STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

MAYVILLE EDUCATION ASSOCIATION

To Initiate Arbitration Between Said Petitioner and

MAYVILLE SCHOOL DISTRICT

Case 18
No. 40099
INT/ARB-4777
Decision No. 25459-A

Appearances:

Mr. Armin Blaufuss, UniServ Director, Winnebagoland UniServ Unit-South, and Ms. Ellen Henningsen, WEAC Staff Counsel, appearing on behalf of the Association.

Mulcahy & Wherry, S. C., Attorneys at Law, by Messrs. Kirk D. Strang and Edward J. Williams, appearing on behalf of the Employer.

ARBITRATION AWARD:

On June 7, 1988, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act to resolve an impasse existing between Mayville Education Association, referred to herein as the Association, and Mayville School District, referred to herein as the Employer, with respect to certain issues as specified below. The proceedings were conducted pursuant to Wisconsin Stats. 111.70 (4) (cm). On June 28, 1988, the Arbitrator advised the parties that they had until July 15, 1988, to advise the Arbitrator and the Wisconsin Employment Relations Commission of their desire to withdraw their final offer if they intended to do so. Neither party withdrew its final offer.

Hearing was held at Mayville, Wisconsin, on August 17, 1988, September 12, 1988, and September 30, 1988, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, posthearing briefs and reply briefs were filed in the matter. Reply briefs were received by the Arbitrator on November 28, 1988. Thereafter, on December 22, 1988, the Association, by its UniServ Director, directed a letter to the Arbitrator objecting to what it alleged were misstatements of fact contained within the Employer's reply brief, attaching thereto a list of the statements to which the Association objected. On December 28, 1988, the Employer, by its Counsel, Kirk D. Strang, requested an opportunity to respond in full to the Association allegations. On January 4, 1989, the Arbitrator informed the parties: "This is to inform the parties that I will hold all decisions in abeyance in this matter until I am in receipt of Mr. Williams' response to Mr. Blaufuss' letter of December 22, 1988." Thereafter, on January 5, 1989, the Employer, by its Counsel, filed alternative motions with the Arbitrator to either: 1) strike from the record

the letter of Mr. Blaufuss dated December 22, 1988; or 2) to provide the Employer an additional ten days from the entry of the order to respond to the letter of December 22, 1988. On January 9, 1989, the Arbitrator issued an Order which read: "The Association's letter of December 22, 1988, is hereby struck pursuant to the District's Motion to Strike." The record was closed on January 9, 1989.

THE ISSUES:

The impasse in negotiations involves the salary schedules for 1987-88 and 1988-89, and an issue involving the determination of the insurance carrier for health and dental insurances.

With respect to the salary schedule dispute, the Association proposes a salary schedule for 1987-88 commencing at $18,538 and topping at $34,021 at the MA+20 lane at Step 13. The Employer for the same school year proposes a salary schedule commencing at $18,309 and topping at $33,600 at Step 13 of the MA+20 lane. Both parties propose to continue the same format of the salary schedule which existed in the predecessor school year, including the longevity step of $200 for those employees beyond Step 13 of each lane.

For 1988-89, the Association proposes a starting salary of $19,550 and an ending salary of $35,878 at Step 13 of the MA+20 lane. The Employer proposes a beginning salary of $19,315 and a top salary of $35,446 at Step 13 of the MA+20 lane.

With respect to the insurance dispute, the Association proposes that a new provision in the Collective Bargaining Agreement be added at Article VI, O. The provision proposed by the Association reads:

> The insurance carrier and plan for the benefits and coverages provided in Subsections L, M and N of this article shall be those in effect on December 31, 1987. In the event a change is desired in the insurance carrier or plan, the MEA and Board shall meet to discuss the proposed change. Changes shall be made only with the mutual consent of the MEA and Board.
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> In the event the aggregate premium amount for the health and dental insurance plans for the 1988-89 school year increases in excess of 20% over the aggregate premium amount for the health and dental insurance plans in effect on December 31, 1987, that amount in excess of 20% shall be deducted from the teacher's pay in twenty-four (24) equal installments. The aggregate premium amount for health and dental insurance shall be calculated for single and dependent coverage and deducted from the teacher's pay on that basis.
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> This provision shall be prospective and take effect upon a voluntary settlement or an arbitrator's award for the 1987-89 Collective Bargaining Agreement, whichever occurs first.

