

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Wautoma Area School District and the Wautoma Education Association, with the matter in dispute the salary increase to be paid to those in the bargaining unit during the two year duration of the renewal agreement.

The parties exchanged their initial proposals for the renewal agreement in February of 1989, after which they met on four occasions in their attempt to reach a voluntary settlement. The Association filed a petition with the Wisconsin Employment Relations Commission on January 23, 1990 and, after an interim investigation by a member of its staff, the Commission on March 28, 1990 issued certain findings of fact, conclusions of law, certification of results of investigation and order requiring arbitration. On April 5, 1990, the Commission issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Wautoma, Wisconsin on July 16, 1990, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions. Each party closed with the submission of post hearing briefs and reply briefs, after the receipt and distribution of which the record was closed by the Arbitrator effective August 27, 1990.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, hereby incorporated by referenced into this decision and award, may be summarized as follows:

- (1) The District's offer would entail the following salary adjustments over the term of the agreement:
 - (a) Structurally unchanged salary schedules with a BA Base of \$18,864 for 1989-1990, and \$19,628 for 1990-1991; this would represent adjustments to the base of \$744.00 or 4.1% in the first year, and an additional \$764.00 or 4.05% in the second year.
 - (b) The Board proposed salary increases would approximate \$1460.00 per FTE teacher or 5.8% in 1989-1990, with an additional approximate \$1467 or 5.5% in 1990-1991.
- (2) The Association's offer would entail the following salary adjustments over the term of the agreement:
 - (a) Structurally unchanged salary schedules with a BA Base of \$19,080 for 1989-1990, and \$20,034 for 1990-1991; this would represent adjustments to the base of \$960 or 5.3% in the first year, and an additional \$954 or 5.0% in the second year.
 - (b) The Association proposed salary increases would approximate \$1763 per FTE teacher or 7.1% in 1989-1990, with an additional approximate \$1753 or 6.5% in 1990-1991.

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. Comparisons 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. Comparisons 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 the final offer of the Association should be selected by the undersigned, the Association emphasized the following criteria and advanced the following principal arguments.

- (1) That the weight to be assigned to each of the arbitral criteria is issue dependent. That the Wisconsin Statutes do not prioritize the various criteria, and that the factors historically identified by the parties as having the greatest weight should be accorded the greatest weight in arbitration.
 - (a) That there is no dispute that the Board has the lawful authority to grant the offer of the Association; accordingly, that this criterion should not be a determining factor.

- (b) That the stipulations of the parties are not in dispute in these proceedings.
- (c) That there is no ability to pay issue present in these proceedings, and that the interest and welfare of the public criterion favors the selection of the final offer of the Association. In the latter connection that the salary provided for in the Association's final offer would better tend to attract and to hold high quality teachers within the District.
- (d) That arbitral consideration of the comparison criterion favors selection of the final offer of the Association: that wage comparison is the criterion which should control the outcome of the proceedings, but the difficulty here is in the selection of appropriate groups of other teachers or other employees with which to make the appropriate comparisons; in previous arbitrations that athletic conference, regional and statewide comparisons have been utilized and, accordingly, that athletic conference, contiguous school district, CESA districts and statewide districts comparisons should be utilized in these proceedings; that recent changes by the Legislature in the statutory description of the comparison criterion indicates its desire for greater weight to be placed upon public school teacher comparisons in Wisconsin, in the CESA group, in contiguous school districts, and within athletic conferences; that athletic conference comparisons should not receive the same weight as accorded them prior to the statutory change; that a teacher in Wautoma should be paid wages similar to every other teacher in Wisconsin because they perform similar services as compared to all other teachers holding the same or similar teaching licenses; and that the wages of teachers in Wautoma must not be allowed to deteriorate in relation to any comparable group, and certainly not as their wages relate to the state average or the average of schools in the same geographic area.
- (e) That arbitral consideration of the cost-of-living criterion favors the selection of the final offer of the Association. In considering this criterion, that the Arbitrator should keep several factors in mind: that vertical steps in the salary schedule cannot appropriately be used as part of the cost of living adjustment; that the final base increases proposed by the Association for the two years of the agreement compare favorably with what has been and is projected to reflect future cost-of-living increases; in the past that the parties have elected to compare Wautoma teachers to others, but they never anticipated a future return to a lesser position than reflected in the 1986-1989 time frame; that the exhibits of both parties have deemphasized cost-of-living considerations. That comparability on a per cell basis or on the basis of dollar per returning teacher has been emphasized by the parties, rather than cost-of-living considerations.

