue in that proceeding.

In Jacobson Manufacturing Co., LA 43 730, Arbitrator Anderson at page 733 found that because of the mutual mistake of the parties in drafting their agreement, the terms of the agreement were to be reformed, reflecting the true intent of the negotiations.

Both of the cited cases require that mutual error must be found before a reformation of the terms of a collective bargaining agreement (in this instance a collectively bargained calendar) can be achieved. It is, therefore, essential to determine whether the error claimed by the Board was a mutual error between the parties, or alternatively, an error of the magnitude that was so gross as to indicate to the opposite party that an error had been made. We look to the testimony and the exhibits at hearing to make that determination. First, there is the testimony of Mr. Hans Kuhn, President of the Employer School Board, who testified there was an error in the continuance of the disputed language. He further testified that in the Board offer with respect to make-up days on the calendar, the Board agreed to change the makeup procedure from the first and fourth inclement day not being made up to the first and second inclement day not being made up. He further testifies that the Board proposed in what is marked in these proceedings as Board Exhibit No. 17 to delete the phrase "if necessary to maintain state aids". Board Exhibit No. 17, which was a proposal at the bargaining table, clearly omits that language. Board Exhibit No. 19-A introduced in these proceedings is a proposal by the Association with respect to the calendar, which reads: "1-2 snow days; not made up." Finally, the calendar attached to Board Exhibit No. 19, which was the tentative agreement between the parties, reads: "Snow make up days - 1 & 2 days not made up." Nowhere in the exchange of offers between the Association and the Employer at the bargaining table which led up to the final Agreement were the parenthetic words "if necessary to maintain state aids" included in the written proposals.

The Association has argued that it was incumbent upon the Employer to spell out the distinction between its offer and the calendar of the predecessor Agreement and that the Employer failed to do so. The Association argument is rejected, because

the written proposals clearly deleted what is now the disputed parenthetic language with respect to the requirement to receive state aids.

The undersigned is satisfied that the Employer has satisfactorily established that a mutual error was made when the predecessor bargained calendar was printed, which included the words "(if necessary to maintain state aid)". The foregoing is so because the tentative agreement between the parties clearly reflects that those words were not included. Having so concluded, it follows that the status quo with respect to the calendar issue favors the Employer position. A determination as to whether the Association has fulfilled its burden with respect to changing the status quo of the calendar will be addressed in a later section of this Award.

THE SALARY DISPUTE

CRITERIA d - WAGE COMPARISONS AND PATTERNS OF SETTLEMENT AMONG EMPLOYEES PERFORMING SIMILAR SERVICES

Effective May, 1986, Section 111.70 (4) (cm) 7 of the Municipal Relations Act was changed by the Legislature so that what had been criteria d was split into criteria d, e and f of the revised statute. Criteria d now requires the Arbitrator to consider wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services. Previously, criteria d spoke to the same type of comparisons, but linked those comparisons to comparisons in comparable communities. The legislative mandate of criteria d no longer requires the Arbitrator to consider comparable communities when comparing wages, hours and conditions of employment of the employees in the arbitration with wages, hours and conditions of employees performing similar services. Thus, for the purpose of comparing patterns of settlement of teachers and wage rate or salary comparisons of teachers, those comparisons pursuant to d of the statute are to be made without respect to whether the communities are comparable. Consequently, all of the determinations with respect to comparable communities are inapplicable when making the comparisons of patterns of settlement for teachers and salary or wage comparisons for teachers. For the foregoing reasons, then, the undersigned will consider not only the athletic conference in analyzing the patterns of settlement for teachers and wage comparisons for teachers, but the undersigned will also consider all of the comparisons advocated by both parties in these proceedings. In making those determinations, however, geographic differences and prior salary relationships that may have existed will be considered.

The salary dispute between the parties is a relatively narrow dispute in the first year of the Agreement. For 1987-88, the Board offers 6.7% and the Association proposes 7% as a salary only increase. The Board offer generates $1696 per returning teacher, and the Association offer generates $1751 per returning teacher, a difference of less than $60 per teacher for the year. In 1988-89 salary dispute, the Board offers 6.2% salary only increase, and the Association proposes a 6.9% increase. The salary only average per returning teacher of the Board offer is $1657 and for the Association is $1852. In the second year, then, there is a difference of 0.7% between the parties, and a dollar amount difference of $195 per returning teacher for the year 1988-89. At least in the first year, where the difference is less than $60 per returning teacher for the year, the dispute appears to the undersigned to be more over how the increase should be applied than the substantive dollar difference in the offers.

