ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between MUKWONAGO SCHOOL DISTRICT And MUKWONAGO SCHOOL DISTRICT CLASSIFIED EMPLOYEE UNION, LOCAL 1101, AFSCME, AFL-CIO	WERC CASE 39 NO. 39879 INT/ARB-4705 Decision No. 25380-A

Impartial Arbitrator

William W. Petrie
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Hearing Held

July 21, 1988
Mukwonago, Wisconsin

Appearances

For the District

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Mukwonago School District and the Mukwonago School District Classified Employee Union, Local #1101, AFSCME, AFL-CIO, with the matter in dispute the terms of the parties' two year renewal labor agreement covering July 1, 1987, through June 30, 1989. The impasse items consist of the amounts and timing of certain deferred wage increases to be applicable during the term of the agreement, plus the Employer's demand for certain changes in the areas of health insurance, dental insurance and early retirement.

The parties exchanged bargaining proposals and met on three occasions in an unsuccessful attempt to arrive at a negotiated settlement, after which the Union on December 21, 1987, filed a petition with the Wisconsin Employment Relations Commission requesting interest arbitration of the matter in accordance with the Municipal Employment Relations Act. After a preliminary investigation had been completed, the Commission on April 22, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order directing arbitration of the dispute. On May 18, 1988, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing was scheduled to take place in Mukwonago, Wisconsin on July 21, 1988, at which time the Arbitrator unsuccessfully attempted to mediate a settlement at the request of both parties, after which the parties moved directly into arbitration of the dispute. Both parties received a full opportunity at the hearing to present evidence and argument in support of their respective final offers, and all parties agreed to keep the record open for the verification of certain data, and the submission of additional material beyond the hearing date, after which each party reserved the right to submit post-hearing briefs and reply briefs.

THE FINAL OFFERS OF THE PARTIES

The final offers of each of the parties to the proceeding are hereby incorporated by reference into this decision, and they provide in summary as follows.

(1) The Employer proposes that the previous contract be modified in the following respects:

(a) That Article 16, Section 16.01, entitled HEALTH INSURANCE, be modified to provide that the Employer pay $202.76 per month

for family coverage and $78.60 per month for single coverage during the first year of the renewal agreement, and that it pay the specific amounts representing the full monthly premiums for family coverage and for single coverage during the second year of the agreement.

(b) That Article 16, Section 16.05, entitled DENTAL INSURANCE, be modified to provide that the Employer pay $57.94 per month for family coverage and $18.15 per month for single coverage during the first year of the renewal agreement, and that it pay the specific amounts representing full monthly premiums for family coverage and for single coverage during the second year of the agreement.

(c) That Article 17, entitled RETIREMENT, be modified by the addition of Section 17.02 which would provide for early retirement for those with fifteen or more years of service in the bargaining unit, who have reached the age of sixty-two years through sixty-four years, with the Board paying the contract premium for health insurance for which the employee is eligible, until the employee becomes eligible for medicare. The early retirement benefit would be subject to four limitations, providing for a maximum benefit of three years, establishing an application cutoff date of May 1 of the year of retirement, providing for the termination of health insurance premiums payment by the employer in the event the Board is required to pay the employee unemployment compensation benefits, and providing for the termination of health insurance premium payment by the Employer in the event the early retiree gets another job and is eligible for comparable health insurance benefits paid by the employer.

(d) Effective July 1, 1987, that Appendix 2 be revised to increase all steps on the salary schedule by 30¢ per hour.

(e) Effective July 1, 1988, that Appendix 3 be revised to increase all steps on the salary schedule by an additional 30¢ per hour.

(2) The Union proposes that the previous contract be modified in the following respects:

(a) Effective July 1, 1987, increase all wage rates listed in the appropriate appendix by 24¢ per hour.

(b) Effective January 1, 1988, increase all wage rates listed in the appropriate appendix by 8¢ per hour.

(c) Effective July 1, 1988, increase all wage rates listed in the appropriate index by 34¢ per hour.

(3) Both parties propose that the renewal labor agreement have a duration of two years, and that it run from July 1, 1987, through June 30, 1989. Both parties also proposed the continuation of a 25¢ per hour longevity supplement for those employees who have been at the top step of the salary schedule for one or more years.

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 Employer is the more appropriate of the two final offers before the Arbitrator, the District offered the following principal arguments.

(1) That the composition of the primary comparison pool is dictated by the relative proximity of the District to the Milwaukee area.

(a) That a comparable pool of geographically proximate and similarly sized districts was utilized by Arbitrator Robert Mueller in his decision governing the District in October of 1978; that the Arbitrator determined at that time that the twelve most relevant districts were Menomonee Falls, New Berlin, Oconomowoc, Hamilton, Muskego, Burlington, Kettle Moraine, Whitewater, Elkhorn, East Troy, Waukesha and Waterford. That he also determined that the impact of the City of Milwaukee on the surrounding districts took the form of a "diminishing domino type effect," with the districts further from Milwaukee being less affected by the Milwaukee influence.

(b) Since the case at hand involves support staff, rather than teachers, that the domino effect cited by Arbitrator Mueller should be more

significant; that it is unlikely that those in the bargaining unit would commute any great distance and, accordingly, that the wages and benefits paid locally would not be as signficantly influenced by Milwaukee as might otherwise have been the case.

(c) That the comparable districts can be geographically aggregated and summarized into the following tiers: Tier One (districts contiguous to Milwaukee) - Menomonee Falls, New Berlin, Muskego; Tier Two - Hamilton, Waukesha, Waterford, Burlington; Tier Three - Kettle Moraine, Mukwonago, East Troy; Tier Four - Oconomowoc, Elkhorn, Whitewater.

Because of the varying proximity of the districts to Milwaukee, it is obvious that certain natural wage disparities should occur within the comparable pool.