- (f) Since the record does not contain sufficient data for appropriate and meaningful overall comparisons, that the Arbitrator should not place substantial weight upon the overall compensation criterion.
 - (g) That there was no agreement of the parties to hold the record open for additional settlement data, and that the changes in circumstances criterion is so over-shadowed by other criteria, that the Arbitrator should assign little weight to this factor.
 - (h) That the other factors criterion may appropriately be considered and applied by the Arbitrator, and that it may be assigned proper weight in the final offer selection process.
- (2) That the costing data of the District contains errors, and thus is less credible than Association data.
- (a) That the District data cannot be trusted since it failed to properly cost the Association's final offer.
 - (b) That the Arbitrator should rely upon Association data, which has been shown to be accurate, and to reject the District data which has been shown to be inaccurate.
- (3) That the primary comparison group in these proceedings should consist of all schools in Wisconsin.
- (a) That Wautoma teachers are behind in pay as compared to their colleagues in other Wisconsin School Districts; that arbitral adoption of the Association's final offer would begin to close the gap, while selection of the Board's final offer would widen the gap.
 - (b) That the Arbitrator should utilize the statewide data to reject the District's offer and to adopt the offer of the Association.
- (4) That athletic conference benchmark data, and data from area school districts also support the position of the Association in these proceedings.
- (a) Over the two year term of the renewal agreement, the Association offer is favored over that of the district in eight of the fourteen benchmarks.
 - (b) In terms of dollars per returning teacher, the final offer of the Association is also favored.
 - (c) That only the selection of the Association's final offer would close the gap in average salaries between Wautoma and contiguous school districts.
 - (d) That arbitral consideration of CESA 5 schools also favors selection of the final offer of the Association; that this is true both on a benchmark comparison basis, and on the basis of average dollars per returning teacher.

- (5) That wages of teachers can and should be compared to other employees with similar training and experience. That the Arbitrator should use comparison data relating to other college graduates, so that the salaries of teachers can be raised and as a result, allow Wisconsin school districts to attract and retain the best and the brightest young men and women into the teaching profession; that Employer data and arguments to the contrary should not be credited by the Arbitrator.
- (6) That the parties' voluntary settlement covering 1986-1989, best indicates where the District and the Association feel teachers' salaries should be as compared to those paid in other school districts.
 - (a) There is significant similarity between the relative position of the teachers in Wautoma in 1988-1989 versus other teachers in Wisconsin.
 - (b) That the Association offer attempts to maintain the ratios which the parties themselves established voluntarily in 1986-1987, and the District's offer would modify the previously agreed upon ratios at every benchmark.
 - (c) That the District has presented no persuasive justification for modification of the statewide comparison status quo.
 - (d) In considering what the parties would have agreed upon had they been able to do so, the expired agreement indicates a standard for the current interest arbitration decision. That the Arbitrator should award the offer which is closest to the pattern set voluntarily by the parties in their most recent agreement.
- (7) That comparison data in the record relating to expenditures, as well as economic and financial data applicable to Wautoma, indicate that the Association offer should be selected.
 - (a) That the data in the record show that the Wautoma Area School District is not dominated and driven by the farm economy, has relatively low spending, pays teachers less in wages and benefits, works teachers harder because of larger pupil teacher ratios, and taxes itself less than other athletic conference schools.
 - (b) That similar results are found if Wautoma is compared with contiguous school districts, or with school districts which are within CESA 5 Section III.
 - (c) That Wautoma has larger classes, spends less on classroom expenditures, pays teachers lower average salaries, and has lower percentages per classroom when compared to statewide averages.
- (8) That the state of the economy is not an impediment to the adoption of the Association's final offer.

