ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

HUSTISFORD SCHOOL DISTRICT

And

HUSTISFORD EDUCATION ASSOCIATION

Case 22
No. 43647
INT/ARB-5602
Decision No. 26565-A

Impartial Arbitrator

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

Hearing Held

Hustisford, Wisconsin
September 17, 1990

Appearances

For the District

WISCONSIN ASSOCIATION OF SCHOOL BOARDS
By Karl L. Monson
Consultant
122 W. Washington Avenue, #500
Madison, WI 53703

For the Association

WINNEBAGOLAND UNISERV
By Armin F. Blaufuss
Executive Director
205 Trowbridge Drive
Post Office Box 1195
Fond du Lac, WI 54936-1195

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Hustisford School District and the Hustisford Education Association, with the matter in dispute the terms of a two year renewal labor agreement, covering the 1989-90 and the 1990-91 school years. There are two remaining impasse items, the salary to be paid during the term of the renewal agreement and certain language addressing dental and health insurance premium payments during the contract term.

After the parties had failed to reach complete agreement in their renewal negotiations, the Association on February 13, 1990 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration of the dispute in accordance with the requirements of the Municipal Labor Relations Act. After preliminary investigation of the matter by a member of its staff the Commission on July 25, 1990 issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order directing arbitration. On August 27, 1990, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Hustisford, Wisconsin on September 17, 1990, 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 submission of post-hearing briefs and reply briefs, after the receipt of which the record was closed on November 3, 1990.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, which are hereby incorporated by reference into this decision and award, may be summarized in material part as follows:

(1) The District proposes the following changes during the term of the renewal agreement:

  (a) A salary schedule with a BS Base of $19,000 for 1989-90, and $19,800 for 1990-91.

  (b) Modification of Article 12 to provide that the Employer will pay certain specified maximums for health and dental insurance premiums during the life of the agreement.

(2) The Association proposes the following changes during the term of the renewal agreement:

  (a) A salary schedule with a BS Base of $19,150 for 1989-90, and $20,150 for 1990-91.

  (b) Retention of the previous language of Article 12 which obligates the Board to pay 100% of health and dental insurance premiums, with the language updated to insert the specific premium amounts for 1989-90 and for 1990-91.

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 emphasized the following principal considerations.

(1) Preliminarily it characterized the dispute as consisting of the Association proposed 5.2% increases in each salary cell in each of the two years of the renewal agreement, versus the Employer's offer of a 4.3% increase in the first year and a 4.2% increase in the second year, in addition to the Association proposed retention of existing insurance language and the District proposed change in such language.

(2) By way of additional introduction, it urged arbitral consideration of certain historical considerations in the final offer selection process in these proceedings; in this connection it particularly emphasized the selection of primary comparables by prior interest neutrals in 1970, 1985-86, and 1986-87. It urged arbitral consi-

deration of benchmark comparisons between and among districts used as primary comparables by the parties in their negotiations history, argued that no appropriate basis had been established for arbitral adoption of the District's proposed change in insurance language, emphasized that there was no ability to pay question present in the dispute, and submitted that the final offer of the Association was the more reasonable of the two offers when considered in light of the evidence in the record and the various statutory criteria. In the latter connection it urged that the comparison criterion has historically been regarded as the most important and the most persuasive of the various criteria.

(3) For a variety of reasons, including the decisions and awards of various arbitrators, the selection of comparables by the Hustisford School Board in determining substitute pay, the residential and the shopping patterns of Hustisford teachers, and the geographic proximity of the District to both Madison and Milwaukee, that the primary comparisons in this proceeding should be between Hustisford and those districts used for substitute comparison purposes, and those districts located in Dodge county.

(4) That the final offer of the Association is favored by arbitral consideration of settlements among comparable school districts.

(a) That the settlement patterns within the immediate economic-geographic area support the selection of the final offer of the Association, whether the comparisons take the form of benchmark analysis, dollar and percentage comparisons, or dollars per teacher and salary only percentages.

(b) That arbitral consideration of the various comparisons show the Hustisford teachers to be in a catchup situation.

(5) That cost of living considerations favor the selection of the final offer of the Association, with the pattern of settlements in nearby districts comprising the most reliable and persuasive indicator of the application of this criterion.