In making a comparison of patterns of settlement, the undersigned finds that the Employer offer for 1987-88 is $52 under the average settlement of the athletic conference, and is .44% above the average percentage increase for that year. The Association offer for 1987-88 is $7 above the average settlement and is 9.67% above the average settlement.

For 1988-89, the average settlement among the settled districts in the conference for that year is $1822, and the average percentage increase is 6.07%. The Association offer is $1851 and 6.88% and the Employer offer is $1657 and 6.17%. The Association offer, then, is $29 above the average settlement and is .81% above the average percentage settlement, salary only. The Employer offer is $165 below the

average settlement and is .10% above the average settlement. The foregoing establishes, to the satisfaction of the undersigned, that when considering the dollars per returning teacher settlements, the Association offer is closer to the average; however, when considering the percentage increase the Employer offer is closer to the average settlement among the conference districts. The question, then, is presented whether under the instant set of facts one should consider the dollar increase per returning teacher or the percentage per returning teacher. The undersigned concludes that the dollars per returning teacher for this comparison of patterns of settlement constitute the appropriate measure. This is so, because the salary schedules of the instant Employer are low compared to the conference. A percentage factor, therefore, will generate fewer dollars than the same percentage among the conference districts which pay a higher wage. Notably, Howards Grove, which has a salary schedule closest to the salaries paid in the Employer school district, settled for 7% increase on salary only, an amount almost identical to the Association proposal here. It follows from the foregoing, that the patterns of settlement in the conference favor the adoption of the Association offer.

The undersigned now turns to a comparison of wage rates at the salary minimums in the schedule and at the salary maximums in the schedule within the conference. The Employer offer for 1987-88 generates a BA base of $17,685, and the Association offer generates a BA base of $17,270. At schedule max, the Employer offer generates a maximum salary of $30,255, and the Association offer generates a salary offer of $30,478 for 1987-88. The foregoing compares to a BA base average in the conference of $18,437, and an average maximum salary in the conference of $35,306. Thus, both parties' final offers at the BA base for 1987-88 fall significantly below the average BA base within the conference, with the Employer offer more nearly approaching the BA base average than that of the Association. In fact, only one other school within the conference, Howards Grove, has a salary maximum lower than that proposed by either party. It follows from the foregoing, that when considering the starting salary, the Employer offer is preferred, and when considering the top salary the Association offer is preferred.

The undersigned is concerned about comparing maximum salaries because maximum salary schedules at other school districts reflect a requirement of 24 to 32 credits beyond the MA degree in order to qualify for the salary top, except for Howards Grove, which like the Employer here merely requires 12 credits beyond the master's degree in order to qualify for the salary top. Thus, there is some question whether the comparison of the maximum salary reflects a comparison of apples to apples. The undersigned, therefore, to confirm the salary maximum positions, looks to the maximum salary paid at the MA lanes which are a consistent measure of educational requirements among the conference districts. The evidence shows that in 1987-88 the Employer offer will generate a maximum salary in the MA lane of $29,772, and the Association offer will generate a salary of $29,969. The average in the conference at the maximum of the MA lane is $32,580. Consequently, the Association offer is preferred on this comparison, since it is closer to the average. The foregoing comparisons confirm that the salary schedules, when comparing like points at the MA max, favor the adoption of the Association offer.

The Arbitrator will next consider the evidence submitted by the Association at its Exhibit No. 49 showing the settlements in the surrounding school districts of Chilton, Fond du Lac, Kiel, Manitowoc, New Holstein, Plymouth, Sheboygan, Sheboygan Falls, and Two Rivers. The data shows only patterns of settlement and makes no effort to compare salaries to salaries. The patterns of settlement for 1987-88 range from a low of 5.85% at Fond du Lac to a high of 7% at Chilton. The dollar per returning teacher ranges from a low of $1619 at Two Rivers to a high of $1817 in Sheboygan. The average settlement in dollars per returning teacher is $1732 compared to the Employer offer of $1696 and the Association offer of $1754. The average dollar per returning teacher proposed by the Association is closer to the average settlement among this group, and, therefore, the undersigned concludes that for 1987-88 the Association offer is preferred.

Turning to 1988-89, the settlements in this grouping of surrounding communities range from $1606 in Two Rivers to a high of $1940 in Fond du Lac. The average settlement is $1773 among this grouping. This compares to an Association offer of $1851 and an Employer offer of $1657 for 1988-89. Because the Association offer

is closer to the average than that of the Employer, the evidence supports the adoption of the Association offer when considering this grouping.