With respect to the insurance dispute, the Employer proposes the maintaining of language of the predecessor Agreement, which reads: "The Board agrees to continue to carry group hospital - surgical insurance at not less than current benefit levels."

DISCUSSION:

Wisconsin Statute at 111.70 (4) (cm) 7 directs the Arbitrator to give weight to the factors found at subsections a through j in making any decision under the arbitration procedures authorized in that paragraph. The undersigned, therefore, will review the evidence adduced at hearing and consider the arguments of the parties in light of the statutory criteria.

Criteria d directs the Arbitrator to make a 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. The parties here are not in agreement as to which communities should be compared for the purpose of comparing wages, hours and conditions of employment.

Criteria j directs the Arbitrator to consider 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 public service or in private employment. Among those other factors, in the opinion of the undersigned, are the patterns of settlements which have emerged through voluntary settlements, compared to the proposals made by the parties in this dispute. The parties also dispute which comparisons are to be made for these purposes. The undersigned will initially determine which school districts should be utilized for the purpose of comparing the wages contained within the final offers of the parties to the wages paid for other employees performing similar services, and for the purpose of comparing patterns of settlement.

The Employer would limit the comparisons by the Arbitrator to a comparison of wages and patterns of settlement which have emerged in the Flyway Athletic Conference. The Employer comparisons include the School Districts of Campbellsport, Horicon, Lomira, Markesan, North Fond du Lac, Oakfield, and Rosendale-Brandon. The Association comparisons include school districts located in Dodge County; school districts contiguous to Mayville; school districts which have been a member of Mayville's present (Flyway) athletic conference; and school districts which were members of Mayville's former athletic conference (Scenic Moraine Conference). The Association comparisons include the School Districts of Beaver Dam, Dodgeland, Horicon, Hustisford, Lomira, Waupun, Oakfield, Hartford UHS, Campbellsport, Markesan, North Fond du Lac, Oakfield, Rosendale-Brandon, Kewaskum and Slinger.

Both parties rely on citations from prior arbitration awards, the Employer citing New Holstein School District, Dec. No. 22898-A (Yaffe); Oakfield School District, Dec. No. 23433-A (Monfils); Mayville School District, Dec. No. 24039-A (Fleischli); Berlin Area School District, Dec. No. 23363-A (Briggs); Horicon School District, Dec. No. 37757 (Petrie).

The Association cites Arbitrator Flaten in Dodgeland (Dec. No. 30289); Arbitrator Haferbecker in Horicon (Dec. No. 21871-A); Arbitrator Petrie in Hustisford (Dec. No. 24380-A); Arbitrator Petrie in Horicon (Voluntary Impasse Procedure); Kerkman in Dodgeland School District (Dec. No. 23378-B) and School District of Beaver Dam (Dec. No. 24176-A), and Arbitrator Mueller in Kewaskum School District (Dec. No. 17981-A).

The undersigned has carefully considered the cases cited by the parties, and

has also considered the demographics which the parties have placed in evidence. After due deliberation the Arbitrator adopts the pool of school districts proposed by the Association as the proper comparisons to determine the outcome of this dispute. The undersigned agrees with the holdings of Arbitrator Briggs in Berlin Area School District and Arbitrator Petrie in Horicon School District wherein they held that once comparables have been established between the parties they should not be disturbed so as not to undermine the stability of the collective bargaining process. There is present in this dispute, however, a history which causes the undersigned to believe that the Association proposed comparisons are appropriate. Employer Exhibit No. 40 is the Fleischli Arbitration Award issued on May 13, 1987, which set the salary schedules for the 1986-87 school year in this school district. At page 38 of his Award, Fleischli states:

> Some consideration should be given to the comparisons drawn to the comparables relied upon by the Association; however, they lack sufficient weight to be deemed primary or compelling under the comparability criteria.

Fleischli, however, at page 37 notes:

> While the districts falling within the 25 mile radius proposed by the Union are arguably more comparable than those falling within the 35 mile radius proposed by the Union, only three of those districts have settlements and two involve multi-year agreements, while the third involves an elementary district.

