STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of ELROY-KENDALL-WILTON EDUCATION ASSOCIATION To Initiate Arbitration Between Said Petitioner and ELROY-KENDALL-WILTON SCHOOL DISTRICT	Case 15 No. 40777 INT/ARB-4955 Decision No. 25631-A

Appearances:

Mr. Gerald Roethel, Executive Director, Coulee Region United Educators, appearing on behalf of the Association.

Mr. Kenneth Cole, Executive Director, Wisconsin Association of School Boards, Inc., appearing on behalf of the Employer.

ARBITRATION AWARD:

On September 26, 1988, the undersigned was appointed to serve as Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act, to resolve an impasse existing between Elroy-Kendall-Wilton Education Association, referred to herein as the Association, and Elroy-Kendall-Wilton School District, referred to herein as the Employer. Hearing was held at Elroy, Wisconsin, on November 17, 1988, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. The final briefs were exchanged by the undersigned on January 23, 1989.

THE ISSUES:

Two issues are in dispute between the parties. They are: 1) the salary schedules for the 1988-89 school year and the 1989-90 school year; and 2) the amount of the Employer's contribution to the cost of health insurance for members of the bargaining unit.

With respect to the salary issue, the Board proposes that the 1987-88 salary schedule be improved by $800 at each cell for the year 1988-89; and that the 1988-89 salary schedule be improved by $1000 at each cell for 1989-90. The Employer proposes no other changes to the salary schedule, maintaining the horizontal increments at $300 and the vertical increments at $535 through Step 10 of the BA lane, Step 12 of the BA+6 lane, Step 14 of the BA+12 and BA+18 lanes and Step 15 of the BA+24, the BA+30/MA and the MA+6 lanes. The Employer proposed salary schedule for 1988-89

creates a base salary of $18,372 and a top salary of $27,662 without longevity. The Employer proposed salary schedule for the year 1989-90 creates a base salary of $19,372 and a top salary of $28,662 without longevity. The Employer proposal continues longevity in the amount of $250 for each year beyond Steps 10, 12, 14 and 15 of the appropriate lanes.

The Association proposes a 1988-89 salary schedule commencing at $18,100 and topping at $28,690 without longevity. The Association proposes to continue the same number of steps and lanes as had been in effect in the predecessor Contract. The Association also proposes to continue the $250 longevity payments for each year beyond the steps of the salary schedule. In 1988-89, the Association proposes to improve the vertical increments from $535 to $585, and the horizontal increments from $300 to $400. For 1989-90, the Association proposes a base salary of $19,096 and a top salary schedule of $30,268. The lanes and steps of the schedule, as well as the longevity, remain unchanged in the Association proposal for 1989-90. The Association, however, proposes a further increase in the vertical increments to $617 and an increase in the horizontal increments to $422.

With respect to the insurance dispute, the Association proposes to maintain the language of the predecessor Agreement. The Employer proposes the following language:

1988-89 - $94.36/mo single, $242.10/mo. family

1989-90 - The health insurance contributed by the District shall be increased by an amount up to $15,000, but not to exceed a contribution as required by the actuarially determined rates of the insurance plan.

The parties dispute the meaning of the Association insurance position in this matter, the Association arguing that the predecessor language requires the Employer to pay 100% of the health insurance premium. The Employer asserts that the predecessor language calls for a dollar amount of premium payment, which would result in the Association picking up the increased health insurance cost under the Association proposal.

DISCUSSION:

The Municipal Employment Relations Act at 111.70 (4) (cm) 7 directs the Arbitrator, in making his decision, to give weight to the factors enumerated at subsections a through j of 7. The undersigned, therefore, in arriving at his decision in this matter, will consider all of the statutory criteria, focusing particularly on those criteria to which the parties have directed their evidence and to which they have made argument.

The parties dispute which school districts should be used for the purpose of comparing salary schedules, and for the purpose of comparing patterns of settlement. Therefore, the undersigned must initially determine which school districts should be used for these purposes.

