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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
CRIVITZ SCHOOL DISTRICT)
)
And)
)
NEAR NORTH EDUCATION)
ASSOCIATION)
)

Case 8
No. 40091
INT/ARB-4776
Decision No. 25234-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Public Hearing Held

June 9, 1988
Crivitz, Wisconsin

Arbitration Hearing Held

June 9, 1988
Crivitz, Wisconsin

Appearances

For the Board

WISCONSIN ASSOCIATION
OF SCHOOL BOARDS, INC.
By William G. Bracken
Associate Executive Director
P. O. Box 160
Winneconne, WI 54986

For the Association

WEAC UNISERV COUNCIL #21
By R. A. Arends
Executive Director
P. O. Box 1030
Marinette, WI 54143-1030

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Crivitz School District and the Near North Education Association, with the matter in dispute the terms of a two year renewal labor agreement between the parties. The two impasse items submitted to arbitration consist of the teacher salary schedules for the 1987-1988 and the 1988-1989 school years, and the definition of the District's obligation for the payment of medical and dental insurance premiums for the duration of the agreement.

The parties exchanged bargaining proposals and met on various occasions in 1987 and 1988, in an unsuccessful effort to reach a voluntary settlement, after which the District, on January 28, 1988, filed a petition with the Wisconsin Employment Relations Commission, requesting interest arbitration in accordance with the Municipal Employment Relations Act. After a preliminary investigation by a member of its staff, the Commission, on March 3, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration; on March 14, 1988, it issued an order directing the undersigned to hear and decide the matter as arbitrator.

A preliminary public hearing was petitioned for and took place on the evening of June 9, 1988, after which the parties moved directly into the arbitration hearing. Both received a full opportunity at the hearing to present evidence and argument in support of their respective positions, and each closed with the submission of post-hearing briefs.

THE FINAL OFFERS OF THE PARTIES

The complete final offers of each of the parties, hereby incorporated by reference into this decision, may be summarized as follows:

(1) The District proposes a salary schedule for 1987-1988, ranging from $18,548 at BA +1 to $33,415 at MA +30 14.

The Association proposes a salary schedule for 1987-1988, ranging from $18,609 at BA +1 to $34,209 at MA +30 14.

(2) The District proposes a salary schedule for 1988-1989, ranging from $19,308 at BA +1 to

$34,785 at MA +30 14.

The Association proposes a salary schedule for 1988-1989, ranging from $19,475 at BA +1 to $35,819 at MA +30 14.

(3) The District proposes increases in its monthly medical insurance premiums for family coverage from $145.57 to $162.58 for 1987-1988, and from $162.58 to $195.00 for 1988-1989. It proposes monthly increases for single coverage from $51.81 to $66.02 per month for 1987-1988, and from $66.02 to $79.22 per month for 1988-1989.

(4) The District proposes increases in its monthly dental insurance premiums for family coverage from $36.16 to $49.15 for 1987-1988, and from $49.15 to $54.07 for 1988-1989. It proposes monthly increases for single coverage from $11.04 to $18.70 for 1987-1988, and from $18.70 to $20.57 for 1988-1989.

(5) The Association proposes that the contract language be modified to obligate the Employer to pay the full cost of monthly premiums for both medical and dental insurance, rather than to identify the specific required premium amounts.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following described arbitral criteria.

"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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
e. Comparison 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 generally in public employment in the same community and in comparable communities.
f. Comparison 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 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 employees, 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."

POSITION OF THE EMPLOYER

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

(1) That the most appropriate comparables for the purpose of these proceedings consist of the school districts comprising the M & O Athletic Conference.

(a) That the athletic conference was used as the principal comparison group by Arbitrator Gil Vernon in a previous decision and award dated May 25, 1987; in these prior proceedings, that the Union had proposed utilization of U.S., State, CESA 8 and athletic conference comparisons.

(b) That the Union is now attempting to re-open the issue of comparables by arguing the use of several other school district groupings, including the entire State of Wisconsin.

(c) That many arbitrators have held as a general labor relations principle, that once parties

have established comparables through arbitration, another arbitrator should not disturb this determination.

(2) That there is no reason to expand the comparables, particularly in light of the fact that all athletic conference districts have settled.