(d) In addition to geography, that various other factors can provide guidance relative to where Mukwonago should stand in relationship to the comparable pool: in terms of equalized value per member, that Mukwonago ranks lowest among the comparables, and is 44% below the average of the comparables; in terms of school cost per pupil, Mukwonago ranks seventh of the thirteen districts; on the basis of mill rates, that Mukwonago ranks fourth of twelve (with Waterford excluded); in terms of tax levy growth, that Mukwonago has experienced an increase of 23.63% between 1986-1988, the largest increase among the comparable group, and some 16% higher than the average group growth rate of 7.61%; further, that the tax levy growth is funded largely by residential and agricultural property, since the District has only 6.5% commercial and 1.5% manufacturing property; in terms of adjusted gross income per capita, that Mukwonago ranks eighth of thirteen, substantially below those districts closer to Milwaukee.

(e) On the basis of the above considerations, that the District should seek to maintain a position at or near the average of the twelve comparable districts. That the low equalized value, the present school cost per pupil, the high District

mill rate, the recent explosion in the property tax levy, the District's high reliance upon residential and agricultural property, and the low adjusted gross per capita income, simply do not justify a position at or near the top of the comparable pool.

(2) That the final offer of the Board maintains Mukwonago's noncertified salaries at a rate substantially above average.

In terms of ranking for the various bargaining unit positions, and when measured by deviation from average rates paid in the comparable pool, the Board's offer for 1987-1988 would result in the vast majority of positions in the bargaining unit being paid substantially above average at the minimum rates, the maximum rates, and at the maximum rates including longevity.

(3) That the Board's offer is favored by consideration of the cost-of-living criterion.

(a) That when compared against movement in the CPI between 1979-80 and 1988-89, the Board's wage offer is clearly favored; accordingly, that there is no basis for concluding that any catch-up situation is presented.

(b) That the 3.9% increase in the CPI for 1987-88, and a similar projected increase for 1988-89 favors the selection of the Board's final offer. That the Board is offering increases of 4.9% and 5.2% for the two years, while the Union is seeking increases of 6.4% and 5.61% for the two year period.

(4) That selection of the Board's final offer is clearly indicated by comparisons against other contract settlements in the Village of Mukwonago, Waukesha County and the City of Waukesha.

(5) That the final offer of the Board on insurance, maintains full payment of premiums for employees, which is a continuation of the status quo.

(a) That the Board offer is merely intended to increase employee awareness and appreciation of the increasingly expensive health and dental insurance benefits.

(b) That no benefit reduction is attendant on the proposal of the Board in this issue.

(c) Despite recent attempts to keep a lid on increases, that the cost of health and dental insurance has nearly doubled between 1980-81 and 1986-87. For 1988-89, that the combined increase in health and dental insurance was 16.3%.

(d) That the explosive recent increases in health and dental insurance costs have been considered by other Wisconsin interest arbitrators.

(e) That health and dental insurance premiums presently range from approximately 17% to 35% of bargaining unit employees' total compensation, depending upon classification.

(f) That the Union seeks to continue substantially above average wage scales while ignoring the escalating insurance premiums in the District; that the District is not proposing any reduction, but is merely seeking to inform employees in a meaningful manner as to the cost of their insurance benefits.

(g) That the Board will continue to provide fully paid insurance benefits to all bargaining unit employees during the life of the labor agreement, which is a continuation of the status quo.

(h) That the Board contribution toward family plan coverage exceeded the average employer contribution among comparable districts, and Mukwonago is one of only four other comparable districts which pay full insurance benefits for all classes of full-time employees.

(i) That the Employer's paid insurance benefits are significantly more advantageous to employees, than those paid by comparable public sector employers in the area, such as Waukesha County, the Waukesha County Technical College and the City of Waukesha.

(6) That the Board's offer on voluntary early retirement is identical to that contained in the Union's final offer in the impasse proceeding in the prior renewal agreement.

(a) That a substantial number of other comparable districts provide for some type of health insurance continuation for their employees after retirement.

(b) That this portion of the district's final offer would be an improvement in the employment situation of unit employees, and must be viewed as such in evaluating the respective final offers of the District and the Union.

In its reply brief the District cited the following principal points and arguments.

(1) That the Union allegation that the Board's final offer is defective simply ignores the record in the proceeding.

(a) That the Union ignores both relevant case law and the record adduced in the case at hand.

(b) That numerous Wisconsin interest arbitrators have allowed negotiations history based clarification of complicated or complex proposals.

(c) That the Board in its opening statement and in the testimony of Mark Olson and Paul Strobel, appropriately clarified the intent of the Board's offer as it relates to health and dental insurance.

(d) That the Union has demonstrated its ability to fully address all elements of the Board's offer, and that its unfounded objections to the intent of the offer must be dismissed from arbitral consideration.

(2) That the entire comparable pool should be accepted as dictated by prior arbitrators, and as proposed by the Board for use in these proceedings.

(a) That there is no appropriate basis for distinguishing between unionized and non-unionized employees; that the union analysis of comparison is inconsistent with this principle.

(b) That various Wisconsin interest arbitrators have considered the applicability of both unionized and nonunionized wages in the determination of interest arbitration disputes.

(c) That the statutory criteria require comparison with "public employees performing similar services" without reference to union representation or bargaining units.

(3) That the Union interpretation of the financial condition of the District is grossly inaccurate.

(a) That while the District has not made an ability to pay argument, it cannot be properly characterized as a low tax district.

(b) That Employer supplied evidence indicates that Mukwonago residents paid the fourth highest mill rate among comparable districts.

(c) That the District's repurchase of 3.7 million in bonds in 1987-88, was for the purpose of refinancing, and that the District has a substantial debt load of $6.675 million.