The Employer would have the Arbitrator look only to the athletic conference in which this school district is now situated, the Scenic Bluffs Athletic Conference. The Association would have the Arbitrator look to the schools contained within the Scenic Bluffs Conference, but would also have the Arbitrator consider school districts contained within the Ridge and Valley Athletic Conference, the athletic conference to which this school district once belonged. Additionally, the Association

urges consideration of comparisons to state-wide averages for all school district and to school districts of the same general student population as the instant school district.

The Employer points to the decision of Arbitrator John J. Flagler, who on September 1, 1986, issued an Arbitration Award involving these same parties, wherein, he held at pages 4 and 5 as follows:

> Of all the statutory criteria, arbitrators strongly favor comparability of total compensation as the most reliable standard for choosing the more reasonable final salary position in interest arbitration. By far the most valid comparisons are among like-situated school districts which generally tend to be found within athletic conferences. Their common grouping by relative size and geographical proximity therefore leads to certain salary commonalities through collective bargaining and market pressures.
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> In the present case, however, the fact that only two school districts in the Scenic Bluffs Conference have settled frustrates any possibility of discerning an emerging salary pattern within the parties' traditional comparison group. In similar situations, arbitrators may seek to structure some other acceptable comparison group -- often by "borrowing" selected school districts from contiguous athletic or regional conferences. Sometimes this approach produces a representative sampling of like-situated districts. Other times this approach fails to define an acceptably representative comparison group.
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> The fundamental consideration which distinguishes valid and reliable comparison groups from mere aggregations is to be found in elemental concepts of sample design. To be included within a valid and reliable statistical sample, the individual school district must be truly representative of the population with which it is grouped. In short, it must share enough of the key characteristics of that comparison group as to provide some confident level of predictive value to the variable being examined (in this case salary levels and trends).
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> In the present case the Association argues that the selected school districts from surrounding conferences should be included in its structured comparison group because they are of comparable size and proximity, and because other arbitrators have included Elroy-Kendall-Wilton in their comparisons. Careful examination of the resulting sample, however, does not support the conclusion that the proffered comparison group meets acceptable tests of validity and reliability.
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> I have subjected the Association's structured comparison group to a number of standard statistical tests to assess its sampling validity. Coefficients of variance show that the distribution wanders from acceptable norms by wide margins at several benchmark levels and in its overall composition. The variances are so great at certain benchmarks as to confound any reasonable comparisons.
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> Examination of the historical data leading to the composite further frustrates the predictive value of the data set. Trend lines within the comparison group often move in erratic directions at various benchmark levels which defies any systematic slotting of Elroy-Kendall-Wilton salary steps as a continuous function of simultaneous extrapolation.

In sum, while I accept as a general proposition the possibility of structuring a comparison group by adding selected school districts from surrounding conferences, the particular comparison group offered here by the Association proves unsatisfactory. Mere size of and proximity obviously do not make selected districts necessarily comparable -- nor are they made intrinsically more representative because other arbitrators have included Elroy-Kendall-Wilton in entirely separate comparison groups.

Indeed, minor sampling errors and systematic sampling biases may be exaggerated by the assumption that the "borrowing" process is reciprocal, i.e., that including Elroy-Kendall-Wilton in some other comparison group renders selected districts in that group representative of Elroy-Kendall-Wilton's traditional conference group.

Granted that there are no perfect comparison groups, the fact remains that -- to paraphrase Orwell -- some groups are more equal than others. The basic reason why the distributional pattern in acceptable comparison groups is less dispersed can be found in bargaining history and in market considerations. Collective bargaining relies heavily on cross comparisons and tends towards standardization of terms and conditions of employment among those districts the parties use as common referents.

The marked variances both within the Association's comparison group and between Elroy-Kendall-Wilton and the comparison group averages at the various benchmarks strongly suggest that no such bargaining induced commonalities can be discerned from these data. The necessary inference counsels that size and proximity in this case are mere coincidental rather than causal or co-variant factors and have little or no explanatory value for purposes of the present analysis.