- (a) That Waushara County is the second leading county in producing vegetables in Wisconsin, and these crops have yielded substantial income within the county for the past several years.
 - (b) That the county also produces a large number of Christmas trees, which also produces substantial agricultural income.
 - (c) That tourism in the country has flourished with the increased tourism in Wisconsin as a whole.
 - (d) That the Wautoma School District tends to be where people live, but not necessarily work; that many workers travel to high wage employment in Outagamie, Winnebago, Fond du Lac and Wood Counties; that teachers need high wages to effectively compete for goods and services within the School District.
 - (e) Apart from the above, that the State and the national economies have been performing well.
 - (f) However the economy is examined, either locally, statewide or nationally, there is no reason in the record to suggest that the state of the economy would be an impediment to the selection of the Association's final offer.
- (9) That the interests and welfare of the public are best served by the offer of the Association.
- (a) That it is widely recognized that the teaching profession is significantly underpaid as compared to earnings of other, similarly educated workers, which causes a decline in the numbers and the quality of those seeking and remaining in teaching careers.
 - (b) That the high quality work force in Wisconsin is dependent in large part upon the quality of education, and that the most important element in good schools are good teachers.
 - (c) That the Wautoma Area School District is a high quality school district with a highly trained and veteran faculty; to recruit and retain quality teachers, however, they need to be paid fair wages. That the Association offer is a more reasonable one and better meets the need for fairness.
- (10) That any increase in wages in Wautoma is worth less because of the lateness of the payment.
- (a) That monies due for 1989-1990 are worth less to the recipient when paid in late 1990.
 - (b) Even if there was any doubt about the reasonableness of the Association offer, that doubt could be removed by considering the lower present value of the District's or the Association's offer.

In summary, that while the Arbitrator is required to consider all of the various criteria described in Section 111.70(4)(cm)(7), the comparison criterion, the interests and welfare of the public criterion, and various other factors normally and traditionally considered in collective bargaining, fact-finding and interest arbitration favor the selection of the final offer of the Association. That it additionally should be emphasized that the District's budgets contain adequate funds to pay the teachers, that the tax rate of the District is low compared to others in the state, and that ability to pay is high in relationship to other districts.

In its reply brief, the Association emphasized the following principal arguments.

- (1) That Wautoma's health and dental costs are low as compared to other conference schools, but there is insufficient data in the record to adequately consider total package costs or comparisons.
- (2) That the District's arguments relating to the unknown costs of future insurance rates should not be afforded significant weight.
- (3) That the Wautoma School District is not dependent upon the farm economy, but even if it were, the good current state of the farm economy would favor the selection of the final offer of the Association.
- (4) That certain evidence presented by the Employer relative to the number of teacher applicants should not be afforded significant weight; that the number of applicants for positions is increased by the fact that new graduates may send out large number of applications.
- (5) That the position of the District is inconsistent with the wage relationships which were established by the parties in their 1986-1989 agreement. That the final offer of the Association preserves the previously negotiated status quo, while that of the District would reduce the status quo as reflected in dollars per returning teacher.

POSITION OF THE DISTRICT

In support of its contention that the final offer of the District should be selected by the Arbitrator in these proceedings, the District emphasized the following principal arguments.

- (1) Preliminarily it urged the following conclusions relating to the final offer selection process.
 - (a) That the costing of the salary offers by both parties is very close, and any difference is insignificant.
 - (b) Since the Union did not supply costing figures for the total package, the Board's figures must be accepted by the Arbitrator as accurate.