(d) That Union arguments relative to mill rate reductions were based upon a July 1988 estimate; that equalized value data, which is essential to mill rate determination, is not certified to the District until early October.

(e) Even if the mill rate were to decline slightly, the conclusion does not necessarily follow that property taxes would go down; that any modest increase in the equalized value of property would be sufficient to increase the tax burden of an individual resident of the District.

(f) Based upon all of the above, that the Union's characterization of the District finances must be disregarded.

(4) That the Union's comparisons have limited value in the determination of this dispute.

(a) That there are no less than 22 different classifications of personnel, but the Union has chosen to use only five positions for comparison purposes; that the five benchmarks used by the Union are insufficient to be reliable.

(b) That Union comparables do not recognize either the longevity or specialty wage rates reflected in the salary schedule; since longevity is

recognized after only six years in Mukwonago, it is important to view maximum wage rates with longevity included.

(c) Despite the Union's assertion that its five benchmark classificaitons reflect the major classifications within each group, this conclusion is not borne out by the facts; by way of example, that the Principal's Secretary classification contains only one secretary per school, while there are a significant number of other secretaries working within the District; further, that the Cook classification contains only five people, while there are ten Food Service Aides.

(d) That the Union selected classifications do not reflect benchmarks which reflect a majority of persons in the bargaining unit.

(e) That the 1988-89 data cited by the Union are incomplete and, therefore, lack credibility. That when the dearth of settlements is added to the paucity of classifications used for benchmark analysis, it is clear that the Union's analysis lacks utility.

(f) That the percentage increases cited by the Union are mere fabrications that lack relevance in the determination of this dispute. That percentage analysis is largely irrelevant due to the fact that both parties are proposing an across-the-board cents-per-hour increase.

(g) That the important factor in the matter at hand is that when the wage rates of a vast majority of bargaining unit personnel are measured against wages in comparable districts, Mukwonago noncertified employees are paid substantially above average.

(h) That Union objections to Board costing are belated, and must be rejected. That the District's approach to costing has been used through numerous years of bargaining between the parties; further, that the Union merely objected to the Board's costing, but provided no independent cost analysis of its own.

(i) That Union assertions as to increases in the CPI as they related to the final offers, are

simply inaccurate. That the Arbitrator should take arbitral notice of recent CPI figures, which are public information, and which are relevant to the proceedings under Section 111.70(4)(cm)7.i, of the Wisconsin Statutes.

Further, that it is highly inappropriate to view only across-the-board increases when measuring cost-of-living; that the dispute involves both wages and insurance, and rapid increases in insurance costs are a measure of the financial well-being of particular employees.

(5) That the Union has apparently willfully mischaracterized the Board's proposal on insurance.

(a) That the Board's offer is neither unreasonable nor a change in the Board's commitment to full payment of insurance premiums.

(b) That the Board's offer is supportable under both the statutory interest arbitration criteria and the present state of WERC law pertaining to the status quo doctrine.

(c) That the Union ignores the fact that the collective agreement will expire fully two months before any increase in the health or dental insurance, thereby providing a two-month buffer for all the parties to wrap up their renewal agreement prior to any premium increases or decreases.

(d) That "gun to the head" arguments similar to those of the Union, have been rejected by at least two other Wisconsin interest arbitrators.

(e) That any successor agreement problems should be dealt with by the parties, or by future arbitrators, and not by the Arbitrator in the matter at hand.

(f) That the District is approaching the health insurance issue on a direct and forthright basis.

(g) That various arbitration cases cited by the Union are not applicable to, or are readily distinguishable from the dispute at hand.

(h) That the Union is inconsistent in arguing that administrative salary increases should be matched for the bargaining unit, while urging arbitral disregard of the fact that administrators now have insurance caps in the policy covering their employment.

(i) Contrary to the posture of the Union, that it is simply undeniable that most collective bargaining in recent years has focused extensively on increases in the cost of health and dental insurance. That there is no dispute that a number of bargaining units in public schools, in Waukesha County and Waukesha County VTAE, and in the City of Waukesha have provided for some employee contribution toward the cost of these benefits.

(6) That the early retirement proposal of the Board is the quid pro quo previously identified by the Union.

(a) That in the last round of bargaining the Union proposed a voluntary early retirement plan as a quid pro quo for the cost containment achieved in the health insurance area.

(b) While the District submits that it is not changing the status quo relative to the payment of health and dental insurance premiums, the value of the Board's early retirement benefit more than replaces the speculative "impact" of the Board's offer on health and dental insurance after the expiration of the agreement.

(c) That the Board's proposal is neither uncertain nor insignificant. That the estimated ten year costs of the change total $93,439.

(d) That state and federal legislators have recently been addressing the trend toward early retirement, but have not addressed the cost of health insurance. That the Board offer would address this matter, and make early retirement a viable option for certain employees.

POSITION OF THE UNION

In support of its contention that the final offer of the Union is the more appropriate of the two offers before the

Arbitrator, the Union emphasized the following principal arguments.

(1) Preliminarily it submitted that the Union was proposing only wage changes during the life of the renewal agreement, while the Employer was proposing wage changes in addition to changes in health and dental insurance and retirement benefits. It submits that the major issue present in the proceedings is health and dental insurance, where the Employer is proposing a fundamental departure from the parties' past practice, while the Union is proposing continuation of the status quo.

(a) That the wage dispute pales in comparison with the health and dental insurance dispute.

(b) Contrary to any contention that the Employer's wage offer is a "buyout," that the offer is anemic. Further, that the early retirement benefit is of dubious value, and has not been sought by the Union.