The undersigned has carefully reviewed the dicta of Arbitrator Flagler with respect to appropriate comparison groups, and concludes that Arbitrator Flagler was wrong. Flagler relies primarily on coefficients of variance showing that the distribution wanders from acceptable norms by wide margins at several benchmark levels of the salary schedules so as to confound any reasonable comparisons. However, Arbitrator Flagler makes no reference to these same comparisons internal to the athletic conference upon which the Employer would rely. A review of the evidence in the present arbitration proceedings causes this Arbitrator to conclude that the variations which Flagler states that he deplores when attempting to make comparisons to the Ridge and Valley Conference, also exist within the Scenic Bluffs Conference. This being the case, if one were to apply Flagler's conclusions uniformly, there would be no comparison possible. The undersigned considers that to be an absurdity. Fur thermore, Flagler errs, in the opinion of this Arbitrator, where he concludes that the Association grouping proves unsatisfactory because: "Mere size of and proximity obviously do not make selected districts necessarily comparable -- nor are they made intrinsically more representative because other arbitrators have included Elroy-Kendall-Wilton in entirely separate comparison groups." The undersigned has reviewed all of the demographic data contained within this record and finds that there is significantly more commonality between the districts espoused by the Association in the Ridge and Valley Conference than mere size and proximity. The demographic data contained within Association Exhibit Nos. 109 through 114 support that conclusion when considering levy rates for 1986-87, equalized value per pupil, total school comparison cost, and ranking of districts on the basis of cost per pupil highest to lowest.

Moreover, it is the opinion of the undersigned that Arbitrator Flagler erred when he concluded that the coefficients of variance show that the distribution wanders from acceptable norms by wide margins at several benchmark levels and in its overall composition. Flagler concluded there was not comparability among the Association comparison group because the salary schedules did not conform to what he considered comparability. Flagler misstates the statutory direction when he makes that comparison. The statutory direction is to compare in the same community and in comparable communities. Flagler made a comparison of the comparability of the salary schedules, not a comparison of the comparability of the communities.

It follows from all of the foregoing discussion that comparisons will be made to school districts within both the Scenic Bluffs Conference and the Ridge and Valley Conference. The Association also proposes that the Arbitrator look to state averages for the purpose of making comparisons. The undersigned believes it appropriate to do so under the statute which was revised effective May 7, 1986. Prior to May 7, 1986, criteria d contained reference to a comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration with the wages, hours and conditions of employment of other employees performing similar services and referred in the same section to other comparisons being made in the same and in comparable communities. With the statutory revision of 1986, however, criteria d now merely speaks to the comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services without reference to making that comparison among comparable communities. It appears that the revised statute contemplates broader comparison groups, including the consideration of state-wide averages.

For all of the reasons discussed above. the undersigned concludes that the comparison sets espoused by the Association are appropriate for the purpose of analyzing which final offer is to be adopted in this dispute.

THE SALARY DISPUTE

The parties, in presenting their costing evidence, set forth data which furnished partial information to the Arbitrator. For example, Employer Exhibit Nos. 3 and 5 set forth the salary increase per returning teacher for 1988-89 and 1989-90, and the percentage of package increase at 6.1%. It does not set forth the salary and fringe increase per returning teacher, nor the salary only percentage increase. Association Exhibit Nos. 6 and 10 furnish cost data with respect to salary only average dollar increase per returning teacher for the Association and the Employer offers, but not the percentage increases. From the exhibits, the undersigned has constructed additional data which he believes to be relevant. The salary only percentage increase proposed by the Association for 1988-89 is 7.3%, compared to a salary only increase proposed by the Employer of 4.88%. For 1989-90, the salary only percentage increase proposed by the Association is 6.85%, compared to a 6.44% salary only increase proposed by the Employer. The average increase per returning teacher, salary only, for 1988-89 is $1795 pursuant to the Association proposal, and $1200 pursuant to the Employer proposal. The average dollar per returning teacher increase for 1989-90, salary only, is $1807 pursuant to the Association proposal, and $1660 pursuant to the Employer proposal.

Considering salaries and fringes combined (total package increase), the percentage increase proposed by the Association for 1988-89 is 8.12% compared to 6.1% proposed by the Employer. Percentage package increase for 1989-90 is 6.81% proposed

by the Association and 6.1% proposed by the Employer. The average package dollar increase per returning teacher is $2608 proposed by the Association and $1960 proposed by the Employer. For 1989-90, the package average dollar per returning teacher increase proposed by the Association is $2365, compared to the average dollar increase proposed by the Employer of $2071.

