

BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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DEERFIELD EDUCATION ASSOCIATION	:	
	:	
To Initiate Arbitration	:	Case 21
Between Said Petitioner and	:	No. 40497 INT/ARB-4892
	:	Decision No. 25519-B
DEERFIELD COMMUNITY SCHOOL DISTRICT	:	
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Appearances:

Mr. A. Phillip Borkenhagen, Executive Director, Capitol Area Uniserv North, McFarland, Wisconsin; Mr. Stephen Pieroni, Attorney at Law, Wisconsin Education Association Council, Madison, Wisconsin; and Mr. William Haus, Kelly and Haus, Attorneys at Law, Madison, Wisconsin, on behalf of Deerfield Education Association.

Mr. Gerald C. Kops and Mr. Kenneth B. Axe, Lathrop & Clark, Attorneys at Law, Madison, Wisconsin, on behalf of the Deerfield Community School District.

Ms. Constance L. Anderson, DeWitt, Porter, Huggett, Schumacher & Morgan, S.C., Attorneys at Law, Madison, Wisconsin, on behalf of Mr. Rolland Schmidt and Mr. Ramon Storlie.

ARBITRATION AWARD

Deerfield Education Association, hereinafter referred to as the Association, and the Deerfield Community School District, hereinafter referred to as the District, having in the spring of 1988 met in collective bargaining on eight occasions in an effort to reach an accord on the terms of a collective bargaining agreement which expired on June 30, 1988, covering all full-time and regular part-time teachers, excluding all administrators, any certified personnel who are employed through subcontracts with CESA or other school districts or municipalities, substitute teachers,

intern or practice teachers and all other employes of the District. On April 26, 1988, the Association filed a petition with the Wisconsin Employment Relations Commission, requesting the latter agency to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act; and following an investigation conducted in the matter, the WERC on June 13, 1988, issued an Order wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between, and in that respect the WERC submitted a panel of seven arbitrators from which the parties were to select a single arbitrator. After being advised by the parties of their selection, the WERC, on July 6, 1988, appointed Stanley H. Michelstetter II of Milwaukee, Wisconsin, as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of the investigation conducted by the WERC. Mr. Michelstetter conducted hearing in the matter, at Deerfield, Wisconsin, on September 13 and December 7, 1988. Hearing was also scheduled for October 11, 1988, which hearing was adjourned. After learning that the parties had jointly requested said Arbitrator to withdraw from the instant proceeding, and that said Arbitrator agreed to so withdraw, the WERC on January 20, 1989, furnished the parties with a new panel of arbitrators from which to select a new

arbitrator, the parties, rather than making said selection from said panel, advised the WERC that they had mutually selected the undersigned as the Arbitrator to replace Mr. Michelstetter; and that on February 9, 1989, the WERC issued an Order setting aside the original appointment, and therein appointed the undersigned<sup>1</sup> to issue a final and binding award in the instant matter, by selecting either of the total final offers proffered by each of the parties to the WERC during the course of the WERC's investigation.

Pursuant to arrangements previously agreed upon, the undersigned met with the parties at Madison, Wisconsin, on March 22, 1989, in conference, which was not transcribed, to determine the future course of the proceeding. During the conference the parties were afforded the opportunity to state their views concerning the matters discussed and that further hearing in the matter was conducted by the Arbitrator on April 6, 1989, at Deerfield, Wisconsin, during which the parties were afforded the opportunity to present evidence and argument. The hearing on said date was transcribed.

The transcript of the two days of hearing conducted by Arbitrator Michelstetter was received by the Arbitrator on April 18, 1989, and the parties filed written positions with regard to the subject matter of the issues discussed during the conference of March 22, 1989. The Arbitrator, having considered the matter and the arguments relating thereto, on May 3, 1989, issued his

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<sup>1</sup>Hereinafter the undersigned is designated as the Arbitrator. Any reference to the original Arbitrator shall be so stated.

"Determination With Respect To The Record Made Before The Original Arbitrator", wherein the Arbitrator concluded as follows:

"1. The undersigned hereby accepts and adopts the transcript of the hearing conducted by the original Arbitrator on September 13, 1988, including the comments and rulings made by said Arbitrator on said date, as well as the testimony of the witnesses and the exhibits received into evidence during the course of the hearing on said date.

2. The undersigned, except as herein noted, rejects and does not adopt the transcript of hearing conducted by the original Arbitrator on December 7, 1988, as well as the comments and rulings made by said Arbitrator on said date, as well as the testimony of witness and the exhibits received into evidence, during the course of the hearing on said date, with the exception of exhibits identified as "Witness exhibits 1, 2 and 3."

3. That either party, or both of them, may by May 17th, 1989, move that the undersigned either schedule further hearing in the matter, or close the hearing in the matter. Any motion requesting further hearing shall be accompanied by argument supporting same."

Neither party requested further hearing in the matter, and as a result, the Arbitrator in a letter advised the parties that the hearing was deemed closed as of the date of said notice. Briefs and reply briefs were filed with the Arbitrator on dates agreed upon. The reply briefs were received on July 27, 1989.

#### Proposals In Issue

Final offer proposals in issue relate to teacher salaries for the 1988-89 and 1989-90 school years, and they reflect the following:

	<u>Association Offer</u>		<u>District Offer</u>	
	<u>1988-89</u>	<u>1989-90</u>	<u>1988-89</u>	<u>1989-90</u>
Base Salary	\$16,810	\$17,695	\$17,175	\$18,070
Step Increments				
0 - 5 years	\$ 550	\$ 575	\$ 545	\$ 545
6 - 10 years	\$ 625	\$ 650	\$ 605	\$ 605
11 - 15 years	\$ 700	\$ 725	\$ 675	\$ 675
Lane Increments				
BS 0 - 12 Cr	\$ 550	\$ 575	\$ 520	\$ 520
BS 13 - 29 Cr	\$ 600	\$ 650	\$ 550	\$ 550
MS 1 - 12 Cr	\$ 650	\$ 725	\$ 580	\$ 580
MS 13 - 24 Cr	\$ 750	\$ 800	\$ 425	\$ 605
Longevity Pay				
Current Language <sup>2</sup>	\$ 450	\$ 500	\$ 425	\$ 450

New Teacher Pay

Rookie Teacher    Start at 1st year level    Start at 2nd year level

The Statutory Criteria

Section 111.70 (4)(cm)7 of the Municipal Employment Relations Act sets forth the following factors to be considered by the Arbitrator in an interest arbitration proceeding:

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<sup>2</sup>Current language reads as follows:

"Teachers who are at their salary schedule maximums in a given lane for the \_\_\_\_\_ school year who otherwise will not receive an incremental salary step increase will receive a longevity payment of \$\_\_\_\_\_ (provided the teacher has been employed by the district for the last 10 consecutive years). Regular part-time teachers shall receive a pro-rata longevity payment based upon the teacher's percentage of full-time employment."

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

#### The Association's Position

The Association initially urges that all the criteria set

forth in the statute be considered by the Arbitrator, since the parties did not stipulate otherwise. It argues, however, that the criteria set forth in subsections "c", "d", "g" and "h" carry sufficient weight to impact on the Arbitrator and to be dispositive of the instant matter.

#### The Interests and Welfare of the Public

It acknowledges that the taxpayers have an interest, that the students have a right to a quality education, and that the teachers are entitled to a fair and equitable salary, as well as working conditions. It contends that the public's interest is better served primarily by maintaining a high quality staff, who are paid at a salary level appropriate for their professional skills. It indicates that the District, over the past few years, has acted in support of education by adopting budgets which derived high tax rates, and that it has appropriated sufficient funds to pay for salary settlements. It points out that the District has supported a new school facility, diverse courses, as well as low minimum class sizes, all in support of the objective towards attracting new business and industry into the District, and, further, that the District taxpayers have experienced a 9.24% rise in income during 1985-86, and a 10.88% rise during the following year, the latter rise being the highest in the area. The Association also indicates that over 35% of the District's populace occupy executive, managerial, professional, or administrative positions, and that 13% are college graduates.

The Association proposes that the District has the burden to

"explicitly demonstrate that the Association's offer is harmful in a significant and measurable manner to the taxpayers and/or students of the District", and it contends that the District has not met said burden. The Association further argues that the public interest and welfare is best served by its offer, since it would deter the erosion of teacher salaries, and thus prevent the system from eroding, and thus also avoiding the "driving away" of experienced teachers.

#### The District's Ability to Pay

The Association indicates that the District has the financial ability to pay the costs which would be generated by the Association's offer. It contends that in three of the last four years the District has maintained operating reserves, characterized by the Association as "surpluses", which were created by underestimating its income and by overestimating its expenses, and by spending less on employe salaries and benefits than the amount budgeted therefore. According to the Association, the surplus approximates \$800,000, which amount, according to the Association, is unnecessary for a district the size of Deerfield, since the State recommends that a surplus of 25% of the District's budget is sufficient, and that the amount in such surplus account is 2% in the excess of the State recommendation. The Association claims that said 2% would generate some \$61,000, which is approximately \$7,000 "above the entire costs of the Association's two year offer."



Comparability

The Association contends that the costs of its offer, as well as a salary benchmark analysis, and the need for fair, equitable and competitive salaries, meet the comparability criteria set forth in the statutory provision. It proposes a comparable grouping with twelve other districts, which are either contiguous to Deerfield, and/or which share an economic, political and social climate with Deerfield, all "in the Madison eastern suburban area" consisting of, in addition to Deerfield, the districts of:

Cambridge	Johnson Creek	Monona Grove
Edgerton	Lake Mills	Stoughton
Fort Atkinson	Marshall	Sun Prairie
Jefferson	McFarland	Waterloo

The Association urges that the above grouping of districts, hereinafter referred to as MES, be considered as the most appropriate for comparability, rather than those districts in the same athletic conference with Deerfield, namely the Eastern, Suburban Conference, hereafter the ESC, consisting of:

Cambridge	Hustisford	Palmyra-Eagle
Deerfield	Johnson Creek	Waterloo
Dodgeland	Marshall	Williams Bay

In support of its position on comparables, the Association asserts that the districts in the MES grouping are much more comparative on an operational costs per pupil basis, on the net tax levy basis, as well as on the state aid per pupil basis. Further, it characterizes the District as a "bedroom community" to urban Madison, similar to Cambridge, Marshall, McFarland, Monona Grove, Sun Prairie and Stoughton. It argues that the District can no longer claim to be "rural", since it has become a haven for

suburban industrial development, thus supporting the need for comparables other than the athletic conference. The Association cites various arbitrators who have selected districts other than those in athletic conferences, as being the more appropriate comparable grouping. It also argues that the size of a particular district should not affect its inclusion or exclusion from a comparable grouping.

#### The Costing of the Offers

The Association indicates that a disagreement exists between the parties as to the method of the costing of the two offers, in that the District utilizes the "cast forward" system, while the Association asserts that "the most correct, warranted and logical system" is the "actual cost" to the District, contending that the 1988-89 costs can actually be determined. The Association claims that the "actual cost" system results in a saving of \$27,000 over the "cast forward" system, as a result of staff turnover, and that such savings could adequately fund the difference between the two offers for the 1988-89 school year, with a surplus of \$18,000 to offset second year costs.