From the foregoing, the undersigned concludes that the Fleischli dicta dealing with comparables infers that weight would have been given to the Association proposed comparables within the 25 mile radius had there been contemporaneous settlements available within that grouping. The dicta suggests that because two of the settlements were for the second year of a two year agreement, and the third settlement involved an elementary rather than a K-12 district, Fleischli found they lacked sufficient weight to be compelling under the criteria.

Because the Fleischli determination of the comparison pool was made under the circumstances described above, a fresh look at the comparables is warranted. Because Fleischli suggests that the Association comparables within 25 miles would be appropriate if data were available; and because the undersigned is of the opinion that the comparables proposed by the Association are supportable by the citations upon which it relies in its brief and by the evidentiary demographics; the undersigned now adopts the school districts proposed by the Association as being appropriate for the purpose of comparing wages, hours and conditions of employment of the employees in this bargaining unit with employees performing similar services, and for the purpose of comparing patterns of settlement.

THE SALARY DISPUTE

The undersigned will first look to the patterns of settlement in determining which final offer should be adopted. The Employer offer here constitutes a salary only wage increase of 7.10% for 1987-88 compared to a salary only percentage increase proposed by the Association of 8.45% for 1987-88. The average dollar per returning teacher generated by the Employer proposal is $1850 for 1987-88 compared to $2199 generated by the Association proposal. For 1988-89, the Employer offer calculates to a 6.63% increase salary only compared to a 6.60% increase proposed by the Association in 1988-89. The average dollar per returning teacher proposed by the Employer

for 1988-89 is $1850 and $1864 pursuant to the Association offer. From the foregoing, it can be seen that the percentage increases and average dollar per returning teacher are almost identical in the parties' final offer in the second year. It is the first year in which there is a significant distinction, wherein the Association offer is 1.35% and $349 average per returning teacher higher than that of the Employer. Because the second year proposal for the school year 1988-89 is almost identical under both the Employer and Association final offers, it is unnecessary for this Arbitrator to give attention to the parties' proposals for that year. All of the comparisons of wages and patterns of settlement, then, will be limited to the first year salary schedule for 1987-88, because that is where the dispute exists.

Before initiating the comparisons, the undersigned notes that the first year differential between the offers of the parties has been generated by reason of the Arbitraton Award finding for the Employer in the 1986-87 school year. In that round of arbitration, the Arbitrator found for the Employer, where the Employer made an offer of 5% which generated an average dollar per returning teacher increase of $1242. The average settlement among the Association pool for comparison purposes for 1986-87 which emerged after the Award was $1795 or 7.53%. If one were to consider only the Employer proposed comparison pool, the average settlement for 1986-87 was $1819 or 7.82%.[1] Thus, the increase for the year 1986-87 imposed by the Award resulted in a salary increase which was approximately 2.5% and $553 below the average increase of the comparable pool espoused by the Association. The record clearly establishes that it is the Association intent in proposing its first year salary increase for 1987-88 as reflected in this round of bargaining to make up some of the "loss" it experienced as a result of the 1986-87 Award.

The Employer opposes any consideration of makeup for the "loss" the Association experienced due to the 1986-87 Award, arguing that any such consideration would be relitigating that Award. The Arbitrator will consider these arguments more fully later in this discussion.

Turning to a comparison of the patterns of settlement for 1987-88, we find that the Employer offer of 7.10% and $1850 average per returning teacher squares almost exactly with the average settlements found in Association Exhibit No. 38, where, among the Association pool of comparables the average settlement was 7.1% increase and $1833 average per returning teacher. Thus, the patterns of settlement for 1987-88 support the adoption of the Employer offer in this dispute.

The foregoing conclusion is buttressed when considering the data contained in Association Exhibit No. 42, which shows that for 1987-88 the average dollar increase per returning teacher among 381 of 429 districts in the State of Wisconsin is $1754.

