In the Matter of the Petition of

SLINGER EDUCATION ASSOCIATION

to Initiate Arbitration Between said Petitioner

-and-

Decision No. 26757-A

SLINGER SCHOOL DISTRICT

Appearances - Debra Schwoch-Swoboda, UniServ Director, for the Association
Roger E. Walsh, Attorney at Law, for the Employer

Slinger Education Association, hereinafter referred to as the Association, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged that an impasse existed between it and the Slinger School District, hereinafter referred to as the Employer, in their collective bargaining; and it requested the Commission to initiate arbitration pursuant to section 111.70(4)(cm)6 of the Municipal Employment Relations Act.

At all times material herein, the Association has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all full time and all contracted part time classroom teachers including full time guidance counselors, special teachers but excluding supervisory personnel, office, clerical, custodial and all other employees of the Employer. The Association and the Employer have been parties to a collective bargaining agreement covering wages, hours and working conditions of the employees in the bargaining unit. The duration of the agreement covered the 1988-89, 1989-90 and 1990-91 school years. However it provided that the compensation provision could be reopened for negotiations for the 1990-91 school year.

On May 9, 1990 the parties exchanged their initial proposals with respect to the compensation provisions to be included in the collective bargaining agreement for the 1990-91 school year. Thereafter the parties met on two occasions in efforts to reach an accord on a new agreement with respect to compensation for the 1990-91 school year. The Association filed its petition and on October 9, 1990 a member of the Commission staff conducted an investigation that reflected that the parties were deadlocked in their negotiations. By December 21, 1990 the parties had submitted their final offers and the investigation was closed.

The Commission concluded that an impasse within the meaning of the Municipal Employment Relations Act existed between the parties with respect to negotiations and it ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties. Upon being advised that the parties had selected Zel S. Rice II, the Commission ordered that he be appointed as the arbitrator to issue a final and binding award to resolve the impasse by selecting either the total final offer of the Association or the total final offer of the Employer.

The Union's final offer, attached hereto and marked Exhibit 1, proposes that the 1989-90 final payment schedule be increased by 4.69 percent per cell to provide an average increase per returning teacher of $1,893.00 and a 5.89 percent salary increase. The Employer's final offer, attached hereto and marked Exhibit 2, proposes a 1990-91 salary increase of 4.37 percent per cell. The difference between the two proposals is .32 percent or an average of $103.94 per year per teacher.

ASSOCIATION'S POSITION

The Association argues that its proposed comparability group considers all the districts that have been proposed by both parties in a previous arbitration, takes into account changes in section 111.70 of the Wisconsin Statutes, acknowledges the labor market and observes the ripple affect that larger districts have on settlement patterns in the area. It contends that the Employer's comparable group is so tightly and erroneously defined that it does not reflect relevant settlement patterns that have a legitimate impact on the negotiations between the parties. The Association asserts that both of the final offers are substandard when compared to school districts in the Employer's economic area. It takes the position that even its offer would only improve the relationship of its BA minimum bench mark when compared to all of the bench marks in its proposed comparable groups. The Association argues that the relationship of the bench marks would decrease dramatically in comparison with both of the comparable groups at every bench mark except the BA minimum and the BA maximum. It points out that only five teachers, or .04 percent of the staff, were at those bench marks in the 1990-91 school year. It contends that both final offers decrease the earning power of the teachers when compared to teachers salaries in the Employer's economic area, comparable high school districts, high school and K-12 comparables, the Parkland Athletic Conference and the Employer's proposed comparables. The Association is concerned that the teachers it represents will lose rank at two of the seven bench marks if the Employer's proposal is selected by the arbitrator. It takes the position that the experience increments on the salary schedule should not be included when a comparison is made to the consumer price index because it will deny the experienced teachers the opportunity to increase their purchasing power.

EMPLOYER'S POSITION

The Employer argues that its proposal is the result of using the same salary increase computation method that the parties voluntarily utilized for the 1989-90 school year which was a percentage increase based upon the average percentage increases for the six comparable districts in its comparable group. It contends that its proposed comparable group maintains the status quo by using the same districts used in a previous arbitration and which the parties used in reaching agreement on a 1989-90 salary increase. The Employer asserts that its proposed comparable group was voluntarily established by the parties during the last round of negotiations and should remain controlling for determining this dispute. It takes the position that its proposal maintains the status quo in regard to the manner in which a reopener increase is to calculated. The Employer argues that bench mark comparisons should be rejected because comparisons from one district to another only show average salaries and are not designed to correct inequities.