The Association takes issue with respect to the District's computations on the costing of the offers herein. According to the District, utilizing the "cast forward" method, the parties are \$87,000 apart for the two years involved. The Association, in using the same method claims that the parties are \$57,807 apart, and, by discounting for normal teacher turnover of seven to eight teachers annually, the difference is lowered to \$54,456 for 1988-89

and to approximately \$30,000 for 1989-90. The Association contends that the "actual cost" basis generates a salary increase of only 4.92% per teacher, or an increase of \$1,214, and that for 1989-90 the projected salary increase amounts to 6.96%, or \$1,802 per teacher. The Association calculates the District's offer to generate a 2.14%, or \$694 per teacher for 1988-89 and a salary increase of 5.24%, or \$1,331 per teacher in 1989-90. The Association also claims that the District has erred in computing social security and retirement costs incurred during the 1987-88 year, resulting in lowering the actual cost of said two items by \$2,000. It also argues that the District's costing of health insurance premiums for the two year agreement is "notably skewed in its favor", thus elevating such costs by \$1,800 for the first year, and by \$2,200 for the second year.

#### Benchmark Comparisons

Regardless of which district grouping is deemed to be the more reasonable appropriate comparable grouping, the Association contends that the District has consistently ranked at the bottom in salary categories which compensate for experience and training, except at the Bachelor degree maximum, and the Master degree minimum, and while the District's offer may not affect its benchmark ranking, the dollar differences indicate disparities in earnings. The Association contends that, after several years of being "on the bottom", District teachers are worthy of "catching up", in order to keep pace with the teachers employed by the districts in either grouping. It contends that the exhibits

introduced by the District establishes that District teachers, when compared to ESC teachers, had the lowest average salary, the lowest mean total salary, and the lowest total compensation for the 1986-87 and 1987-88 school years, despite the raises they received during said years, and that District teachers ranked the second lowest in fringe benefits and lowest in salary in 1987-88, despite their higher than normal raise. It further claims that despite the highest dollar settlement, District teachers were \$63,000 below the average contract costs incurred by ESC districts, and that in the 1986-87 school year District teachers received the lowest dollar and percentile settlement, despite the District's increase in equalized valuation (4.7%) between 1986 and 1987.

The Association claims that the District's offer for 1988-89 would generate an increase in salary of 2.8%, which is 4.0% below the average increase, and 3.8% below the median increase, of teachers in the employ of ESC districts. It also contends that the District's total compensation offer of 3.98% is far short of the lowest settlement of 5.9%, and 3.6% below the average. With regard to total package costs, the Association contends that its offer is the lowest among the District's comparables, while the Association's offer ranks second from the lowest. The Association maintains that the patterns of settlements in both groupings favor its offer.

Countering the District's position that settlements prior to 1986-87 should be rendered moot for the reason that the parties voluntarily reached accords in 1986-87 and 1987-88, the Association

responds that to do so would discourage voluntary settlements in the future. It points out that between 1984-85 and 1986-87, Deerfield teachers dropped severely in benchmark rankings. The Association argues that benchmark rankings alone do not reflect the full picture, and that the Arbitrator should consider the dollar values involved.

#### Modification of the Salary Schedule Structure

The Association argues that the District has failed to substantiate the need to modify the structure of its salary schedule by equalizing the salaries in the first and second steps in the training lanes, thus resulting in granting newly hired teachers salaries identical to those teachers who have one year of experience, and in that regard the Association contends that (1) the proposed change is unfair to teachers who were hired in the 1987-88 or 1988-89 school years; (2) the evidence adduced by the District indicates that it had no problem in receiving 150 applications for a vacant teaching position; and (3) all that is necessary to attract new teachers is for the District to raise the base salary and to add moderate amounts to the increments in the training and experience lanes in order to create a competitive salary schedule structure.

#### Longevity Allowances

The Association contends that the District's experience over the years with respect to longevity allowances has not been comparable, claiming that the District's offer would generate a net gain of only \$25 per year to teachers who have been employed at

least 10 years and/or those who have progressed beyond 16 years on the salary schedule.

Additional Argument

The Association takes issue with the District's picture of the plight of its farmers, citing articles in various publications, which indicate a lowering of property tax bills, despite increases in the levy rate resulting from reduction in the value of agricultural property. It points to the increase of 17% in state aids to the District from 1987-88 to 1988-89, the impact of the Farmland Preservation Program, resulting in property tax relief, as well as the impact of the federal feed grain program. It also discloses that farmers were granted an extra property tax credit of 10% on property taxes up to \$10,000, as well as drought relief granted by the federal government in the form of disaster payments and fee subsidies. It argues that the District presented a meek case with respect to the 1988 drought, in that the District's claim with regard thereto lacked precise evidence. The Association claims that, despite the drought, the District, raised its tax levy by 4% in August, 1988, for the 1988-89 school year, that at its annual Board meeting it advised those in attendance that its financial condition was adequate, and that it had only three years to pay off the debt on the new high school building, and that it further announced that the District had received an increase in state aids in the amount of \$216,546.

With respect to the cost of living criterion the Association claims that arbitrators generally have recognized that teacher

settlement patterns are the most appropriate measure of the impact of the cost of living.

#### The Position of the District

The District characterizes the major difference between the parties as being the weight to be accorded to the interest and welfare of the public, and how that interest is to be determined under the statutory criteria. It argues that local property taxpayers are bearing a larger share of school costs, thus supporting a strong argument for not increasing its property tax burden, which lies heavily on State farmers at a time when said taxpayers have been bearing increasing levy taxes even as the value of their net income has been reduced. However, the District does not contend that its offer is high, nor does it claim to be incapable of meeting the costs of the Association's offer. The District argues that its final offer reflects the interests and welfare of the public, as well as the financial condition of the District. It contends that its offer strikes a proper balance among valid competing interests and is more reasonable, claiming that the Association's offer is "too heavily weighted in favor of self interest".

It emphasizes that District taxpayers have made an effort to fund quality education, as demonstrated by the fact that its taxpayers have consistently paid the highest tax levy rates of any district in the athletic conference, as well as in those districts in the MES grouping urged by the Association. It pleads that it has limited financial resources available to fund public education,

and points out that it has the highest mill rate among the conference districts, as well as the highest rate for the past number of years, except for 1986-87, when it had the second highest. It also claims that it did not receive the largest amount of state aid among the districts in either grouping. The District further contends that its tax levy has consistently been the highest in Dane County. It argues that the "surplus" alluded to by the Association is actually an operating reserve, built up over a period of years, maintained as a safeguard against unanticipated expenditures and unrealized resources, to avoid temporary borrowing, and thereby avoiding additional tax increase. It maintains that its reserve is neither the largest nor the smallest among the districts in the ESC, and it also disputes the Association's claim that the reserved amount is inordinate, as well as the Association's argument that the funds therein should be utilized for teacher salary increases, contending that the latter view is "short sighted".

It points out that the District has experienced a pattern of decreasing property values, accompanied by increasing tax levies, which have been affected by increases in salary and fringe benefits of school employes, contending that such items constitute some 70% of the District's budget in 1985-86, and perhaps 75-80% on average, consistent with state wide trends. It argues that farmers pay a more disproportionate share of their income for property taxes than do homeowners, and contends that its offer more accurately reflects the public interest in light of the state of the agricultural



sector of its local economy, indicating that the drought of 1988 had a substantial severe impact on the farmers in the District. It claims that approximately 60% of local property taxes are derived from agricultural land, and that the Association admits that approximately 40% of the equalized value in the District comes from farmland, despite the fact that farmers constitute only 9% of the employes, and only 13.4% of the District's population. It claims that as a result of the drought there has been a significant substantial decline in farm income, and that such decline has affected the economy of Deerfield.

The District also contends that other comparable districts do not suffer the same tax burden, nor are they as dependent on farmland to raise revenues, except for Johnson Creek, which district settled voluntarily for lower increases for 1988-89 and 1989-90 than those contained in the District's offer, despite the fact that Johnson Creek has a levy rate lower than Deerfield. It also points out that three of the five settlements in ESC were reached before the effects of the 1988 drought became apparent.

The District argues that one measure as to the reasonableness of its offer is demonstrated by the fact that it has not experienced any difficulty in attracting qualified teachers, despite the fact that only 20% of its teachers reside within the District. It claims that the Association has failed to establish that present salaries and those contained in the District's offer are not sufficient to attract and retain qualified teaching personnel. Contrary to the claim of the Association, the District

contests the Association's description of the District's offer for 1989-90 as being "minuscule". The District calculates such costs as amounting to \$134,092.

The District submits that the evidence relating to high costs per pupil, high taxes, low equalized value and the drought all indicate that the public interest in restraining tax increases outweighs the comparability factor. The District maintains that its offer is consistent with the promotion of the public interest and welfare, and that it is the more reasonable of the two offers.

#### The More Comparable Grouping of Districts

The District argues that the athletic conference (ESC) districts constitute the more appropriate set of comparables, as generally accepted by arbitrators, especially where there is an absence of proof of a compelling reason to expand the comparables, such as an insufficient number of settlements with the conference. Again the District points out that none of the districts in either of the two groupings have reached accords on the 1989-90 school year. It also urges the rejection of the MES districts, since their location, standing alone, does not supply a basis for their use as comparables. The District urges the Arbitrator to apply such criteria as size, equalized valuation, members, size of staff, cost per pupil, net tax rates, state aid per pupil, and equalized value per member. It points out that except for the four districts in the MES grouping, which are members of the athletic conference, the remaining MES districts are dissimilar to Deerfield.

The District concedes that its salary schedules have generally

lagged in the athletic conference at most of the benchmarks. It contends that its benchmark rankings prior to 1986-87 are irrelevant in light of the voluntary settlements reached by it and the Association for the 1986-87 and 1987-88 school years. It claims that, in any event, its offer improves its benchmark ranking, and that its teachers enjoy longevity benefits not enjoyed by teachers in the employ of the MES districts, and that one-half of the latter districts do not pay the full costs of all health, dental, disability and life insurance premiums.

#### The Costing of the Offers

The District would have the Arbitrator reject the "actual cost" system urged by the Association, contending that it is inappropriate and leads to invalid comparisons, characterizing same as "reminiscent of voodoo economics". The District claims that unspent funds are not "surplus", but rather that said funds only reduce the amount of tax increase for the following year. The District argues that the "cast forward" system is the standard employed by most arbitrators, and that to utilize the Association's method would result in encouraging bargaining representatives to delay settlements.

In response to the Association's claim that the District's calculations of the costs of social security and retirement benefits are in error, the District indicates that when it originally prepared said costing such calculations were correct, since the parties had not at that time agreed on the payment of insurance. It has corrected its computation, as reflected in Ex.

198. Thus, according to the District, its offer for 1988-89 includes 5.04% on salary, and 5.84% on total package, and that its offer for 1989-90 amounts to a 5.25% increase on salary and 6.14% on the total package.

#### Modification of the Salary Schedule Structure

The District claims that increasing the entry level pay is reasonable and that it is intended to assist the District in attracting qualified personnel, and that such proposed change does not result in the reduction of salary for the teachers presently employed. It argues that its offer in said regard is less egregious than the Association's offer with respect to the increases in the increments and differentials between lanes.