(a) That the Union has presented no compelling reason why the Arbitrator should look beyond the athletic conference in this matter.

(b) That an examination of the evidence advanced by the parties indicates that both regard the athletic conference districts to be the most relevant. That this is clearly indicated by the fact that the parties have submitted the most comprehensive statistics on athletic conference comparisons.

(3) That adoption of the Union proposed comparables would undermine the stability of the parties' collective bargaining relationship.

(a) That stability in the bargaining process requires a fixed and definite set of comparables to be relied upon by both parties in guiding them toward a voluntary settlement.

(b) That statewide comparisons are of little value, because they are too far removed from the local scene; that most arbitrators have rejected statewide comparisons, as not reflecting the similar economic, social and political characteristics found in a specific area of the State.

(c) That both the Board and the Union have relied upon the comparability of athletic conference schools to guide them in reaching voluntary settlements over the past several years; that to abandon this history in favor of use of several random and arbitrary district comparisons, would frustrate the parties' future bargaining efforts.

(4) That consideration of the Board submitted total costs of the final offers, supports arbitral selection of the final offer of the Board.

(a) That the case is unusual, in that the Union has elected not to submit costing information on its final offer; that this action creates a presumption that the Board's figures should be accepted as correct.

(b) That when costed on the basis of the cast forward method, the Board's offer would increase average teacher salaries by $1741 for 1987-1988 (6.5%), and by $1719 for 1988-1989 (6.0%); that the Board's offer would result in total package increases of $2908 per teacher for 1987-1988 (8.5%), and $2442 per teacher for 1988-1989 (6.6%).

(c) That the Union's offer would increase average teacher salaries by $1986 for 1987-1988 (7.4%), and by $1891 for 1988-1989 (6.6%); that the total package costs of the Union offer would be $3200 per teacher for 1987-1988 (9.3%), and $2647 per teacher for 1988-1989 (7.1%).

(5) That adoption of the Union's final offer in the area of health and dental insurance would represent a radical departure from the status quo ante, and that such changes should be negotiated by the parties rather than imposed by an arbitrator.

(a) Under the Union's final offer, that the Employer would be obligated for the "full" payment of health and dental insurance; that this would be a complete departure from the current agreement, which specifies the flat dollar amounts to be paid by the Employer.

(b) That the change requested by the Union would continue in future agreements, unless changed by the parties; that it would be impossible for the Board to remove the term "full" from future agreements, thus ensuring that the change would live on in successor agreements.

(c) That it is a well established principle in interest arbitration that an Arbitrator ought not impose on the parties a proposal

that radically changes the status quo, unless an extremely persuasive case is made for the change.

(d) That the Union is seeking in arbitration, a change that it would not have been able to achieve across the bargaining table.

(e) That there is no quid pro quo for the requested change, in that it would not favor the Employer in any respect. When the change is considered in conjunction with the Union's demand for a 16.4% total package increase, it is clear that the demand exceeds the bounds of reasonableness.

(f) That arbitrators have consistently required a very high burden of proof to be met by the party proposing a significant change in the status quo; that the Union has simply not met this test in the case at hand.

(g) That adoption of the Union's proposal would defeat the purpose of specifying dollar amounts. That either proposal will continue to pay the full amount of insurance premiums, but the use of flat dollar amounts allows the Board to budget specific amounts for this significant fringe benefit; that the Union's proposal would thwart this goal, and would be inconsistent with the parties' bargaining pattern.

(h) That increasing health and dental insurance costs are a widespread problem, and the District needs to raise employees' sensitivity to these large increases; that such a purpose would be frustrated by inserting "full" into the contract, and removing the matter from the bargaining arena.

(6) That consideration of the two offers on the basis of the total package, is the most meaningful approach.

(a) That while the Union has emphasized a wage rate approach in this dispute, this ignores the fact that wages are only one part of the entire settlement.

(b) That only total package comparisons provide

a true measure of the relative merits of final offers.

(c) That many arbitrators, including the undersigned, have stressed the importance of adopting a total package approach to their review of final offers.

(d) That total package consideration is particularly indicated in the case at hand, by the Board's prior agreement to pay substantial health insurance cost increases.

(e) That comparison of the final offers on the basis of total costs, clearly favors the selection of the final offer of the Board.

