ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between ONDOSSAGON SCHOOL DISTRICT And CHEQUAMEGON UNITED TEACHERS	WERC CASE 32 NO. 39597 INT/ARB-4621 **Decision No. 25333-A**

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Hearing Held

July 27, 1988
Ondossagon, Wisconsin

Appearances

For the District

MULCAHY & WHERRY, S.C.
By Ms. Kathryn J. Prenn, Esq.
P. O. Box 1030
Eau Claire, WI 54702-1030

For the Union

CHEQUAMEGON UNITED TEACHERS
By Barry Delaney
Executive Director
Route 1 Box 1055
Hayward, WI 54843

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Ondossagon School District and the Chequamegon United Teachers, with the matter in dispute the terms of a two year renewal agreement between the parties, covering the 1987-1988 and the 1988-1989 school years. The principal impasse item is the amount of the salary increases to be added to the existing salary schedule during each of the two years of the agreement; the parties are also apart on the appropriate hourly wage rate for certain assigned curriculum work, and on the appropriate compensation index for the Assistant Volleyball Coach position.

The parties exchanged bargaining proposals and met at various times in an unsuccessful attempt to reach a negotiated settlement, after which they jointly requested the Commission to initiate statutory interest arbitration in accordance with the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on April 6, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order directing arbitration; on April 28, 1988, it issued an order appointing the undersigned to hear and decide the matter as Arbitrator.

A hearing was scheduled for July 27, 1988, in Ondossagon, Wisconsin, and after preliminary voluntary mediation had failed to result in a negotiated settlement, the matter proceeded to hearing. Both parties received a full opportunity to present evidence and argument in support of their respective positions at the hearing, and each closed with the submission of post-hearing briefs and reply briefs, after which the record was closed by the undersigned effective October 10, 1988.

THE FINAL OFFERS OF THE PARTIES

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

(1) The District principally proposes a 5.75% increase in the salary schedule for 1987-1988, and an additional 5.5% increase for 1988-1989; this would bring the BA base to $17,006.74 for the first year, and to $17,942.11 for the second year of the renewal agreement. It additionally proposes that curriculum work assigned outside the work day or work year be paid at the hourly

of $13.47 for 1987-1988, and at the rate of $14.21 for 1988-1989, and that an extra curricular salary index for the Assistant Volleyball Coach be added to Addendum B of the contract at 4.00.

(2) The Association principally proposes a 6.1% increase in the salary schedule for each of 1987-1988 and 1988-1989; this would bring the BA base to $17,063.02 for the first year, and to $18,103.86 for the second year of the renewal agreement. It additionally proposes that curriculum work assigned outside the work day or the work year be paid at the hourly rate of $13.52 for 1987-1988, and at the rate of $14.35 per hour for 1988-1989, and that an extra curricular salary index for the Assistant Volleyball Coach be added to Addendum B of the contract at 4.41.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Impartial Arbitrator to give weight to the following 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 offers before the Arbitrator, the Employer emphasized the following principal arguments.

(1) That the comparison pool to be utilized in these proceedings should consist of the Indianhead Conference Schools, excluding Hurley, for 1987-1988, and the Indianhead Conference Schools, including Hurley for 1988-1989.

(a) That use of the Indianhead Conference for comparison purposes was adopted by Arbitrator Gordon Haferbecker in his May 1983 interest arbitration decision and award for the Ondossagon School District.

(b) That it is a well established principle in interest arbitration proceedings that previously utilized comparison pools should not be whimsically altered, and that comparability shopping should be discouraged.

(c) That Hurley first entered the Indianhead Conference during the 1986-1987 school year, at which time it had a three year agreement already in place, covering the 1985-1988 time frame. That the District's argument to exclude Hurley until the 1988-1989 school year was endorsed by Arbitrator Edward Krinsky in his decision and award for the Ondossagon School District dated

September 8, 1987. That while the Union argues that Arbitrators Rice and Imes have included Hurley in comparison pools in other Indianhead Conference District interest arbitration proceedings, it was appropriately excluded by Arbitrator Yaffe in his decision and award governing the Washburn School District on September 17, 1987.

(d) That the Hurley renewal agreement covering 1988-1991 was the first negotiated by it as a member of the Indianhead Athletic Conference; accordingly, that Hurley should be included in the comparison pool for the purpose of evaluating the parties' offers for the 1988-1989 school year.

(2) That analysis of the final offers of the parties versus the appropriate comparable districts, supports the selection of the final offer of the District, on the basis of benchmark comparisons, comparisons of wages alone, and comparisons of total compensation.

(a) That Solon Springs should be excluded from benchmark analysis for both 1987-1988 and 1988-1989; that those in the bargaining unit were frozen in rate in the first year, and used a "gimmick" approach for the second year to provide 5.8% increases per cell, and 2.0% salary adjustments.

(b) That benchmark comparisons of dollar increases at the BA Min, the BA Max, the MA Min, the MA Max and the Schedule Max, favor the selection of the final offer of the District.

(c) That consideration of benchmark rankings at the above levels, indicates the reasonableness of the District's final offer.