#### Longevity Allowances

The District maintains that the Association has failed to submit any evidence to support its offer on longevity, which would be sufficient to provide for the recruitment and retention of its teachers, and again it points out that not all districts in the athletic conference provide for such allowances.

#### Private Section Comparables

The District acknowledges that the obtaining of private sector comparables is difficult, because many private sector employers consider such data proprietary in nature. However, it indicates, based on state-wide data, that in 1987-88 private employe pay and benefits, by one measure, were up only 4.5%, as compared to the District's offering of increases in salaries and benefits of 6.07% and 6.16% for the two years involved herein, and it claims that its

offer is clearly more reasonable in light of the private settlements.

#### The Cost of Living Criterion

The District acknowledges that both offers exceed the cost of living. It, in effect, argues that this criterion favors the District's offer, since the Association's offer exceeds the cost of living more so than does the offer of the District.

#### Discussion

The Arbitrator has spent an inordinate amount of time in the review and consideration of the transcript of the hearing, consisting of 576 pages, as well as over 350 exhibits, many of them consisting of multiple pages from 2 to over 100. Both parties filed briefs and reply briefs, totaling 170 pages. The parties should not expect this Arbitrator to discuss all of their arguments set forth in support of each of their offers. A further delay of this long drawn out proceeding, which commenced with the filing of the petition for arbitration on April 26, 1988, to respond to the many arguments and differences between the parties is not warranted. It is time for this proceeding to come to its conclusion, and it is toward that end that the undersigned proceeds to determine the principal issues herein in as concise a manner as is possible under the circumstances.

#### Consideration of the Statutory Criteria Set Forth in Sec. 111.70(4)(cm)7, MERA

Subsection 7 a. The lawful authority of the District.

Neither party questions the lawful authority of the District.

Subsection 7 b. The stipulations of the parties.

During their negotiations, and in the spring of 1988, the parties agreed to certain changes in various provisions of their 1986-88 collective bargaining agreement, and they stipulated that such changes, along with those provisions which were not changes and those which were to be determined by the Arbitrator, were to be incorporated in their 1988-90 agreement. The provisions in which such changes were made are identified as follows:

Art. IV, B - Elementary prep time during school day.

Art. IV, K - Off-hour duty pay for part time teachers.

Art. IV, P - Use of compensation time.

Art IV, S - Payment of summer checks.

Art, IV, Y - Staff development leave.

Art V, C - Personal business leave deduction.

Art V, D - Jury duty leave.

Art V, E (1) and (2) - Child rearing leave (amendments).

General - Extra curricular payment schedule 1988-89 and 1989-90.

General - 1988-89 calendar.

Subsection 7 c. The interests and welfare of the public and the financial ability of the District to meet the costs of any proposed settlement.

The Arbitrator is of the opinion that a conclusion on the instant criterion requires the consideration of the other statutory criteria, and therefore the discussion with regard thereto will follow the discussion with regard to the remaining criteria.

Subsection 7 d. Comparison of wages, hours and conditions of employment of the Deerfield teachers with the wages, hours and conditions of employment of teachers in the employ of other school districts.

This criterion necessitates the selection of teachers in the employ of school districts other than Deerfield in order to make the comparisons called for therein.

#### The Comparable Grouping

As noted previously herein, the Association has characterized Deerfield as a "bedroom community" to the City of Madison, claiming a role similar to the districts of Cambridge, Marshall, McFarland, Monona Grove, Sun Prairie and Stoughton, which the Association would include, along with the districts of Jefferson, Johnson Creek, Lake Mills and Waterloo in its MES grouping. Cambridge, Marshall, Johnson Creek and Waterloo, along with Dodge Land, Hustisford, Palmyra-Eagle, Williams Bay and Deerfield comprise the ESC, which is urged by the District to be the most comparable grouping.

The Association has also argued that Deerfield can no longer claim to be "rural", because it has become a "haven for suburban industrial development". While there is some evidence that a few industries are located in the community, the Arbitrator concludes that the evidence with regard thereto does not establish such a "haven" status. The following tabulation<sup>3</sup> reflects the student population, as well as the number of teachers, in the eight districts in the MES grouping, which are not included in ESC grouping, as compared to similar data in the ESC grouping:

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<sup>3</sup>Source: Dept. of Public Instruction, 1987-88, BASIC FACTS.

<u>MES Districts<sup>4</sup></u>			<u>ESC Districts</u>		
	<u># of Students</u>	<u># of Teachers</u>		<u># of Students</u>	<u># of Teachers</u>
Edgerton	1,672	115.1	Cambridge	829	54.3
Fort Atkinson	2,372	151.5	Deerfield	599	43.9
Jefferson	1,783	130.9	Dodgeland	789	52.8
Lake Mills	1,055	69.6	Hustisford	420	26.4
McFarland	1,588	96.6	Johnson Creek	541	43.5
Monona Grove	1,822	124.0	Marshall	725	52.8
Stoughton	2,752	167.8	Palmyra-Eagle	1,242	74.5
Sun Prairie	3,802	246.0	Waterloo	677	44.3
			Williams Bay	354	31.7

It is quite apparent, at least on a school population basis, as to students and teachers, that Deerfield has a closer kinship with the districts in the ESC, than it does with those in the MES. Perhaps the Association attempted to mend this relationship by also including Cambridge, Marshall, Johnson Creek and Waterloo in its preferred grouping. Neither the evidence, nor the arguments of the Association, have convinced the Arbitrator that Deerfield has lost its "rural" status, or that it has become so "urbanized" that it warrants the conclusion that the MES grouping should be considered the most comparable grouping.

Arbitrators generally accept the athletic conference as the most comparable grouping. An exception arises when circumstances warrant otherwise, most frequently where an insubstantial number of settlements have been reached among the athletic conference

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<sup>4</sup>The MES grouping also includes the districts of Cambridge, Johnson Creek, Marshall and Waterloo.



districts. That is not the case here, at least for the 1988-89 school year. The record is almost bare<sup>5</sup> as to settlements reached by any of the districts in either grouping for the 1989-90 school year. The undersigned concludes that the ESC is the most comparable grouping.

Benchmark Comparisons

The following tabulation reflects the comparison of certain of the 1987-88 Deerfield benchmark salaries with the average of the 1987-88 salaries, at the same benchmarks, paid by the nine districts in the ESC grouping:

	<u>ESC 9 District Average</u>	<u>Deerfield</u>
BA Min	\$16,792	\$15,950
BA + 6	20,517	19,280
BA Max	24,435	25,075
MA Min	18,923	18,670
MA + 9	25,433	23,815
MA Max	29,503	27,795
Sched. Max	31,844	30,165

Of the nine districts in the ESC, all but Dodge land and Deerfield have settled their agreements for the 1988-89 school year. The following tabulation reflects the seven ESC district 1988-89 average teacher salaries at the benchmarks noted with the salaries generated by the offers of the parties, as reflected in

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<sup>5</sup>While there is some data with regard to a settlement at Williams Bay, said data is not complete. Waterloo has also reached an accord, but the data relating thereto is also bare.

each of their proposed salary schedules:

	ESC 7 <u>District Average</u>	<u>Assoc. Offer</u>	<u>Dist. Offer</u>
BA Min	\$17,521	\$16,810	\$17,175
BA+ 6	21,546	20,185	19,960
BA Max	25,265	26,185	25,755
MA Min	19,931	19,760	19,895
MA + 9	26,773	25,010	24,495
MA Max	31,023	29,135	28,900
Sched. Max	33,537	31,835	31,270

The dollar differences between the average of the ESC 1987-88 benchmark salaries and the Deerfield salaries at said benchmarks, and the results which would be generated by both offers for the 1988-89 school year as compared to the average of the settlements involving the seven districts for the latter year are indicated as follows:

	1987-88 <u>Agreement</u>	<u>Assoc. Offer</u>	1988-89 <u>Dist. Offer</u>
BA Min	- \$ 842	- \$ 711 (Gain of \$131)	-\$ 346 (Gain of \$496)
BA + 6	- \$1,237	- \$1,361 (Loss of \$124)	-\$2,586 (Loss of \$349)
BA Max	+ \$ 640	+ \$ 920 (Gain of \$280)	+\$ 490 (Gain of \$150)
MA Min	- \$ 253	- \$ 171 (Gain of \$82)	-\$ 36 (Gain of \$217)
MA + 9	- \$1,618	- \$1,763 (Loss of \$135)	-\$2,278 (Loss of \$458)
MA Max	- \$1,708	- \$1,888 (Loss of \$180)	-\$2,123 (Loss of \$415)
Sched. Max	- \$1,679	- \$1,700 (Loss of \$21)	-\$2,267 (Loss of \$588)

The following tabulation reflects the 1988-89 seven district average dollar and percentage increase at the benchmarks noted, as

well as the dollar and percentage increases which would result from the offers of the Association and the District for the 1988-89 school year:

	<u>7 District Avg. Increase Over 1987-88</u>		<u>Assoc. Offer Increase Over 1987-88</u>		<u>Dist. Offer Increase Over 1987-88</u>	
BA Min	\$ 729	4.34%	\$ 860	5.39%	\$1,225	7.68%
BA + 6	1,029	5.01%	905	4.69%	580	3.00%
BA Max	830	3.40%	1,110	4.43%	680	2.71%
MA Min	1,008	5.33%	1,090	5.48%	1,225	6.56%
MA + 9	1,340	5.27%	1,195	5.02%	680	2.86%
MA Max	1,520	5.15%	1,340	4.82%	1,105	3.98%
Sched. Max	1,693	5.32%	1,670	5.54%	1,105	3.67%

It is noted that the Association's offer generates an increase, both in dollars and in percentage, closer to the ESC seven district averages at all the indicated benchmarks, except at the BA Max, where the District's offer is closer.

A review of the salaries paid at the various benchmarks by the nine districts in the 1987-88 school year, as well as a review of the benchmark salaries of the seven districts which have settled for the 1988-89, reveal the ranking of Deerfield in 1987-88, as well as its ranking which would be generated by the two offers for the 1988-89 school year, as follows:

	<u>1987-88 (9 Districts)</u>	<u>1988-89 (8 Districts)</u>	
		<u>Assoc. Offer</u>	<u>Dist. Offer</u>
BA Min	9	8	8
BA + 6	9	8	8
BA Max	5	4	4

MA Min	7	5	4
MA + 9	9	8	8
MA Max	9	8	8
Sched. Max	9	7	7

As indicated earlier, the Dodgeland district had not settled for the 1988-89 school year, and therefore only eight ESC districts are included in the above tabulation. A comparison of the 1987-88 benchmark salaries at Dodgeland compared with the salaries for the 1988-89 school year generated by each offer is as follows:

	1987-88 <u>Dodgeland</u>	1988-89	
		<u>Assoc. Offer</u>	<u>Dist. Offer</u>
BA Min	\$17,605	\$16,810	\$17,175
BA + 6	22,358	20,185	19,860
BA Max	25,527	26,185	25,755
MA Min	19,718	19,760	19,895
MA + 9	27,640	25,010	24,495
MA Max	30,017	29,135	28,900
Sched. Max	31,865	31,835	31,270

It is apparent to the Arbitrator that in all probability when Dodgeland comes to an agreement for 1988-89, Deerfield benchmark rankings will be reduced another notch in all of the benchmarks.