(a) That strict adherence to CPI measurements could easily result in awards supported by neither the settlement pattern nor the labor market conditions which affect an individual occupation.

(b) In the instant dispute, that the Board's proposal, as measured by benchmark increases, is lower than the present level of the cost of living.

(c) That the vertical increments should not be included in measuring teacher increases against the CPI index; to do otherwise would deny teachers the opportunity to increase their purchasing power.

(d) That the existing pattern of settlements in the substitute and comparable school districts, the primary comparables, should be selected as the most appropriate measure of cost of living.

(6) That the Association's proposal to maintain the insurance language status quo is more appropriate than the District's proposed alteration of the prior language; the Association offer maintains the long standing practice of the insurance language stating the Board's agreement to pay 100% of the premiums, coupled with the actual premium dollar amounts being expressed.

(a) That the District's final offer was not drafted in a clear and unambiguous form.

(b) That arbitral consideration of the Association urged comparables supports its position in the area of insurance.

(c) That the District's health and dental insurance costs are in line with those in the substitute comparables, and in the all schools comparison districts.

(d) The District has proposed no quid pro quo in support of its proposed change in insurance language.

(7) In summary that the following considerations strongly favor arbitral selection of the final offer of the Association in these proceedings.

(a) That the primary comparables should be those known as the substitute comparables, coupled with the Dodge County school districts. That the use of these comparables is consistent with the negotiations history of the parties, and Eastern Suburban Conference comparisons have had relatively little influence on past settlements.

(b) That the Association proposed benchmark increases are justified by benchmark comparisons within the primary comparison group.

(c) That the Association's final offer when measured on the basis of dollars per teacher or salary-only percentages, is well within the range of settlements within comparable districts.

(d) That the Association's offer maintains the District's relative salary position among the substitute comparables and the all schools comparison districts; that the District's offer would result in further deterioration in the District's relative salary position.

(e) That while the District should be in a catchup situation, the Association's offer merely preserves the salary status quo.

(f) That the Association's clear proposal for retention of existing insurance language is favored over the ambiguous proposal of the District.

(g) That arbitral consideration of comparables supports the

adoption of the Association's insurance proposal.

(h) That no compelling reason has been advanced to change the insurance language status quo, and the District has offered no quid pro quo for the proposed change.

(i) That the originally unexpressed intentions in the District's insurance language proposal, unjustly changes the balance of the parties' negotiations relationship.

(j) That certain references in the District's May 1990 newsletter support the selection of the final offer of the Association in these proceedings.

POSITION OF THE DISTRICT

In support of the 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 considerations.

(1) That the primary comparables in these proceedings should consist of those schools utilized by the parties in their past negotiations, interest arbitrations, fact-finding, school board deliberations relating to substitute pay, and the members of the Eastern Suburban Athletic Conference.

(a) That the schools used for determination of substitute pay consist of: Hartford, Watertown, Horicon, Dodgeland, Mayville, Beaver Dam, Neosho, Rubicon J6, Slinger and Waterloo.

(b) That the Dodge County schools consist of: Waupun, Lomira, Mayville, Beaver Dam, Horicon, Dodgeland and Hartford.

(c) That the Eastern Suburban Athletic Conference is composed of: Cambridge, Deerfield, Dodgeland, Johnson Creek, Marshall, Palmyra-Eagle, Waterloo and Williams Bay.

(d) From the above lists that Williams Bay should be excluded because it is a zero aid district and is distant from Hustisford, Neosho and Rubicon J6 should be excluded because they are K-8 feeder schools, Beaver Dam, Slinger, Lake Mills and Watertown should be excluded because they are much larger, and Mayville should be excluded because it is part of another athletic conference.

(e) Pursuant to the above, that the following schools should comprise the primary comparables: Cambridge, Deerfield, Dodgeland, Horicon, Johnson Creek, Lomira, Marshall, Palmyra-Eagle, Waterloo and Waupun.

(2) That when comparisons are made between Hustisford and the comparison group on the basis of a total package costing approach, the following conclusions are apparent.

(a) That fringe benefits costs are increasing as a percentage of

total package costs by an approximate 1% per year; that the Board must do a better job in controlling these increases in the future.

(b) That the percentage increase in total package costs from 1988-89 to 1989-90 is 7.5%, while the increase in 1990-91 is 7.0%; that these figures far exceed the rate of increase in consumer prices which totalled only 4.5% for the term of the 1989-90 school year.