(d) During the two year term of the renewal agreement, that the Board's "wages only" offer is within $22 of the Conference average, and its "total compensation" offer exceeds the Conference by $256. That the Union seeks a two year "wages only" increase which is $230 in excess of the Conference average and a "total compensation" increase which would exceed the conference average by more than $560. That consideration and use of Union costing brings the District within $3

of the Conference average on "wages only" and shows the District to exceed the conference average in its offer by $273.

(3) That the Board's final offer is more reasonable when considered in light of area municipal settlements. That all of Bayfield County's unionized employees reached voluntary wage settlements with 3.0% increases for 1988, and that these settlements reflect the economic conditions of the Ondossagon area.

(4) That the Board's offer is more reasonable when measured against cost-of-living considerations; indeed that the Board's offer is well over 200% of the annual rate of inflation as of August 1987.

(5) That arbitral consideration of the interests and welfare of the public and ability to pay considerations favor the selection of the final offer of the District.

(a) That while the District operates a cost-effective school system, the mill rate necessary to operate the District has increased nearly 50% since 1980-1981. That the 1987-1988 mill rate is sixth highest in the Conference, and nearly two mills higher than the state average.

(b) That both state aid per member and equalized value per member decreased from 1985-1986 to 1986-1987.

(c) That while the tax levy has increased 6.63% from 1985-1986 to 1987-1988, the District's general fund balance has decreased by over 25%. The District has recently had to borrow substantially to meet operating expenses and, despite increasing tax levies and mill rates, it finds its financial stability eroding.

(d) That the District's final offer shows the appropriate level of restraint and moderation associated with a declining economic environment. That this is evidenced in part by the economic plight of the farmers in rural Wisconsin, who are faced with declining land values, high interest rates, and decreasing farm commodity prices.

(e) That approximately 10% of the District's population lives on farms, and 14.9% of those over the age of 18 years, are employed in agriculture; that these figures are the highest in the Indianhead Conference.

(f) That the District's farmers have recently been hit with a one-two punch, in the form of the 1987 drought, followed by the even more devastating drought of 1988. That such drought conditions have been accorded appropriate weight by other Wisconsin interest arbitrators.

(g) That property tax increases must be paid out of income, and the District has the fourth highest percentage of families living below the poverty level, among Conference schools. That Bayfield County's tax levy increased over 12% from 1986 to 1987, the highest such increase among the four counties in which Conference schools are located; at the same time, that Bayfield County received the lowest percentage of state aid.

(h) That other District problems flow from an aging and deteriorating physical plant, which considerations were recognized in the 1983 interest arbitration decision of another arbitrator.

(i) In the face of all of its difficulties, the Board has made an offer which exceeds the average wage and total compensation increases in the Conference, which is more than could have been reasonably expected under the circumstances.

In summary, that the final offer of the Board is more reasonable when evaluated on the basis of benchmark analysis, is more in line with the settlement trends, outstrips increases in the rate of inflation, provides more wage increases than those afforded other municipal employees, and is more reflective of the current state of the economy.

In its reply brief, the Employer emphasized a number of additional arguments in support of arbitral selection of its final offer.

(1) That the early retirement stipend does not constitute wages, and little justification

exists for an annual adjustment in the amount of the stipend.

(a) That the above is consistent with the decision of Arbitrator Haferbecker in his 1983 decision between the parties.

(b) That the Union should realize and acknowledge that there are no free dollars, and the same dollar cannot be spent twice.

(c) That it is unrealistic for the Union to expect full health insurance (despite the District's highest health insurance premiums in the conference) and a competitive wage increase and an increase in the early retirement stipend.

(d) That if the Union wanted an increase in retirement benefits, it should have adjusted its demands regarding wages and health insurance; that it should not be allowed to tack on an economic item to its final offer, which it would not have achieved voluntarily.

(e) That the Union presented no information relative to the number of districts in the Conference which provide an early retirement stipend, or any data supporting an argument that the District needs to catch up in this area.

(f) That the Union's argument that the District may save money by spending more money for early retirement, is simply not a valid one; further, that arbitrators consistently have rejected budget-to-budget costing analysis, and have relied upon a cast-forward method of costing.

(2) That the Union's selection of comparable districts is contrary to prior arbitration decisions within the Indianhead Conference.

(a) That the Union argument that only those districts should be considered which have two year agreements covering 1987-1989, should be rejected; contrary to the Union's arguments, the timing of the settlements within its comparison pool ranged from September 1987 to May 1988, and there is absolutely no evidence of front-end or back-end

loading in the Drummond, the Hurley or the Washburn contracts.

(b) That the Union's current position relative to the use of non-coterminous, multi-year agreements, has been asked and answered in two teacher arbitration decisions in the Indianhead Conference within the past year and one-half. That Arbitrators Krinsky and Yaffe allowed such comparison evidence to be used in their decisions and awards governing the Ondossagon and the Washburn School Districts.

(c) That there has been no showing by the Union that economic circumstances were different when the Drummond and the Washburn settlements were negotiated, or that there is anything markedly different about these settlements.

