

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

RECEIVED
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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

WILMOT GRADE SCHOOL DISTRICT

To Initiate Arbitration
Between Said Petitioner and

Case 15
No. 44770 INT/ARB-5809
Decision No. 26861-A

KENOSHA COUNTY EDUCATION ASSOCIATION

APPEARANCES:

Barry Forbes, Esq. on behalf of the District
Dennis G. Eisenberg on behalf of the Association

On May 16, 1991 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70 (4) (cm) 6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on August 21, 1991 at Wilmot, WI. Post hearing exhibits and briefs were exchanged by the parties by November 14, 1991. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats. the undersigned renders the following arbitration award.

ISSUES:

This dispute is over the terms of the parties' 1990-1992 collective bargaining agreement. Many issues are involved:

Costing--

The parties disagree about how their final offers should be costed. The following constitutes a summary of those disagreements:

Costing of the Board's Final Offer:

1990-91	Board	Association
Salary increase per FTE dollars	\$1,800	\$1,683

percent	7.09	6.63
Total cost increase per FTE		
dollars	\$2,976	\$2,680
percent	8.73	7.80
1991-92		
Salary increase per FTE		
dollars	\$1,851	\$1,801
percent	6.81	6.65
Total cost increase per FTE		
dollars	\$2,423	\$2,358
percent	6.53	6.37

Costing of the Association's Final Offer

1990-91		
Salary Increase per FTE		
dollars	\$3,309	\$3,128
percent	13.04	12.32
Total cost increase per FTE		
dollars	\$4,788	\$4,420
percent	14.04	12.87
1991-92		
Salary Increase per FTE		
dollars	\$1,886	\$1,908
percent	6.57	6.69
Total cost increase per FTE		
dollars	\$2,468	\$2,503
percent	6.35	6.46

The Board calculates the total cost difference between the two offers over the two years to be \$33,161.

Salary Schedule Structure--

The Board proposes continuation of a salary schedule with 12 vertical steps and 12 lanes, with vertical increments equal to 4 percent of the prior step, and horizontal increments of 2 percent of the lane to the left.

The Association proposes deletion of several steps on the schedule, changing the horizontal increment to 4 percent, and changing the vertical increment to 4 percent of the lane base. The Association also proposes that two employees at BA+0 Maximum continue to receive their 1989-90 salaries until the schedules proposed by the Association catch up to their current rates.

Fair Share and Dues Deduction--

The Board proposes continuation of existing fair share language, and proposes that the contract continue to not provide for dues deductions.

The Association proposes new fair share language and dues checkoff.

Other than the dues deduction issue, the major dispute between the parties on this issue is the extent to which the Board must be indemnified by the Association for any and all expenses it may incur in litigation arising out of the parties' fair share agreement, and the extent to which the Association shall control the defense against any such claims against the District.

Limited Term Employees--

The Association proposes defining limited term employees as employees hired to fill a position vacated by an employe on leave or an employe hired to fill a vacancy arising after August 1 of a school year, if, in either case, the employe works more than 30 working days.

The Board's proposal does not contain a definition of a limited term employee, though the current agreement provides that non-unit employees shall not teach greater than one-third of full time equivalent.

Teacher Contracts--

The Association has proposed that individual teacher contracts be attached to the back of the collective bargaining agreement.

The Board's final offer does not address this issue.

Grievance Procedure--

The Association proposes that the grievance procedure be amended to allow the Association to bring grievances on its own behalf.

The Board proposes no change in the existing grievance procedure.

Personnel Files--

The Association proposes that anonymous communications could not be placed in a teacher's personnel file; and that teachers promptly be shown copies of derogatory materials placed in the teacher's file.

Merit Pay--

The Association proposes deletion of language that provides for a procedure for the Board and the Association to jointly work out a merit pay plan.

Insurance--

The Board proposes the following language regarding the standard for changing insurance carriers or plans:

"The medical insurance and dental insurance provided in 1991-92 will be a plan/s equivalent to the plan/s provided in the previous contract year."

Said language, with the exception of the reference to the 1991-92 school year, represents no change from the parties' prior collective bargaining agreement.

Regarding this issue, the Association proposes the following language:

"The medical insurance, LTD and dental insurance provided in each year will be equal to the plan(s) provided in the previous contract year."

The Association's proposal also requires the full premium payment by the Board of LTD insurance in the second year of the Agreement, but stated as a flat amount.

Insurance Benefit Summaries--

The Board has proposed that summaries of health, dental and LTD insurance benefits not be attached to the collective bargaining agreement, while the Association has proposed that benefits summaries be attached to the collective bargaining agreement.

Retirement Benefits--

The Association has proposed that teachers receive a payment following retirement equal to \$100 time the number of years the teacher has taught.

The Association also proposes to delete payments for unused sick leave at retirement. The Board proposes to continue said benefit.