(7) That the statutory criteria should be applied in a manner to approximate where the parties would have settled had they been able to reach agreement across the bargaining table.

(a) That the stipulations of the parties reflect the fact that the Board has already agreed to assume the full cost of employees' fringe benefits, including health insurance, dental insurance, and retirement. That when this criterion is weighed along with consideration of the total package, it is clear that the final offer of the Board is favored.

(b) That arbitral consideration of the interests and welfare of the public favors the selection of the Board's final offer. That various factors particularly favor this conclusion, including: Wisconsin's falling relative per capita personal income and its above average level of state and local government expenditures per capita; the reports of the Wisconsin Expenditure Commission citing the need to bring Wisconsin spending into line with ability to pay; the necessity for local property tax relief in Wisconsin; projected slow income growth in Wisconsin; Crivitz' reliance upon the farm economy, and the dire economic circumstances facing Wisconsin farmers; the desire of Crivitz taxpayers to control spending and to restrain tax increases; the relatively low average income in Crivitz versus other comparable districts; a high level of unemployment in Marinette County;

and the fact that school spending over the years, has outpaced inflation and growth in personal income.

That the Board's 15.1% total package offer over a two year period strikes a responsible and fair balance between the public interest and the needs of the District's employees. Further, that the position of the Board relative to economics and the interests and welfare of the public is consistent with various Wisconsin interest arbitration decisions.

(c) That consideration of the comparison criterion favors the selection of the final offer of the Board.

That the Board's offer best matches the prevailing settlement pattern within the athletic conference for both 1987-1988 and 1988-1989; that the pattern has been well established in light of the fact that all seven comparable districts have settled for the first year of the agreement, while three schools have settled for 1988-1989. That Crivitz is a wage leader within the Athletic Conference at every benchmark, and that the Board's offer is above the pattern within the conference; that neither offer will change Crivitz' rankings at the various benchmarks; that Crivitz' teachers earn salaries significantly above the conference average.

That internal comparisons favor the Board's final offer. That this is true for all organized employees (custodians, clerical employees, food service employees, aides and bus drivers), for non-organized clerical employees, and for administrators.

That private sector wage increase comparisons favor the selection of the final offer of the Board; that this is true when looking to the area, the state and the country.

(d) That consideration of the overall compensation criterion favors the position of the Board.

That no other school district in the relevant

comparables is settling at the overall increase level demanded by the Union. That the final offer of the Board takes into account the allocation of scarce resources, at a time when the District has been hit with major increases in health and dental insurance premiums (51% and 54% respectively for 1987-1988 and an additional 18% increase for health insurance in 1988-1989).

(e) That selection of the Board's offer is indicated by consideration of the cost-of-living criterion. That the Board's offer exceeds increases in the CPI, and offers real income advances for the teachers; that the teachers have experienced significant real gains in income every year since 1982-1983.

(f) That various other general criteria favor selection of the final offer of the Board, including the need for property tax relief, and the state of the economy generated, need for moderation.

POSITION OF THE ASSOCIATION

In support of its contention that the final offer of the Association is the more appropriate of the two offers before the Arbitrator, the Association emphasized the following prinicpal arguments.

(1) It submitted that the Arbitrator was faced with four preliminary determinations in this dispute: (a) In light of new statutory guidelines, what were the most appropriate comparisons to use in this dispute; (b) What evidence in the record would provide the most fair comparison, benchmark comparisons or cost projections; (c) In light of the above, what is the more reasonable of the two salary schedules; and (d) In light of the above, what should be the amount of employer contribution for health and dental insurance premiums?

(2) In addressing the comparison criterion, it urged basically as follows.

(a) That the changes to Section 111.70 of the Wisconsin Statutes, which became effective on May 7, 1986, brought about changes in the

comparison criterion in sub-paragraphs (4) (cm) 7. d., e., and f. That these changes imply that statewide and national comparisons are now deserving of greater weight than previously was the case.

(b) Rather than focusing upon comparisons within the M & O Athletic Conference, that the Arbitrator should focus first upon national comparisons, second upon state comparisons, and finally upon athletic conference comparisons. For the purposes of this dispute, that primary weight should be accorded certain State of Wisconsin comparisons.

(c) That athletic conference comparisons should not govern, due to the fact that the M & O Conference is very small, and only a few of the member schools have settled for 1988-1989.