(d) That the Union has presented no explanation for its recent flip-flop on the matter of including the Drummond, the Washburn and the Hurley settlements in comparison data.

(e) That there is no basis for the exclusion of the Hurley settlement from consideration, on the basis of any significant trade-offs contained in the negotiations process. Indeed, that the Board's final offer exceeds Hurley's total compensation costs for 1988-1989.

In summary, that the athletic conference comparison pool has been explicitly defined in several prior arbitration decisions; in the absence of anything justifying a deviation from the established practice, that the Arbitrator is compelled to constrain the Union's urge to go shopping for comparables.

(3) That the Union's reliance upon benchmark analysis should be given little weight in these proceedings.

(a) That the value of any benchmark analysis is limited by the fact that such an analysis does not reflect the actual placement of teachers on the salary schedule.

(b) In recent years, that numerous arbitrators have come to share the District's belief that any benchmark analysis is of limited utility. In this connection it particularly referenced the recent decisions and rationales of Arbitrators Neil Gundermann and Jay Grenig.

(c) That the deficiencies inherent in any benchmark analysis, are compounded when the Union engages in the unjustified and unwarranted selection of comparables.

(d) If benchmark analysis is used, that the Solon Springs data should be excluded due to the fact that it froze the increment in 1987-1988 and it provided an acknowledged catch-up of an additional 2% for 1988-1989; additionally, there is no valid basis for the exclusion of Drummond and Washburn in 1987-1988 and Hurley in 1988-1989.

(e) That benchmark analysis fails to properly consider the fact that the Glidden District added an MA +30, a twelfth step in the BA lanes, and a thirteenth step in the MA lanes for 1988-1989.

(f) That when individual districts see the need to boost their benchmarks, as did Solon Springs and Glidden, it should not require other districts in the comparison pool to make similar adjustments; to require other districts to follow in such cases would create a ripple effect, and would recreate the same deficiency which created the perceived need for the individual districts to boost their benchmarks in the first place.

(g) Less than 25% of the staff are at the benchmarks utilized by either party in its benchmark analysis, and the data tells us very little about the total compensation the returning teachers will receive under the parties' final offers.

(3) That an analysis of the wage and total compensation data supports the selection of the Board's final offer.

(a) That the Board's two-year "wages only" offer is within $22 of the Conference average, and its "total compensation" offer exceeds the Conference average by $256.

(b) That arbitrators have increasingly placed more reliance upon "total compensation" than upon "wages only." In this respect it cited certain decisions of Arbitrators Briggs, Flagler, Weisberger, Malamud, Yaffe and Vernon.

(c) That for 1987-1988 and 1988-1989, Ondossagon

has the highest health insurance premiums in the conference, which costs must be included as part of the total compensation provided to teachers.

(4) That an examination of certain settlements cited by the Union calls into question certain of the Union's arguments.

(a) That when proper costing techniques are used, the Board's two-year offer is within $3 of the Mellen arbitration award, and the Union is seeking an award exceeding Mellen by more than $300.

(b) That when the Glidden settlement is properly costed out, the two year total compensation provided is more than $800 less than the Union's offer in this proceeding.

(c) When improper sick leave costing data is removed from the package, that the Hurley settlement total compensation cost per teacher, is $500 less than the Board offer and $700 less than the Union's offer.

(5) That the total compensation data summarized in Employer exhibits, document a trend toward moderation in settlements within the Conference, which trend was referenced by Arbitrator Yaffe in his recent decision in the Washburn District. That the Union in its final offer ignores this trend, while the final offer of the District is consistent with it.

In summary, that the District has presented accurate and complete data consistent with the numerous statutory criteria, while the Union has attempted to build its entire case upon benchmark analysis using skewed and indefensible comparables, and upon number crunching. That arbitrators are required to consider the larger picture, and to apply all arbitral criteria.

POSITION OF THE UNION

In support of its position that the final offer of the Union is the more appropriate of the two final offers before the Arbitrator, the Union emphasized the following principle arguments.

(1) That the parties are relatively close on all items except the regular teaching salary schedule for the

two years covered by the renewal agreement and, accordingly, that the outcome of the arbitration should principally be determined by the salary impasse item.

(a) In terms of supplemental pay for meetings, junior prom, substitutes, noon hour duty, supervision and part-time teachers, the final offers differ only by a total of $24.33 for 1987-1988, and by $69.91 for 1988-1989.

(b) That the dollar differences in the parties' final offers relative to pay for the Assistant Volleyball Coach position are only $75.46 for the first year of the renewal agreement, and $87.95 for the second year.

(c) That the dollar difference between the parties on the School Psychologist position represents only $98.89 in the first year, and $293.74 in the second year of the renewal agreement.

(d) That the parties' difference on pay for the new category of extra duty for curriculum work assigned outside of the regular work day or work year is so small, that no attempt was made by either party to compute the amount of any difference.

(e) That the Union proposed 6.1% increase in the early retirement monthly incentive of $275.00 per month between ages 55 and 62 has no immediate cost implications, due to the fact that no one is currently using the benefit. That the District has proposed no increase in the early retirement stipend, which somewhat favors the selection of the final offer of the Union.