The Association has also proposed that the District pay for three years of single or family health insurance following the retirement of teachers with ten years experience who are eligible for a WRS annuity. After three years of District payment for the insurance, teachers would be allowed to continue in the insurance indefinitely at their own expense.

Annexation, Consolidation, Cessation of Operations, or Other Reorganization--

The Association proposes to extend layoff recall rights two years, if possible, and the term of the collective bargaining agreement by three years, if permitted by law, and that bargaining on severance pay for anyone laid-off, non-renewed, discharged or separated from service be reopened if the District becomes a party to a covered organizational change.

Calendar--

The Board proposes to continue to have a calendar with 180 pupil contact days, one parent conference day, four inservice days, two convention days, and three holidays.

The Association proposes to convert two days from full pupil contact days to half pupil contact and half teacher workdays in the 1991-92 school year.

Paycheck Schedule--

The Association proposes continuation of current language requiring the District to pay teachers in 26 installments, which could result in teachers receiving their first paycheck for a school year prior to their first day of work.

The Board proposes that teachers receive their first paycheck of each year on the first Friday after teachers report to work.

Comparability--

The Board proposes that all K-8 districts in Kenosha and Racine Counties be used as a comparison group. The Board has divided these schools into two groups. The primary comparison groups is made up of K-8 school districts with less than 350 pupils. This group includes: Brighton No. 1, Dover No. 1 (a.k.a. Kansasville), Norway Jt. 7 (a.k.a. Drought), Paris Jt. 1, Raymond Jt. 1 (a.k.a. North Cape), Raymond No. 14, Salem No. 7 (a.k.a. Trevor), Washington-Caldwell, Wilmot Graded, and Yorkville Jt. 2.

The secondary comparison group is made up of Kenosha and Racine County K-8 school districts with more than 400 pupils. Those districts include: Bristol No. 1, Randall Jt. 1, Salem Jt. 2, Silver Lake Jt. 1, Union Grove Jt. 1, Waterford Jt. 1 (V), Wheatland Jt. 1.

The Association believes the school *systems* in the eastern half of the Southern Lakes Athletic Conference (SLAC), along with the Kenosha Unified School District should be designated as the primary comparables. The SLAC includes Burlington, Waterford, Union Grove, Lake Geneva, and Salem (a/k/a Central, Westosha), in addition to the Wilmot *system*. Of all of the schools in the primary comparable set, the Association asserts that Wilmot High School constitutes the single most comparable individual school.

The Association asserts that while there is a basis in the record to conclude that the eastern half of the Athletic Conference systems constitute, on a weighted basis, the best comparability set, a second tier of comparability also exists, and that is the western half of the Athletic Conference.

The Association also cites the Hartland area K-8 and Union High School Districts as rebuttal comparables.

The undersigned will address each of the issues in dispute individually, and thereafter, will discuss the relative merits of the parties' total final offers.

Before doing so however, the undersigned believes it important to set forth at the beginning of this discussion the standards that will be applied in determining whether proposed changes in the status quo are deserving of support in this proceeding.

The most critical question which must be answered in making such determinations is whether the party proposing the change has been able to demonstrate that a legitimate issue which needs to be addressed exists. Such issues might reflect the existence of past disputes over such issues, the potential for future disputes arising out of ambiguity in the collective bargaining agreement, hardship experienced by affected parties, and the existence of well established intra industry employment conditions and standards of fairness which have not been adopted by the parties in their past collective bargaining relationship.

Once the legitimacy of an issue has been established, the proponent of the change also must demonstrate that its proposal is reasonably designed to address the defined problems and/or issues, and that the proposal will not impose an undue hardship on the other party.

Though comparability may affect the outcome of such a determination, the undersigned is not of the opinion that reasonable proposals addressing legitimate problems and/or issues must always be accompanied by overwhelming comparability. Though at times comparability evidence can be used to support the reasonableness of proposed solutions to problems, and though it can also be used to justify the need for change based upon considerations of fairness and equity, overreliance on comparability, particularly on matters unrelated to wages and benefits, will generally result in status quo results which are unresponsive to the often relatively unique issues and problems that labor management relationships confront. The collective bargaining process is designed to enable the parties to address the problems which confront them; if comparability drives the process exclusively, the process is doomed to fail.

Lastly, though it is generally accepted that a proposal by an employer to take back from employees what they have gained through the collective

bargaining process must be accompanied by a reasonably equitable quid pro quo, that concept does not apply to every proposed change in the status quo. Where legitimate problems are shown to exist and reasonable solutions are proposed to address such problems which do not impose a hardship on the other party, the undersigned is not of the opinion that the proposed change must be accompanied by a quid pro quo.

Comparability--

Board Position:

The parties are in apparent agreement that 17 K-8 districts under Wilmot, Central-Westosha, Union Grove and Waterford Union High School Districts should be used as comparisons. Sixteen of those have settlements in 1990-91 and eight have settlements in 1991-92. These comparisons should provide the critical mass of information needed to determine comparable settlement patterns.

