STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

SOUTHERN DOOR SCHOOL DISTRICT

To Initiate Arbitration
Between Said Petitioner and

SOUTHERN DOOR
EDUCATION ASSOCIATION

Case 19
No. 42725
INT/ARB-5363
Decision No. 26317-A

APPEARANCES:

William G. Bracken on behalf of the District
Dennis W. Muehl on behalf of the Association

On March 5, 1990 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on May 22, 1990 in the District offices located near Brussels, WI Briefs were exchanged by the parties by July 18, 1990. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the undersigned renders the following arbitration award.

ISSUE:

Technically, the only issue remaining in dispute between the parties is the salary schedule of the 1990-91 school year. All other terms of the parties' 1989-91 Agreement have been agreed upon. The Association's offer contains a salary base of $20,020, while the Board's proposed base is $19,910. There is no dispute between the parties regarding the structure of the salary schedule, and in both cases, the remaining schedule steps are generated from the base.

In the opinion of both parties, a more important conceptual dispute exists between them. The Board has proposed a salary schedule based upon a total package approach, wherein the salary schedule was generated after the cost for FICA, WRS, and insurances for the 1990-91 contract year became known The Association's salary schedule was not base upon total package costs. It is this dispute which appears to be the crux of the parties' disagreement

The District's 1990-91 salary proposal generates the following increases: Salary only--$1770 or 5.8%/teacher and Total package--$2747 or 6.7%/teacher. The Association's proposal generates the following: Salary only--$1945 or 6.4%/teacher and Total package $2995 or 7.2%/teacher.

DISTRICT POSITION:

The costing discrepancies between the parties are not of significant magnitude to cause rejection of the Board's offer. The difference between the parties' costing for 1990-91 is only $1289 The reasons the Board's social security rate is not the same as the Association's is due to the fact that two teachers are not covered by social security. The Board recalculated the rate to be applied to all teachers allowing for the two teachers who are not covered.

The Association's deletion of Mishicot from the comparables is self serving and should be rejected. Mischicot was included as a comparable by arbitrator Weisberger in a recent arbitration award The Association's effort to delete Mishicot is a self serving attempt to eliminate a relatively low settlement growing out of an award which favored the District Also relevant is the fact that the Association's representative, who also represented Mishicot in a recent arbitration proceeding, did not attempt to exclude Southern Door from the list of comparables in that case.

It is well settled that once the parties have established comparables through the arbitration process, that precedent should be followed. (Citations omitted) Otherwise the parties will always engage in shopping for

comparables to support their respective positions.

Most importantly, the parties have utilized the total package concept to settle their 1986-87, 1987-88, and 1988-89 salary schedules. In each of these cases, salary scahedules were built after insurance rates were known.

The parties' last agreement provided, in pertinent part

> The 1988-89 pay schedule will be formulated between the Board and the Association as soon as the health and dental rates are known for 1988-89. The total package increase will equal 6 2 percent from 1987-88.

In the last round of bargaining the Board obtained its total package concept for resolving wages, hours and working conditions, and the Association received a new salary schedule lane and a new insurance carrier. Now the Association unfairly seeks to undo that bargain without even offering a quid pro quo. Just as any other mandatory subject of bargaining, the total package concept lives on past the duration of the parties' last agreement

An arbitrator ought not to grant a change in the status quo unless an extremely persuasive case is made by the proponent of such a change Here, the Association has failed to make such a case

Moreover, there are important reasons to retain the total package concept which the parties incorporated into their last agreement, the main one being the rapidly escalating cost of health insurance. This factor has forced both parties to wrestle with the whole idea of allocating money between salaries and fringe benefits. Only the District's position in this dispute allows for this to continue to be done.

At least one distriact in the relevant comparables (Algoma) has also reached a settlement along these same lines.

Comparability also favors the Board's final offer Though both offers are somewhat competitive and comparable (both parties are about the same distance from the settled average--the Board slightly below and the Association slightly above), the merits of the total package approach to constructing the final offers tips the balance to favor the Board's offer Relatedly, the dollar and percent increase on the benchmarks also is split evenly between the parties' offers. The reason that the District is slightly below the average increases at the MA-9, MA Max. and Schedule Max is because Algoma changed its salary schedule structure, and shifted money to

the top of the salary schedule. Because there are only four districts to compare, Algoma's increases are an aberration and have a disproportionate impact on the average. Besides, the District's salaries are above average at every benchmark. In fact, the District had the third highest average salary in 1989-90.

