ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	
Between	
TWIN LAKES #4 SCHOOL DISTRICT	Case 11 No. 43274 INT/ARB 5487 Decision No. 26592-A
And	
TWIN LAKES EDUCATION ASSOCIATION	

Impartial Arbitrator

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

Hearing Held

October 23, 1990
Twin Lakes, Wisconsin

Appearances

For the District

WISCONSIN ASSOCIATION OF SCHOOL BOARDS
By Barry Forbes
Staff Counsel
122 West Washington Avenue
Madison, WI 53703

For the Association

SOUTHERN LAKES UNITED EDUCATORS, COUNCIL 2
By Dennis Eisenberg
Executive Director
124 South Dodge Street
Burlington, WI 53105

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Twin Lakes #4 School District and the Twin Lakes Education Association, with the matter in dispute the terms of a two year renewal labor agreement covering the 1989-1990 and the 1990-1991 school years. The two impasse items in dispute in these proceedings are employer and employee contributions for health insurance, and the salary to be paid to those in the bargaining unit during the term of the agreement.

The parties exchanged proposals in mid 1989, met thereafter on six occasions in an attempt to reach a negotiated settlement, and submitted a joint stipulation on December 7, 1989, indicating that an impasse existed and asking for arbitration in accordance with the Municipal Employment Relations Act. After a preliminary investigation by a member of its staff, the Wisconsin Employment Relations Commission on August 10, 1990 issued certain findings of fact, conclusions of law, certification of results of investigation, and an order requiring arbitration; on September 4, 1990 it issued an order directing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Twin Lakes, Wisconsin on October 23, 1990, at which time all parties received an opportunity to present evidence and argument in support of their respective positions. During the course of the hearing, agreement was reached to allow the parties to submit certain additional evidence which was duly accepted into the record by the Arbitrator, after which each party concluded with the submission of post hearing briefs and reply briefs, after the receipt and distribution of which the record was closed effective January 14, 1991.

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 as follows:

(1) The primary dispute between the parties lies in the area of the Employer contributions for health insurance.

(a) The District proposes an employer contribution of $136.00 per month for single plans and $356.00 per month for family plans in 1989-1990, which would represent an approximate 95.1 percent of the health insurance premiums; it proposes employer contributions of $150.00 per month for single plans and $388.00 per month for family plans in 1990-1991, which would represent approximately 90.3 percent of the single and 90 percent of the family health insurance premiums.

(b) The Association proposes an employer contribution of $143.00 per month for single plans and $374.00 per month for family plans in 1989-1990, and $166.06 per month for single plans and $430.92 per month for family plans in 1990-1991; the Association's final offer would obligate the Employer to continue to assume 100% of the health insurance premiums during the term of the renewal agreement.

(2) The remaining dispute between the parties is the salary schedule for the two year agreement.

(a) The District proposes a salary schedule with a BA Base of $20,251 for 1989-1990, and a BA Base of $21,021 for 1990-1991; it proposes no changes in the salary structure or in the indexing.

(b) The Association proposes a salary schedule with a BA Base of $20,285 for 1989-1990, and a BA Base of $21,080 for 1990-1991; it proposes no changes in the salary structure or in the indexing.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the undersigned 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 the contention that its final offer is the more appropriate of the two final offers before the Arbitrator, the Association argued principally as follows:

(1) That the following preliminary considerations and arguments should be considered by the Arbitrator.

(a) That while the District has come close to the Association's final wage offer, the health insurance take-back must be considered primarily a salary compensation issue.

(b) That the Arbitrator should focus primary attention upon the 1990-1991 proposals, since they will be the basis for the determination of the status quo at the end of the agreement.

(c) That the parties are in disagreement with respect to what comprises the comparable school districts, the weight to be placed upon comparable settlements, and the salary costing of some districts; that there is total disagreement with respect to the methodology, use and weight to be given the cost of anything other than the salary increase.

(d) That while the Association feels that the overriding issue is the amount of the increase in take home pay available in both years of the agreement, the companion issue of the appropriateness of the reduction in employer health insurance contributions must also be addressed.

(2) That Arbitral selection of the appropriate pool of comparable school districts is of significant importance, particularly in that once in place, such comparisons remain in place for many years.

(a) That the Milwaukee to Chicago area data in such connections as cost of living, are much more relevant than national data.