(c) That the final offer of the Employer is defective due to a lack of specificity. That the offer contains merely incomplete concepts rather than specific language; that the District's belated attempt to clarify its intentions is insufficient, and the Arbitrator should not award an ambiguous final offer that will cause uncertainty and potential problems in its implementation.

(2) It cited certain area and district information in support of its proposed comparison group, and argued as follows.

(a) That the twelve comparable districts cited by the Employer had been adopted in two prior interest arbitration decisions involving the United Lakewood Educators and the District, by Arbitrators Robert Mueller and George Fleischli.

(b) That in the prior arbitration between Local Union 1101 and the District, the Arbitrator chose not to specify the appropriate set of school districts comprising the comparison pool.

(c) That there are inherent problems in the

adoption of the comparables utilized by Arbitrators Mueller and Fleischli, but for the purpose of these proceedings, the Union has used these districts as a basis for external comparisons.

(d) That there is no inability to pay question present, due to the fact that no such argument has been advanced by the District, and due also to the fact that the Employer's final offer is nominally higher in cost than that of the Union.

(e) That the District is a low valuation, high state aids and medium tax rate district. That residents pay relatively low taxes, despite a recent tax increase and an unanticipated failure to account for a deficit in state aids; that there is nothing in the record to support the argument that the District is strapped.

(3) That consideration of the comparative costs of the final offers supports the selection of the final offer of the Union.

(a) That there are no immediate cost implications to either the maintenance of the status quo or the adoption of the Employer's proposed change in medical and health insurance.

(b) That the Employer computed difference in the costs of the two wage offers is only $4,280 over the contract period; that this figure represents only .0001 of the 1987-1988 program budget of nearly $41,000,000. That when the cost of the Employer proposed pension change is factored in, the Employer's final offer exceeds that of the Union by nearly $2,000.

That the costs of wages and retirement are the only cost variables between the parties' final offers.

(c) That the District is fully capable of meeting the costs of either proposal, since it is prepared to meet the higher immediate costs of its own proposal.

(4) That the wage offer of the Union best meets the interest arbitration criteria established by the Municipal Employment Relations Act.

(a) For 1987-88 that the Union proposes to split the wage increase which results in an effective cost of 28¢, with a lift of 32¢, while the Employer proposes a 30¢ increase; that the cost of the Union proposal is 2¢ less than that of the District.

(b) For 1988-89 the Union proposes an additional 34¢ increase; while the Employer proposes an additional 30¢.

(c) That over the contract period the Union proposal would raise wages by 66¢, while the Employer proposal would raise them by a total of 60¢.

(d) That certain of the District's calculations relating to the wage offers are inflated and not reliable. Among other things, that the District includes wage scale progression in its equation, which does not account for turnover of senior employees and the hiring of replacements. Further, that the District has not produced any comparative information on this item.

(e) That information reported at the hearing indicated that the District had increased the wage of administrative employees by 6.77% and 5.7%, for 1987-88 and 1988-89.

(f) That cost-of-living as measured by the CPI, reflects that both offers fall short of the rising pace of inflation. As of July 1987 that the rate of inflation was growing by 3.7% nationally, and as of June 1988 the rate had increased to 5.1 - 5.4% in the Milwaukee area.

(g) In the area of intra district comparisons, that the Union has selected the Custodian, the Principal's Secretary, the Cook, the Teacher Aide (noncertified) and the Teacher Aide (certified) classifications.

That the Union offer better maintains the historical relationship at the five benchmark positions; that the 1986-87 year can appropriately be used as a base year for comparison purposes.

(h) That comparison data offered at the hearing by the Employer, excluded wage progression

increases for the comparable districts, but included these costs for the Mukwonago District. that this inflated the value of the Mukwonago offers and made for an invalid comparison. Further, that the District's exclusion of wage increase data from Waterford and East Troy because they asserted that wage increases were based upon "merit" is absurd.

(i) That Employer revised Exhibits 19A and 19B were not submitted in response to a Union request and were not submitted to correct errors; accordingly, that these exhibits should not be considered by the Arbitrator.

(j) With the above considerations in mind, that comparisons with the wages paid comparable employees, supports the selection of the Union's, rather than the District's final offer.

(5) That separate consideration of the insurance item supports the selection of the Union's final offer.

(a) That the District has historically provided insurance benefits to full-time employees at no cost; that the Board's proposal would alter this historic pattern.

(b) That the current level of benefits is not unusual, and that the District provided no comparative data in support of its insurance offer.

(c) That there is no dispute that the past costs of providing insurance coverage to unit employees has been above average among comparables; that the Employer proposal, however, would change the historic language governing the insurance benefits.

(d) That the change proposed by the District is more than a cosmetic one.

(e) That major insurance changes were involved in the parties' last interest arbitration governing the 1985-1987 agreement. In that situation, that the Union accepted major reductions in the level of insurance benefits; with the ink barely dry on the prior agreement, the District is now demanding more significant concessions in the renewal agreement in question in these proceedings.

(f) That the District is seeking to change its obligation to pay full premium costs in the inevitable hiatus periods between contracts; in each and every hiatus period in the past, the Board has continued to pay the full premium cost at all times, as required by the collective agreements.

(g) That the District seeks to change its obligations and to impose a catastrophic penalty upon unit members if a successor contract is not resolved prior to any insurance rate change date.

(h) That the Board exacerbated the insurance problem by failing to describe the full implications and the full meaning of its proposal, during the course of the arbitration hearing in this matter.

(i) That the District is attempting to gain options in the insurance area, and to hold a "gun to the head" of the Union to settle future contracts on the District's terms. That the District has indicated that adoption of the Employer's final offer would require unit employees to assume all insurance increases during any hiatus period.

(j) That the District's asserted educational purpose in specifying the insurance rates would serve an unnecessary purpose, because it already includes insurance cost information on employees' biweekly pay checks. Further, that Wisconsin arbitrators have rejected the insertion of dollar caps for educational purposes in other interest proceedings.