- (c) That since the Employer has agreed to pay 100 percent of the single and 95 percent of the family health insurance premiums, and 100 percent of the single and 92 percent of the family dental insurance premiums, it bears the risk of insurance cost increases. That the Arbitrator should distinguish between salaries paid in districts with cost sharing on insurance, versus those with employer paid benefits.
- (2) That the primary comparable in this dispute should continue to consist of the East Central Athletic Conference.
 - (a) That previous interest arbitrators Zeidler and Kessler have adopted the East Central Athletic Conference as the primary comparable, and there is no appropriate basis to depart from this approach in the dispute at hand; that six Conference Schools have settled for 1989-1990, and five have settled for 1990-1991.
 - (b) At no time during the collective bargaining process or in previous arbitration proceedings, have both parties relied upon the broader group of comparables urged by the Association.
 - (c) That the Arbitrator in these proceedings should avoid saddling the parties with a new definition of comparables that could only complicate the next round of bargaining.
 - (d) That other interest arbitrators when handling negotiations impasses have used the East Central Athletic Conference as the principle comparison group for member schools.
 - (e) That statewide comparisons have little relevance to the dispute at hand, and that substantial arbitral authority exists in support of the use of local, rather than statewide comparisons.
 - (3) That consideration of the statutory comparison criterion favors arbitral selection of the Board's final salary offer.
 - (a) That certain background information should be considered in connection with the six East Central Athletic Conference salary settlements: despite the fact that Hortonville's 1989-1990 data reflects the third year of a three year agreement, it is material and relevant in these proceedings; that while Little Chute has a two year agreement covering 1989-1990 and 1990-1991, the parties' agreement to cap the Board's contributions for health and dental insurance must be considered; that the Waupaca settlement must be considered in light of insurance savings, including the adoption of deductibles; in Berlin's Award, the arbitrator rejected statewide comparisons, and he used total package cost comparisons; in his Ripon Award, the arbitrator favored the District's salary offer, but rejected it on the basis of the insurance component of its final offer; in his Winneconne Award, the arbitrator felt the Board's money was too low but the Union's offer did not address the Board's legitimate concerns over insurance.

- (b) In the above connection, that Little Chute and Waupaca obtained health insurance concessions, that Hortonville and Waupaca make less of an insurance contribution than does Wautoma, Ripon's salary settlement should be discounted since the Arbitrator preferred the Board's offer on money, and that Berlin's offer, with no cap on insurance, was about the same as the Wautoma Board's offer.
 - (c) That the Wautoma Board's offer best matches the prevailing settlement trend both in terms of salary only and total package bases. That the Union's offer exceeds the prevailing settlement pattern by nearly 2 percent over two years, while the Board's offer is closer to the comparable settled average at six of eight salary only and total package dollar and percent measurements of the comparables' settlement levels. Indeed, that no other settlement comes close to what the Union is demanding in Wautoma!
 - (d) That the Board's offer best matches the prevailing settlement pattern measured by the dollar and percent increases at the various salary schedule benchmarks; that the Board's offer is closer to the prevailing settlement pattern in 24 of 28 benchmark measurements!
 - (e) In the benchmark comparisons, that Wautoma has moved from near the bottom of the Conference in the early 1980s, to third in 1987-1988 and 1988-1989. In 1989-1991, the Board proposed salaries would rank competitively with other districts in the athletic conference, and there is no appropriate basis for additional catch up.
 - (f) That no other public or private sector employees have received increases of the magnitude offered by the Board. In this connection, that average pay in the State increased 4.5 percent in 1988; pay increases for State employees increased 3.5 percent in 1988-1989 and 4 percent in 1990-1991; major private sector wage increases averaged 4.0 first year increases for 1989, with 3.3 percent increases over the life of the contracts; that state and local government settlements average wage increases were 5.1 percent for 1989. On these bases, that the Board's 5.8 percent salary increase for the first year and its 5.5 percent second year increase will exceed other public and private sector settlements.
 - (g) That the Union's own evidence does not establish that its offer is the more reasonable on the basis of consideration of comparables.
- (4) That cost of living considerations favor arbitral selection of the final offer of the Board.
- (a) That total package increases for teachers in the District have exceeded increases in consumer prices by anywhere from 2.4 to 6.8 percent since 1982-1983.