Association Exhibit No. 44 sets forth a comparison of salaries at various points of the salary schedule. The undersigned is of the opinion that the significant comparative points of the salary schedule are the minimums and the maximums of the schedules. We find in Association Exhibit No. 44 that for 1987-88, if the Employer

1/ From the foregoing, it would appear that the dispute between the comparable pools as it relates to this dispute is mindful of the Shakespearean play entitled Much Ado About Nothing, since the Employer comparables generate higher numbers in the patterns of settlement than do the Association numbers.

offer is adopted, the Employer offer at BA minimum of $18,309 is slightly below the group average of the Association comparable pool of $18,427; whereas, the Association offer at the BA minimum is $18,538, slightly above that average. Looking at the BA max we find that both the Association and Employer offers are significantly above the group average of $25,214; the Association offer ranks 4th among their comparable pool at $27,436, whereas, the Employer proposal would also rank 4th at $27,097.

Comparing MA min for 1987-88, we find that the Employer offer is slightly below the group average of $20,898 compared to the Employer offer of $20,872, whereas, the Association offer is slightly above the group average at $21,133. Comparing the MA max we find that the group average is $31,813 and that the Association offer of $31,277 is $536 below that average, and the Employer offer of $30,890 is $923 below that average. Turning to the schedule max we find that the group average is $34,041 and that the Association offer of $34,021 is almost precisely on that average, whereas, the Employer offer of $33,600 is $421 below that average. From the foregoing comparisons, we see that the minimums at the BA and MA lanes under the proposal of either party hover around the average of the Association pool; we also see that the BA max under either party's proposal is significantly above average, ranking 3rd and 4th among the Association comparable pool; that the MA max generates a below average salary level at that step of the schedule with a ranking of 11th, no matter which party's offer is adopted; and that at schedule max the Association offer is approximately the average of the grouping, whereas, the Employer offer results in $421 less than the average. The Association offer would rank them 7th among the comparables, whereas, the Employer offer would rank them 9th. From the foregoing comparison, the undersigned is unpersuaded that either party's offer is preferred. Because the Employer offer constitutes approximately the average settlement among this same pool, it is presumed in 1986-87 these rankings stood approximately at the same level. A further study of Association Exhibit No. 44 for 1986-87 confirms that assumption. At BA min for 1986-87 Mayville stood in 7th position just above the group average; and at the BA max stood at the 5th position among the Association pool. At MA min Mayville stood in the 6th position, slightly higher than the group average; and MA max it stood at 11th position, $833 below the group average; and at schedule max Mayville stood in 9th position, $593 below the group average. Thus, the relative rankings are also unchanged from 1986-87 when comparing 1987-88 rankings to those of 1986-87. All of the foregoing, then, suggests that the Employer offer is adequate when considering only the comparisons of salaries as they stood in 1986-87 compared to the standings and ranks of those same salary levels at the same position of the salary schedule for 1987-88.

The Association offer of $2199 and 8.45% can only be justified if one takes into consideration the below average wage increase awarded for the year 1986-87. The undersigned believes that those considerations are appropriate, and the Association proposed increase for 1987-88 would partially restore the deficiency of the increase which the 1986-87 Award generated. The record establishes that there was slippage in the standing of the instant teachers when comparing their salaries for 1985-86 with the salaries of the comparison pool for that year. Thus, if one makes the three year comparison urged by the Association, the Association offer is supported. It remains to be determined, however, which offer should be adopted as it relates to the salary dispute after considering all of the statutory criteria relied on by the parties.

Turning to the comparison of total compensation, we reach the same conclusions when reviewing the evidence as those found in comparing patterns of settlement and wage rate comparisons. For 1987-88 school year and the 1988-89 school year, the

total compensation proposal of the Employer is supported by the evidence when looking at the Association comparison pool for those years only. It is only when we look to the three year comparison and the proposed restoration of some of the deficient settlement created by the 1986-87 Award that the Association total compensation position can be supported by the evidence. The same conclusions, then, are drawn in this comparison as those drawn in the earlier comparisons on patterns of settlement and wage rate comparisons.

THE INTEREST AND WELFARE OF THE PUBLIC

The Employer argues that when considering the drop in equalized valuation since 1982-83; the percentage increase in the net tax rate since 1982-83; the amount of state and federal aids received by the Employer; the local support required from the community to support its school system; and the impact upon the farming community; the Employer offer should be adopted. The Association opposes these considerations, and specifically charges that the Employer misstates the percentage of increase of taxes because its data shows that the net tax levy for 1987-88 is either 14.77 or 14.67 for that year.