(k) That the ULE is opposed to insurance caps in its collective negotiations with the District.

(l) That an examination of comparable school districts shows that a majority express the employer's obligations to pay 100% of the premiums, or payment of premiums in full.

(m) That Wisconsin interest arbitrators have been very reluctant to change the status quo, including the Arbitrator in the proceedings at hand. That this reluctance has specifically extended to situations involving an attempt to change the past method of payment of insurance premiums.

(6) That consideration of the early retirement proposal of the Employer does not support the selection of the final offer of the Employer.

(a) That the District's proposal would allow retiring employees who meet stringent requirements, to continue to have the Employer pay the applicable contract premium for health insurance for a period not to exceed three years; that the Union has no current interest in this proposal, particularly in light of the District's insurance proposal.

(b) That the Employer proposal is somewhat ironic, in that it is normally the Union which proposes to expand benefits. While the Union proposed a similar early retirement benefit in the contract renewal process leading to the 1985-87 agreement, the proposal was part of a much larger package of changes, and it was soundly rejected by both the District and the Arbitrator.

(c) That the proposed benefit is of little or no value, and it is insufficient to operate as a "buy out" for the Employer's insurance demand.

In its reply brief, the Union emphasized the following principal points and arguments.

(1) Despite a variety of arguments that point in various directions, that the major issue in these proceedings is the District's attempt to change the status quo in the payment of employee health and dental insurance premiums.

(a) Although the District presented arguments based upon the burden to the taxpayers, it proposes to add a new benefit, and to introduce a settlement which would cost slightly more than the Union's proposal.

(b) That the Union's wage offer is so conservative that it suffers in comparison with the comparables, over the life of the labor agreement.

(c) That there is no ability to pay argument present in this case.

(d) That the District's arguments relative to a tiered system of comparables is a departure from their past analysis, and is unsupported by evidence.

(e) That there are differences between the information presented by the Employer in this dispute, versus that offered to the taxpayers of the District in other forums and/or publications.

(f) That the District assertion that it is primarily residential in nature is meaningless, since it has not offered any data relating to comparables. Further, that its adjusted gross income per capita data is suspect, since the municipalities used in generating the data may lie in more than one school district.

(g) Given the relative equality of the final offers, that the "criteria" examination of the District is not persuasive.

(h) That the District's wage analysis data and arguments are flawed in various important respects.

(2) That the District's brief ignored the wage increases received by school district employees in the twelve comparable districts, and focused instead upon the wage increases granted other types of units of government.

(a) That the wage increases received by other school district employees clearly outpace the final offers of either of the parties to this proceedings. That intra industry comparisons are normally favored by interest arbitrators, and this evidence supports the adoption of the final offer of the Union.

(b) That even if minor consideration is addressed toward wage increases in other types of units of government, the data does not support the position of the District.

(c) That the Union's wage offer is a conservative one, and by no means can be considered a catch-up; that it is generally lower than the wage increases afforded other employees in the comparable districts, and those accorded other Mukwonago employees.

(3) That the Employer's assertion that its health and dental insurance premium proposal is a language change of little consequence, should be reviewed with a critical eye.

(a) That it clearly intends to use the dollar caps to force a change in the bargaining relationship that is unwarranted and unjustified.

(b) That the District would rely upon the burden placed upon bargaining unit employees during the inevitable contract hiatus, to force a contract settlement on its terms.

(c) That the educational rationale offered by the Employer in support of its premium cap proposal is not persuasive.

(d) That there is no dispute that the cost of insurance has generally been increasing, that this is a matter of concern to the Union and to its members, and that the Union agreed to significant concessions in benefit levels during the 1985-87 contract renewal negotiations.

(e) That the cases cited in the Union's initial brief support its position, while certain of the cases cited by the Employer are distinguishable. That there are neither changed circumstances nor persuasive comparables to support the position of the District.

(f) That the District paints an unfair picture of the relationship between wages and insurance costs; that the insurance premiums represent a larger share of compensation to lower paid employees.

(4) That the District has offered no compelling evidence in support of its early retirement change.

(5) That the Union's final offer best meets the statutory criteria in a variety of ways. That it contains a modest increase in wages, while the District seeks a drastic alteration in the status quo.

On the basis of the entire record in these proceedings, that the final offer of the Union should be selected by the Arbitrator.

FINDINGS AND CONCLUSIONS

Preliminarily it will be emphasized that while the parties differ on wages, on health and dental insurance language, and upon an Employer proposed change in early retirement benefits, they did not as comprehensively address the third of the impasse items. The final offer selection process will depend principally upon arbitral consideration of the wages and the insurance impasse items, therefore, and in this connection the parties principally emphasized the comparison criterion, the significance of one party proposing a significant change in the status quo, cost-of-living considerations, and the significance of Union allegations of ambiguity in the Employer's final offer.

For the purpose of clarity, the Arbitrator will separately address each of the above areas prior to reaching a decision and rendering an award. By way of dicta, the Arbitrator will also offer some observations relative to certain post-hearing data verification and record supplementation opportunities agreed upon at the close of the hearing.

The Comparison Criterion

While arbitrators and advocates generally agree that comparisons are the most important of the various arbitral criteria identified by the Wisconsin Legislature, this does not resolve the matters of which comparisons should be utilized, and how the comparisons should be made. Generally speaking, the most persuasive comparison groups to interest arbitrators are those which have been selected and used by the parties in the past, or those which have been selected and used by past interest arbitrators for the same parties. In addressing the most appropriate method of comparison to be utilized, it will be noted that if parties are very close together in their respective final offers, any method of comparison used will have to be relatively comprehensive and accurate in its portrayal of the comparison data; in the event that final offers of parties are relatively far apart, on the other hand, more general and less specific comparisons might be utilized, and such data may be quite persuasive to interest arbitrators.