(d) That the most valid comparisons should be on the basis of consideration of wage schedule percentage increases per cell; that this computation shows average increases proposed by the Association of 5.8% the first year and 4.65% the second year, as compared to Wisconsin school district average increases of 5.5% and 5.0%, and M & O Conference averages of 5.9% and 4.8%. By way of comparison, that the Board's final offer would result in average increases of 4.2% and 4.1% for the two years of the renewal agreement.

That when the two year average increase is computed, the Association offer of 5.2% compares with a Wisconsin average of 5.25%, an M & O Conference average of 5.4% and a Board offer average of 4.15%.

(e) When looking to CESA 8 comparisons, there is an approximate 5.4% first year increase per cell, versus the Association proposed 5.8% and the Board proposed 4.2%.

(f) That use of the Board's cost projection comparisons are too complicated, subject to faulty assumptions and faulty projections, and are also questionable on the basis of use of hearsay input. That there is no statutory requirement to utilize such unreliable figures.

(g) That the value of any increase has already been somewhat diminished by the fact that any 1987-1988 increase will be received more than one year late.

(h) Regardless of methodology, that the Crivitz schedule should be increased by at least the average benchmark increases received in competitive districts.

(i) That the prestigious Endicott Report shows a vast difference between professional averages and beginning averages in Crivitz, versus national figures.

(j) That teacher salaries when compared to Wisconsin per capita income, show that teachers have taken a severe beating in constant dollars since 1971-1972.

(k) Contrary to certain arguments advanced by the Employer, that cost-of-living is best mirrored by the voluntary settlements of others during similar economic circumstances; that these principles should be applied during both high and low inflation periods.

(3) That various other arbitral criteria also favor the selection of the Association's final offer.

(a) Contrary to the emphasis placed upon the farm economy by the Employer, only 6.0% of county residents are farm proprietors, and only 1.4% are farm employees.

(b) That in a society where worth is frequently measured in dollars, teachers have received historically poor wage treatment. That numerous recent reports at both national and state levels, have emphasized the importance of a strong educational system, and have recognized the need for improvements in teacher pay.

(c) That adoption of the Association's final offer would result in an increase of only .46¢ per year per taxpaying unit within the School District of Crivitz.

(4) That the Association's offer relative to payment of health and dental insurance premiums should be

favored over the final offer of the Board.

(a) That insertion of the term "full" in the second year offer was merely a reflection of the intent of the Association to ensure that the Board continue to pay 100% of the premiums, rather than an attempt to ensure "full payment forever," as argued by the District.

(b) That the position of the Association was merely a reflection of the fact that the premium amount was not known at the time of the final offer.

(c) That the Association would have agreed to the language proposal of the Board, had it known the premium amounts in advance; not having access to the premium information, that it merely used the "full" terminology to reflect the fact that the premium amounts were unknown.

(d) That the level of contribution is more important than semantics, and that the parties will be free to bargain again over the subject in the future.

(e) That Crivitz has actually enjoyed the lowest insurance premiums of any districts in the area.

FINDINGS AND CONCLUSIONS

Prior to individual application of the statutory arbitral criteria and the selection of the more appropriate of the two final offers, the undersigned will address certain preliminary considerations which were touched upon by the parties in arguing their respective cases. These considerations lie within the following general areas.

(1) The overall setting of the interest arbitration process and the role of the interest neutral.

(2) Selection and application of comparisons under the Wisconsin Statutes.

(3) Use of historical cost-of-living and wages history in the interest arbitration process.

(4) Consideration of elements of compensation other than wages, in selecting a final wage offer.

(5) Arbitral consideration of innovative or unusual proposals, or those which differ substantially from the status quo.

For the purposes of clarity, each of the above matters will be separately addressed.