(3) That various characteristics among the primary comparison group favor the position of the Employer in these proceedings.

(a) That Hustisford is the smallest of the schools in the comparison group, when measured on the basis of FTE's.

(b) That average total compensation comparisons between the primary comparables shows the highest increases for 1989-90 and 1990-91 to be 8.8%, the lowest to be 5.4% and the average to be 7.6%; that the final offer of the District in these proceeding would provide a 6.9% increase.

(c) That benchmark comparisons for 1989-90 indicate as follows:

(i) BA Base would move from 4th to 3rd of 9 with the adoption of either final offer.

(ii) BA 6 would remain 3rd of 9 with the adoption of either final offer.

(iii) BA Max would move from 3rd of 9 to 2nd of 9 with the adoption of the Association's final offer.

(iv) MA Base would remain 5th under either final offer.

(v) MA 9 would go from 3rd to 4th with the adoption of the District's final offer.

(vi) MA Max would stay 4th under either final offer.

(vii) Salary Max would remain 4th under either final offer.

(d) That benchmark comparisons for 1990-91 indicate as follows:

(i) BA Base would move from 4th to 5th with the adoption of the District's offer.

(ii) BA 6 would remain 3rd under either offer.

(iii) BA Max would remain 3rd under either offer.

(iv) MA Base would move to 7th under the District's offer and 6th under the Association's offer.

(v) MA 9 would remain 4th under either final offer.

(vi) MA Max would move from 4th to 5th under either final offer.

(vii) Salary Max would move from 4th to 5th under either final offer.

(e) That comparisons on the basis of aveage salary increases per returning teacher for the two years of the renewal agreement indicate as follows:

(i) That the highest, lowest and average increases for 1989-90 are $2265 (8.67%), $1355 (5.18%) and $1846 (6.76%); that the Board's offer would total $1565 (6.04%), and the Association's $1782 (6.88%).

(ii) That the highest, lowest and average increases for 1990-91 are $2026 (7.0%), $1497 (5.3%), and $1889 (6.45%); that the Board's offer would total $1602 (5.83%), and the Association's $1899 (6.86%).

(iii) That the Board is above the lowest comparable for each of the two years, while the Association is below the dollar average in year one and above it in year two; to prevail, that the Association must prove that the District is more "average" than "less than average."

(4) That adoption of the Board's final offer would increase the increments beween salary structure lanes to $522 in 1989-90 and to $544 in 1990-91; that adoption of the Association's final offer would move the increments to $527 in 1989-90, and to $544 in 1990-91. That adoption of either final offer would maintain the basic salary structure previously negotiated by the parties.

(5) That the Hustisford District is below average in terms of demographic data that is mostly impossible for it to change, and that this condition has been recognized in prior fact-finding and interest arbitration proceedings. That the position of the Employer in this dispute is favored by arbitral consideration of certain 1980 school district census data, 1988-89 school district data, 1989-90 state aid per pupil, 1988-89 valuation per pupil, 1988-89 levy rates and 1988 school district personal income information.

(a) That consideration of the above data indicates that neither final offer fully addresses the interests and welfare of the public criterion, but the District's final offer is less expensive than that of the Association.

(b) That the only salary benchmark that the Association is interested in is that of the BA Max, due to the fact approximately 30% of the bargaining unit is at this step; that adoption of the Association's final offer would improperly grant privileged status to this group of employees.

(6) That the final offer of the District in the area of medical and dental insurance is favored by the record.

(a) That the Board's proposal would eliminate the 100% payment language from the prior agreement, but the District would continue to pay the full premium costs for medical and dental insurance during the life of the agreement.

(b) That protection is available to the bargaining unit, in that the contract provides for negotiations between the parties in the event of changes in the insurance, the carrier, or the scope of coverage.

(c) That selection of the Board's final offer would require bargaining on future insurance premium increases, but it would not cost the teachers any pay or benefits in the renewal agreement.

(7) In summary that the dispute boils down to two questions: Will the Association be permitted to place more money than the Board at the BA Max step? and Will the Board be permitted to eliminate the 100% reference in the health and dental insurance provisions?

(a) That the BA Max requires 12 years of experience, and no other district among the comparables has a 12 step BA Max.