- (b) That the protection of the teachers from recent cost of living increases is particularly apparent when lane movement is taken into consideration.
 - (c) In summary, that the Board's offer best matches prevailing settlement patterns and exceeds the Consumer Price Index.
- (5) That arbitral consideration of the two offers on a total package basis favors the selection of the final offer of the District.
- (a) That while health insurance costs are not directly in issue, they color what the parties can do on salary; that Little Chute and Waupaca gained insurance relief which affected their abilities to grant salary increases.
 - (b) That the health insurance premium and how it is treated by the parties cannot be divorced from looking at the total settlement; that how the parties allocate salary dollars and fringe benefit dollars must be viewed together.
 - (c) That total package review of offers has been widely accepted in Wisconsin interest arbitration proceedings.
 - (d) That the Union's offer exceeds the average total package settlement rate by nearly two percent over the two year duration of the renewal agreement.
- (6) That arbitral consideration of the interests and welfare of the public criterion favors the selection of the final offer of the District.
- (a) That average total income in Wautoma ranked lowest among comparable school districts in 1988, while its gross and effective property tax rate in 1988 was third highest among the comparables.
 - (b) That the record does not show economic justification for additional raises in teacher salary; that there is no overall shortage of teachers, and no evidence that teachers are leaving the District due to poor salaries.
 - (c) That recent improvements in the farm economy are insufficient to indicate that farmers have recovered from the terrible economic beating they experienced in the last decade.
- (7) That property tax relief can only be achieved from spending restraint.
- (a) That Wisconsin's tax effort is third highest in the nation, while its taxing capacity was 14 percent below the U.S. average.
 - (b) That there is a significant income gap between rural and urban areas in Wisconsin.

- (c) That the Board's final offer strikes a realistic and reasonable balance between the needs of employees and the needs of taxpayers.
- (8) That preservation of an expensive fringe benefit at an unknown cost is a strong factor favoring the Board's final offer. That the Board did not make an issue out of health insurance in these negotiations, and its maintenance of the status quo in this area favors arbitral selection of its final offer.
- (9) That various national studies cited by the Union do not support selection of its higher wage offer.
 - (a) That the interest arbitration process is not the forum to address national educational problems; to the contrary that such matters may appropriately be addressed at the federal and state legislative levels.
 - (b) That substantial increases in teacher salaries cannot be separated from various necessary aspects of educational reform.
 - (c) That Union urged comparison with other professions are flawed in various fundamental ways.

In summary, that the following conclusions are apparent from the evidence and arguments advanced by the Board: that the Board's total package costs must be considered by the Arbitrator; that the East Central Athletic Conference is the only appropriate comparable; that the Board's offer is favored by consideration of the settlement pattern shown by dollar and percentage increases on the salary schedule benchmarks; that the Board's offer matches the prevailing settlement trend in terms of salary only and on a total package basis; that there is no need for any extraordinary catch-up in these proceedings; that the teacher settlements are higher than those enjoyed by other public and private sector employees; that the Board's offer exceeds cost of living increases; that the District's offer best balances the employee and the public interest; that property tax needs are best served by the Board's offer; that the Union data on the farm economy is not persuasive; and that the Board's continuation of fringe contributions must be considered in the final offer selection process.

In its reply brief the District emphasized the following principal arguments.

- (1) That the Board's agreement to continue its share of health and dental insurance strongly favors selection of its final offer.
- (2) That various considerations involve the interest and welfare of of the public, and favor the selection of the Board's offer: that while there is no argument of inability to pay, such a claim cannot really be persuasively advanced in Wisconsin; that the Union has not refuted the evidence indicating that Wautoma taxpayers have relatively low incomes and yet pay high taxes; that evidence in the record indicates no trouble

in recruiting high quality teachers, and there is no evidence indicating that teachers are leaving the District due to low salaries.