The Arbitrator concludes that the interest and welfare of the public supports the Employer offer in this matter. The Arbitrator is particularly mindful of the percentage of tax increase which has confronted the taxpayers of this District between 1982-83 and the year 1987-88. The Employer posits that the percentage increase is 37.5% over that span of time. If we accept the Association data that the net tax rate for 1987-88 is 14.67, the percentage increase becomes 32%. Assuming the Association data is correct, the 32% increase in the net tax rate between 1982-83 and 1987-88 militates for the adoption of the Employer offer in this dispute. While there is a percentage reduction in the net tax rate from 1986-87 to 1987-88 of 8.8% if the Employer data is accepted, or 12.47% if the Association data is accepted; this reduction pales when considering the percentage increase since 1982-83. Furthermore, the Association here asks the Arbitrator to consider the standing it enjoyed in 1985-86 salary schedules in making salary schedule comparisons. The undersigned has been willing to do that. Comity would seem to suggest that we then look to the tax increases which have come into play since 1985-86, since that measures the same span of years as the Association urges should be measured when making the salary comparisons. We find from Employer Exhibit No. 24 that the net tax rate is 13.66 for 1985-86, and if the Association data is accepted for 1987-88 taxes have increased by 7.38% since 1985-86. On the other hand, if the Employer data is accepted the tax increase since 1985-86 is 11.93%. The percentage of tax increase since 1985-86 also militates for the adoption of the Employer offer when considering the interest and welfare of the public.

THE COST OF LIVING CRITERIA

The proposed increases contained in the final offers of both parties exceed the percentage increase in the cost of living for the years in question. From the foregoing, it is obvious that the Employer offer adequately takes into account the cost of living criteria because it proposes an increase in excess of the increase in the Consumer Price Index. Therefore, the cost of living criteria supports the final offer of the Employer.

COMPARISON OF WAGES AND PATTERNS OF SETTLEMENT AMONG OTHER PUBLIC SECTOR EMPLOYEES IN COMPARABLE COMMUNITIES

Employer Exhibit Nos. 15A through 16C establish that for 1987 Dodge County

employees received increases ranging from 2% to 3%, and for 1988 they received increases ranging from 0% to 3%. The same exhibits establish that in Fond du Lac County employees received increases for 1987 of 1.8% to 3.5%, and 3% for 1988. The same exhibits establish that Green Lake County employees received increases for 1987 ranging from 4% to 4.25%, and for 1988 from 2.75% to 4%. The same exhibits establish that the City of Mayville employees received increases of 3.5% for 1987 and 4% for 1988.

Employer Exhibit No. 18A compares Mayville School District monthly and annual salaries with those of public sector professional employees in Dodge County. We look only to the comparison of annual salaries for these purposes. The exhibit establishes that Dodge County pays an average minimum salary to its professional employees of $18,713 for 1988, compared to an Employer proposed minimum of $19,591 for 1987-88 and an Association proposed minimum of $19,836 for that same year. The average maximum salary paid the professionals by the County is $21,303 compared to an average maximum proposed by the Employer for 1987-88 school year of $30,729, and an average maximum proposed for that same year by the Association of $31,111.

Finally, we look to Employer Exhibit No. 23 which sets forth the percentage increases to the non-certified staff of this school district and to the administrative staff. The Exhibit establishes that 5% increases have been effectuated for both administrative staff personnel and non-certified staff for 1987-88 and 1988-89. The Association argues that the administrative increases are 5.7% and 5.9% respectively for 1987-88 and 1988-89. The foregoing is supported by Association Exhibit No. 146 which was a document provided to the Association by the District Administrator. The undersigned, therefore, accepts the Association data as accurate.

Notwithstanding the acceptance of the Association data with respect to administrative staff, the comparisons described in this section of the Award support the Employer offer. The percentage increase proposed by both parties exceeds the percentage increases for the years in question among any of the other public sector employees to which evidence has been addressed. Consequently, it can only be concluded that this criteria supports the Employer offer.

COMPARISON OF WAGE INCREASES AMONG PRIVATE SECTOR EMPLOYEES

Employer Exhibit No. 10 establishes that employees of Mayville Metal Products Co. received a 4% increase for 1987 and 4% for 1988. The exhibit further establishes that employees of Mayville Die & Tool Co. received a 0% increase in 1987 and 1988 and that Mayville Engineering Co., Inc. employees received a 2% increase for 1987 and that the 1988 increases had not been established. The percentage increases offered by the parties here of 7.1% by the Employer for 1987-88 and 8.45% by the Association for 1987-88 considerably exceed the percentage increases granted in the Mayville community for professional employees of the companies listed above. Consequently, when making that comparison the Employer offer is also preferred.