Also relevant is the fact that no other public or private sector employee group has received increases of the magnitude offered by the Board.

In addition, the Board's offer is above the cost of living, as has been the case since 1983-84, thereby generating significant real income gains for the District's teachers this year, as well as over a significant period of time.

Lastly, the Board's offer strikes a realistic and reasonable balance between the needs of the teachers and the interests and needs of the taxpayers in the District

ASSOCIATION POSITION:

The Board's total package offer does not represent the status quo

The total package agreement which occurred in the last round of bargaining only occurred once. This one time bargain does not create a binding practice or pattern which must indefinitely be adhered to The results of that bargain is not a benefit, nor does it create a contract language status quo.

The Board offer has the net effect of generating salary increases far below the average in comparable schools, most of whom are also health insurance consortium participants with the District. This is simply unfair

The discrepancy in the parties' costing of FICA, though not significant in dollar amounts, points out the problem in a total package approach subject to arbitration, in contrast to a voluntary agreement utilizing total packge calculations where the parties agree on costing methodology.

The Board offer falls short of the comparable average both in terms of total package and salaries Regardless of the comparables used, the Association's offer is closer to the comparable settlement pattern in 1990-91

In determining compable districts, Mishicot should not be utilized since it does not currently participate in either the Packerland Athletic Conference or the insurance consortium of which the District is a members. Thus, it no longer shares a community of interest with the District's comparables.

A benchmark analysis clearly supports the Association's proposal, whichever group of comparables is utilized. Since interior benchmarks of a schedule may not be comparable beacause of schedule structure changes, movement freezes, etc. the hiring rates and schedule maximums have been utilized to make benchmark comparisons. Utilizing such comparisons, although the Association offer is lower than the comparables, it is still closer to the average increase by a significant amount than the Board's offer.

Average salary dollar increases among the comparables also support the reasonableness of the Association's offer. Even including Mishicot, the Association's offer is only $70 above the average salary increase, while the Board's offer is $105 below the average The Association's offer is only .2% off the mark in terms of percentage increases, while the Board offer falls short by .4%. Furthermore, all of the comparable settlements, except Mishicot, are voluntary, and in view of the strong pattern of the voluntary settlements, the Mishicot award should carry minimal weight even if Mishicot is included in the comparability group.

The Association's offer is also supported even if total compensation is compared. In this regard it is important to note that total package figures are notorious in their inaccuracies as parties in general have not standardized that statistical development as they have with the cast-forward approach to salary settlements or benchmark analysis Again, while keeping this in mind, utilizing the Board's data, and including Mishicot, the averages still support the Association's offer. The Association offer is within $103 of the comparable average, with a percent increase that matches the comparable average. The Board's offer however falls $105 short of the comparables, and it is one half percent behind the comparable average. Without Mishicot, the Association's proposal is even more comparable.

In addition, comparisons with other employees, both private and public, should not be made unless there is insufficient data for making comparisons with teachers. Such is not the case in the instant matter. In 1990-91, excluding Mishicot, five comparable districts are settled. Consequently, reliance on outside comparables is not only unnecessary, but is inconsistent with arbitral authority. (Citations omitted).

Historically, teacher bargaining results, unlike those of the private sector and nonteacher public sector unions, have not paralleled increases in the C.P.I.. During the years of double digit inflation, Boards successfully advanced the argument that pattern settlements in comparable districts were of greater significance than measures of inflation. The pattern of settlements rational has remained the most significant consideration under the cost of living criterion. (Citations omitted). Strict adherence to C.P I measurements could

easily result in awards supported neither by the settlement pattern nor the labor market conditions which affect an individual occupation. (Citation omitted).