- (3) In addressing comparisons, that the Arbitrator must consider all of the salary and fringe benefits that are bargained for between the parties; that the appropriateness of the athletic conference comparisons is quite clear; and that there is no persuasive basis for statewide teacher comparisons.
- (4) That both final offers are significantly above increases in cost of living; that this is true even if only structural adjustments are considered.
- (5) That the only evidence in the record addressing overall compensation is that provided by the Employer.
- (6) That all statutory criteria should be equally weighed by the Arbitrator, and that arbitral consideration of stipulations in the record, the interest and welfare of the public, comparability, cost of living and overall compensation clearly justify the selection of the final offer of the District.

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and rendering an award, it will be necessary for the Arbitrator to address certain preliminary arguments advanced by the parties, which relate to the application of the comparison criterion, the scope of the interest and welfare of the public criterion, cost of living considerations, and the role of an interest arbitrator in connection with certain educational problems and considerations advanced by the Association.

Application of the Comparison Criterion

As is quite common in interest arbitration proceedings, the parties sharply differed with respect to which comparisons should be regarded as most persuasive to the Arbitrator. In this connection the District urged that the principal comparison should be with the other members of the East Central Athletic Conference, while the Association urged greater reliance upon broader based comparisons, including those against other Wisconsin school districts on a statewide basis.

In addressing the statutory criteria the Arbitrator will note that neither the various criteria in general, nor the multiple references to comparisons have been prioritized by the Legislature. Despite the ingenious arguments of the Association about the most recent changes in that portion of the statutes which describes the appropriate comparisons, there is nothing on the face of the revised statutes to indicate any legislative intent to emphasize statewide, as opposed to area, athletic conference, or any other comparisons. If the Legislature had wished to emphasize statewide comparisons it could have so provided in the most recently enacted changes; for the Arbitrator to place statutory emphasis upon statewide comparisons, as urged by the Association, would require reading additional language into

Section 111.70(4)(cm)(7) that is simply not there! Accordingly, the Arbitrator has preliminarily concluded that the Legislature has left to the individual arbitrator the role of determining which of the various criteria are the most important, on a case-by-case basis.

In addressing what should be the most important comparison or comparisons in the dispute at hand it will be emphasized that arbitrators do not merely insert the data provided at a hearing into a formula or a set of predetermined comparisons and arrive at a correct level of salaries and fringes. Rather, they operate as an extension of the collective bargaining process, and they attempt to select the final offer which most closely approximates the position the parties would have occupied, but for their failure to agree across the bargaining table. In carrying out this responsibility, the undersigned must look principally to the educational comparisons which have been mutually adopted and utilized by the parties in their past negotiations; in the event of a dispute between the parties to an interest proceeding as to which comparisons to utilize, or as to the weight to be placed upon particular comparisons, arbitrators will normally look to and respect the parties' bargaining history, including any past interest arbitrations. This principle and its underlying rationale are well described in the following excerpts from the excellent book by Irving 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.' "

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"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..." 1./

The force of bargaining history is also clearly indicated in the following brief excerpt from the widely cited 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

1./ Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pp. 63, 66.

which the parties themselves had considered significant in free collective bargaining, especially in the recent past." 2./

An examination of the parties' bargaining history clearly indicates that they have principally utilized athletic conference comparisons, including their two prior interest arbitrations. While the Union urged that the parties had moved closer to the statewide salaries in their voluntarily concluded 1986-1989 agreement, there is absolutely nothing in the record to indicate that they mutually did so in reliance upon statewide comparisons.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the statutory criteria have not been prioritized by the Legislature, and equally unprioritized are the various types of comparisons recognized in the body of the statutes. Accordingly, it is clear that the relative importance of the statutory criteria will vary on a case-by-case basis, depending upon the circumstances peculiar to each situation. Arbitrators will normally regard the most persuasive comparisons as those which have been identified and used by the parties in their negotiations history as the most important. In the dispute at hand the negotiations history clearly establishes the East Central Athletic Conference comparisons as the most important in these proceedings.