(b) That none of the comparables used by the Board has any reference to 100% payment by the districts for health and dental insurance.

(c) That the salary offer of the District is favored by arbitral consideration of the interests and welfare of the public criterion, and consideration of the comparison criterion is a toss up.

(d) That the complete offer of the District is favored by arbitral consideration of the cost of living criterion, the overall level of compensation criterion, and various other factors traditionally taken into consideration in the determination of wages, hours and terms and conditions of employment.

In their respective reply briefs both parties reiterated earlier arguments, and emphasized certain additional points. The District took issue with various arguments that had been presented by the Association in its original brief, including questioning the persuasive value of certain comparisons, urging that the Association should have offered more evidence and discussion beyond the salary area, urging that no quid pro quo was needed for an insurance language change that had no economic implications, emphasizing that prior fact finders and arbitrators had used different comparables in the past, urging that teacher substitute comparison has little evidentiary value, denying that Hustisford was in a catch up situtation, and reemphasizing its earlier CPI arguments. The Association argued that there was no logical basis to support the comparables emphasized by the District in its original brief, urging the District had made several errors in its comparisons, taking umbrage at what it characterized as attempts by the Employer to demean the integrity and professionalism of the teachers, defending the current salary schedule of the parties and the placement of the teachers thereupon, urging that even the District's salary comparisons

supported the selection of the Association's salary offer, taking issue with the various interests and welfare of the public arguments of the District, and emphasizing various arguments relating to the Employer proposed changes in group insurance language.

FINDINGS AND CONCLUSIONS

In presenting and in arguing their cases, either or both of the parties placed particular emphasis upon the comparison criterion, cost of living considerations, the interests and welfare of the public, the overall level of wages and benefits within the bargaining unit, and the negotiations history of the parties, including prior face to face negotiations, and prior fact-finding and arbitration proceedings. Prior to reaching a decision and rendering an award in these proceedings, the Arbitrator will address each of these various considerations and how they are normally applied in the interest arbitration process.

Bargaining History and the Interest Arbitration Process

It is widely recognized that interest arbitrators operate as an extension of the parties' contract negotiation activities, rather than as a separate and independent process, and they normally attempt to place the parties into the same position they would have reached but for their inability to reach a complete settlement over the bargaining table. In so doing, the interest arbitrator will closely examine such factors as the parties' past settlements, their past practices and their negotiations history, in an attempt to determine which of the final offers is the more appropriate. These considerations are widely utilized in the negotiations of labor agreement and in various interest proceedings, they fall well within the apparent scope of sub-section (j) of Section 111.70(4)(cm)(7), and they have a substantial impact upon the application of the remaining statutory criteria. These principles are relatively well described in the following excerpts from the widely cited book by Elkouri and Elkouri:

"Arbitrator's Functions in Interest Disputes

* * * * *

In a similar sense, the of the interest arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:

> 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations — they have

> left it to this Board to determine what they should by negotiations, have agreed upon.'..." 1./

The above described concepts have particular application to the Employer proposed modification of the contract language describing its group insurance premium payment obligations. In this connection, it will be noted that the Employer is seeking arbitral modification of long standing and previously negotiated contract language, which has obligated the Employer to pay 100% of the premiums for health and dental insurance. It must be kep in mind that interest arbitrators, including the undersigned, have long demonstrated an extreme reluctance to modify or to overturn established contract language or benefits, and/or to add new benefits or to otherwise innovate, unless the applicable arbitral criteria are clearly met. This reluctance is rather well described and explained in the following excerpt from a frequently cited decision by Professor John Flagler:

> "In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
>
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in comparable areas of the industry and the firm. He must then carry forward the spirit and framework of past accomodations into the dispute before him. It is not necessary or even desirable that he approve what had taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table." 2./

As argued by the Employer, a theoretically stronger case can be made for arbitral innovation in public sector interest arbitration proceedings, where the parties lack the ability to take economic action in support of their proposals for change. In Wisconsin, for example, neither party has the real right to undertake economic action in support of proposals for innovation or change and, if such changes were impossible to achieve in arbitration, either party could permanently prevent modification of the status quo ante. Even in Wisconsin, however, it is a well established principle that the proponent of change has the obligation to make an extremely strong and persuasive case in support of its proposals; stated another way, Wisconsin interest neutrals have generally considered and applied the statutory interest arbitration criteria in such a manner as to favor the final offer which most closely resembles what the parties would have agreed upon over the bargaining table, and they have approved innovation and/or looked beyond the parties' negotiated past practices only where a persuasive case has been made for change.