(2) In applying the comparison criterion, that the Arbitrator should regard as primary comparables, those Indianhead Athletic Conference Districts which have settled for the 1987-1988 and the 1988-1989 years. That the six settled districts that fit this criteria are Bayfield, Butternut, Glidden, Mellen, Mercer and Solon Springs.

(a) That all six districts have two year agreements covering the same time frame as the Ondossagon renewal agreement. That all other settled districts do not have contract durations that cover just the 1987-1988 and the 1988-1989 school years.

(b) In the event that the six primary comparables do not adequately indicate which of the final offers should be selected, that the Drummond and the Washburn Districts should be considered, due to the fact that they have multi-year agreements which overlap into the 1987-1989 period.

(c) That the Hurley District should be totally excluded from consideration for various reasons: (1) It has had two three year agreements, where the last year of the first agreement was 1987-1988, and the first year of the second agreement was 1988-1989; that front-end and back-end loading on the two agreements greatly skewed both the 1987-1988 and the 1988-1989 comparisons; (2) In previous interest arbitrations in Ondossagon and Washburn, the arbitrators have appropriately excluded use of Hurley as a comparable for 1987-1988; (3) Hurley's three year agreement covering 1988-1991 included small increases in exchange for other improvements taken in lieu of salary increases, including new long term disability, new vision insurance, hiring of a half time art teacher to increase teacher preparation time, long lunch periods for elementary school teachers, a pay-out for unused sick leave, creation of tax sheltered annuities for those not using their health insurance benefits, availability of health and dental insurance for non-principal wage earners, and unlimited accumulation of sick leave.

(3) That benchmark comparisons for the two year duration of the renewal agreement, within the six principal comparisons, favor the selection of the final offer of the Union in these proceedings.

(a) That the District's offer reflects an 11.6% increase at each of seven suggested benchmarks, while the Union's offer would result in a 12.6% increase.

(b) That the average percentage increase for the two year period at Bayfield, Butternut, Glidden, Mellen, Solon Springs and Mercer equals 13.8% at the BA Min, 13.0% at BA +7, 12.9% at the MA Min, 12.6% at MA +10, 12.9% at the BA Max, 13.3% at the MA Max, and 13.3% at the Schedule Max.

(c) On the basis of comparing average deviations at the various benchmarks, the District's

offer averages 1.3% and $170 below the comparison group, while the Union's offer averages 0.3% below and $65.00 above the comparison group figures.

(d) That selection of the final offer of the District would erode the previously negotiated salary relationships between Ondossagon and the comparable districts.

(e) That comparisons which include the secondary comparable group also favor the selection of the final offer of the Union. That the average first and second year salary increases for this group are 6.5% and 6.1%, versus the District proposed increases of 5.8% and 5.5%, and the Union proposed increases of 6.1% and 6.1%.

(f) On the basis of comparing average deviations at the various benchmarks for the secondary comparison group, the District's offer represents an average deviation of minus $95.00 for the first, and minus $65.00 for the second year, while the Union's offer would represent an average deviation of plus $5.00 for the first year, and plus $62.00 the second year.

(4) That the many settlements within the comparable districts reflect how these districts have addressed the task of balancing teacher salaries against other factors such as the economic climate within this area of the State of Wisconsin, inflation, unemployment, other wage earners (both public and private), and the total welfare of the people living in northwestern Wisconsin. That the record is devoid of any unusual or unique circumstances concerning Ondossagon, which would separate it from these comparable districts.

(5) That consideration of other arbitration awards, favors the selection of the final offer of the Union in these proceedings.

(a) That Arbitrator Krinsky in his 1987 decision for Ondossagon placed greater weight upon teacher salary comparisons, than upon non-teacher comparisons, and cost-of-living considerations.

(b) That the last decision within the comparable

districts was the 1988 decision of Arbitrator Vernon, covering the Mellen District. Arbitrator Vernon based his decision solely upon comparable school districts, despite District arguments relating to cost-of-living, lower municipal and private employee wage increases, a 50% increase in mill rate over a six year period in Mellen, the fact that Mellen had the second lowest per capita income of the comparables, and the fact that Ashland County was not growing as is Bayfield County.

(c) In addition to the comparables used in the Mellen arbitration, it should be emphasized that the Mellen award matches the Union's offer at Ondossagon, and the Glidden settlement exceeds the Union's offer at Ondossagon.

(d) That the arbitration process should emphasize voluntary settlements, and should offer some measure of consistency and predictability. That these considerations favor the arbitral selection of the final offer that is compatible with other arbitration decisions and other settlements.

In its reply brief, the Union emphasized the following additional arguments in support of the selection of its final offer.

(1) In connection with the composition of the comparison pool, that the Employer is urging the Indianhead Conference excluding Hurley for 1987-1988, but including it for 1988-1989, and with the exclusion of Solon Springs from benchmark analysis for either of the two years. The Union has urged that the comparison pool should consist of the six conference schools which have settled for both 1987-1988 and 1988-1989 under one contract.