The Interests and Welfare of the Public Criterion

The relative importance of this criterion varies on a case-by-case basis and, in situations involving absolute inability to pay, it would take precedence over all other statutory arbitral criteria. There is no inability to pay alleged in the dispute at hand, however, and each party has advanced arguments based upon the public interest considerations inherent in attracting and retaining highly qualified teachers, and in striking a balance between the interests of taxpayers, students and teachers. While all of these considerations are quite important, they are difficult to quantify and prioritize, and parties to collective agreements do not normally assign them the same relative importance as hard data addressing, for example, cost of living considerations, or settlements by comparable employers and unions. Additionally it will be emphasized that many of the so called interests and welfare of the public considerations may more appropriately be addressed by elected officials than by interest arbitrators.

Cost of Living Considerations

Cost of living considerations vary in their relative importance on a case-by-case basis. They assume great importance during periods of rapid inflation or deflation, but assume less relative importance during periods of relative economic stability. Normally, arbitrators will not consider movements in consumer prices during periods prior to the last time that the parties went to the bargaining table, because the parties' most recent settlement is presumed to have resolved all outstanding wage matters, and to go beyond this point would entail, in effect, reopening previous settlements. Except to the extent that they are part of the wage history, as discussed above, settlements prior to 1986 are immaterial with respect to cost of living considerations.

2./ Elkouri, Frank and Edna Asper Alkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition 1985, p. 811.

The Role of the Interest Arbitrator in Certain Contexts

At this point it will be noted that the Association has made a number of valid and extremely important points relating to the salary levels within the teaching profession in general, and it has appropriately emphasized the extreme importance of an adequately educated citizenry to both Wisconsin and to the Nation. Such general considerations should normally be addressed through the political process, however, in the election of representatives to state and local units of government, including local school boards. Interest arbitrators are not elected representatives, but rather operate as part of the continuing bargaining process between the parties, in accordance with statutory criteria identified by the Wisconsin Legislature as appropriate for arbitral consideration; while the decisions of Wisconsin interest arbitrators inevitably impact upon the spending and taxing decisions of local units of government, they act within the constraints established by the elected members of the State Legislature. Wisconsin interest arbitrators lack the statutory authority either to disregard or to minimize the importance of the statutory criteria, in favor of subjective arbitral determinations relating to the relative worth of teachers versus other professionals, and/or based upon arbitral value judgments as to the relative importance of education versus other governmental functions.

The Application of the Statutory Criteria to the Dispute at Hand

Having concluded earlier that the principal comparisons should consist of those with other school districts within the East Central Athletic Conference, it remains to examine these comparisons and to determine what they show.

Table II in the Employer's post hearing brief extracts material from Board Exhibits 86, 87, 95 and 96, and compares the salary increases within the conference with the offers of the Board and the Association; these data indicate as follows:

	<u>1989-90</u>	<u>1990-91</u>
Conference Districts	\$1,584 (5.9%)	\$1,656 (5.8%)
Board Offer	\$1,457 (5.8%)	\$1,468 (5.5%)
Association Offer	\$1,762 (7.1%)	\$1,753 (6.5%)

Examination of the above data indicates that the Board offer is \$127.00 and .1% below the average 1989-90 salary increases among settled schools in the conference, while the Union offer would be 1.1% and \$176.00 above the conference averages. For 1990, the Employer offer would be \$188.00 and .3% below the conference averages, and the Union average would be \$97.00 and .9% above the conference averages. Even if total salary dollars per teacher over a two year period is determined, the parties are almost equidistant from the conference averages.

Since the salary offer comparisons are so close, it is particularly appropriate for the Arbitrator to consider the underlying factors cited by the Employer in connection with the conference settlements at Little Chute and Waupaca where the employers obtained cost concessions on health insurance which was not addressed in Wautoma, and at Hortonville and Waupaca where the districts pay smaller percentages of insurance premiums, and are not impacted by insurance increases in the same manner as Wautoma. When certain employers and unions place more or less money into benefits than in wages, such factors

are certainly material and relevant in evaluating the settlements and in applying the statutory comparison criterion, and this favors the District's offer.