1./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105.

2./ Des Moines Transit Company, 38 LA 666, 671.

The Selection and Application of Comparisons

The Wisconsin legislature has broadly defined the types of comparisons that are subject to arbitral consideration in the interest arbitration process, but they have not established any priority of relative importance as between the various types of comparisons, or between comparisons and other of the various statutory criteria. Accordingly, Arbitrators will normally emphasize those types of comparisons generally found to be persuasive at the bargaining table, and have extended particular attention to the bargaining history of the parties in dispute; they are extremely reluctant to abandon those comparisons utilized by the parties in their previous negotiations (including prior interest proceedings).

The above general principles in the selection and application of comparisons in interest arbitrations, along with their underlying rationales, are well described in the following excerpts from a highly respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determinations because all parties at interest derive benefit from them. To the worker, they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill.... The Employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will still be able to recruit in the local labor market..... Arbitrators benefit no less from comparison. They have 'the appeal of precedent and...awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.'..."

* * * * *

> "a. Intraindustry 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 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." 3./

Observations similar to those described immediately above, have also been made by the Elkouris:

> "Without question, the most extensively used standard in interest arbitration is 'prevailing practice.' This standard is applied, with

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3./ Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, pp. 54. 56.

varying degrees of emphasis, in most interest cases. In a sense, when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties." 4./

As is made quite clear from the above, the most important of the various arbitral criteria is comparisons, and the most persuasive of the possible comparisons are intraindustry comparisons. In the case at hand, of course, the so called intraindustry comparisons consist of the Hustisford School District and other, comparable school districts.

The extreme reluctance of interest arbitrators to abandon those intra-industry comparisons which have been utilized by the parties in the past, is discussed and described in the following additional excerpts from Bernstein's book:

"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.....

* * * * *

"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 type of comparison, there is virtually nothing to dissuade him from doing so again..." 5./

The Elkouris also offer the following similar observations relative to the force of bargaining history in the utilization of and the weight to be placed upon comparisons:

"Where each of the various comparisons had some validity, an arbitrator concluded that he should give the greater weight to those comparisons which the parties themselves have considered significant in free collective bargaining, especially in the recent past." 6./

On the basis of the above it is clear that the most persuasive comparisons to be applied in the case at hand are those with other school districts which have been utlized by the parties in their past negotiations and in past interest proceedings.

4./ How Arbitration Works, p. 804.

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

6./ How Arbitration Works, p. 811.

In applying the above described principles to the dispute at hand, it is noted that the parties have not arrived at a definitive agreement relative to a specific listing of districts which should comprise the primary intra-industry comparison group. As indicated by the undersigned in the 1988 interest arbitration, however: "...the parties, in their past negotiations, interest arbitration and fact finding, and the School Board in its deliberations relative to substitute pay, have recognized a set of comparables outside of the Eastern Suburban Athletic Conference. Accordingly, there is simply no basis for confining, or for addressing primary arbitral attention to athletic conference comparisons." (AX #11, page 20) While both parties have followed the general thrust of the above reference, they sharply disagree with respect to the makeup of the primary intraindustry comparison group.

(1) The District proposed group consists of: Cambridge, Deerfield, Dodgeland, Horicon, Johnson Creek, Lomira, Marshall, Palmyra-Eagle, Waterloo and Waupun.

(2) The Association proposed group consists of: Saylesville, Richfield J. 1, Hartford Elementary, Beaver Dam, Hartford UHS, Horicon, Lomira, Watertown, Neosho, Herman, Mayville, Dodgeland, Marshall, Williams Bay, Lake Mills, Cambridge, Johnson Creek, Waterloo, Palmyra, Deerfield and Slinger, with the two latter districts excluded from the specific comparison process due to lack of settlement information.

In applying the comparison criterion within the interest arbitration process it is normal for the parties to emphasize those comparisons which they regard as most persuasive to their respective cases, but the scope of continuing disagreement in the case at hand is rather extreme. It is unnecessary for the Arbitrator, however, to select a specific comparison group, because the same conclusion is indicated by arbitral examination of either the District's or the Association's proposed comparables.