(b) That statewide data is not a particularly good comparison tool, and that the Association has limited its comparables to schools in which comparability is shown by both the record, and by past arbitration awards.

(c) That the school systems in the eastern half of the Southern Lakes Athletic Conference are the most reliable and proximate comparison group, and these districts should comprise the primary comparison group.

(d) That Wilmot High School constitutes the single most comparable individual school within the area school systems: that this comparison is indicated by the fact that the schools are located within six miles of one another; that Lakewood area taxpayers fund the education of Wilmot High School and Lakewood students;

that the services performed by Twin Lakes and Wilmot UHS teachers are nearly identical; that working conditions are nearly the same; that the Twin Lakes agreement mandates use of the high school calendar; that the schools are in the same legislative and congressional districts; that both schools are in the eastern half of the athletic conference; that state aids and equalized valuation are distributed and calculated based on property in the greater Twin Lakes area for both districts; that taxpayers pay a combined tax for K-12 education; that elementary and high school are part of the Gateway Technical College service area; that both schools are part of the Regional Staff Development Center membership, and both schools participate in the same February in-service; that both schools are part of the same CESA unit; that both schools experience the same impact of the Milwaukee, Racine and Kenosha urban areas, and both are secondarily impacted by the Chicago area; that the DPI mandates educational integration between union high schools and their feeders; that community members pay the same county taxes; and that median household income for the Kenosha Couty area is one of the highest in the state. That the two districts are like twins, with the only difference consisting of their organizational structures; that Twin Lakes community members send their children to both schools, elect members to both school boards, and both districts share a common tax base and are part of the same labor market.

(e) That the remaining members of the primary comparable set include the systems of Salem (Central Westosha), Lake Geneva, Union Grove, Waterford and Burlington. That an Associaton survey confirms that these sytems are favored by geographic distribution of the labor market and the employee consumption of goods and services; that Burlington, Salem, Lake Geneva, Kenosha, Milwaukee, and Racine generally constitute the area in which employees live, work and play, and where they spend money on items measured by the CPI.

That there is no basis in the record for the Arbitrator to conclude that the above systems, rather than their individual parts, best constitute the comparison group. That a large enough sample must be used to draw meaningful conclusions, that the group is favored by comparison of equalized valuation, state aids and levy rates.

(f) That the parties have additionally cited a mutually acceptable comparable that was used in a previous arbitration over ten years ago, the Mukwonago School District.

(g) That an appropriate group of secondary comparables can be formed by utilizing the remainder of the Athletic Conference, in addition to other districts within the geographic area.

(3) That neither the recent statutory changes with respect to the application of the comparison criterion, nor the decisions of other interest arbitrators support the narrow comparables urged by the District.

(a) That there is no appropriate basis in the record for concluding that elementary districts should not be compared with K-12 districts.

(b) That it is inappropriate to reject comparisons solely on the basis of the organization of the districts.

(4) In addressing the lawful authority of the Employer criterion, that there is no dispute that the District has the lawful authority to implement either of the two final offers.

(5) That the stipulations of the parties are not in issue in these proceedings.

(6) That arbitral consideration of the interests and welfare of the public and the financial abiltiy to pay criteria favor selection of the final offer of the Association.

(a) That a high quality public school system best meets the interest and welfare of the public in any community.

(b) That the Employer is a wealthy resort and lake community which has recognized that the maintenance of fully paid insurance and a highly competitive salary schedule are desirable; that selection of the District's final offer would undo ten years of effort to make the District very competitive, and is the antithesis of promoting the public welfare.

(c) That the District's wage proposal must be viewed by the Arbitrator as being reduced by the amount of the Board proposed employee contribution to health insurance; that when this consideration is factored into the equation, the Board's salary and insurance offers are well below the increases in wages and conditions of employment within the cited comparables.

(d) That it is difficult to compare the cost and value of health insurance for various reasons; that Kenosha County rates are influenced by the high cost of service in both the Milwaukee and the Chicago areas. That the 10% premium payment costs to employees would do nothing to address the underlying problem, and the public would be better served by endeavoring to work on those elements of health care that can be managed.

(e) That the Board's proposal should have maintained value and salary schedule rank, and provided some additional compensation or other value to "buy-out" an insurance concession;

that such a buy-out should be substantial enough to guarantee that the salary schedule will not lose its value among the comparable settlement patterns.