DISCUSSION:

The issue of the comparability of Mishicot needs to be addressed in order for the undersigned to address the relative comparability of the parties' proposals in this dispute. While the undersigned agrees that previously utilized comparables should normally continue to be utilized in subsequent rounds of negotiations, the undersigned is not persuaded that such comparables must be utilized indefinitely and unalterably. This is so since comparables must necessarily vary based upon the sequence of settlements and arbitration awards which are available to the parties during any given round of negotiations. Clearly, depending upon the availability of such data, it may be necessary for the parties and arbitrators to utilize alternative comparability data to discern relevant settlement patterns which might have a legitimate impact on a pending negotiations dispute.

In addition, and of equal importance, factual circumstances which are the basis for the establishment of comparables in proceeding such as this change, and when such changes occur, the undersigned does not deem it inappropriate to give recognition to those changed circumstances in determining which comparables to utilize To ignore such changes would, in the undersigned's opinion, deny current reality and give uncalled for importance to the role of comparability precedent in these proceedings. In the instant case, such changes have occurred. Mishicot is no longer a member of the same athletic conference, nor is it a participant in the insurance consortium which most comparable districts have chosen to join. Under such circumstances, particulary where a settlement pattern has been established amongst comparable districts, the undersigned need not include the Mishicot settlement in the comparability data to be considered. That is not to say that under no circumstances should Mishicot be considered as a comparable. It only implies that under the present circumstances there is no need to give consideration to Mishicot comparability data.

Having so concluded, the undersigned must consider the relative comparability of the parties' proposals. This, in turn, requires the undersigned to determine what specifically should be compared, i.e., salaries only or the relative value of the total package proposed by both parties.

Although the parties in their prior agreement negotiated a proviso indicating that the salaries contained in that agreement would be based upon an agreed upon total package, the undersigned does not consider said agreement to

constitute a condition of employment entitled to status quo preservation absent persuasive justification to the contrary. What the parties agreed to in that agreement amounted only to a procedure for the determination of salaries for the term of that agreement. Said procedure, in the undersigned's opinion, is distinguishable from a substantive term and condition of employment entitled to status quo protection

Having so concluded, the undersigned is not persuaded that the Association needs to provide a quid pro quo or other persuasive justification for changing that procedure in order to prevail in this proceeding. That is not to say however that there is not a strong argument for favoring the District's total package approach for the development of a 1990-91 salary schedule Indeed, in the undersigned's opinion the District's proposed total package approach is far more equitable and preferable than the Association's approach for the development of a salary schedule, since it gives appropriate and legitimate consideration to the value of all new benefits teachers will receive under the new agreement. While it must be conceded that the methodology for comparing total package costs is far from perfect, and is therefore somewhat unreliable, such an approach still is preferable to the negotiation of individual benefits with economic value on an isolated basis

Based upon these considerations, the undersigned agrees with the District that in circumstances in which all else is relatively equal, its approach to the development of a salary schedule is more reasonable than the Association's, even though it is not entitled to contractual status quo preservation. The question which must then be addressed is whether under the circumstances present herein, all else is relatively equal.

With respect to that issue, the undersigned is of the opinion that the comparability data in the record indicates that the parties' proposals are not relatively equally comparable. Several indicia support this conclusion

Utilizing a benchmark analysis of schedule minimums and maximums which are not influenced by structural changes and movement freezes, at every benchmark the Association's salary proposal is significantly more comparable than the District's, both in terms of dollar and percentage increses. It is noteworthy in this regard that at each benchmark the Association's proposal is below the average comparable increase at each benchmark.

Utilizing a second basis for comparison, average salary increases, both in percentage and actual dollars, the Association's proposal is more comparable than the District's. This is particularly true when dollar increases are compared.

Lastly, even when the value of total package increases is compared, the Association's proposal is slightly more comparable than the District's, particularly when percentage increases are utilized as the basis for comparison.

Thus, the record supports a conclusion that the Association's proposal is uniformly more comparable than the District's, and at least in some respects, in a not inconsequential manner.

The undersigned is also of the opinion that nothing else in the record supports the selection of the less comparable of the two proposals at issue herein, since the other record evidence does not distinguish the District from its comparables in any meaningful manner.

Based upon all of the foregoing considerations, the undersigned hereby renders the following:

ARBITRATION AWARD

The Association's final offer shall be incorporated into the parties' 1989-91 collective bargaining agreement

Dated this 2nd day of August, 1990 at Madison, Wisconsin

Byron Yaffe
Arbitrator