(1) At page 45 of its post hearing brief the District compares the average salary and percentage increases for returning teachers against the highest, the lowest and the averages within its proposed comparison group, and arrives at the following figures:

	1989-90		1990-91	
	$	%	$	%
Comparison Grp.				
Highest	2265	8.67	2026	7.00
Lowest	1355	5.18	1497	5.30
Average	1848	6.76	1889	6.45
Hustisford				
Board Offer	1564	6.04	1602	5.83
Ass'n Offer	1782	6.88	1899	6.86

(2) In its Exhibits #50 and 51, the Association compares the Board's and the Association's offers for the two years against its broader list of proposed primary comparables, and it arrives at the following figures:

	1989-90		1990-91	
	$	%	$	%
Comparison Grp. Average	1893	6.55	1940	6.24
Hustisford				
Ass'n Offer	1782	6.88	1899	6.86
Board Offer	1565	6.04	1602	5.83

In considering the above figures, the District's salary offer falls below the average for its recommended comparison group by $285.00 in the first year and by an additional $287 in the second year; the Association's final offer, by way of contrast, would be $68 low in the first year, and $10 high in the second year. Even in looking solely to the District proposed comparisons, therefore, the final salary offer of the Association is clearly favored when considered in light of the average salary increase per returning teacher within the intraindustry comparison group. In looking to the figures reflected in the Association's broader comparison group, both of the final offers of the parties fall below the group average, with the Union's final offer closer to the average than that of the District. In reviewing the benchmark comparison presented and argued by each party, the Arbitrator finds nothing to detract from the validity of these dollar and percentage comparisons and observations.

The District urged that the Association had to prove that Hustisford was more "average" than "less than average" as a prerequisite to the selection of its final offer; while this is an ingenious argument, the undersigned must conclude that the proponent of a final offer that is lower than the primary intraindustry comparables, and which is inconsistent with the parties' bargaining history, has the obligation to present persuasive evidence in support of its position. On the above bases, the Arbitrator has preliminarily concluded that arbitral consideration of the comparison criterion clearly favors the selection of the final salary offer of the Association, rather than that of the District.

Cost of Living Considerations

What next of cost of living considerations which are referenced in sub-section (g) of Section 111.70(4)(cm)(7)? In this connection the Employer cited an approximate 4.5% increase in the CPI during the 1989-90 school year and compared this figure with total package increases approximating 7% in each of the two years of the renewal agreement. The Union, on the other hand, argued that the benchmark increases in the salary structure were below the current level of inflation, urged that vertical increments should not be included in cost of living considerations, and submitted that cost of living factors were already reflected in the settlements reached among comparable districts.

As indicated by the undersigned in the parties' 1988 interest arbitration disposition, cost of living considerations are one of the most variable and volatile of the arbitral criteria. In periods of rapid increases in consumer prices, the criterion can be one of the most important considerations in the final offer selection process, while in periods of stable prices it declines in relative importance. It is also regarded as of less relative importance

than comparisons, due to the fact that cost of living considerations have already been considered and applied in the settlements within comparable districts. While both final offers exceed the 4.5% increase in the CPI cited by the Employer for 1989-90, the size of CPI increases during the second year of the renewal agreement are difficult to accurately project at this time. The Association also has a persuasive argument that the negotiated experience steps in the salary structure should not be considred in the same light as increases in the salary structure. On the basis of these considerations, the Arbitrator is unable to conclude that the cost of living criterion favors the selection of the final offer of either party.

The Overall Level of Wages and Benefits Considerations

What next of the Employer's contention that the final offer selection process should not be undertaken without arbitral consideration of the overall level of wages and benefits within the bargaining unit, and its arguments based upon increasing fringe benefits costs and the total package costs of the two final offers?