The benchmark salaries generated by the offer of the Association for the 1989-90 school year, and the dollar and percentage increases over the 1988-89 benchmark salaries generated by the Association's offer, are reflected as follows:

	<u>1989-90 Salary</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>
BA Min	\$17,695	\$ 885	5.25%
BA + 6	21,220	1,035	5.13%
BA Max	27,445	1,260	4.81%
MA Min	20,870	1,110	5.61%
MA + 9	26,345	1,335	5.33%
MA Max	30,620	1,485	5.10%
Sched. Max	33,670	1,835	5.76%

The benchmark salaries generated by the offer of the District for the 1989-90 school year, and the dollar and percentage increases over the 1988-89 benchmark salaries generated by the District's offer are reflected as follows:

	<u>1989-90 Salary</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>
BA Min	\$18,070	\$ 895	5.21%
BA + 6	20,855	895	4.48%
BA Max	26,650	895	3.48%
MA Min	20,790	895	4.50%
MA + 9	25,390	895	3.65%
MA Max	29,820	920	3.18%
Sched. Max	32,190	920	2.94%

There is no adequate grouping of districts, either in the ESC group or in the MES group proposed by the Association, with which to make comparisons with the impact of the 1989-90 offers of the Association and the District. The Association produced an exhibit indicating that, as of March 10, 1989, 140 districts, statewide,

had reached an accord with the representatives of their teachers for the 1989-90 school year. Said exhibit reflected the average salaries at the indicated benchmarks, together with the average dollar and percentage increase over the salaries paid at said benchmarks, by said districts in the 1988-89 school year.\* Said exhibit reflected the following:

	<u>1989-90 Salary</u>	<u>Dollar Increase</u>	<u>Percentage Increase</u>
BA Min	\$19,597	\$ 968	5.20%
BA + 6	24,402	1,172	5.05%
BA Max	28,596	1,305	4.78%
MA Min	21,852	1,090	5.25%
MA + 9	30,030	1,458	5.14%
MA Max	33,976	1,595	4.93%
Sched. Max	36,168	1,738	5.05%

The dollar differences between said statewide benchmark average salaries and the benchmark which would be generated by both offers herein, as well as the differences between the statewide averages and the offers herein, in dollar and percentage increases over 1988-89, are reflected as follows:

Association Offer

	<u>Dollar Differences</u>	<u>Difference in Dollars</u>	<u>Increase Percent</u>
BA Min	-\$1,902	-\$ 83	+ 0.05%
BA + 6	- 3,182	- 137	- 0.08%
BA Max	- 1,151	- 45	+ 0.03%
MA Min	- 982	+ 20	+ 0.36%

MA + 9	- 3,685	- 133	+ 0.19%
MA Max	- 3,356	- 110	+ 0.17%
Sched. Max	- 2,498	+ 97	+ 0.71%

District Offer

	<u>Dollar Differences</u>	<u>Difference in Dollars</u>	<u>Increase Percent</u>
BA Min	-\$1,527	-\$ 73	+ 0.01%
BA + 6	- 3,457	- 277	- 0.57%
BA Max	- 1,946	- 410	- 1.30%
MA Min	- 1,062	- 195	- 0.75%
MA + 9	- 4,640	- 573	- 1.49%
MA Max	- 4,156	- 675	- 1.75%
Sched. Max	- 3,978	- 818	- 2.11%

A review of the above 1989-90 comparisons, for whatever they might be worth, the Association's offer generates increases closer to the above statewide averages in benchmark salaries as well as in dollar and percentage increases, at all of said benchmarks, except at the BA Min.

The Arbitrator concludes that the benchmark comparisons for both school years involved herein favor the Association's offer.

Salary and Total Package Comparisons

The Association and the District reached an accord in bargaining leading to their 1986-88 collective bargaining agreement, and as background, the Arbitrator deems it appropriate to compare the salaries and fringe benefit costs emanating from said agreement with the average of similar data pertaining to the ESC districts for said two year period. Said comparisons are as

follows:

	<u>1986-87</u>		<u>1987-88</u>		<u>Two Year Annual Average</u>	
<u>Salary Schedule and Longevity Pay Increase Per Teacher</u>						
ESC						
Dist. Average	\$1,683	7.7%	\$1,625	6.9%	\$1,654	7.30%
Deerfield	1,167	5.5%	1,844	8.2%	1,505 *	6.85%
<u>Total Package Increase Per Teacher</u>						
ESC						
Dist. Average	\$2,170	7.4%	\$2,381	7.5%	\$2,276	7.45%
Deerfield	1,576	5.5%	2,398	7.9%	1,987	6.70%

It should be noted that the 1986-87 averages were computed from data available from six (including Deerfield) of the nine districts in the ESC, while the 1987-88 averages were computed from seven of said districts, also including that of Deerfield.

The Costing of the Final Offers

The parties presented exhibits reflecting the salary schedules which would be generated by their final offers, for both the 1988-89 and 1989-90 school years. Such schedules are set forth in Appendices A and B, attached hereto. The parties also presented exhibits reflecting cost analyses of their final offers relating to salaries and other earnings, insurance, retirement, and social security contributions by the District. The Association submitted exhibits reflecting such costs, computed on the "actual cost" basis, as well as on the "cast forward" basis. The District also submitted two exhibits to reflect its costing of the final offers, determined on the "cast forward" basis. Its initial exhibit in this regard was introduced during the first day of the hearing. The second exhibit was presented subsequently to correct its fringe



benefit calculations. The undersigned has prepared various calculations from the information contained in the Association and District exhibits, and said calculations are set forth in Appendices C through F, attached hereto<sup>6</sup>.

While the District presented exhibits reflecting benchmark salaries paid by seven of the ESC districts which had reached an accord on their 1988-89 agreements, the package costs of the 1988-89 settlements were obtainable from only five of said districts, namely Cambridge, Hustisford, Johnson Creek, Palmyra-Eagle and Waterloo. Apparently the districts of Marshall and Williams Bay had not completed their costing computations. The following tabulation reflects the comparisons of the increases in the average teacher salaries (including longevity payments) generated by the offers of the Association and Deerfield for 1988-89 with the ESC five district average increase in teacher salary (including longevity) for the same school year:

ESC 5 District Average - \$1,678 (6.8%)

Association Analysis - "Actual" Basis

Association Offer - \$1,205 (4.92%)      District Offer - \$688 (2.81%)

Association Analysis - "Cast Forward" Basis

Association Offer - \$1,672 (6.96%)      District Offer - \$1,154 (4.81%)

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<sup>6</sup>The Arbitrator is aware of the discrepancies in the dollar amounts assigned by each of the parties setting forth the total fringe benefit costs for the school year 1987-88. The Association provided different cost figures in the two methods of computing total package costs. The amount of fringe benefit costs provided by the District in its original determination (Appendix E) does not coincide with either of the Association's fringe benefit costs amounts.

District Initial Analysis - "Cast Forward" Basis

Association Offer - \$1,672 (6.96%)      District Offer - \$1,155 (4.81%)

District Subsequent Analysis - "Cast Forward" Basis

Association Offer - Not Computed      District Offer - \$1,155 (4.81%)

The following tabulation reflects the comparisons of the increase in the average teacher total earnings and fringe benefits generated by Association and District offers for 1988-89, compared with the ESC five district average increase teacher total earnings and fringe benefits for the same school year:

ESC 5 District Average - \$2,505 (7.6%)

Association Analysis - "Actual" Basis

Association Offer - \$1,932 (5.87%)      District Offer - \$1,310 (3.98%)

Association Analysis - "Cast Forward" Basis

Association Offer - \$2,466 (7.64%)      District Offer - \$1,547 (5.71%)

District Initial Analysis - "Cast Forward" Basis

Association Offer - \$2,544 (7.89%)      District Offer - \$1,957 (6.07%)

District Subsequent Analysis - "Cast Forward" Basis

Association Offer - Not Computed      District Offer - \$1,885 (5.85%)

From the data previously set forth herein, the Arbitrator has calculated the following comparisons:

Three Year (1987-89) Average Annual Increases Per Teacher

	<u>Schedule Salary &amp; Longevity</u>	<u>Total Package</u>
Settled ESC Districts	\$1,662 (6.8%)	\$2,352 (7.5%)

Association Computation - "Actual Cost" Basis

Association Offer	\$1,405 (6.2%)	\$1,969 (6.4%)
District Offer	1,233 (5.5%)	1,461 (5.8%)

Association Computation - "Cast Forward" Basis

Association Offer	\$1,561 (6.9%)	\$2,147 (7.0%)
District Offer	1,338 (6.2%)	1,840 (6.4%)

Initial District Computation - "Cast Forward" Basis

Association Offer	\$1,561 (6.9%)	\$2,173 (7.1%)
District Offer	1,338 (6.2%)	1,977 (6.8%)

Subsequent District Computation - "Cast Forward" Basis

Association Offer	Not Computed	Not Computed
District Offer	\$1,338 (6.2%)	\$1,953 (6.4%)

The Arbitrator is satisfied that the "actual cost" basis utilized by the Association in computing the costs of the two offers is closer to reality than is the computation based on the "cast forward" method. Regardless, it is apparent that the Association's offer for the 1988-89 school year, as it relates to the increases in schedule salaries (including longevity payments), as well as to the increases in average teacher total earnings and fringe benefits, is closer to the ESC five district average increases, in both dollars and in percentage increases, than is the offer of the District.

It appears that only Waterloo of the ESC districts has settled for the 1989-90 school year, therefore there exists no meaningful ESC settlements to form any averages to compare with the offers of the parties for that year. Nevertheless, the costing of their 1989-90 offers by the parties reflect the following dollar and percentage average teacher increases over their 1988-89 offers:

Average Teacher Salary (Including Longevity)

Association Analysis - "Actual" Basis

Association Offer - \$1,789 (6.96%)      District Offer - \$1,321 (5.24%)

Association Analysis - "Cast Forward" Basis

Association Offer - \$1,822 (6.96%)      District Offer - \$1,343 (5.23%)

District Initial Analysis - "Cast Forward" Basis

Association Offer - \$1,822 (6.96%)      District Offer - \$1,317 (5.23%)

District Subsequent Analysis - "Cast Forward" Basis

Association Offer - Not Computed      District Offer - \$1,343 (5.23%)

Average Teacher Total Earnings and Fringe Benefits

Association Analysis - "Actual" Basis

Association Offer - \$2,675 (7.68%)      District Offer - \$2,110 (6.17%)

Association Analysis - "Cast Forward" Basis

Association Offer - \$2,618 (7.66%)      District Offer - \$2,097 (6.17%)

District Initial Analysis - "Cast Forward" Basis

Association Offer - \$2,669 (7.67%)      District Offer - \$2,108 (6.14%)

District Subsequent Analysis - "Cast Forward" Basis

Association Offer - Not Computed      District Offer - \$2,095 (6.14%)

Modification of Salary Schedule at Entry Levels

With respect to the District's stated motive for increasing the entry level salaries of newly hired teachers so as to attract better qualified applicants, it should be noted that the District produced evidence indicating that, in the past, it experienced the receipt of numerous applications to fill teaching vacancies. The record reflects that seven teachers either resigned or retired, and that an additional teacher assumed a reduced teaching load, at the close of the 1987-88 school year. The District hired seven new teachers for the 1988-89 school year. Only one new hire, an individual assigned to an 18.75% teaching load, was hired at an entry level position.