(a) Contrary to its arguments, that the Employer included Solon Springs on a benchmark basis in eight of its exhibits. Further, that the exclusion of Solon Springs is inappropriate on various other bases: that other districts have frozen increments in the past without being excluded from comparison; that five of the Solon Springs benchmarks are not affected by frozen increments; if there had been a significant savings at Solon Springs it would show up in total cost, but the Employer has still used Solon Springs in its total cost comparisons.

(b) Both parties used Solon Springs benchmarks for comparisons during the 1986-1987 arbitration at Ondossagon, and the arbitrator also did so, despite the fact that Solon Springs had frozen its increments for part of the 1985-1986 school year.

(c) If the Arbitrator feels that Solon Springs should be excluded due to "uniqueness," then Hurley and Mercer should be excluded on the same basis. Hurley, for the reasons discussed in the initial brief, and Mercer, due to the fact of its size and because it is out of step with other conference schools.

(2) That area municipal settlements should not be given significant weight in these proceedings.

(a) That the lack of importance of such comparisons is reflected in the scant attention paid to this criterion by the District in its post-hearing brief, and in its hearing exhibits.

(b) There is no indication in the record that the parties have considered municipal settlements in their past negotiations on Ondossagon.

(c) That the Employer cited only the wage settlement, without any indication of total settlement costs, including benefits and other related cost items.

(d) That past arbitrations within the Conference have accorded little or no weight to non-teacher municipal settlements.

(3) That while the Employer argued only the cost of the two offers and the impact of a settlement upon the farmers, the interests and welfare of the public criterion raises a number of additional considerations.

(a) The interests and welfare of the public are served by providing competitive schooling for children, which is the reason for the existence of public schools.

(b) The District is in a competitive labor market for good teachers, just like other conference districts, and it is in the best interest of the Ondossagon public to have competitive salary increases for their teachers.

(c) That various arbitrators have recognized the relationship between educational need and the interests and welfare of the public criterion.

(d) That the Employer has not alleged that it lacks the ability to pay, but has merely argued that economic conditions in the District justify the selection of its final offer. Indeed, that the total dollar differences between the two final offers is quite small, and there is nothing in the record to suggest that the selection of either of the offers would change the lax levies, or have any significant impact upon the taxpayers. That the position of the Union in this connection, has been recognized by other arbitrators under similar circumstances, in other districts.

(e) That various other economic considerations favor the selection of the final offer of the Union: (1) that over 90% of the District does not live on farms; (2) that per capita income in Bayfield County rose by 7.8% in 1986, the highest increase in any county containing the comparable districts; and (3) that the May 1988 unemployment rate for Bayfield County stood at 5.3%, the lowest figure since 1979, and the lowest unemployment rate of any county containing comparable districts.

(f) That the District's argument that 14.9% of the employed persons in Ondossagon work in agriculture is inaccurate, because that figure also includes the substantial number of persons working in forestry. Further, that the Glidden District, with 14.8% working in agriculture and forestry, adopted a 16.7% total cost increase over two years, which is identical with the final offer of the Union in this dispute.

(g) That the Employer's arguments relating to the decrease in the Ondossagon general fund balance is due to the Board's ill-advised vote to reduce the administrative budget levy by $65,000, and not to the Union's offer.

(h) That in attempting to substantiate its argument that the Union's offer is too high, the Employer

should use actual costs rather than the cast-forward method. That while the latter approach can be utilized when comparing settlements between districts, there is no such justification for its use in connection with ability to pay arguments. That such an approach to costing is consistent with the decisions of various arbitrators in deciding other disputes.

(i) That there is nothing in the record to persuasively suggest that Ondossagon is unique. Of the six primary comparables urged by the Union, three have higher and three have lower total costs per student than does Ondossagon; that the Ondossagon levy rate is exactly in the middle of the conference; that the District is not a farm district, and is not entitled to special treatment on the basis of an agricultural base.

(j) That while the District urges the need for relief for farmers, neither offer provides any such relief.

(4) That consideration of total cost comparisons favors the selection of the Union's final offer.

(a) That there is a difference between the total cost data used by the Employer and that computed and used by the Union.

(b) That union generated costing on a percentage basis covering the Employer's comparable pool, indicates that the Union final offer is .16% above the average for 1987-1988 and .64% below the average for 1988-1989; that the Employer offer would generate a 1987-1988 increase that was .18% below average, and a 1988-1989 increase that was 1.19% below average.

(c) That the above comparisons made on a dollar basis show a first year employer increase that is $36 above average and a second year increase that is $191 below average; that the final offer of the Union would generate a first year increase some $147 above average, and a second year increase that was $12 above average.

(d) That the percentage comparisons are neutral for the first year, but favor the Union in the

second year; that the dollar figures show the Employer closer to average in the first year and the Union closer the second year.

(e) That the costing information provided by the Union is more accurate and credible than that provided by the Employer.

(f) That the Employer used flawed techniques and/or erroneous costing approaches in several of its exhibits.

(5) That the District emphasized dollar increases when comparing benchmarks, average wage increases and total cost increases with other districts, while the Union utilized both dollar and percentage figures.

(a) That percentage increase comparisons are more legitimate for maintaining past relationships.