(f) That since there is no ability to pay question raised, the issue before the Arbitrator is willingness to pay.

(g) That the position of the Association relative to the interests and welfare of the public and the final offer in issue in these proceedings, is consistent with published professional analyses and recommendations, and with the decisions of other interest arbitrators.

(7) That the final offer of the Association is favored by arbitral consideration of the comparison criterion involving other employees performing similar services.

(a) That to provide a valid comparison, the Board's final salary offer must be reduced to reflect the insurance cost take back, and the FICA, federal tax and state tax take backs.

(b) That the Association's final offer is favored by individual consideration of the settlement at Wilmot UHS, and/or by the average settlements among Wilmot, Salem, Lake Geneva, Union Grove, Waterford and Burlington; in the latter connection, that the Board's offer, when corrected for take backs, averages $227 lower in year one and $537 lower in year two; that the Association's final offer would be $27 above the average in year one and $23 above average in year two.

(c) That the Association's final offer is favored by consideration of the secondary comparables: the Mukwonago District, and the average settlements from among Delavan Darien, Elkhorn, East Troy, Milton, Whitewater, Jefferson, Kenosha and Hartland. In the latter connection, that the Association's final offer would be $36 and $3 above average for the two years, while the District's offer would be $218 and $517 low for the two years.

(d) That the Association's final offer best matches the prevailing settlement trend when measured by the percentage increases at various salary schedule benchmarks.

(e) That the Board's salary offer does not offset or buyout the proposed employee contribution to monthly health insurance premiums.

(f) That health insurance in Twin Lakes is similar to that in the districts comprising the primary comparison group, and that the recent increases in rates has not been shown to be due to employee use or misuse of the insurance plan, and

(8) That arbitral consideration of comparisons with other employees generally in public employment in the same community and in comparable communities has not been shown to favor the offer of the Employer.

(9) That arbitral consideration of comparisons with other employees generally in private employment in the same community and in comparable communities has not been shown to favor the offer of the Employer.

(10) That arbitral consideration of the cost-of-living criterion does not favor the selection of the final offer of the Employer. That this factor does not receive equivalent weight to the comparison criterion in the interest arbitration process, and the Arbitrator should consider the fact that those in the bargaining unit have been without cost of living increases for the entire 1989-90 school year and almost half of the 1990-91 school year.

(11) That arbitral consideration of the overall compensation presently received criterion cannot be assigned significant weight in these proceedings, due to the difficulty or impossibility of acquiring this information in a consistent manner from comparable districts.

(12) That arbitral consideration of changes which have occurred during the pendency of the arbitration proceedings, favors the selection of the final offer of the Association; that increases in inflation and certain additional settlements support this conclusion.

(13) That certain other factors traditionally considered in collective bargaining, favor the selection of the final offer of the Association.

(a) That the final offer of the Employer represents a significant change in the status quo of payment of health insurance premiums, by imposing a 10% employee contribution in 1990-91.

(b) That the District has failed to meet the recognized burden of proof to justify a change in the status quo; that many Wisconsin interest arbitrators have recognized such an obligation.

(c) That the Employer has failed to provide any "quid pro quo" for its proposed drastic change in the health insurance premium payment area, and that it has failed to demonstrate the need for such change.

(c) That shifting a portion of the health insurance premium costs to the Teachers will not produce cost containment for the District.

(d) That Contract language and premium co-payment agreements should be reached over the bargaining table, rather than in the interest arbitration process.

(e) That in past negotiated agreements the Association has agreed to health insurance concessions which were responsive to the needs of the parties; in this connection it cites second opinion surgery, preadmission hospital review, front end

deductibles, mail order drugs, pharmacy drug reimbursement, an option plan and adoption of other employee coverage.

POSITION OF THE EMPLOYER

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

(1) That the principal comparison group in these proceedings should consist of all K-8 school districts in Kenosha, Racine and Walworth Counties; that 21 of these 25 schools are also recognized as members of the primary comparison group by the Association.

(a) That 20 of the schools have settlements covering the 1989-90 school year, and 16 also have settlements for 1990-91. That this large group provides the appropriate "critical mass" needed for determining comparable settlement patterns.