The Overall Setting of the Interest Arbitration Process

An interest arbitrator does not merely assimilate information from the parties, plug the data into a formula, and determine a mathematically "correct" answer. Rather, he or she must operate as an extention of the bargaining processes of the parties, with the goal of arriving at the same decision that the parties would have reached at the bargaining table, had they been able to achieve a voluntary settlement. These considerations are rather well described in the following excerpt from the book by Elkouri and Elkouri:

> "In a similar sense the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > "Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination upon consideration of policy, fairness, and expediency, of what the contract ought to be. In submitting this case to arbitration, the parties have left to this board to determine what they should by negotiations, have agreed upon. We take then that the fundamental inquiry, as to each issue is: what should the parties themselves as reasonable men have agreed to?....To repeat, our endeavor will be to decide the issues, as upon the evidence, we think that reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining'..." 1./

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

The Selection and Application of Comparisons

While the Wisconsin legislature has rather broadly defined those comparisons subject to arbitral consideration in the interest arbitration process, they have not established any priority or relative importance for the various possible comparisons. Accordingly, interest arbitrators will normally emphasize those types of comparisons generally found to be persuasive at the bargaining table, with particular consideration to the bargaining history of the parties in dispute; if the parties have historically utilized certain comparisons during their previous negotiations (including prior interest arbitrations), arbitrators will normally defer to this bargaining history. When the principal comparisons have thus been decided upon, it is widely recognized that these comparisons are the most persuasive of the various arbitral criteria used in the dispute resolution process.

The above general principles in the selection and application of comparisons, along with their underlying rationales, are well described in the following excerpts from Irving Bernstein's book on wage arbitration:

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

> More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
>
> Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for predictions as may be uncovered in social affairs. The loyalty of arbitrators to this criterion at the general level could be documented at length..." 2./

Observations similar to the above, have also been made in the Elkouris' authoritative book on arbitration:

> "Without question, the most extensively used standard in interest arbitration is 'prevailing practice.' This standard is applied, with varying degrees of emphasis, in most interest cases. In a sense, when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties." 3./

On the basis of the above, it is quite clear that the most important of the arbitral criteria is comparisons, and that the most persuasive of the possible comparisons are intraindustry comparisons. In this case, of course, the "intraindustry" comparisons lie between the Crivitz School District and other, comparable school districts.

The extreme reluctance of arbitrators to abandon those intraindustry comparisons which have been utilized by parties in the past is well described in the following additional insights from Bernstein:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When Newark Milk Company engineers asked for a higher rate than in New York City, the arbitrator rejected the claim with these words: 'Where there

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2./ Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, pp. 54, 56.

3./ How Arbitration Works, p. 804.

is, as here a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.' "

* * * * *

"The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again...." 4./

Similarly, the Elkouris offer the following additional observations:

"Where each of various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past." 5./

On the basis of the above, and in consideration of the parties' use of the M & O Athletic Conference comparisons in the past, and Arbitrator Vernon's selection and use of such comparisons in 1987, the Arbitrator has preliminarily concluded that the most persuasive comparison data in the case at hand is that which compares the Crivitz District with other member school districts within the M & O Athletic Conference.

The Use of Historical Cost-of-Living and Wage Data

Each of the parties to the dispute cited certain historical wage and cost-of-living data in support of their respective positions. The Employer urged arbitral consideration of wage gains by those in the bargaining unit which have outstripped cost-of-living increases in recent years. The Union urged arbitral consideration of long term teacher earnings comparisons with certain other segments of society, arguing that teachers in general had been losing ground to other professions and trades.

4./ The Arbitration of Wages, pp. 63, 66.

5./ How Arbitration Works, p. 811.

Arbitrators will generally refuse to go beyond the parties' most recent prior trip to the bargaining table, in considering wage comparisons or cost-of-living movement. The underlying basis for this principle is arbitral reluctance to reopen or relitigate the parties prior negotiations or their prior arbitrations. The following additional excerpt from Bernstein's book addresses this broad principle, within the narrower context of cost-of-living base period manipulation:

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a relitigation of every preceding arbitration between the parties and a reexamination of every preceding bargain concluded between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost-of-living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger." 6./

On the basis of the above described principles, the Impartial Arbitrator has preliminarily concluded that the cost-of-living and earnings comparison data, and the related arguments of the parties, which antedate the effective date of the parties' 1986-1987 agreement, are entitled to little or no weight in these proceedings.

Elements of Compensation Other Than Wages

Although the parties did not comprehensively address the teachers' entire wages and benefits structure, they differed sharply with respect to the scope of comparison of their final offers. The Employer suggested that the comparison should be on the basis of the costs of the respective proposals of the parties, utilizing the cast forward method, and including the substantially increased costs of health and dental insurance which have been and will be incurred by the District during the life of the

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6./ The Arbitration of Wages, p. 75.

renewal labor agreement. The Association urged that comparisons should be on the basis of the average percentage salary increases per cell, and that the District's proposed total cost comparisons should be rejected as unreliable and unpersuasive.