In first addressing the primary comparison group to be utilized, in these proceedings, it will be noted that the parties are in essential agreement that the group consists of the Elkhorn, Menomonee Falls, New Berlin, Oconomowoc, Hamilton, Waukesha, East Troy, Muskego, Burlington, Kettle Moraine, Whitewater, and the Waterford Districts. These same districts comprised the primary comparison group in two prior arbitrations between the District and the Union representing its teachers, and it urged their use in the dispute

at hand; while the Union first indicated the existence of some unidentified problems with the use of these districts, it then agreed that they comprised the appropriate primary external comparison group for use in these proceedings.

In next addressing how the comparisons should be made, the Arbitrator will note that the parties differed sharply in their respective approaches. The Union selected five benchmarks (Custodian, Principal's Secretary, Cook, Teacher Aide (noncertified) and Teacher Aide (certified), and it then compared the historical relationships between the average maximum rates for the five positions, against the final offers of the parties for the 1986-87, 1987-88 and the 1988-89 contract years. It did not use longevity earnings in undertaking its comparison, and it objected to the use of these earnings by the Employer in its comparisons.

The Employer utilized twelve classifications for comparison purposes (Custodian, Head Custodian/Elementary, Head Custodian/High School, Maintenance, Instructional Aide, Special Education Aide, Clerical Aide, Food Service Aide, Cook, Head Cook, Secretary and Accounting Clerk), and it offered comparisons in the form of ranking and deviation from average rate, at the minimum rates and at the maximum rates, including longevity pay. It urged that it was particularly appropriate to include longevity pay in the comparison data due to the fact that Mukwonago employees progress to the maximum wage rate, including longevity, in a six year period, which is nearly one-half the average time needed for clerical and custodial employees in the primary comparison group, and is forty percent faster in the aide ranks and thirty percent faster in the food service ranks, than in the primary comparison group.

In examining the positions of the parties relative to the most appropriate method of comparison, the Arbitrator agrees, for two principal reasons, that the methods of the District are the more valid and persuasive of the two approaches in the case at hand. First, the final offers of the two parties are very close to one another and, as referenced above, valid conclusions under such circumstances require more comprehensive and more precise comparisons; the Employer's use of comparisons based upon twelve rather than five classifications, and its comparisons at both the minimum and the maximum of the rate ranges, are more comprehensive and valid than the general and more simplified comparisons offered by the Union. Secondly, it must be recognized that employees earn and spend actual dollars, not the wage rates provided in a wage schedule that are exclusive of longevity payments; it would be a rather strained form of logic to conclude that two groups of employees had received comparatively equal wages, based solely upon identical

rates in the wage schedule, if one group had negotiated its wages on the basis of a substantial additional longevity payment, which became available in a relatively short period of time. While an argument could persuasively be made that longevity that became available only after an extended period of time, or only for a small number of employees, should be excluded from consideration, in the matter at hand, all of those in the bargaining unit progress to their maximum hourly rates, including longevity, in six years, and this is much faster than the average progression periods provided within the primary comparison group.

For the reasons described above, the Impartial Arbitrator finds the 1987-88 wage rate comparisons organized and summarized by the Employers,at pages 11 and 12 of its brief, and based upon the adoption of its final offer, to be the most persuasive. These data indicate principally as follows with respect to the listed bargaining unit classifications.

Position	Min.Rt. Rank	Min.Rt. Avg.Dev.	Max.Rt. Rank	Max.Rt. Avg.Dev.
Custodian	4th/12	28-32¢	6th/13	9-13¢
Hd. Cust. E.S.	4th/10	66-72¢	5th/10	37-45¢
Hd. Cust. H.S.	4th/9	35¢	5th/9	(3¢)
Maintenance	4th/9	(5¢)	6th/9	(32¢)
Inst. Aide	2nd/11	92-96¢	3rd/11	54-58¢
Spec. Ed. Aide	3rd/11	67¢	2nd/8	42¢
Clerical Aide	4th/10	42-55¢	5th/10	(3-7¢)
Food Serv. Aide	1st/9	$1.47	1st/9	$1.10
Cook	3rd/11	89¢	4th/12	72¢
Head Cook	5th/10	29¢	5th/11	35¢
Secretary	3-5/12	14-23¢	4-6/12	13-39¢
Accounting Clk.	4th/8	(34¢)	5th/8	($1.00)

As urged by the Employer, the above analysis shows that the majority of classifications in the bargaining unit rank significantly above the average wages paid by comparable school districts. This is particularly impressive when it is considered that various of the districts in the primary comparison group are located in closer proximity to Milwaukee than is the Mukwonago District. Although the above comparisons address only the 1987-88 wage rates, both parties observed that the 1988-89 rates were insufficient for valid and persuasive comparisons.

On the basis of the above the Impartial Arbitrator has preliminarily concluded that the wage comparisons between the Mukwonago District and those contained in the primary comparison group clearly support the adoption of the final offer of the Board. Although the two final offers are within

2¢ per hour of one another in terms of total lift to the hourly rates during the first year of the agreement, no basis has been established for the higher hourly rate proposed by the Union, and no basis is apparent for any extraordinary catchup in the second year of the renewal agreement.

Changes in the Status Quo

The Union is quite correct that interest arbitrators are normally very reluctant to give either party something that they would not have been able to achieve in bargaining across the table, and this reluctance has specifically applied to the addition of new or innovative benefits or language, and/or to the elimination of established benefits or language. Indeed, the Union has cited certain Wisconsin public sector interest decisions of the undersigned in which the proponents of change in the status quo have been faced with a substantial burden of persuasion, including at least one situation where the change in question was an employer's proposed insertion into the contract of specific dollar amounts for insurance coverage.