The remaining hires would not have been affected by the District proposed modification since they were not hired at such steps in the schedule. Nonetheless, such proposed change in the salary schedule has no significant impact on the Arbitrator's determination as to which offer is the more reasonable.

#### Longevity Pay Issue

The differences between the two offers with regard to the amount of longevity payments are not significant enough to have any meaningful impact on the Arbitrator's determination herein.

#### Dollar Differences Generated by the Two Offers

From the data supplied by the parties, and appearing in the appendices, the Association's offer, computed on the "actual cost" method, indicates that the total package costs generated by its offer would exceed that of the District by \$58,670 for the two year period. The Association's offer, computed on the "cast forward" basis, would generate a total package of \$60,871 above that of the District. The District's amended computation, computed on the "cast forward" basis, indicates that the Association's offer exceeded the District's offer in total package costs by \$62,079.

#### Conclusion

The Arbitrator concludes that this criterion favors the offer of the Association.

Subsection 7 e. Comparison of the wages, hours and conditions of employment of the District's teachers with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

No evidence nor argument was presented pertaining to this

criterion.

Subsection 7 f. Comparison of the wages, hours and conditions of employment of the District's teachers with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

The data, presented by the District, pertaining to the rate of wage increases granted to private sector employes nationally is not specific enough, e.g. blue collar, white collar, etc., to warrant any meaningful comparison with the Deerfield teaching staff, especially where, as herein, the District opposed any comparison with teachers in school districts other than those employed in districts within the ESC athletic conference. In no way is it to be inferred that the Arbitrator has concluded that either offer is closer to the percentage or dollar increases received by employes in private employment who are employed within the boundaries of the District, or in comparable districts, for the two year period involved herein, since there was no evidence introduced with regard thereto.

Subsection 7 g. The average consumer prices for goods and services, commonly known as the cost-of-living.

Both offers grant increases at a rate in excess of the rise in the cost of living, with the District's offer closer to the inflation rate than is the offer of the Association. However, it is to be noted that the record reflects that at least for the school years 1986-87, 1987-88 and 1988-89, comparable school district average settlements also exceed the cost of living increase for said years, as did Deerfield in 1986-87 and 1987-88. The criterion favors the District's offer.

Subsection 7 h. The overall compensation presently received by the

District's teachers, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity of employment, and all other benefits received.

The offers of both parties include costs related directly to the salaries to be received by the teachers of the District, as well as the costs of the fringe benefits applicable to them. The positions of the parties with respect thereto have been set forth previously herein, and the Arbitrator has discussed the total package costs generated by the offers, and has compared same with the average of the total package costs of the ESC comparable grouping. For the 1988-89 school year the increase generated by the Association's offer is closer in dollars and in percentage to that of the average of the settled districts in the ESC group, both in salary and total package costs, than is the offer of the District, regardless of the method in which salaries and total package costs have been computed.

Subsection 7 i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.

No argument was presented under this criterion.

Subsection 7 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.

In the past the parties herein have reached agreements in their collective bargaining. The respective bargaining teams bargained to an impasse on their 1988-90 collective bargaining agreement. The parties have a right to disagree in their bargaining. The Municipal Employment Relations Act has provided a mechanism to resolve such an

impasse by final and binding arbitration, a procedure limiting the arbitrator's function to the selection to the total offer of one of the parties involved which is deemed to more reasonably meet the criteria set forth in the pertinent statutory provision. The behavior and attitude of the representatives of the parties to each other during the course of the arbitration proceeding has no affect whatsoever on the determination to be made by the Arbitrator. Said determination results from the consideration of the evidence applicable to the statutory criteria.

Subsection 7 c.

Consistent with the statutory scheme this criterion requires that a balance be struck between the public to pay the necessary costs of the selected offer and the desire of the District's employees, who teach the public's children, for increases in their compensation and related benefits for the two year period involved herein. It is apparent to the Arbitrator that the District, as well as the teachers are proud of the quality of education provided to the students of the District, and that in the past the public has supported the efforts to obtain such results.

The Arbitrator does not accept the Association's charge that the District has the "burden to demonstrate that the Association's offer is harmful in a significant and measurable manner to the taxpayers and/or students of the District". Nor is the District's characterization of the Association's offer as being "too heavily weighted in favor of self interest" persuasive upon the Arbitrator.

Under the instant criterion the impact of both offers must be



scrutinized by the Arbitrator, who must determine which offer is the more reasonable in its impact on the interests and welfare of the public, as well as on the impact of the District's ability to assume the costs involved. The District acknowledges its ability to meet the costs of either offer.

The undersigned has considered the adverse impact of the 1988 drought upon the economy of the District. The District avers that there was no evidence adduced to establish that the drought was considered in other settlements in ESC districts for 1988-89 school year, and further that the settlements in three of the districts were reached before the full extent of the drought became apparent. On the other hand there is no convincing evidence that the District's farmers suffered more adversely than did the farmers in the other ESC districts as a result of the drought. The District makes a strong argument relating to the burden placed on its farmer property taxpayers in bearing a larger share of school district costs. While this may be so, this proceeding does not involve a determination of the method in Wisconsin of obtaining the funding for public school education in this state.

The record reveals that the District has high costs per pupil, high taxes, a low equalized evaluation, and a high mill rate. However, such predicament does not arise solely as a result of increases in salaries and fringe benefits applicable to its employes. As indicated in the District's 1987-88 Budget and Annual Report, the District's costs increases, at least in part, as a result of its new facilities, making the District "debt heavy", not only for the 1987-

88 school year, but until the costs thereof are paid off, or substantially reduced.

The District acknowledges that its salary schedules have generally lagged behind those of the remaining ESC districts at most of the benchmarks, contending that its standing in said regard is a reflection "of financial exigencies and the nature of the District, as recognized, acknowledged and accepted by the teachers by virtue of the 1986-88 agreement". The District further indicated that all parties "have sacrificed, including the teachers, in order to provide the best possible education while not bankrupting the electors." The record herein does not persuade the Arbitrator that either offer herein would bankrupt the electors of the District.

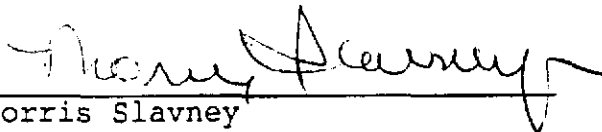
If one were to determine the criterion only on the basis of the effect of the 1988 drought and the need to raise taxes, this criterion would favor the District. The acknowledged "sacrifice", made by the teachers in reaching an accord in bargaining on the expired agreement, indicates that the teachers have been quite considerate of the interests and welfare of the public, and in the opinion of the Arbitrator, their offer herein does not display a disregard thereof. Both parties are sincere in their consideration of the interests and welfare of all the public residing in, and/or owning property in the District, and in the opinion of the Arbitrator, neither party has an advantage over the other with respect to this criterion.

Upon the basis of the above and foregoing the undersigned issues the following:

Award

The final offer of the Association is deemed to be the more acceptable towards meeting the statutory criteria set forth in Sec. 111.70(4)(cm)7 of the Municipal Employment Relations Act, and therefore it shall be incorporated into the 1988-90 collective bargaining agreement of the parties, together with the items and changes agreed upon during their bargaining, and, further, together with the provisions of their expired agreement which remain unchanged, either by the Association's final offer, or by mutual agreement during bargaining.

Dated at Madison, Wisconsin, this 5<sup>th</sup> day of October, 1989.

  
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Morris Slavney  
Arbitrator

1988-89 Salary Schedule Generated By Association Offer

STEP	BS	BS+6	BS+12	BS+18	BS+24	MS <sup>MS</sup> BS+30	MS+6	MS+12	MS+18	MS+24
0.0	16810	17360	17910	18510	19110	19760	20410	21060	21760	22460
1.0	17360	17910	18460	19060	19660	20310	20960	21610	22310	23010
2.0	17910	18460	19010	19610	20210	20860	21510	22160	22860	23560
3.0	18460	19010	19560	20160	20760	21410	22060	22710	23410	24110
4.0	19010	19560	20110	20710	21310	21960	22610	23260	23960	24660
5.0	19560	20110	20660	21260	21860	22510	23160	23810	24510	25210
6.0	20185	20735	21285	21885	22485	23135	23785	24435	25135	25835
7.0	20810	21360	21910	22510	23110	23760	24410	25060	25760	26460
8.0	21435	21985	22535	23135	23735	24385	25035	25685	26385	27085
9.0	22060	22610	23160	23760	24360	25010	25660	26310	27010	27710
10.0	22685	23235	23785	24385	24985	25635	26285	26935	27635	28335
11.0	23385	23935	24485	25085	25685	26335	26985	27635	28335	29035
12.0	24085	24635	25185	25785	26385	27035	27685	28335	29035	29735
13.0	24785	25335	25885	26485	27085	27735	28385	29035	29735	30435
14.0	25485	26035	26585	27185	27785	28435	29085	29735	30435	31135
15.0	26185	26735	27285	27885	28485	29135	29785	30435	31135	31835

1989-90 Salary Schedule Generated By Association Offer

STEP	BS	BS+6	BS+12	BS+18	BS+24	MS <sup>MS</sup> BS+30	MS+6	MS+12	MS+18	MS+24
0.0	17695	18270	18845	19495	20145	20870	21595	22320	23120	23920
1.0	18270	18845	19420	20070	20720	21445	22170	22895	23695	24495
2.0	18845	19420	19995	20645	21295	22020	22745	23470	24270	25070
3.0	19420	19995	20570	21220	21870	22595	23320	24045	24845	25645
4.0	19995	20570	21145	21795	22445	23170	23895	24620	25420	26220
5.0	20570	21145	21720	22370	23020	23745	24470	25195	25995	26795
6.0	21220	21795	22370	23020	23670	24395	25120	25845	26645	27445
7.0	21870	22445	23020	23670	24320	25045	25770	26495	27295	28095
8.0	22520	23095	23670	24320	24970	25695	26420	27145	27945	28745
9.0	23170	23745	24320	24970	25620	26345	27070	27795	28595	29395
10.0	23820	24395	24970	25620	26270	26995	27720	28445	29245	30045
11.0	24545	25120	25695	26345	26995	27720	28445	29170	29970	30770
12.0	25270	25845	26420	27070	27720	28445	29170	29895	30695	31495
13.0	25995	26570	27145	27795	28445	29170	29895	30620	31420	32220
14.0	26720	27295	27870	28520	29170	29895	30620	31345	32145	32945
15.0	27445	28020	28595	29245	29895	30620	31345	32070	32870	33670