When the Wisconsin legislature included the overall compensation criterion in Section 111.70, it rather clearly anticipated arbitral use of costing comparisons in the interest arbitration process. Certainly it is fair to conclude that parties who have emphasized a wide range of expensive fringe benefits may be excused from completely meeting competition in the area of wages or salaries and, conversely, parties who have elected to take a large percentage of compensation in the form of wages rather than fringes, may be excused from matching the fringes pattern within a primary comparison group.

The Employer is justified in urging arbitral consideration of the overall costs of the final offers of the parties in this case, including the widely used cast forward method of costing, and it is also entitled to have included in the costing package, the substantial cost increases occasioned by rising health and dental insurance premiums during the life of the renewal agreement; the Association, of course, has the right to submit similar comparison data, including wages and fringes for other employers, and it has the right to challenge the accuracy of the costing comparisons provided by the Employer. If either party to the interest arbitration process fails to provide overall costing and comparison information, however, an arbitrator will normally accept at face value the data supplied by the other party.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the overall costing comparisons urged by the Employer, including health and dental insurance premium increases, are appropriate for arbitral consideration.

Arbitral Consideration of Innovative or Highly Unusual Proposals

The Employer urged arbitral rejection of two alleged innovations contained in the Association's final offer: (1) its proposal that the Employer accept the "full" costs of health and dental insurance, which is a departure from the parties contractual identification of specific dollar premium amounts in the past; and (2) the Association's varied salary increase proposal, which would disturb certain historic relationships within the salary structure. The

Association minimized the nature of the dispute with respect to payment of "full" insurance costs, characterizing it as merely a response to the fact that exact insurance premium costs were unknown to the Union at the time that it formulated its final offer.

Interest arbitrators have frequently drawn upon the fact that they are extensions of the negotiations process, in resisting the adoption of innovative changes in private sector negotiations impasses. Due to bargaining considerations, including the fact that public sector employees do not have the right to strike in support of their negotiations positions, there is greater justification for innovation in some cases, than is the case in the private sector. Even in the public sector, however, arbitrators require the proponent of change to make a very persuasive case in support of the innovation or substantial departure from the past. Arbitrator Howard Block has described these considerations and their underlying rationale as follows:

> "One of the most compelling reasons which makes it necessary for neutrals in public interest disputes to strike out on their own is the dearth of public bargaining history. The main citadels of unionism in private industry have a continuity of bargaining history going back at least to the 1930s. Public sector collective negotiations, on the other hand, is still a fledgling growth. In many instances its existence is the result of an unspectacular transition of unaffiliated career organizations responding to competition from AFL-CIO affiliates. As we know, a principle guideline for resolving interest disputes in the private sector is prevailing industry practice--a guideline expressed with exceptional clarity by one arbitrator as follows:
>
> > 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity--the reliance on a set of tested and established guides.
> >
> > In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
> >
> > The arbitrator attempts to accomplish this

> objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.'
>
> Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt."7./

Contrary to the underlying rationale of Arbitrator Block's comments on innovation, public sector collective bargaining in Wisconsin has a long history, and the parties to the dispute at hand have a relatively mature bargaining relationship. Stated simply, the situation at hand is not that of a fledgling union suddenly emerging into the collective bargaining field. In applying the above principles to the situation at hand, the Arbitrator must recognize that both the proposed change in health and dental insurance, and the varied, rather than uniform, adjustment in wage rates, are departures from the parties' past bargaining pattern.

While the Association suggests that its demand for the payment of full health and dental insurance premiums was not motivated by a desire to lock the parties into "full payment forever," that is the substance of its demand. If the Association's desire in framing its final offer was merely to have the proposal reflect an amount equal to the entire premium required by the insurer, it could have so indicated in its final offer. Not having done so, it is bound by the substance of its final offer, rather than its professed underlying motivation.