We now look to see how the data contained in the preceding paragraphs compare to the available patterns of settlement data. The Employer correctly points out that among the other school districts of the Scenic Bluffs Conference there are no settlements for comparative purposes. The comparisons, however, do not end there in view of the findings in the preceding section of this Award. It is also proper to consider a comparison among school districts in the Ridge and Valley Conference and to the state-wide averages. Turning first to a comparison of the patterns of settlement with those schools settled in the Ridge and Valley Conference, we find from Association Exhibit No. 73 that seven Ridge and Valley Conference schools have settled for 1989. The seven include: DeSoto, Ithaca, Kickapoo, North Crawford, Seneca, Wauzeka and Weston. It is noted and stressed that all of the foregoing settlements are settlements which are the second year of a two year settlement. Percentage of settlements, salary only, range from a low of 7.38% at North Crawford to a high of 8.23% at Seneca. The average dollar per returning teacher settlement salary only ranges from $1776 at Ithaca to a high of $1979 at Seneca. The average salary only settlement among the foregoing seven is 7.75% and $1827 per returning teacher. From the foregoing, it is clear that the salary only increase proposed by the Association in 1988-89 of 7.3% and $1795 average per returning teacher is much closer to these patterns of settlement than the Employer offer of 4.88% and $1200 average per returning teacher.

When considering package settlements among the same seven, there is data for only four of the seven set forth in Association Exhibit No. 73. The four schools that show package settlement data are DeSoto, North Crawford, Wauzeka and Weston. The package percentage settlements range from 7.64% at DeSoto to 8.71% at North Crawford. The package average dollar per returning teacher ranges from $2247 at Weston to $2454 at Wauzeka. The average of the four schools is 8.05% and $2350 per returning teacher. Again, the 8.12% and $2608 average per returning teacher is closer to the foregoing settlements than the Employer offer of 6.1% and $1960.

It follows from the foregoing comparisons of patterns of settlement that the Association offer is preferred. The weight to be attributed to this comparison is diminished, however, because all of the foregoing settlements are the second year of two year agreements.

Turning to a comparison of the proposed percentage increases and average dollar per teacher to the settlements which have emerged state-wide, we look to Association Exhibit Nos. 75, 76 and 100. Association Exhibit Nos. 75 and 76 are WEAC data with respect to state-wide settlements. Association Exhibit No. 100 is WASB data setting forth state-wide settlements. The WASB data is data dated September 1, 1988, and includes 1988-89 school year reports covering 282 school districts which have reached agreement. WEAC data reflects settlements to November 7, 1988, which include settlements in 336 school districts. The average dollar per returning teacher unweighted is close in both reports; the WEAC data showing $1768 and the Employer data showing $1754. The average salary percentage increase per teacher is calculated by WASB as 6.5% and that calculation is not made in the WEAC data. The average total package increase per teacher WASB reports as $2476, representing a 7% increase. Clearly, the Association proposal for 1988-89 of $1795 per returning teacher (salary only) and 7.3% is closer to the state-wide averages than the

offer of the Employer, which is $1200 per returning teacher and 4.88%. The total package increase per teacher of the Association at $2608 is also closer to the state-wide average total package increase per teacher than that of the Employer offer which calculates to $1960; however, the Employer total package percentage increase of 6.1% is slightly closer to the average increase of 7% than is the Association offer of 8.12%.

There is no data from the Wisconsin Association of School Boards in this record with respect to state-wide settlements for 1989-90. WEAC data reflects that the unweighted average increase for 1989-90 based on 65 districts is $1784, which compares favorably to the 1989-90 offer of the Association which generates a salary only average dollar per returning teacher of $1807 compared to the Employer offer generating $1660.

In addition to the settlements for 1988-89, there is also in evidence Association Exhibit No. 74 which sets forth the LaFarge Board offer of November 15, 1988. The LaFarge Board offered a salary only increase of 8.14% or $1844 per returning teacher. The foregoing offer calculates to 9.09% total package and $2629 per returning teacher total package. Clearly, the LaFarge Board offer to its Association generates more dollars per returning teacher and a higher percentage of settlement than the Association proposes here. This data supports the Association offer.