(b) That various criteria indicate the appropriateness of the proposed primary comparison group: that they are in reasonably close geographic proximity to one another; that they are reasonably comparable in terms of numbers of students and teachers; that they are comparable in terms of reported personal income; and that the organizational structure of the various K-8 districts justifies their inclusion in the same comparison group. In the latter connection that comparisons of K-8 districts better reflect the market forces of supply and demand, which differ greatly between elementary school and high school teachers.

(c) That the Association has proposed various nontraditional criteria of comparability that should not be adopted by the Arbitrator; that such considerations as athletic conference membership, school district of residence of district employees, the location of major purchases of bargaining unit teachers, the "modified" equalized valuations submitted by the Association, state aids, levy rates, school costs, numbers of teachers per work site in Kenosha, and work schedules in various of the districts, should not be given determinative weight in these proceedings.

(2) That statewide comparisons should be of only secondary importance in these proceedings; that these data can be used, however, to show certain trends.

(a) That Twin Lakes exceeds median statewide salary benchmarks by an amount similar to that which it exceeds the medians in the primary comparison group.

(b) That employer contributions to health insurance costs in the primary comparison group are higher than employer contributions on a statewide comparison basis.

(c) That the Board's final offer for employer health insurance contributions equals the primary comparison group contribution, and exceeds the statewide comparison group contribution.

(3) Contrary to the arguments advanced by the Union, that the Employer is proposing no change in the status quo.

(a) That past collective agreements have consistently required the Board to pay a specified dollar amount toward the cost of health insurance, but the dollar amount has been equal to 100 percent of the cost of such health insurance.

(b) That the parties past use of specific dollar amounts puts the Association on notice that, just like salary levels, health insurance contributions are subject to renegotiation in each succeeding negotiations.

(4) That arbitral consideration of the comparison criterion favors the selection of the final offer of the Employer.

(a) That consideration of employer costs for health insurance among comparable districts, favors the final offer of the Employer. That the Board's 1989-90 offer exceeds the average family premium contribution by $26.77 per month, and in 1990-91 would be only slightly less than the average figure for comparable schools; that the Association's offer exceeds the average among comparable districts by substantial amounts in each of the two years.

(b) That the Board's final offer also exceeds statewide average health insurance increases by substantial margins in both 1989-90 and in 1990-91.

(c) That comparable districts have made greater efforts to control health insurance costs; that five of the 25 comparables require employee premium contributions, many have large deductibles, and three have co-payments on benefits. That thirteen of the 25 districts have made significant efforts at health insurance cost containment.

(d) That some districts which were faced with demands for premium contributions settled for lower salary increases than would otherwise have been the case.

(e) That the Twin Lakes teachers have offered neither a concession on health insurance nor a lower salary increase in lieu of such a concession.

(f) That both the Board's and the Association's final offers exceed the median benchmarks of schools in the primary comparison group each year by a substantial amount; that the Board's final offer is, however, the more reasonable of the two final offers. That the same conclusion is indicated by examination

of statewide benchmark comparisons.

(g) That average salary increases in the primary comparison group were $1689 per returning teacher in 1989-90 and $1835 per teacher in 1990-91. That the Board's final offer would exceed the comparables by $11 in 1989-90, and would be $36 less than the comparison group for 1990-91; that the Association's final offer would exceed the comparison group increase by $60 in 1989-90, and by $2 in 1990-91. Over a two year period the Board's final offer is closer to the comparison group than is the Union's final offer.

(h) That average total salary increase comparisons favor selection of the final offer of the Employer. That the Board's final offer exceeds the comparison group average by $41 in 1989-90, and is $20 less than the comparison group in 1990-91; that the Association offer would exceed the group averages by $91 in 1989-90, and by $19 in 1990-91. Over the two year period, that the Board's final offer is closer to the comparison group than is the Union's final offer.

(5) That arbitral consideration of comparisons with other state and local government employees, favors the selection of the final offer of the Board.

(a) That Twin Lakes teachers will receive larger pay increases under the Board's final offer, than will the typical state or local government employee in America.

(b) That the above holds true even when attention is focused upon primary and secondary school district employers.

(6) That arbitral consideration of private sector comparisons favor selection of the final offer of the Board.

(a) That the private sector data shows that it is far ahead of public sector employers in controlling health insurance costs.