COMPARABLE GROUPS

The Union proposes a comparable group consisting of the school districts of Campbellsport, Cedarburg, Northern Ozaukee, Hamilton, Hartland UHS, Horicon, Hustisford, Lomira, Mayville, Menomonee Falls, Mequon-Thiensville, Ocomomowoc, Port Washington, Random Lake, Brown Deer, Franklin, New Berlin, Pewaukee, St. Francis, Whitnall, Erin, Germantown, Hartford Elementary, Hartfort UHS, Herman, Kewaskum, Neosho, Richfield Joint #1, Saylesville and West Bend, hereinafter referred to as Comparable Group A. Those 30 school districts are included in what the association describes as the Employer's ecomonic area and includes the comparable high school disctricts in the immediate area, the comparable high school and K-12 districts in the immediate area and the Parkland athletic conference in which the Employer's athletic teams compete. The Employer proposes a comparable group consisting of Germantown, Hartford Elementary, Hartford UHS, Kewaskum, Richfield Joint #1 and West Bend, hereinafter referred to as Comparable Group B. Comparable Group A includes all of the school districts in Comparable Group B.

The Association contends that Comparable Group A considers all the school districts that had been proposed by parties in the previous arbitration, takes into account changes in the Wisconsin statutes with respect to arbitration, acknowledges the labor market and observes the ripple effect that larger districts have on the settlement pattern. The Association's so called Employer's economic area includes all of the school districts from which the Employer draws its labor force. The Comparable high school districts and K-12 and high school districts had been proposed by either the Employer or the Association in a 1986 arbitration as had the Parkland athletic conference. It contends that consideration of Comparable Group A is necessary to discern relevant settlement patterns that have a legitmate impact on these negotiations. The Association asserts that changes in the bargaining law and their impact

require a broader comparability group. The Employer asserts that Comparable Group B is the appropriate comparable in this case because they were determined to be the appropriate comparables by the arbitrator in the 1986 arbitration between the parties. It points out that the parties voluntarily recognized the appropriateness of the comparables during negotiations for their 1988-91 collective bargaining agreement.

An established group of comparables should not be ignored unless there is some compelling reason for not considering it. A change of established comparables serves no purpose unless the old comparable group no longer has sufficient validity to merit its consideration. If a comparable group includes school districts that are of a similar size with similar staffs and have similar equalized values and are in the same geographical area and have social, economic and political similarities they are appropriate. There is no justification for changing a comparable group just because that change would support a different position. In the absence of compelling evidence that proves that the old comparable group is no longer appropriate, there is no reason for not continuing to use it as the basis of comparison. The Association has fallen short of demonstrating that its proposed modification of the parties established comparables is warranted. The 1985 ammendments to the statutory criteria for interest arbitration do not obligate the arbitrator to expand the comparable group that was adopted by the arbitrator in 1986 and which the parties used as a basis for computing the 1989-90 salary increases. Such comparisons need not be limited to a narrow group of comparable school districts, but there is no basis for abandoning Comparable Group B in the absence of evidence that its comparability is no longer valid. The factors underlying the findings of comparability have not changed. Equalized value, range of enrollment, full time equivalent teaching staff, mill rates, tax levy rates and income per tax filer remain primary considerations for determining comparability. Comparable Group B fit those criteria in the 1986 arbitration and the parties were satisfied to use it as a basis for the 1989-90 wage computations. These parties have historically maintained some relationship between their bargaining and those agreement reached in Comparable Group B and the arbitrator considers that group as a reliable guide to what the outcome of successful bargaining would have been. Accordingly the arbitrator will rely primarily on Comparable Group B in making his determinations in this matter.

The Association argues that the parties voluntary agreement on Comparable Group B only applied to the 1989-90 salary schedule and they did not intend to limit their future use of comparables to those listed. It also argues that modifications to the Wisconsin Statutes allow for changes in previous established comparability groups. However a comparability group should not be changed just because a revision in the statutes permits it. If a comparability group has been appropriate and remains appropriate and there is no convincing evidence that it no longer has validity, there is no reason for changing it. The arbitrator finds that Comparable Group B was adopted by the arbitrator in the 1986 negotiations and utilized by the parties in determining the 1989-90 salary

schedule. The parties did not agree to utilize it as a basis for determining salaries for the 1990-91 school year but the arbitrator is satisfied that it is more appropriate than Comparable Group A. There is no real reason to believe that the mere fact that some of the Employer's employees live in a communities that are not in the geographic area with different equalized valuations, enrollments, full time equivalent teaching staffs, mill rates, tax levy rates and average incomes should have an impact on the salary of the Employer's teachers.