(b) That all settled districts within the comparable pools, except one year at Glidden, applied a single percentage increase to all cells of their salary schedules; that none applied a specific dollar amount to all cells in their salary structures.

(c) That the above practice of the districts is based upon the fact that constant dollar increases disturb the relationship between the cells on the individual salary schedules. Further, that the same thing is true for relationships between districts.

(d) In the situation at hand, that there has been no change in the working conditions in the districts, and there is no reason to change their past wage relationships. Accordingly, that the percentage comparisons of benchmarks and average teacher increases are more relevant than are dollar increase comparisons.

(6) In the area of benchmark analysis, that certain of the figures and charts used by the Employer in its brief are not supported by the data contained in various of its exhibits; that the Employer has apparently made certain arithmetic errors in the calculation of various average dollar increases. That when the appropriate figures are utilized, overall consideration of benchmark comparisons favors the selection of the Union's, rather than the Employer's final offer.

FINDINGS AND CONCLUSIONS

Preliminarily, the Arbitrator will reference the fact that he agrees with both parties that the final offer selection process in this dispute will turn upon the relative merits of the parties' salary increase offers. Even with the process thus simplified, the case is complicated by various factors, including the following.

(1) The parties are relatively close together in their final salary increase offers.

(2) While both parties emphasized comparisons in presenting and in arguing their cases, they differed significantly on this criterion in the following major respects: (a) the relative weight to be placed upon certain of the comparisons; (b) which school districts should be included in the primary comparison group; and (c) what techniques or types of comparisons should be utilized by the Arbitrator.

(3) There were significant differences between the parties relative to the accuracy of certain data and computations used by them in presenting and in arguing their cases.

(4) The parties were in disagreement relative to the application of and the weight to be placed upon certain other of the statutory criteria.

For the purposes of clarity, the Impartial Arbitrator will preliminarily address the positions of the parties, by separately considering the comparison criterion, cost-of-living considerations, and the interests and welfare of the public, prior to selection of the most appropriate final offer.

The Application of the Comparison Criterion

The Wisconsin legislature has defined the various arbitral criteria, including comparisons, in rather general terms, and it has not indicated either the relative weight to be placed upon the various criteria in general, or the relative importance of the various types of possible comparisons which may be urged by the parties in the interest arbitration process. The relative importance of the various criteria can be best understood when the role played by interest arbitration is set into perspective. An interest arbitrator operates as an extension of the bargaining processes of the parties, with the normal goal of attempting to arrive at the same position they would have occupied, but for their inability to reach a

settlement across the bargaining table. These principals are well described in the following excerpt from the widely cited 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./

Due to the above considerations, interest neutrals tend to place the greatest weight upon those arbitral criteria and those comparisons normally found most persuasive to parties during their face-to-face negotiations. Parties to labor negotiations normally find comparisons within their own industry to be the most persuasive, and they frequently have developed a negotiations history of using certain specific comparisons. The use of such comparisons in the interest arbitration process is well described in the

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

following excerpts from Irving Bernstein's authoritative 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.'..."

* * * * *

> "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./

As is apparent from the above, the most important of the

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

arbitral criteria is generally regarded as comparisons, and the most persuasive of the possible comparisons are intra-industry comparisons. In the case at hand, of course, intra-industry comparisons would refer to comparisons between the Ondossagon School District and other comparable school districts.

In determining which intraindustry comparisons to utilize in a given case, interest arbitrators will frequently look to the parties' bargaining history, and will be extremely reluctant to abandon those comparisons utilized by the parties in the past. This principle is described as follows by 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 is, as here a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.' "
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> * * * *
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> "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...." 3./

The Elkouris also offer the following observations relative to the force of bargaining history in determining the weight to be placed upon various possible comparisons:

> "Where each of various comparisons had some validity, an arbitrator concluded that he should

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

> give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past. 4./

In addressing the negotiations history of the parties, including their past interest arbitration proceedings, it is clear that the parties have regarded the most appropriate intraindustry comparison group as consisting of the other members of the Indianhead Conference, including both the Hurley District beginning in 1988-1989, and those Conference districts which have labor agreements which do not coincide timewise with the term and the expiration of the Ondossagon District labor agreement. There is simply nothing in the record to justify arbitral departure from the practice of regarding the athletic conference comparisons as the parties' primary comparison group. Although arbitral consideration of other private and public sector comparisons is mandated in the Wisconsin Statutes, such comparisons are normally secondary, and they typically carry far less weight in the interest arbitration process than do the primary comparisons.

Despite having identified the primary comparison group for use in these proceedings, the Arbitrator is still faced with two major disputes between the parties relative to the application of the comparison criterion: (1) What type of comparison or comparisons should be accorded primary weight? (2) How accurate are the data and the computations supplied by the parties in support of their various arguments?