The Employer also adduced evidence with respect to comparisons of hourly rates among its professional employees. There are assumptions contained in those calculations which the Arbitrator is unwilling to accept. For example, the hourly rates for professional employees of Mayville Metal Products are calculated by dividing the annual salary by 2,080 hours, and the teacher hourly salaries are calculated by dividing the annual salary set forth in the salary structure by the number of contract days multiplied by eight hours. The foregoing calculations of the hourly rate of professional employees at Mayville Metal Products fails to take into account hours not worked by employees by reason of holidays and vacations. The undersigned

concludes that the data is unreliable, and, consequently, no weight is given to the hourly wage comparisons between professional employees at Mayville Metal Products and Mayville Engineering Company with those of the hourly rates of teachers under the Employer and Association proposals as set forth in Exhibit No. 10.

SUMMARY AND CONCLUSIONS ON SALARY SCHEDULE ISSUE:

The undersigned has concluded that the patterns of settlement for the years in question and the comparisons of salaries among the Association comparison pool for the years in question support the adoption of the Employer final offer. The undersigned has further concluded that, when considering the three year increases and the impact of the below average Award of 1986-87, the Association proposal can be justified. The undersigned has further considered the other statutory criteria to which the parties have adduced evidence, and has concluded that the interest and welfare of the public, particularly when considering the impact of the percentage increase of the net tax rate in the community, supports the Employer offer: that the increases in the cost of living as measured by the Consumer Price Index supports the final offer of the Employer; that the comparison of wage increases negotiated for other public sector employees in the area supports the Employer offer in this matter; and that the wage increases granted private sector professional employees in the City of Mayville also support the Employer final offer. After due deliberation, the undersigned now concludes that, particularly in view of the interest and welfare criteria of the statute, the Employer final offer with respect to salary is to be adopted.

THE INSURANCE DISPUTE

The Association proposal, if adopted, would require the Employer to terminate the self insurance program it adopted effective January 1, 1988, and insure the health insurance coverage with Wisconsin Education Association Insurance Trust, hereinafter WEAIT, and the dental insurance with Blue Cross-Blue Shield. It would further require that any change from the aforementioned coverages would require the mutual consent of the parties, and it would also provide for a 20% cap on aggregate health and dental premium increases for the 1988-89 school year. The foregoing changes pursuant to the Association proposal would be prospective only and take effect upon the issuance of this Award. Before analyzing the evidence to select a preference for one party's position or the other in this dispute, it would be helpful to set forth the circumstances which were the genesis of the impasse on this issue.

From Employer rebuttal Exhibit No. 77A the history of the health insurance contractual language in the Collective Bargaining Agreement dealing with the identification of the health insurance provider is provided. From the years 1962-63 through 1964-65 there was no identification of the health insurance provider in the Collective Bargaining Agreement. In 1965-66 the parties negotiated a provision which identified the Wisconsin Physician Service as the health insurance provider. This provision remained in force in the successor Collective Bargaining Agreements through the Agreement covering the 1972-73 school year. Effective with the Contract which covered the 1973-74 school year, the health insurance provider was identified as WEAIT. Commencing in 1974-75, no identification of the health insurance provider was included in the Collective Bargaining Agreement, and that status remained unchanged to the present time. The sole reference to the type of coverage in the Collective Bargaining Agreement reads: "The Board agrees to continue to carry group hospital/surgical insurance at not less than current benefit levels." It is this provision that the Association seeks to change and that the Employer seeks to retain.

In an executive session of the School Board of this District held on July 20, 1987, the Board decided that they would self insure the health and dental benefits. On August 11, 1987, the Board of Education of the School District met with the Association, advising them of its intention to go self funded for health and dental insurance purposes, and that it was its intent to do so September 1, 1987. The Association took legal action in two forums. The Association initially sought an injunction in Dodge County Circuit Court to enjoin the Board from initiating its self insurance plans. The Association also filed a prohibited practice with the Wisconsin Employment Relations Commission which is still pending.