Certain important considerations must be kept in mind in addressing status quo questions in the interest arbitration process. It must be recognized that there is a significant distinction between private sector interest impasses, where the parties have the future right to strike or to lock out in support of their bargaining goals, versus public sector impasses, where the parties lack the right to undertake strikes or lockouts. A complete refusal to allow innovation or to consider changes in the status quo in the latter context, would operate to prevent unions from gaining the progressive and innovative changes achieved by their private sector counterparts in across the table bargaining, and such a refusal would also operate to prevent public sector employers from gaining important changes through the collective bargaining process, which changes have already been enjoyed by certain private and/or public sector counterparts.

The distinction between the public and the private sector interest arbitration processes, and the need for greater arbitral flexibility in consideration of proposed innovation or changes in the status quo in public sector disputes, where the parties lack the ability to strike or to lock out, has been addressed in part as follows by Arbitrator Howard S. Block:

> "One of the most compelling reasons which makes it necessary for neutrals in public sector 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 principal 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 <u>either party</u> 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 in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting precollective negotiation practice which management may yearn to perpetuate but which

are the target of multitudes of public employees in revolt."1./

Although Arbitrator Block was principally addressing employer resistance to union requested change or innovation in a context in which the union lacked the ability to strike, the principle has equal application to the situation where an employer is proposing innovation or change, which is being resisted by a union. If public sector interest neutrals were precluded from recognizing change or innovation, the matter could not be rectified by the parties' in their next negotiations, at which time they had the power to undertake economic action in support of their demands! A union dedicated to avoidance of change in a context where all impasses moved to binding interest arbitration, rather than being open to strikes and lockouts, could forever preclude an employer from achieving change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.

The question before the arbitrator in the matter at hand is whether a persuasive case has been made for the change in insurance premium payment language proposed by the Employer. In addressing this matter, the Arbitrator has carefully examined the following considerations: the apparent motivation of the employer in undertaking the proposal; the overall bargaining climate in which the proposal is offered; the nature of the Employer's final offer in its entirety; and the significance of comparisons outside of the primary comparison group.

In first addressing the Employer's motivation in undertaking to offer the contractual limits upon the payment of health and dental insurance premiums, it will be noted that there is no dispute between the parties as to the rapid and continued escalation in health and dental insurance premiums in recent years, and this is a matter of almost universal concern to employers and unions in general. The parties addressed substantial attention to cost containment in these insurance areas in their last contract renewal negotiations, and the continuing importance of the subject matter is quite apparent from the evidence in the record. During the course of presenting and arguing its case, the Employer offered repeated assurances as to the educational rationale for the proposed changes in insurance language, and further assurances that it did not regard its insurance proposal as reflecting any mutual agreement to change the

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1./ Block, Howard S., Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, University of California, Los Angeles, California, 1972, pp. 164-165. (Internal quote from Des Moines Transit, 38 LA 666.)

meaning of the prior contract language governing the payment of insurance premiums. On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the Employer's insurance proposal was undertaken in good faith, and in response to a genuine and widely recognized problem in the area of escalating health insurance costs.

In next addressing the overall nature of the Employer's offer, the undersigned must recognize that it is fully competitive in wages, and the proposed improvement in early retirement benefits is a change that was sought by the Union in the parties' last prior contract renewal negotiations. Even though the early retirement change is not regarded by the Union as an appropriate quid pro quo for the capping of insurance premiums in the contract, it is a valuable benefit to employees who may use it in the future. In addressing the overall nature of the Employer's offer in its entirety, the Arbitrator must conclude that it is both reasonable and competitive in the areas unrelated to the change in insurance premiums.

In next addressing the area of comparisons it will be noted that no case has been made for the proposed change in insurance premium language, in the primary comparison group. In its post-hearing brief, however, the Employer makes the point through cited arbitration decisions, that Dane County has moved to insurance caps throughout their various bargaining units. Additionally, the Employer emphasized that insurance caps had been applied to other non-bargaining unit employees of the District. These external and internal comparisons provide a basis for arbitral adoption of the proposed change, despite the lack of support among the districts comprising the primary comparison group.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the Employer has succeeded in establishing a persuasive case for its proposed change in contract language governing the payment of insurance premiums. It has established a good faith and positive motivation for the proposed change, it has offered the proposed change at a time when both the economic climate and the collective bargaining climate indicate the existence of substantial, genuine problems in the health insurance area, and the proposed change is supported by certain external and internal comparisons.

What of the Union's argument that the change would result in a "gun to the head" of the Union during any contract hiatus, in future contract renewal negotiations? Indeed, this Arbitrator has recognized the potential negotiations difficulties of movement to capped insurance contributions

in at least one prior case. As argued by the District, however, the charter of the undersigned is to decide the dispute at hand, and with the good faith assurances of the Employer which are referenced earlier, it is difficult to substantially credit the arguments of the Union relating to future negotiations difficulties. It should also be noted at this juncture that it is not necessary for the parties to complete future contract renewal negotiations long after the expiration of the predecessor agreements; indeed, a mutual goal of the parties should be the timely completion of such negotiations.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the Employer has established a persuasive basis for the proposed change in the contract language governing the payment of health and dental insurance premiums.

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 appropriate consumer price indexes. In periods of rapid movement in the CPI, the cost-of-living criterion can be an extremely important factor in the final offer selection process. During periods of relative price stability, however, the criterion declines in relative importance, which is partially attributable to the fact that the settlements of comparable employers and unions already reflect their consideration of changes in cost-of-living.