In first addressing the types of comparisons question, it will be noted that the parties used a variety of approaches in presenting and in arguing the significance of the comparison criterion. Generally speaking, the Union emphasized various types of benchmark comparisons, while the Employer tended to emphasize and compare on the basis of the dollar costs of the two final offers. As referenced earlier, the rationale underlying the persuasive value of the comparison criterion is that it affords an employer assurance that others are faced with the same costs as itself, and it assures employees that they are being compensated in an amount and manner consistent with others. Comparisons of benchmark levels within wage structures are a useful device, but they entail comparisons of arbitrarily selected points in a compensation structure, which may have little relationship to the actual number of persons reposing at the points used for comparison purposes.

4./ How Arbitration Works, p. 811.

Such an approach to applying the comparison criterion to wage impasses may generate significant variations in the actual cost impact to individual employers, and it may also result in significantly higher or lower levels of actual wages or actual wage increases to affected employees. When comparison data based upon actual dollar costs to an employer or, actual dollar benefits to employees are available, it seems quite logical that such figures should carry greater persuasive value across the bargaining table, and should also command far greater weight in the interest arbitration process! While benchmark comparisons have certain advantages and are frequently used in the interest arbitration process, it should also be noted that they are simply not as precise as other forms of comparison, and not as valuable as a measuring device when the parties are quite close in their respective final offers. By way of analogy, a yardstick is a helpful measuring instrument when rough measurements are needed, but precision measuring instruments are needed for some types of determinations. In situations where the final offers of the parties are quite close, as in the situation at hand, the more meaningful and persuasive "measuring device" may be provided by the use of either specific dollar comparisons or specific percentage increase comparisons.

What next of the questions relating to the accuracy of the data and the computations provided by the parties? It is extremely difficult for an interest arbitrator when either party to interest arbitration proceedings elects to dispute the accuracy of the exhibits and/or the computations of the other party on a post-hearing basis, and this is particularly true when such disputes are emphasized in reply briefs. Theoretically, the accuracy of the various exhibits should be examined and tested at the arbitration hearing, but the difficulty of so doing results from the large volume of material that is first seen by the advocates and the arbitrator at the hearing. In the event that questions arise relative to the accuracy of certain exhibits, or to computations based thereon, it is appropriate for arrangements to be made at the hearing for the parties to mutually address and resolve these questions on a post-hearing basis prior to the submission of briefs, and this approach was used in the matter at hand. One other alternative that might be considered in the future by the parties is their advance resolution of questions and potential problems, and/or the submission of joint exhibits which contain agreed-upon data which may appropriately be utilized by the parties in arguing their cases thereafter.

Rather than reexamining source documents in detail and/or recomputing cost and comparison data submitted by the parties, interest arbitrators try to base their decisions upon data that

is not in dispute, and this has been the approach of the undersigned in these proceedings. In its reply brief, the Union used its own costing figures, presented total compensation percentage increase, and total compensation dollar increase figures for each of the final offers, and compared these figures to the athletic conference averages. It concluded that the parties were about the same in percentage deviations from conference averages for 1987-1988, that the Union's offer was closer to the conference percentage average for 1988-1989, that the Employer was closer to conference average for 1987-1988 in terms of dollars, that the Union was closer in dollars to the 1988-1989 conference average, and that both parties were very close in total dollars over the term of the agreement.

When the parties are quite close together in their final offers, for the reasons referenced earlier, the undersigned prefers to have available for comparison purposes, the actual dollar costs to the employer and/or the actual dollar benefits to the employees. Although the Union is quite correct with respect to the long term wage or salary structure distortions arising from flat rather than percentage increases, this theoretical objection has little application to a single negotiations, where the parties are very close in their final offers.

The undersigned has utilized the dollar increase figures used by the Union at page 22 of its reply brief, and has taken two additional steps prior to evaluating the comparisons:

(1) For the reasons discussed earlier, the Hurley District increase for the 1987-1988 school year has been disregarded.

(2) Since an increase granted in the first year of a two year agreement has greater cost impact than the same dollar increase granted in the second year, those districts with two year agreements have had their total dollar costs weighted and compared.

After the completion of the above steps, the comparison data is as follows:

Dollar Increases in Total Compensation

DISTRICT	87-88	88-89	Weighted Dollars
Bayfield	2738	2866	8342
Drummond	2458		
Washburn	2433		
Mercer	2752	2477	7981
Mellen	2487	2820	7794
Glidden	2277	2756	7310
Butternut	2452	3037	7941
Hurley		3097	
Solon Springs	2019	2583	6621
Average	2452	2805	7665
Ondossagon:			
Employer	2538	2614	7690
Difference	+86	-191	+25
Union	2649	2817	8115
Difference	+197	+12	+450

Even when using costing data supplied by the Union, therefore, it is apparent that the final offer of the Employer is closer to the athletic conference averages than the final offer of the Union! In total dollar deviations over the two year period the Employer is a total of $105 below, and the Union a total of $209 above the conference averages. When the comparison figures are weighted to reflect the timing of the increases, the Employer's offer exceeds the conference average by $25, while the Union's offer exceeds the average by a total of $450 over the two year duration of the contract.

On the basis of all of the above, therefore, the Impartial Arbitrator has preliminarily concluded that arbitral consideration of the intraindustry comparison criterion clearly favors the selection of the final offer of the District, rather than that of the Union.