SALARY SCHEDULE FOR DEERFIELD SCHOOL DISTRICT  
BOARD COST 1988-89 SALARY NEGOTIATIONS

	BASE 16630	L1 545	L2 605	L3 675	E1 520	E2 550	E3 580	E4 605	LONG 425	
STEP	BA	BA+6	BA+12	BA+18	BA+24	BA+30 or MS	MS+6	MS+12	MS+18	MS+24
0	17175	17695	18215	18765	19315	19895	20475	21055	21660	22265
1	17175	17695	18215	18765	19315	19895	20475	21055	21660	22265
2	17720	18240	18760	19310	19860	20440	21020	21600	22205	22810
3	18265	18785	19305	19855	20405	20985	21565	22145	22750	23355
4	18810	19330	19850	20400	20950	21530	22110	22690	23295	23900
5	19355	19875	20395	20945	21495	22075	22655	23235	23840	24445
6	19960	20480	21000	21550	22100	22680	23260	23840	24445	25050
7	20565	21085	21605	22155	22705	23285	23865	24445	25050	25655
8	21170	21690	22210	22760	23310	23890	24470	25050	25655	26260
9	21775	22295	22815	23365	23915	24495	25075	25655	26260	26865
10	22380	22900	23420	23970	24520	25100	25680	26260	26865	27470
11	23055	23575	24095	24645	25195	25775	26355	26935	27540	28145
12	23730	24250	24770	25320	25870	26450	27030	27610	28215	28820
13	24405	24925	25445	25995	26545	27125	27705	28285	28890	29495
14	25080	25600	26120	26670	27220	27800	28380	28960	29565	30170
15	25755	26275	26795	27345	27895	28475	29055	29635	30240	30845
L	26180	26700	27220	27770	28320	28900	29480	30060	30665	31270

SALARY SCHEDULE FOR DEERFIELD SCHOOL DISTRICT  
BOARD COST 1989-90 SALARY NEGOTIATIONS

	BASE 17525	L1 545	L2 605	L3 675	E1 520	E2 550	E3 580	E4 605	LONG 450	
STEP	BA	BA+6	BA+12	BA+18	BA+24	BA+30 or MS	MS+6	MS+12	MS+18	MS+24
0	18070	18590	19110	19660	20210	20790	21370	21950	22555	23160
1	18070	18590	19110	19660	20210	20790	21370	21950	22555	23160
2	18615	19135	19655	20205	20755	21335	21915	22495	23100	23705
3	19160	19680	20200	20750	21300	21880	22460	23040	23645	24250
4	19705	20225	20745	21295	21845	22425	23005	23585	24190	24795
5	20250	20770	21290	21840	22390	22970	23550	24130	24735	25340
6	20855	21375	21895	22445	22995	23575	24155	24735	25340	25945
7	21460	21980	22500	23050	23600	24180	24760	25340	25945	26550
8	22065	22585	23105	23655	24205	24785	25365	25945	26550	27155
9	22670	23190	23710	24260	24810	25390	25970	26550	27155	27760
10	23275	23795	24315	24865	25415	25995	26575	27155	27760	28365
11	23950	24470	24990	25540	26090	26670	27250	27830	28435	29040
12	24625	25145	25665	26215	26765	27345	27925	28505	29110	29715
13	25300	25820	26340	26890	27440	28020	28600	29180	29785	30390
14	25975	26495	27015	27565	28115	28695	29275	29855	30460	31065
15	26650	27170	27690	28240	28790	29370	29950	30530	31135	31740
L	27100	27620	28140	28690	29240	29820	30400	30980	31585	32190

Computation Based on Association Exhibits E-12 and E-15

Cost Analysis - "Actual" Basis - Association Offer - 49.378 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,325,191	\$ 1,416,881
Fringe Benefits	364,672	395,201	435,607
Total Package Costs	1,624,990	1,720,392	1,852,488
		<u>Amount of Increases Over Previous Year</u>	
Take Home Pay		\$ 64,873 (5.15%)	91,690 (6.92%)
Dollars Per Average Teacher		1,314	1,857
Fringe Benefits		30,529 (8.37%)	40,406 (10.2%)
Dollars Per Average Teacher		618	818
Total Package Costs		95,402 (5.87%)	132,096 (7.68%)
Dollars Per Average Teacher		1,932	2,675

Cost Analysis - "Actual" Basis - District Offer - 49.378 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,299,505	\$ 1,367,900
Fringe Benefits	364,672	390,138	425,918
Total Package Costs	1,624,990	1,689,643	1,793,818
		<u>Amount of Increases Over Previous Year</u>	
Take Home Pay		\$ 39,187 (3.11%)	\$ 68,395 (5.26%)
Dollars Per Average Teacher		794	1,385
Fringe Benefits		25,466 (6.98%)	35,780 (9.17%)
Dollars Per Average Teacher		516	725
Total Package Costs		64,653 (3.98%)	104,175 (6.17%)
Dollars Per Average Teacher		1,310	2,110

"Take Home Pay" includes salaries, longevity pay, extended contract pay, extra-curricular pay, and pay for duty at athletic events.

"Fringe Benefits" includes District payments for health, dental, disability, and life insurance, as well as retirement and social security.

Computation Based On Association Exhibits Nos. B-20 and E-23

Cost Analysis - "Cast Forward" Basis - Association Offer - 50.371 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,350,046	\$ 1,443,349
Fringe Benefits	365,552	400,081	440,870
Total Package Costs	1,625,870	1,750,127	1,884,219

Amount of Increases Over Previous Year

Take Home Pay	\$ 89,728 (7.12%)	\$ 93,303 (6.91%)
Dollars Per Average Teacher	1,781	1,852
Fringe Benefits	34,529 (9.45%)	38,589 (9.64%)
Dollars Per Average Teacher	685	766
Total Package Costs	124,257 (7.64%)	134,092 (7.66%)
Dollars Per Average Teacher	2,466	2,618

Cost Analysis - "Cast Forward" Basis - District Offer - 50.371 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,323,810	\$ 1,393,279
Fringe Benefits	365,552	394,929	431,069
Total Package Costs	1,625,870	1,718,739	1,824,348

Amount of Increases Over Previous Year

Take Home Pay	\$ 63,492 (5.04%)	\$ 69,469 (5.25%)
Dollars Per Average Teacher	1,260	1,379
Fringe Benefits	29,577 (8.09%)	36,140 (9.15%)
Dollars Per Average Teacher	587	717
Total Package Costs	92,869 (5.71%)	105,609 (6.14%)
Dollars Per Average Teacher	1,847	2,097

Appendix D

Computation Based on District Exhibit No. 2

Cost Analysis - "Cast Forward" Basis - Association Offer - 50.371 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,350,100	\$ 1,443,459
Fringe Benefits	363,542	401,912	442,988
Total Package Costs	1,623,660	1,752,012	1,886,447
	<u>Amount of Increase Over Previous Year</u>		
Take Home Pay		\$ 89,782 (7.12%)	\$ 97,585 (6.91%)
Dollars Per Average Teacher		1,782	1,853
Fringe Benefits		38,370 (10.5%)	41,076 (10.2%)
Dollars Per Average Teacher		762	815
Total Package Costs		128,152 (7.89%)	134,435 (7.67%)
Dollars Per Average Teacher		2,544	2,669

Cost Analysis - "Cast Forward" Basis - District Offer - 50.371 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,323,884	\$ 1,393,405
Fringe Benefits	363,542,	398,564	435,235
Total Package Costs	1,623,660	1,722,448	1,828,640
	<u>Amount of Increase Over Previous Year</u>		
Take Home Pay		\$ 63,766 (5.04%)	\$ 69,552 (5.25%)
Dollars Per Average Teacher		1,262	1,380
Fringe Benefits		35,022 (9.63%)	36,671 (9.20%)
Dollars Per Average Teacher		695	728
Total Package Costs		98,788 (6.07%)	106,193 (6.14%)
Dollars Per Average Teacher		1,957	2,108



Computation Based On District Exhibit No. 198

Revised Cost Analysis - "Cast Forward" Basis - District Offer - 5.371 Teachers

	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
Take Home Pay	\$ 1,260,318	\$ 1,323,884	\$ 1,393,405
Fringe Benefits	363,542	394,944	430,963
Total Package Costs	1,633,860	1,718,828	1,824,368

Amount of Increase Over Previous Year

Take Home Pay	\$ 63,566 (5.04%)	\$ 69,521 (5.28%)
Dollars Per Average Teacher	1,262	1,380
Fringe Benefits	31,402 (8.64%)	36,019 (9.12%)
Dollars Per Average Teacher	623	715
Total Package Costs	94,968 (5.85%)	105,540 (6.14%)
Dollars Per Average Teacher	1,885	2,095

RECEIVED

DEC 01 1988

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of  
DEERFIELD EDUCATION ASSOCIATION  
To Initiate Arbitration Between  
Said Petitioner and  
DEERFIELD COMMUNITY SCHOOL DISTRICT

Case 22  
No. 40497  
Decision No. 25519-A  
Stanley H. Michelstetter II  
Arbitrator

Appearances:

A. Phillip Borkenhagen, Executive Director, and Stephen Pieroni, Staff Attorney, appearing on behalf of the Association.

Lathrop & Clark, Attorneys at Law, by Gerald C. Kops and Kenneth B. Axe, appearing on behalf of the Employer.

DeWitt, Porter, Huggett, Schumacher & Morgan, S.C., Attorneys at Law, by Constance L. Anderson, appearing on behalf of witnesses Storlie and Schmidt with respect to motion to quash.

ORDER DENYING MOTION TO QUASH AND PROTECTIVE ORDERS

Deerfield Education Association, herein referred to as the "Association" having petitioned the Wisconsin Employment Relations Commission to initiate Arbitration, pursuant to Sec. 111.70(4)(cm), Wis. Stats., between it and Deerfield Community School District, herein referred to as the "Employer," concerning an impasse with respect to the parties' 1988-1990 collective bargaining agreement; and the Commission having appointed the Undersigned as Arbitrator on July 6, 1988; and the Undersigned having conducted a hearing in Deerfield, Wisconsin, commencing September 13, 1988, during the course of which two witnesses, Ramon Storlie and Rolland W. Schmidt, having filed a motion to quash subpoenas issued to them signed by the Arbitrator and completed by the Association; and the parties having agreed to have said motion decided by affidavit and brief; and the last submission with respect thereto having been received November 21, 1988.

ORDER

1. That the duces tecum provisions of the subpoenas issued in this case to witnesses Storlie and Schmidt are both amended to read:

"Federal forms Schedule F and related documents including, but not limited to, form 4562 and form 4797 and Schedule D, if filed, for the years 1986 and 1987. In addition, the subpoena will encompass all records kept for the year 1988 which will be utilized to establish taxable income from farm operations. Finally, the witness should bring records of crop yield for each crop that was planted in 1986, 1987 and 1988. Witnesses need not supply any information which does not relate to farm income or

yield, or the calculation of either, for these years."

2. The Association shall prompt execute an enforceable contract or other agreement specifying that the documents obtained pursuant to these subpoenas and any information obtained as a result thereof will be used only by Counsel for the Association, Mssrs. Borkehagen and Pieroni, their clerical assistants and certified public accountants (or other experts) solely for the purposes of preparing for hearing in this matter and examination at hearing of these witnesses and for no other purpose. Every expert authorized to receive this information shall first become party to the same, or similar, contract with each such witness. Any such agreement shall, also, require that every copy of any portion of the documents provided pursuant to this subpoena shall be returned to its owner, Mr. Storlie or Mr. Schmidt, after the rendering of the award and the completion of any appeals therefrom.