(b) That a clear trend is apparent toward employee contribution toward premiums, to higher deductibles, and to copayment provisions, all of which slow the rising costs of health insurance.

(c) That many Wisconsin interest arbitrators have considered and accorded weight to fringe benefit levels in the private sector.

(d) That evidence in the record addressing wage changes for private sector employees, supports the selection of the final offer of the Board in these proceedings.

(7) That arbitral consideration of the cost of living criterion favors selection of the final offer of the Board.

(a) That evidence in the record shows increases in the appropriate

CPI of 1.0% in 1986-87, 2.8% for 1987-88, 3.6% in 1988-89, 4.0% in 1989-90 and 5.4% (annualized) thus far in 1990-91.

(b) That both the Board's offers of approximately 6.16% in each year, and the Association's offers of approximately 6.3% each year exceed cost of living increases by a considerable amount.

(c) That the same conclusion as above is indicated by arbitral consideration of the Board's 6.9% and 6.44% total package increases for the two years of the renewal agreement, versus the Association proposed increases of 7.46% and 7.01% for the two years.

(8) That arbitral consideration of the interest and welfare of the public criterion favors selection of the final offer of the Board.

(a) That the Board has, without success, approached the matter of health insurance cost control from various avenues; that it has proposed consideration of benefits changes, carrier changes and employee contributions, but the Association has rejected such proposals.

(b) That arbitrators favor employee contribution toward health insurance because it has an equal impact upon all members of the bargaining unit.

(c) That the Board believes that employee contribution toward health insurance premiums will curb insurance costs in both the short and the long run.

(d) Despite the fact that the public has an obvious interest in attracting and holding competent taechers, this interest must be balanced against its interest in controlling costs. That acceptance of the Board's offer will not detract from the District's ability to attract and hold competent teachers.

FINDINGS AND CONCLUSIONS

In addressing the merits of the dispute, it will again be noted that the only impasse items before the undersigned are the respective wage offers of the two parties, and the Employer demand for the institution of employee premium sharing on health insurance. Although each of the parties cited various statutory arbitral criteria, and advanced varied arguments in support of their offer, two major areas of consideration were addressed and argued by the parties:

(1) The composition of the primary intraindustry comparison group;

(2) The arguments of the parties relating to the alleged changes in the status quo.

These two matters will be preliminarily addressed by the Arbitrator prior to consideration of the remainder of the statutory arbitral criteria, and selection of the more appropriate of the two final offers in issue in these proceedings.

The Composition of the Primary Comparison Group

The Wisconsin Statutes describe the various arbitral criteria in general terms, but they do not indicate the relative weight to be placed upon the various considerations. The relative importance of the various criteria is best understood when they are considered in light of the normal role of an interest arbitrator. The interest neutral functions as an extension of the contract negotiations of the parties, with the normal goal of arriving at the same position that the parties would have reached over the bargaining table, had they been able to so agree. This principle is well described in the following excerpt from the highly respected book by Elkouri and Elkouri:

> "In a similar sense the function 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 as follows by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > '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 consideration of policy, fairness, and expediency, of what the contract ought to be. In submitting this case to arbitration the parties have left to this board to determine what they should by negotiations, have agreed upon. We take it then that the fundamental inquiry, as to each issue is: what should the parties themselves as reasonable men have agreed to?....To repeat, our endeavor will be to decide the issues, as upon the evidence, we think that reasonable negotiators, regardless

> of their social or economic theories might have decided them in the give and take of bargaining.' ...." 1./

In implementing the above principles, interest neutrals place the greatest weight upon those comparisons with other employers that have normally been found most persuasive to the parties in face-to-face negotiations. In this connection, parties normally rely most heavily upon so-called intra-industry comparisons, and they often have developed a negotiation history of using various specific comparisons within the intraindustry group. These principles are described and explained in the following excerpts from Irving Bernstein's authoritative book on interest arbitration:

> "Comparisons are preeminent in wage determination 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. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. 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.'..."

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> "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.
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> 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...." 2./

As is clearly indicated from the above, the most important and persuasive of the various arbitral criteria is comparisons, and the most persuasive of

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

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

the various types of comparisons are intraindustry comparisons. In the case at hand, of course, the "intraindustry" comparisons would consist of the Twin Lakes #4 School District with other comparable school districts.