The undersigned further considers the data supplied by the Association on statewide settlements. Again, the data in Association Exhibit No. 51 supports the Association final offer when considering the average dollar per returning teacher proposed by each of the parties compared to the average dollar per returning teacher negotiated in statewide settlements as of February 15, 1988.

We now consider the patterns of settlement among the additional districts proposed by the Employer, which include for 1987-88 Chilton, Hilbert, Kiel, New Holstein, Reedsville and Sheboygan Falls. (Employer Exhibit No. 87) The settlements range from $1601 per returning teacher at Reedsville to $1733 per returning teacher at New Holstein. Percentagewise, the 1987-88 settlements among those districts range from 6.5% at New Holstein to 7.3% at Hilbert. The average dollar settlement per returning teacher among this grouping is $1698, and the average percentage settlement is 6.9%. Thus, we find that the Employer offer for 1987-88 of $1695 more nearly mirrors the average settlement of this grouping. The Association offer as a percentage increase of 7% more nearly mirrors the average percentage increase of 6.9% of this grouping. Because the undersigned has considered the dollar settlements to be more significant in this dispute, the dollar settlements would favor the adoption of the Employer offer when considering this grouping.

Turning to 1988-89, we find that the settled districts proposed by the Employer are Chilton, Kiel, New Holstein and Sheboygan Falls, and that the dollar settlements range from $1720 at Sheboygan Falls to $1759 at Kiel. The average settlement is $1740 among this grouping. The percentages range from 6.1% at New Holstein to 6.8% at Chilton and average 6.4% among this grouping. The Employer offer for 1988-89 in this dispute is $1657 per returning teacher and is $63 lower than the lowest settlement among this Employer grouping, and is $83 below the average of this grouping. The Association offer at $1851 is $92 above the highest settlement in this grouping, and is $111 above the average settlement in this grouping. The average percentage settlement among this grouping of 6.1% is closer to the Employer offer of 6.17% than that of the Association offer for 1987-88 of 6.88%. Because the undersigned has concluded that the dollar increases are the more appropriate comparisons we look to that for the purpose of determining which offer is supported by this data. We conclude that because both parties are outside the range of settlements when looking at this data, the Employer being below the range, and the Association being above the range, that this data supports the offer of neither party.

We turn now to a comparison of the actual salary rates among the Employer proposed grouping, and find from Employer Exhibit Nos. 62 and 90 that the Employer proposal of $17,685 more nearly approaches the average base salary among this grouping for 1987-88, which averages $17,821. The Association offer of $17,270 falls considerably below that average. When considering schedule max, from Employer Exhibit Nos. 64 and 92, we find the average of this grouping to be $30,446 compared to an average maximum salary proposed by the Employer of $30,255 and the Association offer of $30,478. Thus, the Association offer is almost exactly on the average of this grouping. Thus, it is clear that when considering this data the maximum salaries proposed by the Association for 1987-88 favor the adoption of its offer.

Turning to the same comparisons of salaries to salaries among this grouping proposed by the Employer, we find that in 1988-89 the average base salary among this grouping is $19,282 compared to an Employer offer of $18,985 and an Association offer of $18,220. Again, the Employer offer is preferred when comparing the base among this grouping. The salary max comparisons in this grouping for 1988-89 average $32,288 compared to an Employer offer of $31,594 and an Association offer of $32,154. Again, the Association offer is preferred, because it is almost on the average of the data for this grouping.

Because the Association offer more nearly approaches the averages at the maximum at the schedule max; and because the undersigned concludes that the salary schedule of the Employer here needs more attention at the maximums of the schedule than at the minimum; the undersigned now concludes that a comparison of actual salaries paid at the various points of the salary schedule favors the adoption of the Association offer here.

From all of the foregoing, then, the patterns of settlement and a comparison of salaries among teachers, causes the undersigned to conclude that the Association salary offer is preferred, based on the statutory criteria which requires the Arbitrator to compare salaries proposed in the district being arbitrated with salaries of employees performing similar services.

THE INTEREST AND WELFARE OF THE PUBLIC

The parties have adduced reams of evidence going to the criteria of interest and welfare of the public. The parties have introduced the classic evidentiary exhibits going to that question dealing with the state of the local economy, etc. put in by the Employer, and the public studies and recommendations put in by the Association. Arbitrators have generated considerable dicta in their awards with respect to how the interest and welfare of the public is impacted with respect to all of the foregoing data. The record evidence with respect to levy rates persuades the undersigned that the interest and welfare of the public is not going to be adversely affected by the adoption of the Association offer here, because there is nothing in this record which would persuade the undersigned that the adoption of the Association offer here would cause a greater levy rate increase than that of the Employer offer.