From the foregoing comparisons of patterns of settlement, the Association offer is preferred.

The Association here proposes a modification to the form of the salary schedule where it proposes that the horizontal and vertical increments be increased, whereas, the Employer proposes that the horizontal and vertical increments be maintained as set forth in the predecessor salary schedule for 1987-88. Since the Association proposes the change it has the responsibility to establish by the evidence that the change is supported by the evidence. The Employer has cited arbitral authority which has held that changes in the construction of a salary schedule should be left for the parties to negotiate and should not be adopted by an arbitrator. The undersigned agrees that it is preferable that the changes in the format of a salary schedule be negotiated, and that in most instances, the party proposing the change in the schedule places itself at high risk of having its offer rejected. The mere fact, however, that there is a change in the format of the schedule proposed should not, in the opinion of this Arbitrator, automatically foreclose the adoption of the party's offer who makes the proposal for change. If the evidence supports a substantial need for the change, then the change should be awarded. The Arbitrator will look to the evidentiary record to determine whether the change in the salary schedule proposed by the Association is supported by the evidence.

The Association offer starts at a lower base than the Employer offer, $18,100 compared to $18,372. By increasing the horizontal and vertical increments, the Association offer exceeds the Employer offer at the top of the schedule. In 1988-89, the Employer offer tops at $27,662, without longevity, compared to $28,690 for the Association offer. Obviously, this is caused by the increase in the increments proposed by the Association. This presents the question as to whether the higher top salaries proposed by the Association are justified. The answer to that question is one measure of whether the evidence supports the increased increments that the Association proposes. A second measure of whether the evidence supports the increased increments is a comparison of the increments proposed by the Association with the increments contained in the salary schedules of other school districts.

Both of these tests require a comparison with data from other districts.

Considering first the question of whether the higher top salaries proposed by the Association are justified, we look to a comparison of the top salaries in the schedules of the Scenic Bluffs Conference. Association Exhibit Nos. 23 and 24 provide the data for that comparison for the year 1987-88. The data reveal that at the BA max Elroy ranks last, $1508 below the closest district, Wonewoc. This comparison does not include longevity. The record establishes that longevity is paid in the Conference as follows: $200 per year at Bangor and Cashton; 1 increment every three years at Necedah; $200 at New Lisbon; $175 at Hillsboro; no longevity at Norwalk and Wonewoc; and $250 at Elroy. For the year 1987-88, longevity had been paid for six years, establishing a top longevity payment of $1500 in this district. In order to compare salary tops with longevity it is assumed that the other districts' top longevity payment recognizes 6 years beyond the top of the schedule as well. Using the foregoing assumptions in comparing BA max with longevity, this district still ranks last in the Conference $8 behind Wonewoc. At MA max and at schedule max without longevity, Elroy ranks fifth behind Norwalk. However, if longevity is included, Elroy ranks third behind New Lisbon and Bangor. While the evidence shows that the increased increments are justified at the BA max, it does not support the increases at MA max or at schedule max because at these points Elroy stands just below the midpoint without longevity and just above the midpoint with longevity. The undersigned concludes that the Association has failed to justify its proposed increased increments based on this test.

The second test of the adequacy of the Association proof also fails. The only evidence the Arbitrator finds in the record which shows the amount of vertical and horizontal increment is Association Exhibit B, the 1988-89 DeSoto salary schedule. While the DeSoto 1988-89 schedule supports the Association proposed modifications to the schedule, one salary schedule is insufficient on which to base a conclusion that the evidence supports the changes advocated by the Association. From all of the foregoing, it is concluded that the Association proposed changes to the schedule are not supported by the evidence.

We turn to a comparison of salaries at the BA minimum and BA maximum, the MA minimum and the MA maximum and the schedule maximum. The comparisons will be made with the seven settled districts in the Ridge and Valley Conference. The Employer offer for 1988-89 of $18,372 base is higher than that of the Association offer of $18,100 at base. Both parties' offers are higher than the average base among the seven settled districts for 1988-89, $18,000. At the BA max, the Employer offer is $23,187 compared to an Association offer of $23,365. The average BA maximum among the seven settled districts is $25,598. At the MA min, the Employer offer is $19,872, and the Association proposal is $20,100 compared to an average of $19,913. At the MA max, the Employer offer is $27,362, and the Association proposes $28,290, compared to the average of the seven settled districts at MA max of $29,260. At the schedule max, the Employer offers $27,762 and the Association offers $28,690, compared to an average schedule max among the seven settled districts of $30,871 (Association Exhibit No. 49). Thus, except for the BA minimum and the MA minimum, all of the maximum salaries at the BA, MA and the schedule max are below the average of the settled districts for 1988-89. All of the foregoing comparisons, however, are without taking longevity into consideration. For 1988-89, the Employer will pay up to $1750 longevity beyond the maximum of the salary schedule. This is considerably more than the seven settled districts pay in longevity. Three of the seven districts pay no longevity beyond the schedule, and the remaining four districts' maximum longevity range from a low of $250 to a high of $935. The average longevity paid,

averaging the ranges where they were set forth, calculates to $283 in longevity payments. Thus, if one were to consider longevity included at the maximum, the BA max proposed by the Employer, including longevity, would be $24,937 and the Association proposal, including longevity, would be $25,115. Adding the average longevity to the BA max of the seven settled districts, we have $25,881 average BA max paid inclusive of longevity. From the foregoing, even including longevity at the BA max comparison, both parties' offers are below the average. Performing the same exercise at the MA max, we find that the Employer offer would be $29,112 and the Association offer would be $30,040. Thus, the Association offer would exceed the average MA max of the seven settled districts, inclusive of longevity of $29,541 by $499, and the Employer offer would fall $429 below that average. Comparing schedule max, inclusive of longevity, we find the Employer offer would generate $29,412, and the Association offer would generate $30,440. The foregoing compares to an average of the seven settled districts at the schedule max, inclusive of longevity, of $31,154. Both parties' offers fall below the average of the seven settled districts at the schedule max with longevity. These comparisons support the Association offer.

The undersigned has reviewed the data contained within Association Exhibit Nos. 50, 51, 52, 53 and the same conclusions as those in the preceding paragraph are drawn when comparing this data which sets forth the BA min, max, MA min, max and schedule max by school districts of the seven settled districts for 1988-89 in the Ridge and Valley Conference. All of the data, then, supports the Association offer in this matter.

The Employer argues that the interest and welfare of the public militate for the adoption of its final offer. The Employer relies heavily in its argument with respect to the interest and welfare of the public on the fact that the district resides within a rural area, and that the drought conditions, as well as declining property values which cause an eroding tax base, all support the conclusion that the interest and welfare of the public are best served with the lower offer of the Employer rather than the adoption of the higher offer of the Association. The record evidence satisfies the undersigned that the Employer arguments are supported by the evidence. Consequently, the undersigned concludes that the interest and welfare of the public are best served if the Employer offer in this matter is adopted.

Turning to the criteria of the cost of living, the final offer of both parties exceed the rise in the cost of living for the periods in question. Consequently, it is concluded that the cost of living criteria supports the adoption of the Employer offer in this dispute.

The undersigned has concluded that the comparison of patterns of settlement and the comparison of salaries among settled districts for 1988-89 at the BA minimum, MA minimum, BA maximum, MA maximum and schedule maximum, all support the Association offer. The undersigned further concluded that the cost of living criteria and the interest and welfare of the public criteria support the Employer offer in this dispute, and that the evidence fails to support the Association proposed increases in the horizontal and vertical increments. After considerable reflection, the undersigned concludes that the Association offer is preferred as it relates to the salary schedule dispute.

THE INSURANCE DISPUTE

The Association final offer proposes no change to the language of the predecessor Agreement as it relates to premium participation by the Employer for health insurance purposes. The Employer proposes specific dollar amounts of premium payment.