In the dispute at hand, the Union's wage offer would increase the total wage lift during the two year term by some 6¢ per hour above the Employer's final wage offer. When the timing of the Union's wage proposal is considered, however, the two final offers are extremely close to one another. Looking solely at wages, the Employer estimates that the total two year wage costs under its proposal would be $2,880,527.00, while the total two year wage costs under the Union's proposal would be $2,884,807.00, for a total difference of only $4,280.00. While the assignment of costs to the Employer's early retirement change involves some difficult assumptions, almost any current value assigned to this benefit change would bring the two final offers closer together.

The Employer is quite correct that the rate of increase in the Milwaukee Consumer Price Index for the first six months of 1988 was in the 4.0% to 4.1% yearly range, rather than the 5.1% to 5.4% range cited in the Union's brief.

Also as urged by the Employer, it is appropriate for the Arbitrator to take notice of certain types of readily ascertainable information, such as CPI data, for the purpose of complying with the requirements of Section 111.70(4)(cm) 7i of the Statutes. In light of the closeness of the final offers of the parties, however, the Arbitrator is unable to conclude that consideration of the cost-of-living criterion favors the selection of the final offer of either party.

The Alleged Ambiguity in the Employer Health Insurance Proposal

In arguing its case, the Union urged that ambiguities in the Employer's final offer justified its rejection by the Arbitrator, while the Employer urged that any ambiguity had been clarified by it in presenting its case, and that this had been appropriately recognized by various Wisconsin interest arbitrators as an appropriate procedure.

Without unnecessary elaboration, the Arbitrator will observe that he has reviewed the citations submitted by the Employer, and fully agrees with the rationale adopted by other Wisconsin arbitrators. The final offer of the Employer is clear and understandable when viewed in connection with the presentations of the parties, and it should not be dismissed from arbitral consideration on the basis of any ambiguity.

Remaining Considerations

By way of additional observation, the undersigned will note that each of the parties offered certain evidence and argument relating to the financial condition of the District, but there is no ability to pay argument present in these proceedings, and nothing in the record to suggest that the District should be required to pay either more or less in wages and benefits than would be otherwise indicated by arbitral consideration of the comparison criterion, and/or any other arbitral criteria having application to the resolution of the dispute.

The Record in the Proceedings

During the course of the proceedings, the record remained open beyond the July 21, 1988, hearing date to allow the parties to verify the status of what was characterized as a June 28, 1988, tentative contract renewal agreement, in the negotiations between the District and the United Lakewood Educators, and to allow both parties to get together within fourteen days after the hearing, to correct and/or to clarify exhibits as necessary. Specifically, the following

arrangements were agreed upon.

(1) The Union reserved the right to submit affidavits relating to the status of the purported tentative agreement, which were to be postmarked on or before August 11, 1988.

(2) The Employer reserved the right to respond to the above, such response to be postmarked on or before August 25, 1988.

(3) Either party could, prior to the issuance of the decision and award in this matter, supplement the record relative to the ultimate disposition of the purported tentative agreement of June 28, 1988. This right is, of course, provided by statute.

(4) Both parties would get together within fourteen days after the hearing to correct and/or to clarify exhibits as necessary. The cutoff date for the submission of clarification or corrections was August 5, 1988.

While theoretically, the parties have the opportunity to cross examine at the hearing relative to the contents of various exhibits, much of the material contained in the exhibits may be first seen at the hearing. Arrangements along the lines described above are relatively common in the experience of the undersigned, and offer the parties some time to examine the body of information and to mutually correct, to supplement or to clarify certain of the items of evidence. The post-hearing record in these proceedings was far more voluminous than anticipated, however, and a total of nineteen letters were exchanged between the parties and the Arbitrator between July 28, 1988, and October 31, 1988. Certain of the letters requested arbitral rulings, and certain contained argument and evidence beyond the agreed upon cutoff dates, and/or beyond the actual submission date for the parties' reply briefs. Indeed it was not until my letter of October 29, 1988, crossed in the mail with that of the Employer of October 31, 1988, that the post-hearing exchange was completed.

Without undue elaboration, the Arbitrator will merely observe by way of dicta, that such delay and extended argument is in the best interests of neither party, and it considerably delays the completion of the arbitration process.

Summary of Preliminary Conclusions

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

(1) While the comparison criterion is generally regarded as the most important and the most persuasive of the various statutory arbitral criteria, the matter of which comparisons should be utilized, and how the comparisons should be undertaken may vary from case to case.

(2) When the final offers of the parties are extremely close to one another, any persuasive method of comparison will have to be relatively comprehensive and accurate in its portrayal of comparison data.

(3) The Employer comparison data is more persuasive in these proceedings, due to the fact that it used twelve classifications, and it compared the classifications with the primary comparison group on the basis of both the minimum and the maximum rates in the various classifications. In the dispute at hand, it was fully appropriate for the Employer to add the longevity rates into the maximum classification rates used for comparison purposes.

(4) An examination of the wage comparisons between those in the bargaining unit and the primary comparison group, clearly supports the adoption of the final offer of the Employer.

(5) In examining the Employer's proposal for the insertion of caps in the insurance premium payment provisions in the agreement, it is appropriate to require the District, as the proponent of a change in the status quo, to fully justify the change. On the basis of arbitral consideration of the Employer's motive in proposing the change, the overall bargaining climate in which the change was proposed, the nature of the Employer's final offer in its entirety, and the significance of comparisons outside of the primary external comparison group, the Employer has established a persuasive basis for the proposed change in the status quo.

(6) Arbitral consideration of the cost-of-living criterion does not significantly favor the selection of the final offer of either party.

(7) The Employer's final offer is sufficiently clear as to justify arbitral consideration.

Selection of the Final Offer

Based upon a careful consideration of the entire record in these proceedings, and all of the statutory arbitral 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 School District of Mukwonago is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the District'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 15, 1988