Furthermore, the public hearing conducted by this Arbitrator pursuant to the petition of seven citizens of the District, persuades the undersigned that the Employer cannot credibly argue that the interest and welfare of the public supports its position. Prior to the change of the provisions of the statute at 111.70 (4) (cm) in May, 1986, the decision maker in interest disputes of this type was required first to attempt to resolve the dispute voluntarily between the parties through mediation efforts. With the revisions of the law, the mediation mantle was stripped from the shoulders of the arbitrator. Under the predecessor statute, the statutory timing of the public hearing, if one were petitioned, arguably presented an opportunity to the public to make persuasive arguments to the parties which would cause them to soften their positions and lead to a voluntary settlement in mediation, because the public hearing immediately preceded the mediation phase of these proceedings. With the change in the statute, mediation is no longer conducted by the arbitrator unless the parties mutually consent to or request a mediation effort on the part of the arbitrator. Consequently, it can no longer be inferred that the purpose of the public hearing is to apply pressure to the parties for settlement. Rather, the timing of the public hearing now suggests that the public is given an opportunity to hear the positions of the parties and the reasons the parties have assumed those positions before they are given an opportunity to speak before the arbitrator and the parties to establish a public interest reaction to those offers.

Given all of the foregoing, it would follow that when a public hearing is petitioned the public interest is manifest by the expressions of the public at the hearing. In these proceedings, after the parties had explained their final offers to the public, the public was given an opportunity to express itself with respect to the positions of the parties. No one in the audience, who heard the explanations of the parties, chose to speak. The Arbitrator made inquiry of the parties with respect to the foregoing phenomenon, and was informed that the audience was comprised solely of Board members, teachers and administrators, and that no other members of the public were present. Not even the seven signators to the petition for public hearing attended. The public hearing was set at 7:00 p.m. in the high school auditorium so as to establish a convenient time for the rural members of the community to attend to express their position. No one of the community, other than teachers, board members and administrators appeared. Furthermore, the undersigned is fully satisfied that the required notice went to the public from the Clerk of the School Board as recited in prefatory statements in this Award. From the foregoing, then, the undersigned concludes that the failure of the public to attend the public hearing manifests a total disinterest in the outcome of these proceedings. Consequently, the undersigned can only conclude that since the public is uninterested in the proceedings, the public interest is not served by the adoption of the final offer of the Employer, nor is the public interest damaged by the adoption of the Association final offer in this matter.

The undersigned concludes, after a review of all of the evidence submitted

and argument made with respect to the criteria of interest and welfare of the public that the Association offer is preferred based on this criteria.

CRITERIA e AND f - COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT IN THE PUBLIC SECTOR AND PRIVATE SECTOR IN THE SAME AND COMPARABLE COMMUNITIES

The Employer has introduced evidence in its Exhibits 146, 147, 149, 150 and 152 which purport to show that state and national private and public sector employees' settlements support its position. The undersigned finds that these exhibits are not material to the instant dispute based on the criteria. The criteria refers to comparison among the same or comparable communities. There is nothing in this record to establish that state and national data in the private and public sector constitute comparable communities. In fact, the findings with respect to the comparability of communities as set forth earlier in this Award hold to the contrary. Consequently, the foregoing data is given no weight with respect to the resolution of this dispute.

There is in evidence, however, private sector settlements from the Kohler Corporation, Knowles Manufacturing Corp., Plyco Corporation, Sargento Cheese Co. These data show that in the private sector in communities which have already been determined to be comparable in these proceedings, wage increases at Kohler are less than 2% for represented employees there, and 4.5% for salaried employees; at Knowles the increases range from 2-3%; at Plyco, 5% and at Sargento Cheese the hourly employees received an increase of 3%. All of the foregoing settlement data supports the Employer offer here, because these private sector settlements in comparable communities are closer to the Employer offer than that of the Association.

There is also in evidence public sector wage increases for the Village of Elkhart Lake and for the custodial and food service employees of this school district. The Village of Elkhart Lake shows a 4.4% wage increase, and the custodial, clerical and food service employees a 4.2% salary increase. Thus, these public sector settlements in the same community also support the Employer final offer in these proceedings.