In addressing the matter of which intraindustry comparisons to place primary reliance upon in a given case, interest arbitrators will normally look to the parties' bargaining history, including past arbitrations, and will be extremely reluctant to abandon or downgrade the importance of those comparisons utilized by the parties in the past. In this connection Bernstein indicates as follows:

> "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 practices for years in the face of an effort to remove or create a differential....."

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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..." 3./

In the situation at hand, however, the parties never, in their prior negotiations or interest arbitration proceedings, identified or specifically agreed upon what school districts comprise the primary intraindustry comparison group; accordingly, it is up to the undersigned to address this matter. In arguing their respective cases, the parties differ not only relative to the specific identity of the school districts which should comprise the primary intraindustry comparison group, but they also disagree with respect to the types of districts that should be included in such a group. The Employer urges that the primary comparison group should be limited to K-8 school districts which are in reasonable geographic proximity to Twin Lakes, and it rejects the inclusion of either high schools or K-12 district schools in the primary intraindustry comparison pool. The Association, on the other hand, urges that the school systems in the eastern half of the Southern Lakes Athletic Conference are the most reliable and proximate group, and it urges that these entities should comprise the primary intraindustry comparison group.

While there is an underlying logic to the Employer's basic argument that only like districts should be included in a primary comparison group, such surface logic breaks down when it is applied to certain specific applications. Any decision that would hypothetically exclude otherwise comparable elementary school teachers from being compared to one another,

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

merely because one was employed in a K-12 district and the other in a K-8 district, for example, would be to elevate form over substance in a highly inequitable and illogical manner. Similarly, and despite certain differences between elementary school and high school teachers, it would be difficult to logically exclude Twin Lakes from being compared with the Wilmot High School, with which it operates as a feeder school. As argued by the Association, the Twin Lakes community sends its children to both schools, they elect members to both school boards, both districts share a common tax base, and both are part of the same labor market. Not only would such considerations support the broader comparison group, but it would be extremely difficult to persuasively rationalize the exclusion of otherwise comparable K-12 districts and closely related high schools from an otherwise appropriate primary comparison group.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that there is no appropriate basis in either law or logic to indicate that K-8 and K-12 school districts should be mutually exclusive of one another in comprising the primary intraindustry comparison groups in the statutory interest arbitration process, nor should high schools be arbitrarily excluded from comparison with elementary schools and vice versa. Due to the nature of the record in these proceedings, however, and for the additional reasons discussed below in connection with the application of the comparison criterion, the undersigned will not identify, within the above guidelines, which specific schools should comprise the primary intraindustry comparison group. Since such action is not needed in the selection of the final offer in the matter at hand, it is more appropriate for the parties to again address the identity of the comparison pool in their forthcoming negotiations.

The Arguments of the Parties Relating to Changes in the Status Quo

As indicated and discussed above, interest arbitrators operate as an extension of the contract negotiations process and, as such, they seek to arrive at the same end point in the process that the parties would have reached across the bargaining table, had they been able to do so. From a practical standpoint parties do not begin from scratch when they are faced with contract renewals, but rather they start with the expiring agreement, and each party proposes modifications to the previous settlement. In the event that one party or the other is faced with demands to significantly modify past practice, to eliminate or to significantly modify previous langauge or benefits, or to add new language or innovative benefits, the process of give and take bargaining takes place. In the absence of extraordinary negotiating pressures, neither party would normally give up significant language or benefits or practices gained in past negotiations, without a so called "quid pro quo" from the other party. When a negotiations impasse moves to interest arbitration, the arbitrator adopts the same rationale as the negotiating parties, and he will avoid changing the status quo by giving either party what they could not have achieved at the bargaining table. The proponent of change in the status quo has the burden of establishing a persuasive case for such change, and bears the risk of non-persuasion; if an interest arbitrator concludes that the proposed change would not normally have been acceptable at the bargaining table without a quid pro quo flowing from the proponent of change to the other party, he will be extremely reluctant to endorse the proposed change.