The Board's proposed comparisons meet the traditional tests used in determining comparability, while the Association's proposed comparisons do not. In this regard, the number of teachers and pupils, geographic proximity and similarity of local economic conditions are appropriate indicators of comparability. Though many arbitrators look to athletic conferences as an indication of comparability, the use of athletic conferences is merely a surrogate indication of these other factors. (Citations omitted).

All of the Board's proposed compables are within a 30 mile radius of the District.

With respect to size, the District is one of the smallest school districts in Wisconsin, with 7.9 FTE teachers, and 116 FTE pupils. Thus, if the size criterion used by many arbitrators (citations omitted) is to have any meaning, then schools which are substantially larger than the District should be excluded from the comparison group. Thus, Wilmot Union High School should not be used as a comparison since it has six times as many teachers and over five times as many students as Wilmot Grade School. Similarly, Kenosha and Burlington surely are not comparable with Wilmot Grade School for the same reasons. For the same reason, the union high school districts and the K-12 districts proposed by the Association are all much larger than the Wilmot Grade School and are not comparable for that reason.

Though the Association would have the arbitrator consider the size of individual schools in districts in determining comparability, the more appropriate and generally accepted basis of comparison is district size.

The Board contends that all districts which are more than three times as large as Wilmot Grade School should not be found to be sufficiently similar in size to be used for comparison purposes. School districts with 350 or more pupils are more than three times as large as Wilmot Grade School. Applying this standard would result in the following schools being excluded from the comparison group: Wilmot Union High, Randall (though schools in the Board's secondary comparison group are more than three times as large as Wilmot Grade School, they should be used as comparables based upon the fact that both parties propose using them), Silver Lake, Lake Geneva Union High, Genoa City, Lake Geneva Jt. 1, Central-Westosha Union High, Bristol, Salem Jt. 2, Wheatland, Union Grove Union High, Union Grove Grade School, Waterford Union High, Waterford Grade School, Burlington, Kenosha, East Troy, Milton, Whitewater, Jefferson, Delavan-Darien, Elkhorn, Arrowhead UHS, Hartland-Lakeside Jt. 3, and Merton Jt. 9.

When economic considerations are used as a basis for determining comparability, school districts in the Board's proposed primary and secondary comparison groups have equalized valuations ranging from a low of \$171,774 per pupil to a high of \$472,196 per pupil. Wilmot Grade School, with an equalized value of \$239,102, is reasonably close to the average equalized value per pupil of \$299,160. In contrast, the Association's proposed comparables have equalized values as high as \$1,537,458 per pupil, with an average of \$444,074 per pupil.

In addition, Wilmot Grade School is a high cost district with a small property tax base. (See Board exhibits 19 and 107) However, equalized value of property comparisons will not be useful when comparing a K-8 school district to either K-12 school districts or union high school districts since K-8 school district equalized property values per average daily membership will tend to be higher than K-12 school district property values. Union high school districts tend to have even higher equalized value per average daily membership than either K-8 or K-12 districts because the total property in those districts is divided only among the pupils in grades 9 to 12.

K-8 districts also differ from K-12 and union high school districts in that they do not hire high school teachers. While some types of teacher certification allow teachers to teach K-12, the licenses needed to teach in elementary schools are generally different than the licenses needed to teach in high schools. In fact, the vast majority of teachers in the District and at Wilmot UHS do not have certifications which would let them teach in the

other school--most teachers at Wilmot Grade School do not have the licenses necessary to allow them to teach at Wilmot UHS.

Relatedly, the supply and demand for teachers varies significantly with areas of certification. Currently, elementary teachers are in more than adequate supply. While there is also a surplus in some secondary school certifications as well, the greatest excess in supply is among general elementary teachers. These market conditions must be considered in the selection of comparables. (Citation omitted)

In response to the Association's argument that the residence of staff is a relevant consideration, arbitrators have not used this criterion as an indicia of comparability. (Citation omitted)

Similarly, the places where employees make major and minor economic purchases is not an indication of comparability. (Citations omitted)

Though the Association would have the arbitrator rely on the similarity of school schedules in determining comparability, this criterion has not been used by other arbitrators, and more importantly, it is not particularly useful for differentiating between districts because all schools have some similarities in their pupil class schedules.

Association Position:

Both Wilmot Elementary and the High School are similar due to the following: They are located within 500 yards of one another; area taxpayers fund both; services performed by teachers are nearly identical; working conditions are nearly identical except that the UHS teachers daily workload is 305 minutes vs. 358 minutes for the elementary staff (See exhibits 52, 30 and 31), the Elementary calendar mandates the same beginning student contact day, the same common inservice, and that the same Christmas, convention, and Easter recess periods of the high school Calendar be followed; the schools are in the same legislative and congressional districts, both are in the eastern half of the SLAC; state aids, and equalized valuation are distributed and calculated based on property in the greater Wilmot Elementary area for both; taxpayers pay a combined tax for K-12 education, they are both part of the Gateway Technical College service area; both are part of the Regional Staff Development Center; both participate in a common in-service program; both are part of the same CESA unit, both experience the same impact of the same urban areas, DPI mandates educational integration between union high schools and their feeders, including joint curriculum development, community members pay the same county taxes; locally, the wealth, as

measured by 1989 WI Dept. of Revenue data, at both are nearly identical; the District paid a high school reading specialist teacher on the UHS salary schedule to work with elementary teachers in 1990-91.

Both districts share a common tax base and are part of the same labor market.

The record shows that Burlington, Kenosha, Salem, Lake Geneva, Racine, Milwaukee, and Illinois constitutes the area in which employees live, work and play, and where they spend money on items measured by the CPI.

Analysis of equalized valuation and state aids shows the usual inverse correlation between wealth and aids for these primary comparables. All values are within a reasonable range of each other. Nor do levy rates show any great dispersion.

Like Wilmot Elementary the *systems* in the western half of the Athletic Conference all have relatively small elementary feeder schools all are approximately the same size; and all have the same comparability standards as were utilized by the Association in selecting its primary group of comparables.

Arbitrator's have repeatedly compared elementary and high school teachers. (Twin Lakes, Dec. No. 16302-B, 1/17/79, Belman; Neosho, Dec. No. 17305, 5/14/80, Weisberger; Hartford Elementary, MED/ARB-538, 6/7/80, Imes; Maple Dale-Indian Hill, Dec. No. 16352-A, 11/21/78, Kerkman; Salem Joint 2, MED/ARB-3642, 1/29/87, Briggs).

The time has come to question the assumptions which underlie rejection of comparability solely on the basis of district organization. If these organizational distinctions are truly important, why is it so common to compare union high schools with K-12 districts? There are approximately 360 systems in the state with identical salaries for elementary and high school employees. Nothing in the statute even remotely suggests that the organization of school districts should limit comparability. Nothin in the record provides a valid reason to restrict comparability on the basis of district organization.

Discussion:

For many of same reasons set forth by arbitrator Petrie in Twin Lakes #4 School District (Dec. No. 26592, 3/91), referred to earlier in the Association's arguments, the undersigned is of the opinion that it is unreasonable to

exclude from consideration the conditions of employment of teachers in other districts in the area surrounding the District which have similar economic bases and labor markets just because the other districts are structured differently, i.e., as K-12 or UHS districts. In fact, the vast majority of elementary and secondary teachers in this State are not treated distinctly in proceedings such as this, nor in fact are they so treated in the collective bargaining process. To do so here, based upon organizational distinctions which are relatively unique to the area in question, would perpetuate highly illogical and inequitable results. As arbitrator Arlen Christensen stated in an early factfinding decision referred to elsewhere herein, a district's choice to remain organizationally small does not relieve it of the responsibility to provide comparable wages, benefits, and conditions of employment to its employees--and comparability in the teaching profession in Wisconsin is not generally limited by the organizational structure of school districts.

Based upon these considerations the undersigned believes that it is fair and reasonable to consider as comparability evidence the wages and conditions of employment of teachers in the surrounding area working for K-12 and UHS districts, as well as for other K-8 feeder districts in the area.

However, the undersigned is also of the opinion that recognition must be given to the fact that in the area in question, a relatively unique organizational structure of K-8 feeder schools and union high schools exists, which has had the effect of splintering the decision making process concerning teachers' and other employees' conditions of employment in public education. This reality cannot be ignored in determining relevant comparable practices, and for that reason, the undersigned concludes that in determining comparability, it is fair to consider the wages and conditions of employment of the teachers employed by each district, considered individually, in the eastern half of the Southern Lakes Athletic Conference. This comparability group is most geographically proximate to the District, all districts are in the same athletic conference, said grouping of districts reflects the relatively unique organizational structure of school districts found in that area, i.e., K-8 feeder districts and union high schools, and it also includes a K-12 district.

This configuration of comparable districts will give more weight to union high school districts and K-12 districts than has been the case in the past, while at the same time, it gives recognition to the reality of a good number of small K-8 districts in the area which determine their own wages and conditions of employment.

It also provides the undersigned with a sufficient number of 90-91 settlements (24 or 25, depending upon the availability of evidence) and 91-92 settlements (11 or 12, depending upon the availability of evidence) to make reliable comparisons, particularly on the issue pertaining to the District's need for catch up in wages.

Costing--

The basic source of the costing differences between the parties grows out of the settlement of a dispute pertaining to the placement of several teachers on the 1990-92 salary schedules. As a result of said settlement these teachers were moved more than one step in the 1990-91 and/or 1991-92 school year.

Board Position:

Costing of the final offers should reflect the fact that the teachers in question moved more than one step on the schedule as a result of an agreement between the parties pertaining to their proper placement on the schedule. The Association's costing improperly assumes that all teachers move only one step on the schedule, even though three teachers will be moving more than one step.

Association Position:

In the final analysis, the arbitrator should give little weight to the cost of either party's offer if he concludes that catch-up is appropriate and necessary.

The Association used the classical returning teacher methodology not only in analyzing the cost of the Association's final offer and the District's, but in comparing those final offers to other settlement increases. The District used the Association's methodology for every other comparable, yet inflated its alleged salary increase/teacher by advancing some employees more than one increment.

The Association filed a grievance alleging that the District had inaccurately placed employees on the 90-91 salary schedule. The parties resolved the grievance by placing four employees at different steps. Clearly the Board should not be given credit in determining the costs of the parties proposal based upon the error it made in this regard.

Discussion:

While the undersigned agrees that the difference between the parties' costing of the final offers will not be determinative of the outcome of this

proceeding in view of the very substantial difference that exists between the parties' economic proposals, the undersigned is of the opinion that in this proceeding the cast forward method should be utilized in determining the dollar impact of the parties' salary proposals. Where, as was apparently the case here, a District misplaces employees on a salary schedule and later agrees to correctly place them on the schedule, in the undersigned's opinion it should not get credit for the additional costs involved in making such proper placements on the schedule when computing the costs of proposed salary schedule changes. Therefore, the undersigned will utilize the Association's costing of the parties' final offers in this proceeding.

Salary and Total Package Comparisons--

Board Position:

The Association has proposed a method of analyzing comparison data in K-8 and union high school districts which is not fair. It proposes that a weighted average of benchmark salaries and of the cost data be taken for each group of K-8s and the union high school. Each salary benchmark and the cost increase per returning teacher for a union high school and K-8s are reduced to single numbers. This method gives too much weight to some settlements and not enough to others, e.g., although less than half of the FTE teachers have settlements in Wilmot, Salem and Waterford groups, the Association's method of comparison gives these group numbers the same weight as the settlement data for the Lake Geneva and Union Grove groups, where most of the teachers are settled. Use of this method would allow the Association to argue that one settlement in a small K-8 district (with none of the other schools settled) represents the settlement data for all of the K-8s and the union high school in that group.

This method is not fair to small school districts, since if weighted averages are used, then the settlements in bigger districts become more important than settlements in smaller districts.

The Board recognizes that its 1989-90 starting salaries are weak compared to other school districts; however, District salaries for experienced teachers, where most of the District's teachers are, compare well with other comparable districts, the average benchmark being about \$540 below comparable districts.

Based upon the Board's proposed 17 comparables, in 1989-90 the District's median benchmark ranking was ninth. The District's rankings at the

maximum salary benchmarks, where most of the teachers are, and at the MA Step 9 benchmark, ranked from eight to eleven.

The Board's offer maintains these rankings and improves the District's rank at the BA Base and BA Step 6.

On the other hand, the Association's final offer radically changes the District's benchmark rankings, with an average change in rankings of over six rankings.

In addition, under the Association's salary proposal, teachers at the BA Maximum would not receive a pay raise in 1990-91, while other teachers would receive increases as much as \$6,000 in 1990-91.

The Board's salary offer would increase all benchmarks at about the same level as is found in comparable districts. In fact, the average benchmark increase under the Board's offer is about \$25 higher than the average in comparable districts.

On the other hand, the average benchmark increase in the Association's offer is about three to four times as large as the average increase in comparable districts.

In 1990-91 the Board's salary proposal would result in the District's being much closer to comparable district average benchmarks than would be the case under the Association's offer.

The same result would occur under the parties' 1991-92 salary offers. In this regard, the Association's proposal would result in the District being an average of about \$2,672 higher than the averaged benchmarks in comparable districts

If the Board's offer is selected, the parties will start bargaining in 1992-93 with a schedule very near to the average of comparable districts. If the Association's offer is selected, the parties will start bargaining with an average benchmark that is over \$3,400 per benchmark higher than benchmarks in comparable districts.

In 1991-92, among the nine settled comparable districts, the Board's salary offer would generally maintain its benchmark rankings, and would improve the District's ranking at the BA Maximum and MA Base. The average District benchmark ranking would be 5.71.

Again, on the other hand, the Association's 1991-92 salary proposal would move the District from average to second or third place benchmark rankings. At the same time, the Association's 1991-92 salary offer would drop the District's ranking at the BA Maximum from five to eight.

When average increases per returning teacher are compared, the Board's offer would exceed the settlement average by \$42 per returning teacher in 1990-91. The Association's proposal for that year would exceed the settlement average by \$1,551 per returning teacher, nearly double the settlement average.

In 1991-92, the Association is \$35 closer to the settlement average than the Board, when settlement averages per returning teacher are compared. However, the Association's 1990-91 increase is so far from what other comparable districts have found to be reasonable that the 1990-91 cost data far outweighs the 1991-92 cost data.

This is particularly evident when a comparison of proposed increases over the two-year period is made. The Board's offer is within \$34 of the two-year average, while the Association's proposal is more than \$1,500 over that average.