Finally, the Association has adduced evidence with respect to administrative personnel increases in the school district. The record evidence establishes that the Superintendent received a salary increase of 8.64% and that the principal of the high school received an increase of 7.12%. The foregoing increases are closer to the proposals of the Association than that of the Employer.

After considering all of the evidence in the record with respect to comparison of settlements in the same community and in comparable communities, both in the public and private sector, the undersigned concludes that under criteria e and f the Employer offer is preferred.

CRITERIA g - THE COST OF LIVING

Criteria g requires the Arbitrator to consider the average consumer prices for goods and services, commonly known as the cost of living. The evidence is the percentage increases in the Consumer Price Index, which clearly establish that both parties proposed increases which exceed the percentage increase in the Consumer Price Index for the relevant periods of time. Because the Employer offer meets the percentage increase in the CPI; and because the Association offer exceeds that of the Employer offer; the undersigned concludes the Employer offer meets the requirements of this criteria.

The Employer argues that criteria should carry heavy weight, citing Arbitrator Gunderman in Reedsville School District, Dec. No. 24219-A (7/1987) at page 25. In the opinion of the undersigned, merely meeting the requirements of the cost of living cannot be the entire basis for the determination of the outcome of an interest arbitration proceeding. Meeting of the increase in cost of living is but one of the ten factors which an arbitrator must weigh. The substance of the Employer argument suggests that the cost of living criteria should take primacy

over all of the other criteria. The undersigned disagrees. When voluntary negotiated settlements set a pattern exceeding the cost of living, those settlements suggest quite persuasively that there are overriding considerations which go beyond the cost of living considerations. Furthermore, there is nothing in the statutory language which directs the Arbitrator to give primacy to the cost of living criteria, nor is there anything in the statutory criteria which directs the Arbitrator to consider the Consumer Price Index as a sole gauge as to the measure of cost of living. The undersigned, in recent experience, has had employers argue that either the producer price index or the personal consumption expenditure index should be considered as a measure of the cost of living. In years past, the undersigned recalls when employers argued that the deflator index rather than the CPI should be the appropriate measure of cost of living. While the undersigned agrees with arbitral authority which has held throughout the years that the CPI is the most appropriate measure of cost of living, nevertheless, the disparity of arguments as to what properly measures the cost of living tends to dilute the weight to be given this criteria.

Furthermore, if the Employer is truly convinced that the cost of living criteria should be the controlling criteria or the most heavily weighted among all of the criteria of the statute, it raises the question as to why an Employer who takes that position has not proposed a cost of living provision in the Agreement as part of his wage proposal. Here, there is no such proposal by the Employer, and the lack of cost of living proposal suggests that the Employer itself cannot be serious when it argues that the cost of living criteria should take primacy over the other criteria of the statute.

The appropriate weight to be assigned this criteria will be considered by the Arbitrator when evaluating the total final offers of the parties in the conclusion section of this Award.

CONCLUSIONS RE THE SALARY DISPUTE

After careful deliberation with respect to the foregoing, the undersigned concludes that the salary proposal of the Association is the appropriate proposal to be adopted here, based on all of the discussion set forth in the preceding sections of this Award.

THE CALENDAR DISPUTE

The undersigned has determined that the status quo with respect to the calendar dispute resides with the Employer for the reasons discussed earlier in this Award. Having made that determination, it remains to be determined whether the evidence adduced by the Association fulfills its burden of proof in proposing that the words "(if necessary to maintain state aid)" should be included in the calendar. The undersigned has reviewed all of the testimony and concludes that the Association has failed to muster sufficient proof for the inclusion of those words. The undersigned, therefore, finds that the Employer offer with respect to the calendar is preferred.

SUMMARY AND CONCLUSIONS:

The undersigned, in the prior sections of this Award, has found for the Association on the salary proposal and for the Employer on the calendar proposal. It remains to be determined which offer in its entirety should be adopted. The undersigned is satisfied that the salary proposal is the more significant of the two issues which went to impasse in this proceeding. In fact, at page 14 of its brief, the Employer arrives at the same conclusion when it states: "While the calendar issue dispute is not as important as the salary schedule dispute, the Board believes that its offer best preserves the status quo." Because the Arbitrator concludes that the salary schedule dispute takes primacy over the calendar dispute, the undersigned concludes that the final offer of the Association in its entirety should be adopted, and it will be so ordered.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering all of the arguments of the parties, and the statutory criteria, the undersigned makes the following: