ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between KEWAUNEE SCHOOL DISTRICT And KEWAUNEE EDUCATION ASSOCIATION	Case 16 No. 40772 INT/ARB-4954 Decision No. 25701-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin 53185

Hearing Held

January 11, 1989
Kewaunee, Wisconsin

Appearances

For the District

WISCONSIN ASSOCIATION OF SCHOOL BOARDS
By William Bracken
Director, Employee Relations
Post Office Box 160
Winneconne, WI 54986

For the Association

BAYLAND TEACHERS UNITED
By Dennis W. Muehl
Executive Director
1136 North Military Avenue
Green Bay, WI 54303

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Kewaunee School District and the Kewaunee Education Association, with the matter in dispute the terms of a two year, renewal labor agreement covering the 1988-89 and the 1989-90 school years. There are four impasse items in the proceeding, including the salary schedules for each of the two years of the renewal agreement, the payment of group medical and dental insurance premiums during the term of the agreement, the extra-curricular pay schedules during the term of the renewal agreement, and the availability of insurance benefits for certain early retirees.

The parties exchanged initial proposals in March of 1988 and met on three occasions thereafter, in an unsuccessful attempt to reach a negotiated settlement. On June 22, 1988, the Employer filed a petition with the Wisconsin Employment Relations Commission requesting arbitration of the impasse in accordance with the Municipal Employment Relations Act and, after preliminary investigation by a member of its staff, the Commission on September 29, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration. On October 12, 1988, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Kewaunee, Wisconsin on January 11, 1989, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties closed with the submissions of post-hearing briefs which were received and distributed by the undersigned, and the record was closed on February 15, 1989.

THE FINAL OFFERS OF THE PARTIES

The final offer of the parties, which are hereby incorporated by reference into this decision and award, are summarized as follows:

(1) The District proposes the following changes in the renewal agreement:

   (a) A salary schedule with a BA Base of $17,880 for 1988-89, and $18,590 for 1989-90.

   (b) That teachers who elect medical and dental coverage will have $260.00 per month paid by the District for 1988-89, and $299.00 per month for 1989-90, with any additional premiums

paid for by the individual teachers.

(c) Approximate 5.0% increases in the extra-curricular salary schedule for 1988-89 and for 1989-90.

(d) Deletion of Article XX, Section B of the predecessor agreement, which addressed early retirement.

(2) The Association proposes the following changes in the renewal agreement.

(a) A salary schedule with a BA Base of $18,050 for 1988-89, and $18,980 for 1989-90.

(b) That teachers who elect medical and dental coverage will have $266.00 per month paid by the District for 1988-89, with the District paying 91.5% of combined family health and dental premiums beginning with the 1989-90 school year.

(c) A 4.85% increase in the extracurricular salary schedule for 1988-89, with an additional 5.15% increase for the 1989-90 school year.

(d) Modification of Article XX, Section B of the predecessor agreement, to provide early retirement group insurance benefits for certain teachers who retire with fifteen or more years of service, between ages 62 and 65.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Impartial Arbitrator to give weight to the following arbitral criteria.

"a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

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

POSITION OF THE ASSOCIATION

In support of its contention that its final offer is the more appropriate of the two offers before the Arbitrator, the Association argued principally as follows:

(1) That the parties are in agreement as to what school districts comprise the principal comparison group; that these districts consist of the Algoma, Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicot, Sevastopol, Southern Door and Sturgeon Bay Districts.

(a) That the parties have consistently relied upon these "peninsular schools" in their negotiations, and in presenting their positions in past interest arbitrations.

(b) In his 1983-84 award, that another arbitrator pointed out that Kewaunee had the fourth highest

cost per pupil, that it received the third highest amount of aid per pupil, that its levy rate was the third highest in the group, and that it had the fifth highest equalized valuation per pupil, the fifth highest enrollment and the fifth largest full time teaching staff.

(c) Despite many of the same District arguments advanced in the case at hand, that prior arbitrators selected the final offer of the Association in 1983-84 and in 1985-86.

(d) In 1987-88 that the District ranked fifth in cost per pupil, first in aid per pupil, fourth in levy rate, sixth in equalized value per pupil, fifth in enrollment and fifth in full time teaching staff.

(e) On the basis of the record, that there has not been any shift in the demographic relationships between the comparable districts and Kewaunee, and there is no basis for disturbing the established relationship in the case at hand.

(2) That certain non-teacher settlement and wage patterns submitted by the District should not be accorded determinative weight in these proceedings.

(a) That many of the exhibits were not comprehensive in terms of all wages and benefits earned by the individuals to whom the surveys applied; that many surveys were not returned by employers; that many surveys which were returned, were not scientifically reliable.

(b) That prior arbitrators have not regarded such evidence as justifying a departure from the settlement patterns among the primary comparables.

(c) That the District offered no evidence that private sector settlements, non-teacher public sector settlements or even farm income in Kewaunee, were significantly different from those experienced in the same context in the Peninsula comparables.

(3) With respect to the insurance issue, that the record supports the final offer of the Association.

(a) That the percentage of health insurance premiums paid by comparable districts averaged 92.9% in 1988-89, which compares well with the Association proposed contribution rate of 91.5%.

(b) That most of the comparables calculate Board and teacher contributions toward health and dental insurance premiums by a percentage of premiums charged. That Kewaunee is the only contract that does not tie Board contributions to a percentage of total premium in one way or another.

(c) That the Association's offer does not change the status quo when measured in terms of actual dollars paid by the Employer, which approximated 91.5% in the most recent agreement.

(4) In connection with the retirement issue, that the Board proposes a significant change in the status quo by deleting the early retirement provision of the predecessor agreement.

(a) That the 1986-88 agreement contained a provision for early retirement which dated back to the 1978-79 agreement. After the enabling statute was modified, the parties updated the agreement in 1984-85.

(b) That the enabling statute carried a sunset date of August 1, 1987, and was not reenacted by the Legislature, as a result of which the long-standing language in the agreement was without effect.

(c) That the comparison criterion clearly supports the position of the Association, in that all comparable districts provide some relief to early retirees in the form of insurance program participation, with the single exception of Southern Door.

(5) In connection with the extracurricular pay issue, that the position of the Association is favored.

(a) That the parties are very close in their costing of the extracurricular pay offers, with the only noticeable difference in the second year of the Board offer.

(b) That while the Board proposes to freeze certain positions two years in a row, it offered no persuasive evidence in support of the proposed change in pay relationships between the various extracurricular positions.

(c) That the Association's offer of a flat percentage increase for each position in each of the two years, maintains the established pay relationship between positions.

(6) That the Association's position on the salary issue is favored by the record.

(a) That the eight settlements covering 1988-89 provide as follows: an average increase of $922 at the BA Base, versus a Board offer of $662 and an Association offer of $835; an average increase of $1466 at the BA Max, versus a Board offer of $1090 and an Association offer of $1369; an average increase of $985 at the MA Base, versus a Board offer of $725 and an Association offer of $910; an average increase of $1500 at the MA Max, versus a Board offer of $1188 and an Association offer of $1491; an average increase of $1562 at the Schedule Max, versus a Board offer of $1221 and an Association offer of $1533. (Figures exclude Sturgeon Bay longevity increases for 1988-89.)

(b) That the three settlements covering 1989-90 provide as follows: an average increase of $929 at the BA Base, versus a Board offer of $710 and an Association offer of $930; an average increase of $1589 at the BA Max, versus a Board offer of $1163 and an Association offer of $1525; an average increase of $1020 at the MA Base, versus a Board offer of $774 and an Association offer of $1014; an average increase of $1692 at the MA Max, versus a Board offer of $1269 and an Association offer of $1662; an average increase of $1718 at the Schedule Max, versus a Board offer of $1304 and an Association offer of $1708. (Figures exclude Sturgeon Bay longevity increases for 1989-90.)

(c) That the Board's proposal falls outside the range of comparable settlements at the various benchmarks, whether measured on the basis of percentages or dollar increases.

(d) That the Association's offer is also favored by consideration of average salary increases per teacher for the two year renewal agreement. That average settlements for 1988-89 were 6.6% and $1748, versus Board proposed increases averaging 4.8% and $1380, and Association proposed increases averaging 5.8% and $1660; that average settlements for 1989-90 were 6.7% and $1894, versus Board proposed increases averaging 4.8% and $1445 and Association proposed increases averaging 6.0% and $1814.

That the Board's offer is low by $369 and 1.8%, and by $449 and 1.9% in the two years. That the Association's offer, also below average, is closer to the comparables.

(e) That Board arguments relating to the fact that a significant percentage of Kewaunee teachers are at the top of the schedule were not credited by a prior arbitrator in 1984, and should not be credited in these proceedings.

(7) That arbitral consideration of the total compensation criterion does not favor the selection of the final offer of the District.

(a) That data presented by the Board is usable in the first year, but should not be relied upon in the second year.

(b) That the Association does not dispute the impact of insurance upon total package costs. That these costs are not predictable in the future, however, and multi-year contracts carry risks for both sides in terms of total package/insurance costs.

(c) That the Association is asking the Board to share the family premium risk in Kewaunee on a 91.5/8.5 basis, while the Board proposes to cap the insurance increase in the second year. That the Board is not only offering a substandard wage offer in the second year, but it also seeks to mitigate its risk in the area of total compensation.

(d) That the total package comparisons within the primary comparison group averaged $2421 and 7.0% for 1988-89, versus the Board proposed $2200 and 5.8% and the Association proposed $2596 and 6.9%.

That the Association's offer exceeds the average by $175 while the Board offer is $221 low; on a percentage basis that the Association offer of 6.9% is 0.1% below average, while the Board offer falls 1.2% below the average settlement.

(e) That the total package data for 1989-90 are not fully reliable, involve only three settlements, and should be discounted by the Arbitrator in these proceedings.

(8) That cost-of-living considerations should not be accorded determinative weight in these proceedings.

(9) That arbitral consideration of the ability to pay/interests and welfare of the public criterion does not support the selection of the final offer of the Board.

(a) That the Board did not plead inability to pay.

(b) That many of the Board's arguments in this matter were rejected by previous arbitrators in 1984 and in 1986.

(c) That if taxpayers in the District are feeling a "tax pinch," it is not the fault of the schools relative to other local taxes. That on agricultural land, taxes levied actually went down from 1986 to 1988, and that the school tax has declined in the District as a percentage of the total real estate tax. In many taxing areas, that Kewaunee school taxes have decreased in real dollar terms over the past few years, and only in the City of Kewaunee have school taxes increased from 1986 to 1988.

(d) That the overall picture in the District is brighter in 1988 than in 1986, that recent unemployment figures are encouraging, and that the recent drought must be placed in proper perspective.

(e) That while the impact of the drought cannot be dismissed, Kewaunee area farmers have been able to mitigate the impact of the drought in various ways.

(f) That the Board has failed to show that the Kewaunee economy is worse than that of the

comparables; that there is nothing in the record to show that Kewaunee farmers were more adversely affected by the drought, than those who reside in comparable school districts.

(g) That the timing of the settlements in comparable districts does not justify a departure from the settlement pattern.

(10) That the interests and welfare of the public must be considered in an educational needs context.

(a) That the welfare of the public will be well served when educational needs are recognized, and when teachers receive salaries commensurate with their contributions to society. That educational needs in general, and the need for competitive salaries and career opportunities for teachers in particular, are reflected in various publications that are part of the record.

(b) That the above principles have been reflected in at least one other Wisconsin interest arbitration proceeding.

(c) In applying the above principles, that it must be kept in mind that the Association is not seeking a larger than normal increase, but rather the District is offering a smaller than normal settlement. In the balancing of interests process, that the public interest in adequate professional educators' salaries should take precedence over the contrary arguments advanced by the District in this proceeding.

POSITION OF THE DISTRICT

In support of its contention that the final offer of the District is the more appropriate of the two final offers before the Arbitrator, the District emphasized the following principal arguments.

(1) Preliminarily, it emphasized that the parties are not apart in their costing of the two final offers. In the salary area that the parties are approximately $280 per teacher apart for 1988-89, and approximately $369 apart for 1989-90.

(a) In the area of salary, that the parties are approximately $280 per teacher apart for 1988-89, and $469 per teacher apart for 1989-90.

(b) In the costing of the total package, that the parties are $396 per teacher apart for 1988-89, and $735 per teacher apart for 1989-90.

(2) That while all comparables have settled, the timing of the various settlements justifies the Arbitrator placing less weight on this arbitral criteria than would normally have been the case.

(a) That there is no dispute as to the principal comparables, which consist of the School Districts of Algoma, Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicot, Sevastopol, Southern Door and Sturgeon Bay.

(b) That limited weight should be placed upon the settlements of the principal comparables, due to the fact that all but one of the 1988-89 settlements were reached prior to June, 1988, at which time economic conditions were substantially different than those that followed.

(c) With the exception of Sevastopol, that the comparable districts based their settlements upon the agricultural prospects that existed prior to the 1988 drought. That while Sevastopol settled after the drought, it apparently acquiesced in the settlement pattern that evolved prior to the drought, and it also may have tried to "catch up" to other districts, since its 1986-88 settlement was several hundred dollars below the comparable average settlement.

(d) That economic conditions have changed so radically since the majority of comparable districts settled, that it would be an injustice for the Arbitrator to hold the Kewaunee School Board to the same relatively high level of settlements that occurred prior to the changed economic conditions.

(e) That substantial arbitral authority supports the proposition that a significant change in economic circumstances will justify ignoring settlements in otherwise comparable school districts.

(f) That all of the comparable settlements, except Sevastopol, should not be given significant weight in these proceedings. That two of the settlements for 1988-89 reflect the second year of the two year contracts, that one is the third year of a three year contract, and that all comparables but one occurred prior to June of 1988.

(g) That evidence in the record indicates that the existence of a full scale drought first became evident in late June of 1988.

(3) That certain fundamental differences in local economic circumstances, render some districts in the primary comparison group, less comparable to Kewaunee.

(a) That the taxpayers of Kewaunee pay a significantly higher average tax levy to support public education, than do comparable districts; that average tax levy rates of 12.19 and 15.73 for Kewaunee for 1987-88 and for 1988-89, compare to average rates for comparable districts of 10.97 and 12.90 for the same two years.

(b) That Gibraltar and Sturgeon Bay have far less in common with Kewaunee than some of the other rural school districts. That Gibraltar receives no state aid, is very small, is located in the heart of the Door County tourist area, has equalized value per student of over $1,000,000, as compared to $147,875 per student in Kewaunee, and has a levy rate of only 5.46 mills compared to Kewaunee's 15.73 mill rate.

(c) That Association exhibits show agricultural employment of approximately 20% in Kewaunee, Denmark, Luxemburg-Casco and Southern Door, versus only 11% to 12% in Gibraltar and Algoma.

(d) That Sturgeon Bay is unique in that it is primarily an urban area with only 1.4% of its population employed in agriculture, and further that this district's most recent settlement contained a substantial catch up.

(e) That Kewaunee District residents average some $1200 per year in average personal income below the averages in districts comprising the principal comparison group.

(f) That Kewaunee's greater effort to support public education and its lower income, diminish the comparison value between Kewaunee and some of the districts in the primary comparison group.

(4) That the Association's offers on health and dental insurance represent a radical departure from the status quo, and such changes should be negotiated between the parties rather than imposed in arbitration.

(a) That the Association's insertion of a fixed 91.5% health and dental insurance obligation would be a departure from the previous contract conditions, would live on in future agreements, and would constitute a substantial change in the parties' relationship on this fringe benefit item.

(b) That it is well established in Wisconsin interest arbitration, that an arbitrator should not impose a radical change upon the parties unless an extremely persuasive case has been made for the change; that no basis for the requested change has been made in the case at hand.

(c) That there is nothing in the record to persuasively support acceptance of the Association proposed change in insurance premium payment; that it has offered no quid pro quo for the change, and that when considered in combination with its proposed 14.2% total package increase, the change must be rejected.

(d) That family health and dental insurance premiums increased 49% from 1983-84 to 1988-89, and that the purpose of using dollar amounts is to establish a "cap" on employer cost, which allows it to budget a specific amount for a specific program.

(e) That the Union's proposal would thwart the Board's goal of containing health and dental insurance costs, at a time when employers all over the state are looking for ways to soften the impact of major cost increases in health and dental insurance programs.

(5) That the Association's early retirement proposal seeks to preserve a working condition that has expired.

(a) That Article XX, Section B of the prior master agreement was tied to Section 40.02(42)(f) of the Wisconsin Statutes; that this statutory provision expired as of August 1, 1987.

(b) Since the Wisconsin Statutory provision authorizing teacher early retirement has expired, that Section B of Article XX should be deleted from the agreement.

(c) That the Union is seeking the Board's continued payment of hospital-surgical insurance premiums for early retirees, without the underlying statutory authorization.

(d) That the Legislature and the Governor are still debating an early retirement law; upon passage of such law, that the parties should then address the matter over the bargaining table.

(e) That the Union proposal for the continuation of the expired early retirement plan is a change in the status quo; that the Board believes that the entire section should be deleted since the statutory authorization granting life to the early retirement concept has expired.

(f) That consideration of comparables in this area should not justify the position of the Union. That Denmark, Luxemburg-Casco and Sevastopol do not have the State's early retirement plan; that Algoma, Gibraltar and Sturgeon Bay plans are tied to the Wisconsin Statutes.

(g) That the Union's proposal of an unlimited and uncapped health insurance payout for early retirees, would subject the District to increasing fringe benefit costs over which it has little control.

(6) That consideration of the total package, including all salary and fringe benefits, is the most meaningful way to measure the reasonableness of a settlement.

(a) That the Union approach, which would restrict the Arbitrator to consideration of wage rate increases, is misleading.

(b) That at least two districts, Luxemburg-Casco and Mishicot, have implemented an increment freeze, with the savings from the freeze apparently plowed back into salary schedule increases.

(c) That consideration of wages only, penalizes districts which are allocating proportionally more money to maintain fringe benefits; that Kewaunee had the third highest health insurance rate increase in 1988-89, at 28%; that the average increase among comparables was 17.6%.

(d) That the total package approach has been used by many Wisconsin interest arbitrators.

That a total package approach, which utilizes dollars per returning teacher and includes recent increases in health insurance costs, is the best measure of the relative fairness of the settlement.

(7) In addressing the salary schedule issue, that various considerations favor the selection of the Board's final offer.

(a) That arbitral consideration of the interest and welfare of the public criterion favors the Board's final offer. That the local taxpayers face serious economic problems: that Kewaunee County has 22% of its labor force in farm employment, and is a farm dependent county; that six of the seven towns comprising the School District have over one-half of their property devoted to agriculture; that the long run economic difficulties of Wisconsin farms existed prior to the drought of 1988 and are well documented in the record, as are the effects of the drought of 1988; contrary to the arguments of the Union, that the Farmland Preservation Act has not solved all of the farmer's property tax woes; that tax levy decreases on agricultural property have not kept pace with actual declines in property values and falling farm income. That the evidence is quite clear that the drought of 1988 will have a direct, immediate, and adverse impact upon almost every taxpayer in the Kewaunee School District.

(b) That the Arbitrator should not ignore local economic conditions on the grounds that other districts have taken the same conditions into account in reaching their settlements. That evidence in the record shows that the Kewaunee District relies more on agriculture than many comparable districts: among the primary comparables, that only Kewaunee has been identified as farm dependent, by the Department of Agricultural Economics of the College of Agriculture and Life Sciences of the University of Wisconsin - Madison; that Door, Manitowoc and Brown Counties derive much less earned income from farming than does Kewaunee; that Kewaunee County employs 26.2% of its workforce in agriculture, while Door, Manitowoc and Brown Counties have 15.8%, 8.8% and 3.0%, respectively.

(c) That arbitral consideration of the impact of the drought, and the timing of the settlements within comparable districts, justify primary reliance in the final offer selection process being placed upon the interest and welfare of the public, rather than comparisons.

(d) That arbitral consideration of other factors such as lower per capita income in Kewaunee than in Door and Manitowoc Counties, and average unemployment in Kewaunee that was the seventh highest of 72 Wisconsin counties, supports selection of the final offer of the Board.

(e) That the interest and welfare of the public can best be served by the balancing of the interests of the Association in higher teacher salaries and a fair salary increase, the interests of the public in maintaining quality education by attracting and retaining competent teachers, and the interests of the taxpayers in the District in minimizing the ever increasing cost of public education.

In the above connections, that the Board's offer gives the teacher a real (after inflation) salary increase; that Kewaunee teacher salaries are already high enough to attract and retain competent teachers; and that District taxpayers have not received income increases comparable to the teachers in the District.

(f) That taxpayers of the District already contribute more to support education than do comparable taxpayers; in this connection it emphasized evidence indicating a higher than average tax levy rate, and lower average income levels in the District, and it submitted that Wisconsin arbitrators have generally recognized and given consideration to such factors, in the final offer selection process.

(8) Without prejudice to its earlier argument relating to the weight to be placed upon comparisons, the District submitted that arbitral consideration of total package comparisons supported the selection of its final offer.

(a) In considering total compensation increases for the two year duration of the renewal agreement, that the Board's offer for 1988-89 was slightly below and the Association's offer slightly above the comparables; for 1989-90 that the Board's offer is very close to the average settlement, while the Association's offer is "out of the ballpark."

(b) That Kewaunee is a wage leader where it counts the most, and that the Association's benchmark analysis largely misses this point. That some 72% of the Kewaunee teaching staff are at the top of the salary schedule, and benchmark comparisons at the top of the salary schedule support the selection of the final offer of the District. That this is true on the basis of rankings at the BA Maximum, the MA Maximum and the Schedule Maximum, or on the basis of comparisons against the median conference salaries at these levels.

(c) That Kewaunee's teachers earn salaries significantly above the average salaries paid by comparable districts; that this conclusion is also true when the comparison is made on the basis of the total package of teacher salaries and benefits.

(d) That the selection of the final offer of the District is supported by arbitral consideration of private sector and other general public sector settlements. That on either a local, a state, or a national basis, no persuasive

justification has been advanced for a 5.8% pay increase for 1988-89, and a further 6.0% increase for 1989-90. That the Board's pay offer of 4.8% increases in each of the two years is more realistic and, in fact, exceeds most pay increases granted elsewhere.

(e) That consideration of the overall compensation criterion favors the selection of the final offer of the Board. On this basis that the Arbitrator is faced with consideration of a 5.8% versus a 6.9% increase in 1988-89, and a 5.6% versus a 7.3% increase in 1989-90. That this consideration is more important when, as here, the parties are dealing with the allocation of scarce resources.

(9) That since the Board's final offer exceeds cost-of-living changes, it guarantees real income advances for the covered teachers. That the Board's final offer, on a total package basis, exceeds cost-of-living increases by 1.8% for the first year and by 2.9% in the second year of the renewal agreement. Regardless of comparables, that there is no basis for selecting the 14.2% total package offer of the Association.

(10) That other factors such as the impact of the drought upon the weight normally placed upon comparables, the economic and political reality of the times, and the parties' recent negotiations history, favor the selection of the Board's final offer. In the latter connection, that recent settlements in the District have outstripped those received by other public and private sector employees, but it is now time for the teachers to accept the kind of increases that are being received by others in society.

(11) Contrary to certain evidence and anticipated arguments from the Association, that national studies do not support the higher wage offer of the Association.

(a) That much of the evidence is not pertinent or relevant to either Wisconsin or to the Kewaunee District.

(b) That the national studies submitted by the Union contemplate various sweeping reforms,

rather than addressing only salary considerations. That the Association cannot ignore the recommended accountability factors, and isolate upon salary matters.

(c) That Wisconsin interest arbitrators have not placed significant weight upon isolated arguments, based upon studies which address serious national educational problems.

(d) That Association arguments emphasize salary considerations and neglect accountability elements in the reports, and that certain of its salary comparisons fail to take into consideration the nine month school year versus the twelve month working schedule in many other professions.

FINDINGS AND CONCLUSIONS

Preliminarily the Arbitrator will observe that both parties have presented extensive evidentiary records and comprehensive and well argued briefs in support of their respective positions. While the final offer selection process is not an easy one in this case, a particularly refreshing aspect of the dispute is the fact that the parties are in basic agreement with respect to both the makeup of the principal comparison group, and the major costing considerations inherent in the two final offers.

Prior to reaching a decision and rendering an award in these proceedings, the Arbitrator will separately address each of the four impasse items, and will consider the application of various arbitral criteria to the four items. On the basis of their apparent relative importance, the Arbitrator will address in order, the salary impasse, the health and dental insurance dispute, the early retirement item and, finally, the extracurricular salary schedule impasse.

The Salary Impasse

In the presentation of their respective positions on the basic salary impasse, the parties addressed the comparison criterion, on both salary alone and on a total compensation basis; they emphasized the interest and welfare of the public criterion on the basis of certain economic conditions in the Kewaunee District and elsewhere, and from the perspective of teachers and the perceived need for educational improvement. Finally, each of the parties addressed the application of the cost-of-living criterion to the dispute at hand.

In first addressing the application of the comparison criterion it will be noted that while the Legislature has not prioritized the various arbitral criteria specified in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is widely recognized in Wisconsin and elsewhere that the comparison criterion is normally the most important of the various criteria, and that the so-called intraindustry comparison is the most important of the various possible comparisons. This is not to indicate, however, that this must always be the case, and the Employer has attempted to establish that other criteria than intraindustry comparisons should be accorded greater weight in these proceedings.

The intraindustry comparisons which have historically been used by the parties in their prior negotiations and in prior interest arbitrations in 1984 and 1986, consist of the so-called peninsula schools, or the Algoma, Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicot, Sevastopol, Southern Door and Sturgeon Bay Districts.

What of the various arguments advanced by the District relating to certain economic differences between the various districts in the principal comparison group? In this connection, it cited such considerations as differences in average incomes, in taxing efforts, in percentages of agricultural employment, and in the property rich status of certain districts. The normal persuasiveness of the intraindustry comparison in interest proceedings is well described in the following extract from the authoritative book by Irving Bernstein:

> "a. Intradindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
>
> Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for predictions as may be uncovered in social affairs. The loyalty of arbitrators to this criterion at the general level could be documented at length..." 1./

1./ Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, p. 56.

If there is a dispute as to which intraindustry comparisons to use or relative to the weight to be placed upon such comparisons, interest arbitrators will very frequently consider the parties' bargaining history, and they are extremely reluctant to abandon or to distinguish the comparisons used by the parties in the past, or to modify the wages, benefits or language comparisons utilized by the parties in the past. These principles and their underlying rationale are described as follows by Bernstein:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When Newark Milk Company engineers asked for a higher rate than in New York City, the Arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.' "

* * * * *

> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..." 2./

The force of bargaining history in selecting and in applying wage comparisons is also briefly explained in the following excerpt from the book by Elkouri and Elkouri:

> "Where each of various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past." 3./

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

3./ How Arbitration Works, p. 811.

On the basis of the above, the Arbitrator has preliminarily concluded that the various items of evidence, and the arguments advanced by the Employer in attempting to distinguish between the various districts comprising the principal intraindustry comparison group, must not be credited. The various considerations advanced by the Employer have not historically been utilized by the parties to distinguish between the various districts, and no appropriate basis has been established that would justify arbitral abandonment of the wage and benefit relationships and comparisons that the parties have utilized in the past, within the peninsula schools.

What next of the arguments of the District relating to the economic impact of the 1988 drought? In this connection, it urged that these economic conditions should temper the weight normally placed upon the agreed upon intraindustry comparisons, since all but one of the comparable school districts had settled prior to the impact of the drought.

An arbitrator normally attempts to select the final offer that most closely approximates the settlement that should have or might have been reached across the bargaining table by the parties, which principle could support arbitral disregard of events which occurred after the time frame in which the parties should have settled. The Wisconsin Statutes, however, in Subparagraph (i) of Section 111.70(4)(cm)(7), mandate arbitral consideration of changes in any of the specified arbitral criteria during the pendency of the arbitration proceedings. The Legislature did not, however, indicate the weight to be placed upon such changes, which supports the inference that such weight should vary with the facts and circumstances of each case, including the nature of the impasse item(s). Changed economic circumstances which have resulted in an absolute inability to fund the wage and benefits increases which have been agreed upon by the comparables, would normally be accorded controlling weight in the final offer selection process, for example, while changes which interferred with short term cash flow might be sufficient to justify selection of a different implementation schedule for wage and benefits changes. It must be recognized, however, that the force of the intraindustry comparison normally takes precedence over claims of financial adversity which fall short of an absolute inability to pay.

The Impartial Arbitrator has preliminarily concluded that the Employer's arguments based upon the 1988 drought should not detract significantly from the persuasive effect of the peninsula school district comparisons for the following basic reasons:

(1) The financial adversity claims do not entail any inability to pay claim, and the force of the intraindustry comparison normally takes precedence over such claims of financial adversity.

(2) While the contention of the Employer is correct with respect to the impact of the drought becoming fully apparent in June of 1988, it must be noted that there were significant earlier signs of a negative impact upon crops due to reduced rainfall; Employer Exhibit #24, for example, refers to crops planted in May being slow to germinate due to dryness, and to farmers becoming concerned due to lack of rain in May of 1988.

While it might well be argued that the settlements which took place prior to May of 1988 were not affected by the prospective lack of rain and the ultimate drought, the same cannot be said for the Gibraltar and Luxemburg-Casco settlements of May 1988, the Sturgeon Bay settlement of June 1988, and the Sevastopol settlement of December 1988.

On the above bases, the Arbitrator has preliminarily concluded that the application of the comparison criterion should be accorded the normal weight in the final offer selection process in these proceedings. While these comparisons have been presented in a variety of ways, the clearest and the most persuasive comparisons in these proceedings are those which compare the average salary increases in the primary comparison group against the two final offers, and those which compare the average total compensation increases against the two offers.

(1) There is no dispute that the average salary increases in the primary comparison group for 1988-89 were 6.6% and $1748, versus the Board proposed 4.8% and $1348 increases, and the Association proposed increases of 5.8% and $1660. The Association's final offer was much closer to the averages for the comparables, while the Board's offer was $368 and 1.8% below the averages for the comparables.

(2) There is also no dispute that the average salary increases in the primary comparison group for 1989-90 were 6.7% and $1894, versus the Board proposed 4.8% and $1445, and the Association proposed increases of 6.0% and $1814. The

Association's final offer was much closer to the averages for the comparables, while the Board's offer was $449 and 1.9% below the averages for the comparables.

(3) There is no dispute that the total compensation increases for 1988-89 averaged $2421 and 7.0% for the comparison group, versus the Board proposed $2200 and 5.8%, and the Association proposed $2596 and 6.9%. The Association offer is $175 above the average, and is slightly closer than the Board's final offer which is some $221 below the average of the primary comparison group.

(4) The total compensation increases for 1989-90 are not a matter of agreement between the parties, because they involve certain assumptions and there are only three current settlements within the primary comparison group. On the basis of the Employer's projections, which include an estimated 25% additional increase in medical insurance costs, the average increases in the comparison group were $2448 and 6.6% versus $2956 and 7.3% for the Association and $2493 and 6.2% for the District. Despite the limited sampling and the estimates, the District is closer to the group average on both a dollar and on a percentage basis.

On the basis of the above, and despite the total compensation comparison data for 1989-90, the Impartial Arbitrator has preliminarily concluded that overall consideration of the comparison criterion, including the definitive wage comparisons for the two years, and the definitive total compensation comparisons for 1988-89, clearly favors the selection of the final offer of the Association in these proceedings.

At this point, the Arbitrator will add that certain additional comparison data relating to general public and private sector settlements, was not sufficiently comprehensive and definitive to be assigned significant weight in these proceedings.

The parties differed sharply with respect to the application of the interests and welfare of the public criterion.

The District heavily emphasized the agricultural orientation of the District, the effects of the 1988 drought, and other long and short term agricultural problems, and it urged primary reliance upon this criterion, rather than the

comparison criterion. In this connection it urged a balancing of the interests of the parties, as between high teacher salaries, fair salary increases, the interests of the public in a quality education, and the interests of taxpayers in minimizing the ever increasing costs of public education.

The Association urged that there was no inability to pay issue, submitted that similar Employer arguments had been rejected in two prior arbitrations, urged that the Kewaunee economy was not shown to be worse than that of the comparables, and argued that the welfare of the public is well served when educational needs are recognized, and when teachers receive benefits commensurate with their contributions to society. It submitted a number of exhibits in support of its position and urged that in the balancing of interests process, the public interest in adequate educational salaries should take precedence over the arguments emphasized by the District.

As has been emphasized by the undersigned in the past, the District is correct that adverse economic circumstances must be taken into consideration by interest arbitrators, but these considerations are normally given determinative weight in only two sets of circumstances. First, where the record indicates an absolute inability to pay and, second, where selection of a final offer would entail a significantly disproportional or unreasonable effort on the part of an employer. In the situation at hand, there is no inability to pay claim, and the record simply does not support a finding that the Kewaunee District is facing unique or unusual economic circumstances, that are not also facing comparable districts. As referenced earlier, many of the factors cited by the Employer in an attempt to distinguish the District from others in the primary comparison group, are items of long standing, during which time the District has continued to negotiate and to arbitrate with the Association on the basis of the peninsula schools comprising the primary comparison group. Many of the Employer's arguments, therefore, clearly fly in the face of the parties' negotiations history.

The Association is also quite correct in its contention that the interests and welfare of the public are served by educational excellence and the corresponding need for the payment of fair and adequate salaries to teachers. Such considerations are difficult to either quantify or to prioritize in relation to other criteria and, as urged by the District, the needs for educational improvement also go well beyond questions of teacher salary.

On the basis of all of the above, the Impartial Arbitrator is unable to assign determinative weight to the interests and welfare of the public criterion in these proceedings.

In next addressing the cost-of-living criterion, three preliminary observations are in order:

(1) This criterion is only examined and considered by arbitrators from the last time that the parties went to the bargaining table; it is conclusively inferred that the parties disposed of all wage issues during their most recent negotiations or their most recent interest arbitration, and there is no appropriate basis for reconsidering or relitigating prior settlements.

(2) Cost-of-living considerations vary in their relative importance, in relationship to the degree of recent movement in the index. During periods of rapid price increases, cost-of-living considerations can be one of the most important factors in the final offer selection process; during periods of relative price stability, on the other hand, the criterion declines in relative importance.

(3) Cost-of-living considerations are generally regarded as of a lesser order of importance than intraindustry comparisons, due to the fact that the settlements of comparable employers and unions already include their consideration of changes in cost-of-living.

In light of the relatively moderate recent increases in the cost-of-living indexes, it is apparent that the final offers of both parties exceed recent and presently anticipated increases in cost-of-living; on this basis, it is clear that the cost-of-living criterion somewhat favors the selection of the final offer of the Employer. Cost-of-living considerations, however, cannot appropriately be assigned determinative weight in these proceedings.

The Insurance Premium Impasse

In this area the parties are not significantly apart on the short term costs of moving to a percentage, rather than a fixed dollar Employer commitment for family medical and dental insurance coverage in 1989-90, with the Employer proposing a dollar maximum of $299 per month, and the Association proposing movement to a 91.5% of premium costs rather than a fixed dollar amount.

While the Union defended its proposal principally on the basis of cost and comparison considerations, the Employer

is quite right that a very important, long term principle is involved. The Employer prefers continuation of the parties' long standing practice of negotiating fixed dollar amounts for Employer contributions for family medical and dental insurance. Not only does this practice better allow for budgeting and planning, but it ensures that the Employer will get future credit across the bargaining table for any negotiated increases in insurance costs, rather than having such costs subject to automatic escalation on the basis of factors external to the bargaining process.

The Arbitrator will observe at this point that the Employer is quite correct that Wisconsin interest arbitrators, including the undersigned, have normally avoided the adoption of proposals that entailed a substantial departure from the prior negotiated status quo, unless the proponent of change has made an extremely persuasive case for the change. This is due to the fact that interest arbitrators attempt to put the parties into the same position they might have or should have reached across the bargaining table, and they look to the parties' negotiations history for guidance in filling this role; such bargaining history considerations, it will be noted, fall well within the scope of Paragraph (j) of Section 111.70(4)(cm)(7) of the Statutes.

Without undue elaboration, and despite the adoption of cost sharing of insurance premiums on a percentage basis by some comparable employers, the Arbitrator will observe that the Association has not met the above described, extremely persuasive test in the matter at hand. If the insurance premium question were the only impasse item, the Arbitrator would reject the final offer of the Association, in favor of continuation of the previously negotiated status quo; the final offer selection process, however, is based upon the relative merits of the final offers of each party in their entirety.

The Early Retirement Group Insurance Dispute

Article XX, Section A of the prior agreement provided for the Board's payment to the Wisconsin Retirement System of an amount equal to the full amount of the teacher's required retirement contribution, and Section B provided for early retirement benefits for certain teachers who retired between the ages of 62 and 65, in accordance with then Section 40.02(42)(f) of the Wisconsin Statutes, which expired without legislative renewal on August 1, 1987.

The Board proposed deletion of Section B in its entirety, while the Association proposed deletion of

Section B(4), and the introduction of new Sections B and B(1). In material part, the Union proposes that teachers who resign from the district with fifteen years of service, between the ages of 62 and 65, be eligible to receive early retirement insurance benefits from the District.

In arguing their respective cases, each of the parties cited certain comparisons, and each argued that the other was proposing a change in the prior status quo. In the latter connection, the Employer argued that the Union was seeking a change in the agreement on a benefit that had, by its own terms, expired. The Association, on the other hand, argued that the early retirement benefit dated back to the parties' 1978-79 agreement, that it had been modified in the interim period, and that the District was proposing a change in the status quo by eliminating the early retirement provisions of the prior agreement.

After carefully examining the position of the parties, the Arbitrator has preliminarily concluded that it is the Employer who should bear the burden of establishing a persuasive basis for the elimination of the prior early retirement provision. It had been in the agreement for an extended period of time, the parties had obviously taken the benefit into consideration in their periodic evaluation and costing of the predecessor agreements and, despite the statutory basis for the benefit, it was part of the predecessor agreement. By way of analogy, if the Legislature had discontinued the Wisconsin Retirement System as a vehicle for handling teacher pensions, the Employer would be hard pressed to argue that it no longer had pension obligations under Section A of Article XX of the prior agreement.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the Employer has failed to show a quid pro quo, or to otherwise make a persuasive case for the elimination of the benefits previously provided under Article XX, Section B of the prior agreement. On the basis of the same rationale discussed earlier, the Employer has failed to establish the requisite persuasive case for its proposed change in the prior status quo.

The Extracurricular Salary Schedule Impasse Item

This is clearly the least important of the four impasse items, and one on which the parties differ only slightly in their final offers. Without extensive discussion, the Arbitrator will observe that he has carefully considered the two final offers on the basis of the arguments and the evidence presented by the parties and the various arbitral criteria

specified in the Wisconsin Statutes. Preliminarily, I have concluded that the final offer of neither of the two parties in this area is particularly favored, and this impasse item cannot be assigned determinative weight in these proceedings.

Summary of Preliminary Conclusions

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

(1) On the basis of their apparent relative importance, the Arbitrator will address in order, the salary impasse, the health and dental insurance dispute, the early retirement item, and the extracurricular salary schedule impasse.

(2) In connection with the salary impasse, the parties principally emphasized the comparison criterion, the interests and welfare of the public criterion, and cost-of-living considerations.

(a) Arbitral consideration of the comparison criterion favors the selection of the final offer of the Union.

(b) Certain evidence and arguments advanced by the District in an attempt to distinguish itself from other districts in the primary comparison group are inconsistent with the bargaining history of the parties.

(c) The application of the interest and welfare of the public criterion cannot be assigned determinative weight in these proceedings.

(d) Cost-of-living considerations somewhat favor the final offer of the Employer, but they cannot be assigned determinative weight in these proceedings.

On the basis of the above, the final salary offer of the Union is favored over the final salary offer of the Employer.

(3) The final offer of the Employer is favored in connection with the insurance premium impasse.

(4) The final offer of the Association is favored in connection with the early retirement group insurance impasse item.

(5) Arbitral consideration of the extracurricular salary schedule impasse item does not definitively favor the final offer of either party.

Selection of Final Offer

After a careful consideration of the entire record, including consideration of all of the statutory criteria, the Arbitrator has preliminarily concluded that the final offer of the Association is the more appropriate of the two final offers. As described earlier, this conclusion is principally based upon arbitral consideration of the comparison and the negotiations history criteria in connection with the salary dispute.

AWARD

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

(1) The final offer of the Kewaunee Education Association is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the Association's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

April 15, 1989