Sub-section (h) of Section 111.70(4)(cm)(7) directs arbitral consideration of the overall compensation presently received by employees, including wages and various non-wage forms of compensation. This section may allow an employer to justify lower wages if, for example, the parties have negotiated unusually high levels of benefits in non-wage areas; similarly, another employer's higher than normal levels of wages may reflect unusually low levels of non-wage compensation. In the situation at hand it is quite true that the costs of various fringe benefits is increasing, and the Employer's concern with this situtation is fully understandable. On the other hand, however, there is nothing in the record to persuasively indicate that the Hustisford District significantly differs in this respect from comparable districts, or that Hustisford has significantly higher levels of benefits than do comparable districts. While the total package cost estimates of the Employer emphasized at page 38 of its post hearing brief differ somewhat from those referenced by the Union at its Exhibit #51, these figures do not indicate a major disparity between the overall levels of wages and benefits negotiated in Hustisford, versus comparable districts.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the overall level of wages and benefits criterion cannot be assigned determinative weight in these proceedings.

The Interests and Welfare of the Public

In addressing the interests and welfare of the public criterion, the District emphasized and urged that Hustisford was below average in terms of certain demographic data that it lacked the power to change, citing such facts as school district census data, state aid per pupil, property valuation per pupil, levy rates and school district income information. It additionally suggested that implementation of the Association's final offer would disproportionally reward the 30% of the bargaining unit that finds itself at the BA Max step in the salary structure, and suggested that this group should not be disproportionally rewarded. The Association took issue with these arguments, characterized salary schedule placement arguments as

demeaning to the teachers, urged that certain of the characteristics cited by the District were, in fact, controllable, and urged that they should not be assigned significant weight in these proceedings.

While certain of the arguments advanced by the Employer are individually persuasive, none of the various factors have arisen since the last time that the parties went to the bargaining table, and it must be inferred that past negotiations were concluded by the parties with due consideration to these considerations. It is not for the undersigned to review and revise the factors that the parties themselves have found persuasive in their past negotiations. Since there is no inability to pay, and no recent impairment of ability to pay, it is reasonable for the Arbitrator to infer that no case has been established for changing the position of Hustisford, relative to comparable districts, on the basis of the factors advanced and argued under the interests and welfare of the public criterion.

Finally it will be observed that the Employer's comments about the percentage of teachers at one step in the salary structure are equally applicable regardless of which final offer is selected; neither party has proposed any structural change in the previously negotiated salary schedule.

Summary of Preliminary Conclusions

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

(1) The considerations principally emphasized by the parties include the comparison criterion, cost of living considerations, the interests and welfare of the public, the overall level of wages and benefits within the bargaining unit, and the negotiations history of the parties.

(2) The bargaining history of the parties should be considered and applied in connection with arbitral consideration of various other criteria, and it also is extremely helpful in attempting to place the parties into the same position they would have reached but for their inability to reach a complete settlement across the bargaining table.

(3) In carrying out the above described responsibilities, interest arbitrators will not disturb the negotiated status quo, unless a very persuasive case has been made by the proponent of change.

(4) The comparison criterion is normally the most persuasive of the various arbitral criteria, and so called intraindustry comparisons are normally the most persuasive comparisons. Arbitral consideration of the comparison criterion in the dispute at hand favors the selection of the final salary offer of the Association.

(5) Cost of living considerations do not definitively favor the selection of the final offer of either party.

(6) Consideration of the overall level of wages and benefits criterion does not definitively favor the selection of the final offer of either party.

(7) Consideration of the interest and welfare of the public criterion does not definitively favor the selection of the final offer of either party.

Selection of Final Offer

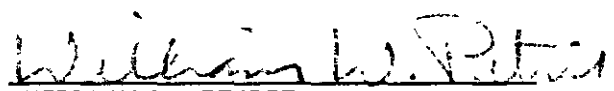
After a careful consideration of the entire record, including all of the statutory criteria, the Arbitrator has concluded that the Employer has failed to make a persuasive case for a change in the group insurance language, and that the final salary offer of the Association is the more appropriate of the two offers. While the Employer clearly wants to exercise some control over the burgeoning costs of health and dental insurance, the value of the long standing 100% premium payment language to employees cannot be disputed; the Employer has simply failed to establish a persuasive case relative to why the Union might have or should have accepted the proposed change in insurance language. Accordingly, the final offer of the Association is the more appropriate of the two final offers before the Arbitrator; this conclusion is principally based upon arbitral consideration of the comparison and the negotiations history criteria.

AWARD

Based upon a careful consideration of all of the evidence and arguments advanced by the parties, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Hustisford 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
Impartial Arbitrator

January 9, 1991