As emphasized in the post-hearing brief of the Association, many Wisconsin interest arbitrators have endorsed the above described principles, the essence of which is also described in the following excerpt from a frequently cited interest arbitration decision authored by Professor John Flagler:

> "In this contract-making process, the arbitrator must resist any temptation 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 extraordinary pressures which led to the exhaustion or rejection of traditional remedies.
>
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of the past agreements reached in a comparable area of 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 has 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." 4./

In examining the bargaining history of the parties in relationship to the salary and the health insurance impasse items, certain considerations must be kept in mind. Although there was and is some disagreement of the parties relative to the accuracy of the information shown on various exhibits and the identity of those schools comprising the primary intraindustry comparison group, the Employer's data and comparisons indicate as follows:

(1) Both parties have recognized and emphasized in arguing their cases that Twin Lakes has been a high paying district in relationship to otherwise comparable districts, and their final wage offers for the renewal agreement are relatively close to one another.

The Employer urges at page 52 of its post hearing brief that, over the two year duration of the renewal agreement, the Board's final offers on salaries are $25.00 less than the two year increases within its proposed comparison group, while the Association's final offer would exceed the two year average by $62.00 per returning teacher.

(2) At pages 35 and 36 of its post hearing brief, the Employer references the significantly higher, previously negotiated health insurance costs to Twin Lakes, versus the Kenosha, Racine and Walworth County districts urged by it as comprising the primary intraindustry comparison group. An examination of Employer Exhibits 30 and 30A indicates the following historical relationship between the average costs of health insurance to Twin Lakes versus those paid in its proposed primary comparison group:

(a) 83-84 = (- $1.09) single and + $15.76 family;

4./ Des Moines Transit, 38 LA 666, 671.

(b) 84-85 = + $6.14 single and + $28.46 family;

(c) 85-86 = + $3.19 single and + $14.84 family;

(d) 86-87 = + $1.66 single and + $2.07 family;

(e) 87-88 = + $7.27 single and + $17.84 family;

(f) 88-89 = + $10.68 single and + $34.31 family

(g) 89-90 Board = + $7.69 single and + $26.77 family;
Assn. = + $14.99 single and + $45.07 family;

(h) 90-91 Board = (- $3.36) single and (- $1.60) family;
Assn. = + $12.20 single and + $41.32 family.

On the basis of the above, it is apparent that acceptance of the Employer's final offer would result in salary increases slightly lower than those in the districts which it regards as comparable, and its final health insruance premium payment offer would, by the second year of the renewal agreement, result in Employer insurance contributions lower than those paid in the districts it regards as comparable. Such a result would be inconsistent with the previously negotiated patterns of the parties.

What of the Employer's argument that its proposed specific amounts of health insurance premium contribution levels was not a change in the status quo, due to the fact that prior agreements had always specified dollar amounts? When the parties have always previously negotiated the specific employer contributions for health insurance premiums that were necessary to cover 100% of such premiums, with the conscious knowledge that such premiums have been higher than comparable districts, and when the Employer now proposes a specific amount that is both less than 100% and, by the second year, less than the average paid in comparable districts, it is apparent to the undersigned that it is proposing a significant change in the previously negotiated status quo. Accordingly, as the proponent of such change the Employer has the obligation to establish a persuasive basis for the acceptance of its offer.

Without unnecessary additional elaboration, the Arbitrator will observe that there is nothing in the record to indicate any quid pro quo for the Employer proposed change in the previous status quo and, indeed, none is alleged by the Employer. It will also be added at this point that I fully agree with the Association's argument that the proposed cost sharing is simply an economic proposal by the Employer, rather than a proposal pointing toward cost control or more efficient and effective utilization of health insurance by employees. Arbitral consideration of the Employer's proposed change in the status quo ante without any proposed quid pro quo for the change, strongly favors arbitral selection of the final offer of the Association.

Further Consideration of the Statutory Criteria

Those statutory criteria principally emphasized by the parties in the presentation of their cases, include various types of comparisons, the interest and welfare of the public, and cost of living considerations.

In considering and applying the comparison criterion, the undersigned has concluded that it clearly favors arbitral selection of the final offer of

the Association, even if the primary intraindustry comparison group urged by the Employer is used. Adoption of the final offer of the Employer would, over the life of the renewal agreement, represent a departure from the parties' prior negotiations history of being a comparatively high paying district, of paying more for health insurance than those in the primary comparison group, and of paying 100% of such health insurance premiums. While the Association's final offer is relatively consistent with the parties' negotiations history, the District's final offer would result in below average wage increases, below average health insurance contributions, and movement away from the Employer's past payment of 100% of health insurance premium costs; in the latter connection, it is noted that only a small percentage of those in the Employer urged primary comparison group pay less than 100% of health insurance premiums, and there is no discernible trend in the direction of their so doing. Other public and private sector comparisons do not definitively favor the selection of the final offers of either party and, in any event, they are far less important than comparisons within the primary intraindustry comparison group.