With respect to the lawsuit for the injunction in Dodge County Circuit Court, no injunction was entered; however, the Employer plans to implement its self insured program were deferred until January 1, 1988. Effective January 1, 1988, the self insurance program was started, and the coverage formerly underwritten by the WEAIT and Blue Cross-Blue Shield for health and dental insurances was terminated. The Association has not grieved the Employer change from insured programs with Blue Cross-Blue Shield and WEAIT to self insurance.

During the course of the three lengthy days of hearing, testimony was adduced from a multitude of witnesses who are teachers employed by the District, testifying as to the deficiencies of the self insured plan. Gene Jensen, President of Preferred Administrative Services, the plan administrator for the District, testified in an attempt to refute the teachers' testimony. In addition to the foregoing testimony, there was testimony from the Superintendent of Schools of the District, and from Mary Yaeger, Manager of Group Life and Corporate Treasurer of the Hierl Insurance Company, all in support of the proposition that the self insured plan provided benefits at least equal to the plan insured by Blue Cross and WEAIT. There was also testimony from Association witnesses from other school districts describing the problems those districts encountered when going self insured, and there was testimony from Employer witnesses from other districts describing the success they had with self insured programs. Additionally, there was testimony from the Field Representative of WEAIT and from the General Manager of Groups of WEAIT, both testifying as to their preference for the insured's program heretofore in place in the district. The Manager of Group Insurance for WEAIT specifically testified as to the fact that the size group of Mayville would only have 42 to 43% reliability as far as credibility was concerned. There was also testimony from actuary David Huttleston over funding methods for self insured programs, testifying as to the distinction between incurred and paid claims; the cash flow advantage claimed by self insured programs; and his agreement with the General Manager of Groups of WEAIT as to the credibility of the size group represented by the number of lives insured in the Mayville School District. There is also testimony from the President of Mayville Education Association describing how the plan was adopted; the lack of involvement of the Association in negotiations over the adoption of the plan and the difficulties she has incurred and been informed about from the membership over the self insured program; as well as her concerns over the lack of confidentiality under the self insured program vis a vis the confidentiality afforded by the insured plans heretofore in effect. There is further testimony from the Personnel Director of Dodge County describing the bad experience Dodge County had under either a self insured or cost plus plan and its return to an insured plan in 1988. There is further testimony in the record from the District Administrators of several school districts testifying as to the adequacy of their experience under self insured plans as administered by the Preferred Administrative Services who administers the plan in the Mayville School District. There is testimony in the record from School Board member and Vice President of Mayville Engineering, a local company employing 326 employees, describing the Company's satisfaction with self insurance which has been in force with the Company since

March, 1981. There is also testimony in the record from the Executive Vice President of Preferred Administrative Services in support of the plan. There is testimony from the Senior Vice President of Alta Health, the largest independent health care administrator in the State of Wisconsin, who testifies that the self insured plans as administered by Preferred Administrative Services and the dental plan which had been previously insured by Blue Cross-Blue Shield and the health insurance previously insured by WEAIT are equivalent; testifying that the benefit levels are replicated in the self insured plan.

The undersigned has reviewed and considered all of the aforementioned testimony as described in the preceding paragraph, as well as the exhibits admitted into the record. The undersigned has considered all of the argument made in the parties' briefs and reply briefs which totaled 260 pages. After lengthy deliberation the undersigned concludes that the Association has failed to make its case that a change is necessary.

The foregoing conclusion that the Association has failed to prove its case that the change it espouses is required is based chiefly on two reasons. First, though the Association claims it is attempting to maintain the status quo, the undersigned disagrees, and concludes that the Association is proposing change. While it is true that the Association would restore the status quo as to who should be the insurance provider, that is not what is considered the status quo in this interest arbitration. In interest arbitration the Arbitrator considers whether the status quo of the language is to be changed. Clearly, the Association proposes a change in the language when it proposes to negate the provision which permits the Employer to change insurance carriers during the life of the Agreement so long as the benefit levels are maintained. The Association proposal would in effect name the carrier, and, furthermore, require that the named carrier remain the named provider until such time as the parties mutually agree to a change. Thus, it is clear to this Arbitrator that the proposal of the Association here changes the terms of the Collective Bargaining Agreement, and, therefore, a change in the status quo is advocated by the Association. Arbitral authority has almost unanimously held over the years that the proponent of change has the burden of establishing the need for the change which it proposes.