The Employer is quite correct that a demand for the payment of full insurance premiums is a significant one,

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7./ Howard S. Block, Criteria in Public Sector Interest Disputes, Institute of Industrial Relations, University of California at Los Angeles, 1972, Reprint No. 230, pp. 164-165. Included quote from the decision of Arbitrator John Flagler in Des Moines Transit Company, 38 LA 666, 671.

particularly during a time period when premium costs are increasing rapidly, and when employers are attempting to highlight and to control these cost increases. It is quite difficult for the Arbitrator to visualize the parties reaching agreement on the assumption of full insurance premiums, without a good deal of preliminary negotiations, and some give and take in the bargaining process. Despite the lack of short term costs associated with the insurance proposal, (the Employer has already agreed to pay the specific amounts proposed by the insurer during the life of the agreement), the Arbitrator must conclude that the Association has proposed a substantial change in the terms and conditions of employment on its insurance premium payment demand, and it has simply failed to make a persuasive case for the change. It has also failed to make a separate case for the proposed varied increases at certain cells in the salary structure, and this is also a departure from the parties past practice; this item is probably, however, of a lesser order of importance than the proposed change in insurance premium payment.

Application of the Comparison Criterion

Having determined, as described above, that the principle comparison should be between Crivitz and the member districts comprising the M & O Athletic Conference, the question remains as to how the salary and total package increases shall be represented and compared.

(1) The Association urges principal utilization of salary increases alone, and it suggests that the percentage increases be derived from aggregating the percentage increases for each benchmark cell, and deriving therefrom, an average percentage increase over the prior year or years. On this basis, it submits that the average salary increase for the two year period for the Association's final offer was 5.2%, for the State of Wisconsin was 5.25%, for the M & O Conference was 5.4%, and under the Board's final offer would be 4.15%.

(2) The Board urges use of an average derived from adding the total salary schedule costs and dividing the results by the FTE for each district. On this basis, it submits that the average 1987-1989 salary increase in the M & O Conference was 6.7%, that the Board's final offer was 6.5%, and that the Association's final offer was 7.4%; on a total package settlement cost basis, it cited 7.2%, versus an 8.5% figure for the Board's final offer and a 9.3% increase represented by the Association's final offer. Comparable Board

figures for 1988-1989 show an average Conference salary increase of 5.6%, versus the Board proposed 6.0%, and the Association proposed 6.6%; the comparable total package costs for 1988-1989 were 6.3% for the Conference, as compared to a 6.6% increase in the Board's final offer, and a 7.1% increase in the Association's final offer.

Initially, it must be recognized that costing on a population weighted, cast forward basis is a widely used and reliable indicator of the relative costs of settlements. The use of benchmarks for job evaluation and surveying purposes is a very valuable tool, but it must be recognized that benchmark averages must give way to more precise measurements when they are available. While benchmark average increases may be reliable indicators in some cases, they may differ greatly from more precise figures which can be derived from using the total population of all classifications or all salary cells in a universe, and weighting the average salaries or the average salary increases by population.

On the above bases, and since both final offers exceed the average total package increases within the M & O Athletic Conference, and since the District's final salary offer was closer to the average increase in the conference, the Impartial Arbitrator has preliminarily concluded that consideration of the primary comparables clearly favors the selection of the final offer of the Board, rather than that of the Association.

Application of the Interests and Welfare of the Public Criterion

Each of the parties emphasized different evidence and/or arguments in connection with the interest and welfare of the public criterion.

(1) The District emphasized such factors as a declining relative per capita income in Wisconsin, along with above average per capita expenditures for local and state government. It cited various sources in support of the need for property tax relief, urged arbitral consideration of the distressed state of the farm economy within the Crivitz District, argued the desire of local taxpayers for spending restraint, and cited a relatively low level of average income in Crivitz versus comparable districts.

(2) The Association cited the importance of a strong education system, urged that teachers had received relatively poor earnings treatment in comparison with other professions, and challenged the statistical significance of the farm economy within the Crivitz District.

The District is quite correct that an adverse economy must be taken into consideration by interest neutrals, but such economic considerations are normally given controlling or major weight only in the event of an absolute inability to pay, or if the record discloses a significantly disproportional financial effort on the part of a district, in comparison to other districts. While there is evidence in the record of a relatively low average income in the Crivitz District, there is nothing in the record to indicate either an inability to pay or an extraordinary taxing effort when compared to other districts. The Association is also correct in its emphasis upon the need for a quality education for students within the District, and in the need for fair and adequate salaries and benefits for members of the teaching profession; such considerations are, however, difficult to quantify and apply in an interest arbitration context.