Further, the Association's proposed pay increase of nearly twice that requested in comparable districts meets anybody's test of undue burden

Lastly, the Association has offered no quid pro quo for its proposed changes

Association Position:

As arbitrator Arlen Christenson stated in a fact finding decision in Hustisford Education Association v. Hustisford Board of Education, (Dec. No. 9723, 9/8/70) "... it ill behooves a school district to insist on remaining small and then to argue that because it is small it need not pay teachers' salaries commensurate with other area schools."

Because of the comparability of the Association's salary offer and the ability of the District to pay, the Association's offer in this regard will best serve the interests and welfare of the public. (Citations omitted)

It is well established that settlement patterns in the public sector are not consistent with increases in the CPI, even when this measure is not as high as in previous years. In this regard, the pattern of settlements among

comparables is given far greater weight than the CPI in interest arbitration proceedings. (Citations omitted)

It is also noteworthy that Wilmot teachers, especially those at the top of the salary schedule have been without a wage increase for a considerable period of time. Unit employees have been without a cost of living increase for the entire 1990-91 school year and almost half of the 1991-92 school year.

Turnover rate of 29% for full time teachers in the District demonstrates that there is a significant problem in the District. Employees, both full-time and part-time, have been leaving the District in droves to attain work in more highly compensated districts. The plain truth is that the District's salaries do not provide comparable incentives to induce teachers to remain.

Furthermore, the Elementary teachers total contact time is 17% greater than that found at the High School. At the same time, during the prior two year contract, when compared to salaries at the High School, each teacher at Wilmot Elementary lost \$539 over two years. Similar relative losses occurred in comparison to other comparables

Such erosion has occurred over a substantial period of time. When one compares High School and Elementary average teacher's salary, in 1979-80, the difference in average salaries was nearly \$1,900 or 14.5%. In 88-90, that differential swelled to nearly \$8,600, a difference of 36.1%. When an average of all seven benchmarks is compared, Wilmot Elementary teachers were \$593 behind in 79-80, and \$3,821 behind in 88-89.

Using 88-89 benchmark BA salaries, Wilmot UHS statewide benchmark was 100th, while Wilmot Grade School ranked 404th out of 407 schools in the count.

It is important to remember in this regard that the average income is the second highest in the county and exceeds Kenosha and the High School, and that the county median household income is higher than Racine and Milwaukee.

In 1990-91 the statewide average base salary was \$21,044, while the schedule maximum was \$40,688. At the BA base, Wilmot High School slipped substantially to 147th. The Wilmot system's average base salary ranked 208th, at \$20,371. Under the Association offer, the average for the 90-91 school year will be \$20,206, for a ranking of 241st. The Board's offer would rank the District at 417th.

Under the Board's 1990-91 offer, the entry level base salary would be 11.8% behind the High School, the BA Step 7 is 9.5% behind, the MA+0 Step 1 is 25.6% behind, the MA+10 is 22.3% behind, the MA Max is 8.8% behind, and the MA+30 is 17.6% behind. That is \$2,200, \$2,200, \$5,300, \$6,000, \$2,200 and \$6,500 behind respectively. A stronger case for catch up could not be made.

When other benchmark comparisons are made, the District is on average thousands of dollars behind comparable districts.

In response to the Board's arguments, the BA+0 maximum is no longer a relevant comparison tool since state statute now requires all teachers without life licenses to gain an additional six (6) credits every five years

When 1991-92 salaries are compared, the settlement pattern is even more compelling on the basis of benchmarks, and is equally supported by the dollar per teacher and percentage increase standards. There is also a similar pattern for returning teacher salary and package increases, and total compensation for the second year.

Discussion:

Based upon utilization of the comparability evidence provided for the individual K-8, union high school, and K-12 Districts in the eastern half of the Southern Lakes Athletic Conference, it is clear that the Board's 90-91 salary offer is far more comparable than the Association's in terms of its dollar and percentage value per teacher. The question which needs to be addressed in this regard is whether there is a sufficient need for catch up in the District to justify the Association's salary proposal, which is more than \$1,000 or 6% per teacher above the average comparable settlement.

In that regard, for 1990-91 the record reflects the following: At the BA base, the Board proposal is \$2,378 below the comparable average, while the Association proposal is also slightly below the comparable average. At this benchmark, the Association's argument for the need for catch up clearly must prevail.

The undersigned will not utilize the BA 7th step and BA Maximum in making comparisons in this proceeding based largely upon the Association's persuasive argument that since Wisconsin Statutes currently require most teachers to take graduate credits on a continuing basis, continued use of these benchmarks will be of increasingly less importance to the parties.

At the MA Minimum, the Board's proposal is about \$2200 below the comparable average, clearly justifying a need for catch up. However, the Association's proposal is almost \$2500 above the comparable average, which clearly cannot be justified as reasonable and necessary. Having so concluded, the undersigned believes that the unreasonableness of both parties' offers at this benchmark should result in their cancelling each other out for purposes of the final offer selection process.