Without unnecessary elaboration, the Arbitrator will observe that the same conclusion as above is indicated by arbitral examination of the seven benchmark comparisons for the two year period summarized by the Employer at Table III in its post hearing brief. This table, based upon material submitted at Board Exhibits 65 to 78, favors the offer of the Board at 24 of the 28 dollar increase and percentage increase comparisons represented in the table. While the Union benchmark comparisons at Association Exhibits 16 and 17 compare the average wages received at the various benchmarks, it is more helpful to focus upon the dollar increases for 1989-90 and 1990-91, because these compare the increases to be superimposed in these proceedings upon the parties' previously negotiated wage structure.

With all of the above factors taken into consideration, the Impartial Arbitrator has preliminarily concluded that the final offer of the Employer is favored by arbitral consideration of the dollar average salary increases and the percentage increases within the Athletic Conference.

In next addressing the parties' interest and welfare of the public arguments, the Arbitrator finds the following considerations to be determinative with respect to the weight to be placed on this criterion: there is no inability to pay claim present in these proceedings; there is no persuasive evidence that the Wautoma economy is significantly better or worse than that of the comparables; while it cannot be denied that the interest and welfare of the public are well served by educational excellence, including fair and equitable salaries for teachers, such excellence goes far beyond mere questions of teacher salary.

Based upon an examination of the entire record, the undersigned has preliminarily concluded that arbitral consideration of the interest and welfare of the public criterion does not definitively favor the position of either party in these proceedings.

In light of the relatively moderate recent and anticipated 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. While the present Middle Eastern situation generates some questions relative to the second year of the agreement, the parties will be able to address any extraordinary and presently unanticipated cost of living developments in their next contract renewal negotiations. Since the final offer of the Employer is closer to the recent and anticipated movement in the cost of living indexes, it is apparent that arbitral consideration of this criterion favors the selection of final offer of the Employer. As emphasized earlier, however, cost of living considerations cannot presently be assigned significant weight in these proceedings.

Finally, the Arbitrator will indicate that he agrees with the Association that the present value of 1989-1990 dollars received during the subsequent academic year, is less than the same amount of money received in a timely manner. Many long delays in the resolution of Wisconsin interest disputes are due to strategic considerations by the parties, and much of such problems are due to the fact that there is no fixed terminal point for the process provided for in the Wisconsin Statutes. If an unconscionable delay in the resolution

of an interest arbitration proceeding has resulted from improperly and strategically motivated acts by either party, this consideration falls well within the scope of Paragraph (j) of Section 111.70(4)(cm)(7) of the statutes, but no such definitive showing has been made in the case at hand.

Summary of Preliminary Conclusions

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

- (1) The most recent changes in Section 111.70(4)(cm)(7) have not changed the relative importance of the various types of comparisons provided for therein.
- (2) The parties' negotiations history, including past arbitrations, clearly establishes the East Central Athletic Conference comparisons as the most important in these proceedings.
- (3) Wisconsin interest arbitrators lack the statutory authority either to disregard or to minimize the importance of the statutory criteria, in favor of subjective arbitral determinations relating to the relative worth of teachers versus other professionals, and/or based upon arbitral value judgments as to the relative importance of education versus other governmental functions.
- (4) The final offer of the Employer is favored by arbitral examination and consideration of the dollar average salary increases and percentage increases within the Athletic Conference, during the two year term of the renewal agreement.
- (5) Arbitral consideration of the interest and welfare of the public criterion does not significantly favor the position of either party in these proceedings.
- (6) Arbitral consideration of the cost of living criterion somewhat favors the position of the Employer in these proceedings.
- (7) The delay in the completion of these interest arbitration proceedings cannot be assigned significant weight in the final offer selection process.

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 District is the more appropriate of the two final offers. As described above, this conclusion is principally based upon arbitral consideration of the comparison criterion.

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 Wautoma School School District is the more appropriate of the two final offers before the Arbitrator.

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



WILLIAM W. PETRIE
Impartial Arbitrator

October 26, 1990