While it is entitled to relatively little weight in these proceedings, the Bayfield County municipal settlement comparisons urged by the Employer fall well within the coverage of the statutory criteria, and they also support the selection of the final offer of the Employer in these proceedings.

The Cost-of-Living Criterion

Cost-of-living considerations vary in their importance to the interest arbitration process, with the degree of recent and anticipated movement in the consumer price indexes. During periods marked by rapid increases or decreases in the indexes, cost-of-living considerations can be one of the most important factors in the final offer selection process; during periods of price stability, on the other hand, the criterion declines in relative importance, and is generally regarded by arbitrators as of a lesser order of importance than certain other criteria. This is partially due to the fact that the settlements of compararble employers and unions, already include their consideration of changes in cost-of-living.

The Employer submitted that its final offer exceeded present and anticipated future movement in consumer price indexes by some 200%, and the Union did not comprehensively address this criterion. On the basis of the record, the Impartial Arbitrator has preliminarily concluded that consideration of the cost-of-living criterion favors the adoption of the Employer's final offer, rather than the higher offer of the Union. In light of the recent stability in the economy, however, and in consideration of the weight placed upon cost-of-living consideration by comparable employers and unions, the cost-of-living criterion cannot be assigned determinative weight in these proceedings.

The Interests and Welfare of the Public Criterion

The parties differed sharply with respect to the significance in these proceedings, of the interests and welfare of the public criterion.

(1) The Employer emphasized a variety of important considerations such as: a 50% increase in the mill rate since the 1980-1981 school year; the fact that the mill rate in the District exceeded the average for the State of Wisconsin; recent decreases in state aid per member, and in equalized value per member; recent increases in the tax levy and decreases in the general fund balance in the District; a significant recent decline in the economy, including major problems in the agricultural sector; and an aging and deteriorating physical plant. It submitted that, despite the referenced difficulties, it has made an offer which exceeds the average wage and total compensation increases in the athletic conference,

and urged that consideration of the interests and welfare of the public favored the selection of its final offer.

(2) The Union urged that the interests and welfare of the public criterion were served by providing competitive schooling for children, that this interest is best served by competitive salaries and benefits for teachers. It also disputed the position of the Employer in a number of specific respects: it challenged certain of the economic data advanced by the District, particularly certain information dealing with the agricultural sector in the District; it cited the small difference in the costs of the two final offers; it cited various favorable economic indicators in the District; and it urged that there was nothing in the record to persuasively indicate that Ondossagon was unique or was being asked to make a disproportionate economic effort in support of its schools.

The Employer is quite correct that local economic conditions fall well within the interests and welfare of the public criterion, and such considerations are given major or conclusive weight under two sets of circumstances: (1) When there is an absolute inability to pay, in which case the criterion is given determinative weight in the interest arbitration process; and (2) where an employer is being asked to make a significantly disproportionate or unreasonable economic commitment. On the other hand, the Union is quite correct that it is difficult to assign major importance to this criterion when the parties are very close in their respective final offers. In the situation at hand, there is no suggestion of inability to pay, and no persuasive indication that the District would be compelled to make a significantly disproportionate economic effort to fund either of the final offers.

While the Arbitrator must agree with various of the economics based arguments of the Employer, particularly those addressing the plight of Wisconsin's farmers, certain of these arguments could properly be addressed politically, rather than through the interest arbitration process. The Arbitrator must address all of the various statutory criteria, including what comparably situated districts have done when faced with circumstances similar to those in issue in these proceedings.

On the basis of the above, the Impartial Arbitrator has

preliminarily concluded that the interests and welfare of the public criterion cannot be assigned determinative weight in these proceedings.

Summary of Preliminary Conclusions

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

(1) Both parties are quite correct in their suggestions that the final offer selection should be determined by the relative merits of the parties wage increase offers.

(2) The intraindustry comparison criterion is normally regarded as the most important and the most persuasive of the arbitral criteria; in the case at hand, this refers to comparisons between the Ondossagon School District and other comparable school districts within the State of Wisconsin.

(3) Based principally upon the parties' negotiations history, including prior interest arbitrations, the principal intraindustry comparison group should consist of the Ondossagon School District and other members of the Indianhead Athletic Conference, including the Hurley District beginning in 1988-1989. Further, the comparison should include those athletic conference districts which have labor agreements which overlap into, but do not coincide with the term and the expiration of the Ondossagon District contract.

(4) Under the circumstances present in the case at hand, the most persuasive types of comparisons are those which utilize the actual dollar costs to the employer and/or the actual dollar benefits to the employees, which are contained in the final offers of the parties.

(5) Consideration of the comparison criterion on the basis of the dollar increases in total compensation under each of the two final offers as compared to similar figures within the principal intraindustry comparison group, clearly favors the selection of the final offer of the District.

(6) 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.

(7) The evidence and the arguments of the parties relating to the interests and welfare of the public criterion cannot be assigned determinative weight in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, and all of the statutory criteria, the Impartial Arbitrator has concluded that the final offer of the District is the more appropriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and argument, and a review of all of the various arbitral criteria provided in Section 111.70 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Ondossagon 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

December 8, 1988