3. The Employer shall promptly execute an enforceable contract or other agreement, to the extent not inconsistent with law, specifying that the documents obtained pursuant to these subpoenas and any other information obtained as a result thereof will be used only by Counsel for the Employer, Mssrs. Kops and Axe, their clerical assistants, and certified public accountants (or other experts) solely for the purpose of preparing for hearing in this matter and examination at hearing of these witnesses and for no other purpose. Every expert authorized to receive this information shall first become a party to the same, or similar, contract with each such witness. Any agreement shall, also, require that, to the extent not inconsistent with law, every copy of any portion of the documents provided pursuant to this subpoena shall be returned to its owner, Mr. Storlie or Mr. Schmidt, after the rendering of the award and the completion of any appeals therefrom.

4. That the Association shall pay Mssrs. Storlie and Schmidt the sum of \$5.00 per hour for each hour reasonably and necessarily incurred in the gathering of said records. That the Association shall pay the reasonable and necessary costs of making any copies of records for the purpose of hearing.

5. That unless agreed otherwise between the parties and witnesses, witnesses Storlie and Schmidt are directed to appear the next scheduled day of hearing in the Library of the Deerfield High School, Deerfield, Wisconsin on Wednesday, December 7, 1988, at 4:30 p.m., together with the documents listed in 1. above. At that time, or by motion filed with me beforehand, copy to each other party, the witnesses may make a motion to close the hearing pursuant to §19.85, Wis. Stats. The Employer is directed to provide public notice that the hearing in this matter may go into closed session and then reopen for the purpose of receiving evidence excepted by §19.85(1)(f), Wis. Stats.

6. That if the testimony of witnesses Storlie and Schmidt hereafter received is stenographically transcribed, then said

testimony shall be prepared in a transcript separate from the testimony of all other witnesses and other argument in this matter not pertaining to the testimony of witnesses Storlie and Schmidt.

Dated at Milwaukee, Wisconsin, this 28th day of November, 1988,

  
Stanley H. Michelstetter II,  
Arbitrator

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO QUASH

This matter is before me by a motion to quash a subpoena filed by the non party witnesses who were served with the subpoenas. The parties have agreed to have this motion determined upon affidavits and briefs.

BACKGROUND

This is an interest arbitration under §111.70(4)(cm). The parties are Deerfield Schools and Deerfield Education Association. Hearing in this matter commenced September 13, 1988 in Deerfield, Wisconsin which proceedings were transcribed by a court reporter by mutual agreement of the parties. The parties were each represented; however, at no time until the motion to quash were the independent witnesses separately represented. The Employer called as a witness Ramon Storlie and Rolland Schmidt. These witnesses were called out of order, at the Employer's request. Each appeared voluntarily. The Employer qualified each as an expert witness based upon their experience as farmers in the local area. 1/ Each testified in general about the effect of the national drought on farmers in the local area and, each supported his testimony by examples of the expected impact of the drought upon production from their own fields.

Mr. Storlie demonstrated how the area wide drought affected the growth of crops. He translated this effect into economic terms. He estimated that he would have approximately a 50% or more crop loss which will result in a loss, rather than income.2/ He then generalized this by stating from his experience and knowledge that based upon his observations of other farmers' fields, they do not look in better shape.3/ On cross examination, he testified that his sole income was from farming and that while there may have been more rain in Marshall, he could not say to what extent the drought effects were worse in Deerfield than in other places. 4/

Rolland W. Schmidt was identified as vice president of a local bank and himself a farmer. It appears that he testified as an expert in both capacities.5/ He testified that roughly 60% of

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1/ §§907.02, .03, Wis. Stats., Tr. pp. 8, 18,

2/ Tr. p. 23, 24

3/ Tr. p. 24

4/ Tr. pp. 26-29

5/ Tr. p.8

6/ Tr. p.9

7/ Tr. pp. 9-10

the district's revenues came from taxes on farm land.<sup>6/</sup> He, also, testified that the drought hit Dane County, Green County and Rock County particularly hard. Using his own farm as an example of his opinion that the drought caused heavy crop and economic losses to farmers, he testified that, comparatively speaking, his production from his farm will be substantially less for this year than last. He gave specific estimates of the losses on his farm.<sup>7/</sup> Apparently, on the basis of his knowledge as a farmer and banker, he testified at page 10 of the transcript that "...crop losses of 50, 60 percent are pretty much commonplace this year." He, also, testified that as a result he will suffer a loss or, at least significantly reduced income.<sup>8/</sup> Cross examination challenged the basis of his knowledge as to the percentage of tax revenue derived from farm land and elicited his conclusion that the drought had hit the vicinity of Deerfield about the same as Deerfield.<sup>9/</sup>

At the close of testimony by each witness, both parties indicated that they had no further questions of these witnesses. Neither party reserved the right to recall these witnesses. After the close of the hearing, the Association's representative requested the issuance of two subpoenas which were issued under my signature in blank. On or about October 11, 1988, these subpoenas were served upon the two witnesses specified above. Each subpoena required the witness to attend the second day of hearing scheduled for October 11, 1988 and to bring with them "Federal and state income tax returns for the years 1985, 1986 and 1987, including all schedules attached thereupon, which denote income, expenses, subsidies, grants and profit and loss records, due to each witness' (sic) association to farm and other rural holdings. In addition, the subpoenae will encompass all books and records kept for the year 1988, which would be utilized to prepare any subsequent tax return data for 1988." I appeared at the hearing scheduled for October 11, 1988, but the parties agreed to postpone the hearing as a result of the issues raised by the subpoenas. After various consultations by telephone, the parties agreed to have this motion decided by written affidavit and argument, preserving any objections they may have as to the right of the witnesses to appear and move to quash.

The Association has since limited its inquiry to farm production and income for 1986 and 1987 and amended the subpoenas to each read:

"Federal forms Schedule F and related documents including, but not limited to, form 4562 and form 4797 and Schedule D, if filed. In addition, the subpoena will encompass all records kept for the year 1988 which will be utilized to establish taxable income from farm operations. Finally, the witness should bring records of crop yield for each crop that was planted in 1986, 1987 and 1988."

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<sup>8/</sup> Tr. p. 15, but compare p. 16

<sup>9/</sup> Tr. p. 17

## POSITIONS OF THE PARTIES AND WITNESSES

The individual witnesses have intervned by counsel and have taken the position that they are entitled to intervene in the proceedings for the only purpose of quashing the subpoenas issued. They argue that the issuance of the subpoena for them is inappropriate because their testimony is completed. It argues that the Association was fully aware of the nature of testimony which was likely to be given in this proceeding and could have been prepared for cross examination or could have chosen to reserve its right to recall these witnesses. They, alternatively, argue that the subpoenas are unreasonable and/or oppressive and should be quashed in their entirety. In partial support of their position, they argue that these subpoenas were deliberately designed to harass and annoy in that they were served only hours before the hearing in which the witnesses were to testify. They primarily argue that subpoenas are not relevant to a legitimate purpose. They deny that the documents requested are related to the existence of relevant local conditions. While they concede that the tax and production records might establish how the drought affected their individual farms, but they do not establish how the drought affected the entire area unless all farmers' records are subpoenaed. Further, they argue that the Association could obtain better evidence for the area by using an expert witness and public records of the ASCS. They, also, deny that this information is relevant to the credibility of the witnesses because the Union has already had an adequate opportunity to cross examine. Additionally, their testimony was only an estimate and, therefore, the actual results lend nothing to the issue of credibility. In any event, they believe this is too intrusive a method of gaining information. Finally, it argues that these subpoenas are designed primarily to discourage citizens from testifying and should, therefore, be quashed in their entirety.

In response the Association narrowed and amended the scope of the subpoenas. It offered to keep the information confidential beyond the arbitration hearing and pay reasonable costs under §805.07(3). It denies the right of witnesses to intervene to seek to quash subpoenas. It argues all objections must be raised by the Employer. It, also, argues that the information is necessary to probe the accuracy of the testimony of the witnesses. It denies the subpoenas are unreasonable or oppressive.

The Employer takes the position that it supports the motion filed by the individual witnesses. It takes the position that the witnesses have standing to participate to the extent of the motion to quash. To do otherwise, in its view, violates the witnesses rights to due process and §805.07(3). The Employer takes the position that the witnesses testimony was complete at the close of their testimony and cross examination. It, also, notes that at pages 151-2 of the transcript (which portion was not provided to me) that the Union opposed continuation of the hearing.

## DISCUSSION

### Authority of Witnesses to Move to Quash

Arbitration proceedings are limited to the parties involved. The witnesses in this case do not have a right to intervene in these proceedings as a party. However, when any agency or arbitrator exercises subpoena authority under law, it is bound to apply the law governing subpoenas. In Wisconsin, issues concerning the scope or propriety of subpoenas are to be addressed to the authority issuing the subpoenas which is then supposed to make determinations as to relevance, etc., Nue's Supply Line, Inc. v. Department of Taxation, 39 Wis. 2d 584, @p. 91 (1968).

The Employer does not fully represent the interest of the witness. Thus, in applying the governmental power conferred by the subpoena authority, it appears that the only practical method is to permit the party subpoenaed to appear by counsel and raise any objections the party may have. Accordingly, while the witnesses are not parties to this proceeding, they may appear for the limited purpose of challenging the subpoenas issued in this case.

### Right to Cross Examine

The witnesses in this case appeared during the arbitration hearing. §111.70(4)(cm)6.b. provides for a "public hearing" upon petition by citizens. There is no right to cross examination during these public hearings. The second hearing provided for is an evidentiary hearing. All witnesses in this hearing are subject to the right of cross examination by the opposing party.

### Subpoena Authority

It appears to the Undersigned that there are two independent bases for the issuance of subpoenas in interest arbitration proceedings. §885.01(4), Wis. Stats. authorizes "any arbitrator" to issue subpoenas.<sup>10/</sup> Wis. Admin Code §32.15(9)b which authorizes interest arbitrators to issue subpoenas in the name of the Commission.<sup>11/</sup> The subpoenas issued in this case were issued under §885.01(4).

10/

This proceeding is under §111.70(4)(cm), Wis. Stats. Pursuant to §111.70(4)(cm)9, Ch. 788, including §788.06 does not apply. Nonetheless, I conclude that §885.01(4) is an independent source of authority and Wis. Admin. Code §32.15(9)b. is not intended to restrict the exercise of authority under §885.01(4). The concept of "jurisdiction" for an arbitrator is unclear; however, "jurisdiction" includes persons in the municipality served by the arbitration under §111.70(4)(cm).

11/

See §111.07(2)(b), (c), (d), §111.71(1). No objection was made upon this basis. I am prepared to issue subpoenas in the name of the Commission.



## Relevance

The standards for issuance of a subpoena in this case are laid out in Neu's Supply Line v. Department of Revenue, 52 Wis. 2d 386, @ p.390, (1971). Arbitrators and/or the Commission must exercise prudent judgment in determining that they have a legitimate and relevant purpose for issuing the subpoena. When the issue is raised by a motion to quash, the arbitrator and/or Commission must first make the factual determinations required to support their conclusion.