In determining the 1989-90 salary increase, the parties agreed that the actual percent per cell increase for each of the school districts in Comparable Group B should be computed. If a particular school district negotiated a salary schedule that provided a different percentage increase in each cell of the schedule, an average increase was determined by computing every percentage increase in each cell of the salary schedule. Then an overall average increase was calculated by adding the average increase for each of the comparable school districts and dividing that total by the number of districts. That method produced a salary increase that was acceptable to both the Employer and the Association for the 1989-90 school year. The Employer's proposed 1990-91 salary schedule utilizes the same method for computing its proposed increase of 4.37 percent for each cell of the salary schedule. Obviously the Employer's proposal of a 4.37 percent increase per cell is closer to the average increase per cell of Comparable Group A than the Association's proposal of a 4.69 percent increase per cell. The difference of .32 percent between the Association's proposal and the average of Comparable Group B is not so great as to make the Association's proposal outrageous but that alone cannot be a basis for selecting the Association's proposal.

The Association argues that salary schedule bench marks provide a consistent method by which to measure teacher wage levels and settlement patterns. It points out that the average bench marks of school districts in the Employer's economic area increased 4.94 percent in 1991 and it would only increase 4.69 percent under its proposal and 4.37 percent under the Employer's proposal. The Association contends that it has made a very modest proposal and has addressed any concerns that the arbitrator might have with regard to a fair and equitable settlement. The arbitrator concedes that the comparison of either the Employer's proposal or the Association's proposal with Comparable Group A indicates that both proposals lag behind the pattern in that comparable group. However the arbitrator is satisfied that Comparable Group B is the proper one to which a comparison should be made. The average increase of the bench marks of school districts in Comparable Group B increased by the same amount as the Employer's proposal. The Association's proposal is somewhat higher than the Employer's proposal and thus not as comparable.

The Association argues that its proposal will not increase the value of their bench mark relationship to the comparables. It contends that its BA minimum bench mark is the only one that would improve its relationship to the similar bench mark in Comparable Group A for the 1990-91 school year. All others

would fall further behind. It points out that the Employer's proposal would even result in a deterioration of the relationship with its bench marks when compared to the averages in Comparable Group B at every bench mark except the BA minimum and BA maximum salaries. It argues that the increase in value at the BA minimum and BA maximum bench mark provides little advantage to the teaching staff because only .04 percent of the staff are placed at those bench marks in the 199-91 school year while 28 teachers or 24 percent of the staff are at the MA maximum. The Association's argument that the Employer's teachers are not well paid in comparison to other teachers with comparable education and experience in either Comparable Group A or Comparable Group B has some validity. Some of the Employer's teachers receive salaries that are below the level received by comparable employees in some comparable school districts. The wage relationships between the Employer's teachers and those in the comparable districts were the result of collective bargaining. Each school district bargains out agreements with its teachers that reflect the local interests of each party and other circumstances involved. As a result some school districts are higher or lower or average. There will be employees who are paid above the average and there will be employees who are paid below the average and there will be employees paid the average. When certain teachers achieve rankings above the average or below the average because of voluntary agreements, they do exactly what free collective bargaining was intended to do. Some bargaining units fall below the average with respect to salaries as a result of trade offs they may make on insurance or other issues that are important to them and may or may not have an economic impact. The mere fact that the Employer's teachers at some bench marks are paid less than other teachers in either Comparable Group A or B with similar experience and training, does not necessarily mean that there is an inequity. When those differentials are the result of voluntary agreements, the arbitrator who did not participate in any of the negotiations should not disrupt the relationships. The normal way to insure against such disruption is to follow the pattern of settlements reached by the comparable group and that is what the Employer's proposal does.

The Association argues that experience increments on the salary schedule should not be included when a comparison is made to the consumer price index because it denies experienced teachers the opportunity to increase their earning power. Arbitrators consistently considers experience increments when making comparisons of salary increases with the increase in the consumer price index. Those increments represent increased compensation to the employees and increased cost to the employers. It would not be realistic to ignore those factors when determining how an overall salary increase for the bargaining unit compares to the increase in the consumer price index. Experienced teachers always benefit when a percentage increase is given to employees because the percentage increase of a high salary amounts to more dollars for an employee then the same percentage increase for an employee receiving a lower salary.