At the MA 10th step, though the Board is \$1000 below the comparable average, which justifies some catch up, the Association is more than \$4000 above that average, which clearly supports the reasonableness of the Board's proposal at this benchmark.

At the MA Maximum and Schedule Maximum the Board's proposal is close to the comparable average; no need for catch up has been demonstrated, and the Association's proposal would result in average salaries of more than \$800 above the comparable average at the MA Maximum, and more than \$5000 above the comparable average at the Schedule Maximum.

All of the foregoing indicates that although the Association has demonstrated a strong need for salary catch up at the BA and MA Minimum benchmarks, and some need for catchup at the MA 10th step benchmark, when its overall proposal is considered, one must conclude that it is excessive and unreasonable to the extent that it frequently overshoots the mark. Instead of bringing the District into the mainstream of comparable districts, it would result in the District becoming a wage leader in the area, which though a commendable goal for its membership, is clearly not necessary in a catch up situation requiring unusually large salary increases.

In 1991-92, though the Association's dollar and percentage increase per teacher more approximate the comparable averages than does the Board's final offer, the impact of the parties' 1990-91 final offers on the District's salary schedule discussed above force the undersigned to give much greater weight to the parties' salary proposals in that year than to their salary proposals for 1991-92.

Based upon the foregoing, the undersigned is of the opinion that the Board's salary proposal is more reasonable than the Association's, even though the Association has demonstrated that the District seriously needs to consider adjustments to its salary schedule to bring it into the mainstream of comparable districts' salaries, particularly as the salary schedule affects relatively new teachers in the District.

Salary Schedule Structure--

Board Position:

In 1990-91 comparable districts had schedules with between nine and 19 steps. The average number of steps is 11.8 at the BA Maximum and 12.8 at the MA Maximum and Schedule Maximum. Only three of 17 comparable districts have nine step schedules.

Further, not one comparable K-8 district has adopted the same schedule as its union high school.

Nor has the Association demonstrated a need for such a change. In response to the Association's argument that the District needs higher starting salaries to attract and retain competent teachers, the District typically receives between 30 and 40 applications for full time positions, and has no trouble filling such positions. The only problems the District has in filling positions of 20 percent or less, and even then, the District has been able to fill all such positions.

Association Position:

One need only look to adjacent school districts to conclude that a 10 step salary schedule with the ratios found in the Association's final offer is the appropriate standard. If two of the areas schools which feed Wilmot High School, and if the other KCEA affiliate has achieved the same high school salary schedule for 91-92, it cannot be said that it is unreasonable for this District to adopt the Association's offer in this regard.

At the bottom of the BA column with no additional credits is one .2FTE employee. This employee is the only teacher the Board wants to pay as much or more than the High School counterparts. Fair treatment demands that the rest of the unit be similarly treated.

Discussion:

The Association has failed to demonstrate that the salary problems in the District which it has identified are attributable to the structure of the salary schedule. Nor has the Association persuasively demonstrated that the salary schedule structure the parties have voluntarily negotiated is out of sync with relatively uniform and different structures negotiated by comparable districts. Without such evidence, the undersigned must conclude that there

is no strong justification for changing the status quo in this regard, and accordingly, it must be determined that the Board's position on this issue is more reasonable than the Association's.

Fair Share and Dues Deduction--

Board Position:

Utilizing the Board's proposed comparables, seven schools have fair share provisions similar to that sought by the Association. Four have fair share with no indemnification, which is similar to the Board's position. Six either do not have indemnification clauses or do not have fair share. Thus based upon comparability, either offer is reasonable.

With respect to the dues deduction issue, if a district has fair share, but no dues deduction, dues deduction becomes somewhat less important, because everyone must support the collective bargaining representative. To the extent that this issue has importance, the record shows that comparable districts tend to have either fair share or dues deduction, but not both. Nine of the 17 schools in the Board's proposed comparables do not have dues deduction. Five of those do not have fair share. Only four have both fair share and dues deduction. This supports selection of the Board's final offer.

The Association cannot prove a need for its proposed fair share change since it cannot prove that an employer has ever been held to be liable for a union's unconstitutional fair share provisions. Existing language merely allows the Board to hire counsel of its own choosing to defend it in fair share litigation, and requires the Association to indemnify the Board in such litigation. If the Board continues to be not responsible for union violations of the constitutional rights of nonunion employees, the indemnification clause would not be activated. If however someone sues the Board over fair share, and if the WERC does not throw the case out on the grounds that the person should sue the union, then the indemnification clause would allow the Board to control its own defense and would require the union to pay for it. In addition, there is no evidence of a need for dues deductions since the Association already has fair share.

The fair share provision in the Board's final offer authorizes the deductions in question and has worked without problems for years.

On this issue as well, the Association has offered no quid pro quo.

Association Position:

Wilmot High School has fair share language identical to that proposed by the Association. Comparable fair share language exists in many comparable districts, which also supports adoption of the Association's final offer on this issue.