This arbitration is conducted pursuant to §111.70(4)(cm). Under §111.70(4)(cm), I am required to determine which of two final offers will be incorporated into the parties' next collective bargaining agreements. I am required by §111.70(4)(cm)7 to weigh the standards expressed therein among which is:

"... 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.

...

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration ...."

The statute leaves broad authority in the hands of the arbitrator to determine the weight to be given any issue in the total package and the weight to be applied to any given factor. The primary issue involved in this case is wage increases which will directly affect the budget of the Employer and the local property tax burden.

Drought and other local economic conditions affect the ability of a significant portion of the taxpayers, farmers and those dependent on agri-business, to finance tax increases needed to pay the local economy to bear tax increases and have had the effect of being the primary determining factor in interest arbitrations.<sup>12/</sup> Parties often litigate issues concerning the local economy, sometimes with the use of statistical information, sometimes with the use of expensive experts, but often with the use of local citizens as "expert" witnesses.<sup>13/</sup> Like the witnesses involved in this case, these witnesses have an economic interest in the outcome of these cases. Therefore, evaluating the credibility of their testimony is vital.

The Employer presented these witnesses, who each voluntarily testified, for the proposition that the current drought has so hurt local farm production and income that the large segment of

12/

Shell Lake School District (Decision No. 25259-A), Michelstetter, 7/88.

13/

Therefore, the issues involved in the motion to quash are of statewide importance and will affect the process of interest arbitration in Wisconsin.

the local population cannot afford the tax increases which will likely be required by the Association's proposal. These witnesses each, using their specialized farming knowledge, have each testified as to the impact the drought will have on crop production and net farm income throughout the district and it appears that the sole basis for this conclusion is their generalization from their experience and the anticipated results on their own farms. It is difficult to cross examine expert witnesses, but one method is to test the validity of the generalizations they make against other objective facts. Thus, obtaining actual production data for a base year and the affected year will greatly help the decider of fact in determining the credibility of the generalization. Obtaining farm income information will help in assessing their generalization as to the impact of lower production on income in the area. While the Association, at its additional cost, may be able to obtain more precise data as to the impact of the drought on production in the area, the information sought herein is more probative as to the honesty and weight of the expert opinion testimony than other data. Information as to income other than farm income is not relevant to these proceedings and the order herein limits the information sought to that which is relevant.

#### Annoyance and Harrassment

As construed in Nue's, Supra., @ p.p. 393-4, there is no evidence of an intent by the Association to annoy or harass. The situation here is simply a conflict between very legitimate and competing interests: the right of the Association to cross examine fully and the individual witnesses' legitimate expectation of privacy in their own business.

Counsel for the witnesses argues that these subpoenas are oppressive on the basis of both the time to obtain the information and that the information sought is personal. For reasons more fully discussed with the protective order, I am satisfied that these subpoenas are not oppressive with respect to the time to obtain the information or cost involved.

The Witnesses in this case very correctly observe that they have legitimate expectations of privacy concerning all of the information sought. However, the mere fact that these witnesses have personal information they do not wish to disclose does not give them a privilege to be excused from testifying.<sup>14/</sup> Further, protection of this interest is not only important to the individuals involved, but to the process in general in that the willingness of citizen witnesses to testify is vital to the process.

Counsel for the witnesses essentially asserts a balancing test of the legitimate interests to determine whether a subpoena

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<sup>14/</sup>

§905.01, Wis. Stats. Neither §§905.02 or 905.08, create a privilege against testifying in this matter.

is oppressive when it seeks personal information. It is the responsibility of labor arbitrators to control hearings and, in that regard, they are responsible to use sound judicial discretion in controlling hearings.<sup>15/</sup> Nonetheless, the information sought herein goes to the heart of the witnesses testimony and to the very foundation of the Employer's case. Any alternative other than obtaining the evidence will seriously prejudice one party's case or the other's.

#### Close of Cross Examination

There is no doubt that the Union closed cross examination on these witnesses before seeking these subpoenas. The purpose of labor arbitration proceedings is to give people an opportunity to present their arguments and positions as best they can with as little formality as necessary to preserve order. The rules of evidence and rules of procedure used in courts are used in arbitration proceedings to provide order in the proceedings, but priority must be given to getting a full and complete record. It is important to avoiding industrial strife in the work place that the relevant concerns of the parties be given the fullest airing. Even the hearing of what otherwise might seem to be frivolous positions can serve to avoid years of hostility in the work place. It is, therefore, important for arbitrators to be flexible enough to ensure that the issues between the parties are fully and completely heard even though some of the technical aspects of trial practice in the courts need to be bent. This is particularly true of this situation where foreclosing examination could lead to many years of hostility over a perception by employees that this testimony was less than honest. Whether or not that perception would be accurate, employees may come to believe that an award in the Employer's favor, if that should occur, was not based upon reality. It is, also, important to note that arbitration often involves lay people as advocates in a context where there is little or no discovery. I am satisfied that allowing the Association to pursue this line of questioning at this point is appropriate.

The witnesses complain that they were given little notice and use this, in part, as a basis for seeking to quash. Arbitration hearings must be held promptly, if for no other reason, than to avoid the industrial strife which can occur if there is a delay. In this context, it is likely that a subpoena will be served on short notice. The correct response is not to quash, but to ask for a continuance. The witnesses have been granted that continuance.

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<sup>15/</sup>

Compare, Chapin v. State 78 Wis. 2d 246 (1977)

## Protective Orders

As stated above, the witnesses have a legitimate expectation concerning the use of their own time and concerning privacy in these matters and it is in the interest of all concerned and the arbitration process that they be afforded all protection properly due for these interests. Basically, the interest of privacy I understand to be asserted is the right to have this information kept as confidential as possible. That would involve limiting the access of persons to the documents received, closing the hearing to all but necessary persons and insuring that a transcript, if any, of the proceedings does not become a public record or, if so, that the public in general is denied access to the confidential information contained therein.

§805.07 authorizes certain protective orders. Further, the grant of authority to hold hearings carries with it inherent authority under §111.70(4)(cm) in the arbitrator to conduct and control hearings, which authority is specified in Wis. Admin. Code §ERB 32.15(9). The orders made today are within the authority expressed or implied in the above provisions.

### Time Involved

It is not oppressive or burdensome for the Witnesses to produce the information requested in the subpoena. Information requested from tax returns, federal schedule F, and related documents, including, but not limited to, form 4562 and form 4797 and schedule D, if filed, for the tax years 1986 and 1987 should already have been prepared and be in the witnesses' files. Similarly, it is inconceivable that crop yield information for the years 1986 and 1987 should not be available. The witnesses are required to keep records for the purposes of preparing tax returns for the year 1988, which would include crop production for 1988 and to gather that information for their own business and tax purposes, although the same need not be done at this time. I am satisfied that it is not burdensome to require them to produce that information, but that some form of compensation, in addition to witness fees and mileage, may be required for the time and effort reasonably required to do so at this time. I have set the sum of \$5.00 per hour for those hours reasonably necessary to prepare the information. Pursuant to ERB §32.15(13), these costs will be paid by the Association as a condition of obtaining this information. In addition, the Association shall pay the reasonable costs of copying said information.

### Confidentiality

#### 1. Access to Data

The Association has indicated its willingness to limit the access of its officers and agents in this case. I have made protective orders which balance the needs of the parties to obtain this information and prepare for hearing against the right to

privacy. The failure to enter into the protective agreements specified herein, will be treated under the arbitrators inherent authority akin to sanctions under §804.12(2)(a)1.,2.

## 2. Public Nature of Hearing

Pursuant to §111.70(4)(cm) interest arbitration hearings are public hearings. The provision for public hearings is not, however, absolute and Ch. 19, Wis. Stats. governs. <sup>16/</sup> §19.85(1)(f) permits a closed session when "considering financial ...data of specific persons...which, if discussed in public, would be likely to have a substantial and adverse effect upon the reputation of any person referred to in such histories or data ...." These are the only statutes authorizing an exception to the open hearing rule.

It appears that the parties would agree to have the hearing closed. Nonetheless, while the hearing will involve personal financial data, there is no showing at this time that its revelation would be likely to have a substantial and adverse effect upon the reputation of either witness. The interest of public in being present is to have the opportunity to evaluate for themselves from the evidence presented and the decision made whether the determination made was, in the public's view, correct. This, in turn, enables the public to decide how to petition their legislature to change this law, if at all. The public, also, has an interest in having witnesses be willing to come forward to testify in these proceedings. While testimony in camera might assist this concern, the legislature has already made the determination that the interest in public scrutiny is stronger. Thus, the mere fact that the evidence would serve to discredit the judgment of the witnesses is not grounds for holding that there is undue damage to reputation.

The evidence, if produced, could show that the income and/or production was higher or lower than anticipated. It may, also, indicate that the witnesses are good or poor record keepers. As to high or low results, the witnesses themselves have generalized from their own experience which I understand to mean that their experience is in the mainstream of local farmers' results. There is no evidence to indicate why, other than the fact that this data is data which the witnesses wish to keep confidential, revelation would affect their reputations, let alone unduly do so. There is no indication that the records requested herein are not accurately kept. The decision made herein does not preclude a later request by the witnesses on this basis and the request, itself, will be processed in camera under this exception. The Employer is so informed in order that it might give appropriate notice under the open meetings statute.<sup>17/</sup>

## 3. Transcript as Public Record

16/

§19.81, 19.85 are primarily relevant.

17/

The parties are notified that there may be an issue as to whether a transcript of proceedings in this matter is a public record when in the hands of the arbitrator or school district. It is my position that none of the records which I hold after a hearing are public records because I am neither a "public officer," nor "employee" within the meaning §16.61(1)(h), Wis. Stats. I hold that position based upon the fact that the legislature used the term "arbitration" in §111.70(4)(cm), Wis. Stats., which process ordinarily is a private process. Thus, arbitration remains private to the extent not inconsistent with other provisions of the statutes. That position can be a subject of lively debate. However, the transcript may be a public record as contemplated in §19.21, Wis. Stats., when held by the Employer or its attorney. In State ex rel. Youmans v. Owens, 28 Wis. 2d 672 (1965), the public official holding such a record can refuse to release it upon the same standards as the hearing in this matter can be closed. (See the discussion above with respect to that issue as it applies to the hearing.) The parties can choose to limit the transcript to my use and make all copies returnable to me after use.

ERB §32.15(7) provides that either party may request a transcript. Pursuant to the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes", Article 5.B.1.b. an arbitrator may: ...seek to persuade the parties to avoid use of a transcript, or to use a transcript if the nature of the case appears to require one." Under this provision, I recommend to the parties, but do not require, that they waive the use of a transcript for that portion of the testimony of the witnesses involved herein dealing with examination on their personal finances and production results. I can, and will require, that examination which appears likely to have a confidentiality interest in it be transcribed separately so that the exercise of discretion with respect to public records may be easier. The parties may, also, consider restricting the number of copies or use of the transcript in a way which will preserve confidentiality.

Based upon the foregoing, I have issued the order attached hereto.

Dated at Milwaukee, Wisconsin, this 28th day of November, 1988.

  
Stanley H. Michelstetter II,  
Arbitrator