Here, the Association asksan interest arbitrator to discontinue the self insured plan of the Employer and restore the prior carrier based at least in part on evidence it adduced at hearing in the interest arbitration purporting to show that the coverages are not the same. The Association makes that proposal even though the predecessor Agreement has a provision which requires the Employer to maintain benefits at not less than the current benefit levels which would have given the Association the means to pursue a grievance and arbitrate this issue. It is the opinion of the undersigned that the Association has failed to utilize the language presently in force in the Agreement when it failed to grieve and arbitrate, if necessary, the change which the Association asserts fails to maintain the present level of benefits. Thus, it would appear that the Association is asking this interest arbitrator to make a determination that would be more appropriately made by a rights arbitrator interpreting the terms of the predecessor Agreement. If the Association is correct in its allegations that the present benefits do not measure up to the prior level of benefits, then the Contract is violated, and a rights arbitrator under an arbitrator's broad remedial powers would have the authority to restore the status quo ante. The Association argues that to grieve and arbitrate on a case by case basis would have been a lengthy and costly exercise. The undersigned disagrees. It would have been sufficient for the Association to prove up before a rights arbitrator that the coverage under a self insured plan was not equal to that of the prior insured's plan, or that a self insured plan was not permissible under the language of the Contract. This could have been done more promptly than awaiting this interest arbitration. The fact

that the Association failed to utilize the language presently in existence in the Contract in an attempt to protect its interest militates against a change in the Contract language in interest arbitration because there is no showing that the present language has been tried and found wanting. In fact, it has not been tried at all.

The second chief reason that the undersigned concludes that the Association has failed to prove that the change is required lies in the prevailing "industry practice". Employer Exhibit No. 57A through M sets forth the health insurance clauses dealing with the right to change insurance carriers in contracts in force in the Flyway Athletic Conference. Only the Contract in force between the Association and the Employer in the Horicon School District names the insurance provider (WEAIT). The remaining six school districts in the conference do not identify the insurance provider by name. From the foregoing, it follows that prevailing practice in the conference supports the Employer position in this dispute.

The undersigned has considered all of the expert testimony with respect to the wisdom of going self insured for an Employer the size of the Mayville School District. The testimony suggests that the choice to establish a self insured program is not a wise one, because a group the size of Mayville lacks credibility for establishing sound experience. The undersigned is inclined to accept that testimony, and questions the wisdom of a self insured plan for a district of this size. That, however, in the opinion of this Arbitrator, is not for this Arbitrator to decide. If the Employer has erred in selecting a self insured program, it is the province of the Employer to make that mistake. It is not the province of the Arbitrator to "save" the Employer from its errors.

Therefore, after considering all of the arguments of the parties and the record evidence, the undersigned concludes that the language of the predecessor Agreement with respect to change of insurance carrier should remain in place, and the Association proposal is rejected. It is possible that the prior insurance carrier may be reinstated as a result of the prohibited practice case now pending before the Wisconsin Employment Relations Commission, or because a rights arbitrator so orders if a timely grievance can be filed alleging that the change to the self insured plan violates the provisions of the Collective Bargaining Agreement which permits a change of carrier by the Employer if benefit levels are maintained. Those decisions, however, are for forums other than the instant arbitration, and if the Association is to prevail in its endeavor to restore the WEAIT and Blue Cross-Blue Shield as the insurance carriers for health and dental insurance they will have to do so in those forums.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the Employer offer on salary is preferred, and that the Association offer on the insurance issue is rejected. It would follow, then, that the Employer final offer in its entirety should be adopted in this matter, and it will be so ordered.

Therefore, based on the record in its entirety, after considering all of the arguments of the parties, and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Employer, along with all of the terms of the predecessor Agreement which remain unchanged through the course of bargaining, as well as the stipulations of the parties, are to be incorporated into the written Collective Bargaining Agreement between the Employer and the Association.

Dated at Fond du Lac, Wisconsin, this 17th day of February, 1989.

Jos. B. Kerkman,
Arbitrator

JBK:rr