On the basis of the above, the Impartial Arbitrator is unable to assign determinative importance in this matter to the evidence and the arguments of the parties relating to the interests and welfare of the public criterion.

Application of the Cost-of-Living Criterion

As referenced earlier, cost-of-living considerations should normally be considered in interest arbitration proceedings, only to the extent of changes which have occurred since the parties last went to the bargaining table prior to the current negotiations. In this case, since the beginning of the parties' 1986-1987 agreement.

The comparable settlements referenced earlier, were all negotiated under the same general economic circumstances present in the Crivitz District, and they reflect the weight placed upon cost-of-living considerations by the negotiating parties within these districts. When this factor is considered in light of the low rates of inflation in 1986 and 1987, and the low current and projected inflation rates through the end of the current school year, it is apparent that the final offers of each party exceed the rate of inflation for the two year term of the renewal agreement. On this basis, it must be concluded that cost-of-living considerations somewhat favor the selection of the final offer of the District. In light of the recent stability in

the economy, however, and in consideration of the weight placed upon the cost-of-living criterion in comparable districts, this factor cannot be assigned determinative weight in these proceedings.

Application of Miscellaneous Remaining Considerations

Without unnecessary further elaboration, the Arbitrator offers the following observations and conclusions relating to certain remaining considerations urged by the parties.

(1) Contrary to the arguments advanced by the Association, the undersigned can find nothing in the 1986 statutory changes in arbitral criteria, to indicate that the legislature intended statewide comparisons to be given primary weight in interest proceedings, or that the weight assigned to national comparisons should be increased.

(2) As urged by the Union, delay in the completion of the interest arbitration process obviously works to the disadvantage of those who are temporarily denied the use of wages and benefits increases. Indeed, intentionally caused delay may fall within the general coverage of sub-section (j) of Section 111.70 (4)(cm)(7) of the Wisconsin Statutes. In the matter at hand, however, it must be noted that the Employer, rather than the Association, moved the proceedings ahead, by filing a petition with the Commission for initiation of the interest arbitration process.

Summary of Preliminary Conclusions

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

(1) The interest arbitrator operates as an extension of the bargaining process, and normally seeks to arrive at the same decision that the parties would have reached at the bargaining table, had they been able to achieve a voluntary settlement.

(2) The intraindustry comparison criterion is normally regarded as the most important and the most persuasive of the arbitral criteria; in the matter at hand, this refers to comparison

of the Crivitz District with other comparable school districts.

(3) Based principally upon the parties' bargaining history, including one prior interest arbitration, the principal intraindustry comparison is between the Crivitz District and the other districts comprising the M & O Athletic Conference.

(4) Cost-of-living data, and general earnings comparison data, which antedate the effective date of the parties' 1986-1987 agreement, are entitled to little or no weight in these proceedings.

(5) The overall costing comparisons urged by the District, including health and dental insurance premium increases, are appropriate for arbitral consideration.

(6) Interest arbitrators normally require the proponent of significant or innovative changes to make a very persuasive case in support of such proposals. The Association has proposed substantial changes in its insurance premium payment proposal, and in proposed changes in certain salary structure relationships; it has failed to make a persuasive case for the adoption of these proposed changes.

(7) Arbitral consideration of comparisons between the Crivitz District and the districts comprising the M & O Athletic Conference favor the selection of the final offer of the Board.

(8) The evidence and the arguments presented by the parties relative to the interest and welfare of the public criterion, cannot be assigned determinative weight in these proceedings.

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

(10) Neither the referenced statutory changes of 1986, nor the delay in the completion of the interest arbitration process can be assigned determinative weight in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record

and all of the various statutory criteria, the Impartial Arbitrator has concluded that the final offer of the District is the more appropriate of the two final offers. This conclusion is principally based upon the referenced comparisons between the Crivitz District and the districts comprising the M & O Athletic Conference. While certain of the considerations emphasized by the Association favored the selection of its final offer, the final offer of the District is the more appropriate of the two final offers before the Arbitrator.

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 Crivitz School Board is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

September 23, 1988