In next addressing cost-of-living considerations, it will be noted that this criterion varies in relative importance with periods of significant movement in consumer prices. It seems clear that the offers of both parties exceed the moderate recent rates of increase in consumer prices, and this would normally favor the selection of the final offer of the Employer. The Association emphasizes the recent situation in the Middle East, and anticipates increases in cost of living as a result thereof, but it is difficult to quantify any such future movement in consumer prices as a result of this factor; in any event the parties will be able to address the economic consequences of the Middle East situation in their forthcoming negotiations. Based upon an evaluation of the record and the arguments of the parties, the Arbitrator has preliminarily concluded that arbitral consideration of the cost-of-living criterion somewhat favors selection of the final offer of the Employer, but this criterion cannot be assigned determinative weight in these proceedings.

In considering the interest and welfare of the public criterion, it will be noted that the weight placed on this criterion varies from case to case; indeed, in cases of absolute inability to pay, it may take precedence over all other statutory criteria. There is nothing in the record to suggest inability to pay, or even an impaired ability to pay on the part of the District, and while the consequences to the taxpayers of labor settlements are a matter of significant importance, both educational excellence and fair and equitable salaries and benefits for teachers also serve the interest and welfare of the public. After carefully examining the record and the arguments of the parties, the Impartial Arbitrator 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.

The undersigned has carefully reviewed and considered the entire record in these proceedings against all of the remaining statutory criteria, and has preliminarily concluded that none is entitled to determinative weight and, in the aggregate, they do not significantly favor the selection of the final offer of either party.

Summary of Preliminary Conclusions

As addressed in more comprehensive detail above, the Impartial arbitrator has reached the following summarized, principal preliminary conclusions:

(1) Interest arbitrators in Wisconsin operate as an extension of the bargaining process, and they normally attempt to put the parties into the same position they would have occupied, but for their inability to reach a voluntary agreement.

(2) Comparisons are generally regarded as the most important of the various statutory interest arbitration criteria, and intraindustry comparisons are the most important of the various possible comparisons. This has not been changed by recent modification of Section 111.70 (4)(cm)(7) of the Wisconsin Statutes.

(3) If faced with the need to determine the makeup of a primary intraindustry comparison group, interest arbitrators will look closely at the parties' bargaining history; in the case at hand, however, neither in their prior negotiations nor in prior interest arbitration proceedings, have the parties identified a specific primary intraindustry comparison group.

(4) While the Arbitrator need not specifically identify a primary intraindustry comparison group to resolve the dispute at hand, it is concluded that there is no appropriate basis in either law or logic, to indicate that K-8 and K-12 school districts should be mutually exclusive of one another in forming intraindustry comparison groups, nor should high schools be arbitrarily excluded from elementary school comparisons and vice versa.

(5) The Employer's final offer entails significant changes in both wages and in health insurance premium payment, when measured against the negotiated status quo ante; there is nothing in the record to indicate any quid pro quo for the Employer proposed changes and, indeed, none is alleged by the District. Arbitral consideration of the proposed change in the status quo ante without any proposed quid pro quo, strongly favors arbitral selection of the final offer of the Association.

(6) Arbitral consideration and application of the comparison criterion clearly favors the selection of the final offer of the Association in these proceedings.

(7) Arbitral consideration of the cost of living criterion somewhat favors the selection of the final offer of the Employer in these proceedings.

(8) Arbitral consideration of the interest and welfare of the public criterion does not definitively favor the position of either party to these proceedings.

(9) Arbitral consideration of the remaining statutory criteria does not significantly favor the selection of the final offer of either party.

Selection of Final Offer

After a careful review of the entire record, including consideration of all of the statutory criteria, the Arbitrator has preliminarily concluded, for the reasons discussed above, that the final offer of the Association is the more appropriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and argument, and upon a review of all of the various arbitral criteria described 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 Twin Lakes Education Association is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

March 2, 1991