Making an award adopting the Employer's proposal for the 1990-91 school year should not be confused as an endorsement of the method by which it was com-

puted as a basis for determining salaries in future years. The parties had a three year agreement with the salaries determined for the first two years of that agreement. They agreed to use a certain method for computing the increase for the 1989-90 school year, but could not agree to adopt that method or any other method for the 1990-91 school year. The arbitrator is satisfied that no great injustice will be done to the parties by computing the increase for the 1990-91 school year in the same manner that it was done for the 1989-90 school year. In future years, the circumstances will not be the same and the method adopted by the arbitrator for the 1990-91 school year may not be the proper one to follow. Inequities at some bench marks have developed and they should be addressed by bargaining directly with respect to those inequities rather than to try to alleviate them with an overall increase. The issues that arise in future bargaining will have an impact on the method of determining the amounts of any increases that are given.

The arbitrator is satisfied that a narrower comparable group such as Comparable Group B is preferable to a broad one like Comparable Group A which includes school districts with different economic, social and political problems. If there is a ripple effect out from Milwaukee that impacts on the Employer, it will also impact on the other school districts in Comparable Group B and any settlments they make will reflect the ripple effect. Inequities at particular cells should be addressed by bargaining specifically about them.

It therefore follows from the above facts and discussion thereon, that the undersigned renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, arguments and exhibits and briefs of the parties, the arbitrator finds that the Employer's final offer more closey adheres to the statutory criteria than that of the Association and directs that the Employer's proposal contained in Exhibit 2 be incorporated into the collective bargaining agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin this 16th day of July, 1991.

Zel S. Rice II, Arbitrator

EXHIBIT 1

FINAL OFFER OF THE
SLINGER EDUCATION ASSOCIATION

October 17, 1990

The final offer of the Slinger Education Association incorporates all provisions of the 1988-90 Master Agreement except as modified by the tentative agreements (attached) and the following:

1. Salary

   See attached schedule, which increases the 1989-90 final payment schedule the following ways:

   --4.69% per cell increase
   --$1893 average per returning teacher increase
   --5.89% salary only increase

Cedar Lake United Educators Council

Four Eleven North River Road, West Bend, Wisconsin 53095
(414) 338-6128

December 19, 1990

Mr. Dan Nielsen
W.E.R.C.
P. O. Box 1375
Racine, WI 53401-1375

Dear Mr. Nielsen:

The purpose of this letter is to inform you that the Association has reviewed the Board's final offer. It is our understanding that the Board's only proposed modification to the existing agreement is to increase the 1989-90 salary schedule by 4.37% per cell.

The Association does not intend to modify the final offer we mailed to you on October 17, 1990.

Please close the investigation.

The Association does not wish to include non-resident arbitrators on the WERC interest arbitration panel.

Very truly yours,

Debra Schwoch-Swoboda
UniServ Director

/arb

cc: Mr. Dennis Crooks, Ms. Doris Pierzchalski

EXHIBIT 2

Name of Case: Slinger School District Case 27 No. 44234 INT/ARB-5705

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we **(do)** **(do not)** authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

12/12/90
(Date)

(Representative)

On Behalf of: Slinger School District

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TENTATIVE FINAL OFFER OF

SCHOOL DISTRICT OF SLINGER

Relating to the Reopener Negotiations for the

1990-1991 School Year

November 29, 1990

1. Tentative Agreements initialled on October 9, 1990.

2. 1990-1991 Salary Increase: 4.37% to each cell as per schedule below:

	BA	B+10CR	B+20CR	MASTER	M+10CR	M+20CR	M+30CR
		.04	.08	.13	.17	.21	.25
	21970	22849	23728	24826	25705	26584	27463
.027	22563	23466	24368	25496	26399	27301	28204
.054	23156	24083	25009	26167	27093	28019	28945
.081	23750	24700	25650	26837	27787	28737	29687
.127	24760	25751	26741	27979	28969	29960	30950
.175	25815	26847	27880	29171	30203	31236	32268
.222	26847	27921	28995	30337	31411	32485	33559
.27	27902	29018	30134	31529	32645	33761	34877
.318	28956	30115	31273	32721	33879	35037	36196
.366	30011	31211	32412	33912	35113	36313	37514
.413	31044	32285	33527	35079	36321	37563	38805
.461				36271	37555	38839	40123
.499				37214	38532	39849	41166