During the pendency of these proceedings, the Employer has continued to pay the full premium for health insurance in the amount of $242.10 for family coverage and $94.36 for single coverage. The Association argues that by proposing no change the amount of Employer contribution for health insurance required by the terms of the Contract is the equivalent of 100% of the premium. The Employer disputes that position, arguing that the Collective Bargaining Agreement has always provided a dollar cap. Employer Exhibit No. 30 sets forth the terms of the 1986-88 Collective Bargaining Agreement relating to the Employer's participation in health insurance premium contributions. At K, there is a provision which reads:

"Family plan: Maximum Board payment -

Single plan: Maximum Board payment -"

The dollar amounts are not filled in in the Contract. At hearing, Superintendent Schraufnagel testifies that the rates were never filled into the Contract because they were determined after the Contract was signed during the second year of the Contract, and were set at $76 and $193.97. The Employer position, based on that testimony, is that if the Association offer is adopted, those caps on the Employer participation for family and single premium contribution by the Employer would remain in place, and, therefore, the Association members would have to assume $48.13 contribution toward family coverage and $18.36 per month contribution for single coverage. The foregoing positions of the parties are set forth in an exchange of correspondence between the Chairman of the negotiating committee of the Association and the Superintendent of the School District, which is admitted into this record as Employer Exhibit No. 74. The undersigned makes no findings as to whether continuation of the language of the predecessor Contract would require premium participation on the part of Association members in the event the Association offer is adopted. That issue would properly be decided by a rights arbitrator, in the event the Association offer is adopted. There is no doubt, however, that if the Association offer is adopted in this matter there will be an immediate dispute as to whether the teachers in the bargaining unit are required to make contribution to health insurance premiums, and whether the Employer is entitled to deduct the differential of the contributions he has made in behalf of the bargaining unit teachers during the hiatus period pending the outcome of this decision. The Employer argues correctly that the adoption of a final offer which will breed immediate litigation ought to be avoided where possible. This is not to say that an unreasonable Employer offer should be adopted merely because litigation might ensue later. It follows, then, that the offer of the Employer must be examined to determine whether it is unreasonable on its face.

The record evidence establishes that the Employer offer here for 1988-89 represents a dollar amount equal to the full amount of insurance contributions from the employees. The Employer final offer also provides for an additional amount to be added to the Employer's contribution for 1989-90. Because there is a provision in the Employer offer which amounts to 100% of premium; and because the record evidence establishes to the satisfaction of the undersigned that except for the 1986-88 Agreement there has always been a dollar cap expressed in the Collective Bargaining Agreement; and because there is a provision for a reasonable assumption of increased premiums for 1989-90 in the Employer offer; the undersigned concludes that the Employer offer is adequate. It follows therefrom that the potential litigation which will ensue if the Association offer were adopted should be avoided, and, therefore, the Employer offer on health insurance is preferred.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the Association offer is preferred with respect to salary. That preference, however, is a slight preference given the economic circumstances in which the drought placed farmers of the instant school district. The preference is also slight because the settlements to which the comparisons have been made, both for patterns of settlement as well as for salary benchmark comparisons, were made with districts who all settled prior to the drought which set in during the past summer, and because the comparisons were made with other settlements that were the second year of a two year agreement. The conclusion that the preference for the Association offer is slight is further buttressed when considering the fact that the Association offer with respect to increases in the lane and step differentials have not been supported by the record evidence.

The undersigned has further concluded that the Employer offer on health insurance is reasonable and is preferred. On balance, after considering all of the issues, the undersigned concludes that the Employer offer should be adopted in this matter. Avoidance of the litigation narrowly tilts the balance toward the adoption of the Employer offer. If the Association were to prevail in this matter, but lose a rights arbitration on the insurance issue, teachers in the unit would be paying an additional $48.13 per month for health insurance. Over the course of 12 months, this calculates to $577.56. The differential between the Employer final offer and the Association final offer in this dispute (salary only) is $595 average per returning teacher. Thus, if the Association were to prevail in this dispute and lose the insurance issue in rights arbitration, the teachers would be no better off than the adoption of the final offer of the Employer here. Therefore, for all of the foregoing reasons, the undersigned concludes that the Employer offer should be adopted in this matter.

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

AWARD

The final offer of the Employer, along with the stipulation of the parties, and those terms of the predecessor Collective Bargaining Agreement which remained unchanged through the bargaining process are to be incorporated into the parties' written Collective Bargaining Agreement for the school years 1988-89 and 1989-90.

Dated at Fond du Lac, Wisconsin, this 28th day of February, 1989.

Jos. B. Kerkman,
Arbitrator

JBK:rr