The Association seeks to codify the existing practice of deducting membership dues. This will not incur any additional costs to the District.

Changes in the administration of a school district raise the likelihood of misunderstanding over established (but unwritten) practices between the Association and District.

The Board's final offer does not even require the Association to pay "reasonable" attorney fees. It simply says that the Association will pay any and all costs for defense no matter how unreasonable the charge.

The issue of indemnification is relevant since it has been determined that an employer commits a prohibited practice when it improperly deducts fair share fees, if the entire amount is deducted without a payback or rebate for non-chargeable expenses. (83 Wis 2d 316 (1978)). In addition, before the Supreme Court now is the question whether a public employer is liable if it does not insure that constitutionally adequate procedural safeguards are implemented before it deducts compulsory fair share fees.

Discussion:

The Association's persuasively argues that its dues deduction proposal *simply codifies current practice in the District, and the District has failed to offer a persuasive reason why said practice should not be codified.* In this regard, the Association's proposal is clearly more reasonable than the Board's.

On the other hand, the Association has not provided a persuasive reason why it is both reasonable and/or necessary to take from the District total control of the District's right to defend itself against claims filed against it arising out of the parties' fair share agreement. The Association's position in this regard is neither supported by a uniform practice in comparable Districts, nor by principles of fairness and equity. Though the Association correctly points out that it should not be liable to the District for unreasonable attorney fees in such matters, that issue could have been addressed by the Association without removing from the Board the right to defend itself in such actions.

On this issue, the undersigned is persuaded that though the Association has demonstrated that the issue needs to be addressed, its' proposed change in the status quo goes too far in that it doesn't specifically address the problem it has identified. Accordingly, the undersigned concludes that on this issue, the Board's status quo position is more reasonable than the Association's proposed change

Limited Term Employees--

Board Position:

The recognition clause should determine when an employee becomes a member of the bargaining unit.

Only four comparable districts have language defining when limited term employees become members of the bargaining unit, and what differences in benefits, if any, those employees will receive. The other 13 have no such language. This comparability evidence also supports selection of the Board's final offer.

Though the Board and the Association had one dispute over this issue, it was settled and no further problems have arisen over this issue, even though the District hired a teacher to fill a temporary vacancy the next semester

The Board's position on this issue is also supported by the fact that no quid pro quo has been offered by the Association.

Association Position:

Unlike many other recognition clauses, the parties' agreement does not contain an exclusion for casual, temporary, substitute workers or any other replacements.

The Association has never required the District to bargain over the application of the agreement to substitutes. But when does a day-to-day substitute start doing "regular" work? The Association proposed a reasonable standard where an employee would not become a member of the unit until they performed work for thirty (30) consecutive workdays, even though the statutory standards suggest that twenty one (21) days is the demarcation point separating short and long term workers. The Association's proposed language clarifies the rights of replacement employees and indicates that limited term employees receive all contractual

rights, obligations and benefits after the 30th workday until the prior teacher returns to his or her job assignment. At that time, the replacement worker is entitled to layoff and recall rights. If the replacement teacher returned before the Wis. Stat. 118.22 timeline, then the District is barred from laying off or non-renewing the employee; if after the timeline, a non-renewal hearing could not be held since the need to reduce the work force requires the layoff procedure to be followed.

Last year two prohibitive practices and a Notice of Claim were filed against the District because the District failed to fill a vacancy with a bargaining unit member. As a result of a settlement the District was required to pay the employee on the salary scale, and pay her for time not worked since they chose to terminate her work early without cause. Thereafter, the District properly gave an individual contract to another teacher to fill a vacancy for the 2nd semester of the 1990-91 school year. Had the District had in place the language contained in the Association's final offer, it could have given this employee a limited term contract since the employee was hired after August 1. By not doing so the District had to decide in less than 30 workdays if nonrenewal was in order.

The irony is that the Association, and not the District, is proposing to limit recognition rights for replacement workers or for workers hired after August 1, just like the language found at the High School and other comparable districts.

Discussion:

Because of the dispute that has arisen between the parties over this issue and the ambiguity in the parties' agreement in this regard, the undersigned is of the opinion that the Association has persuasively demonstrated that the issue needs to be addressed. The Board's reliance on comparability and the desirability of preserving the status quo does not address the fact that the parties' agreement is currently unclear. In view of the fact that the Board has failed to demonstrate that the Association's proposal is inequitable, unclear, or that it would cause the Board undue hardship, the undersigned must conclude that the substance of the Association's proposal would not cause the District problems, and accordingly, the Association's proposal in this regard is deemed to be more reasonable than the Board's.

Grievance Procedure--

Board Position:

The Association already has the right to participate in the processing of grievances. If, for some reason, the agreement's grievance procedure prevented the Association from filing grievances on its own behalf, the Association could use the WERC's declaratory ruling process to force a change in the next round of bargaining. In fact, grievance procedures which do not allow the Association to participate on their own behalf are permissive subjects of bargaining. (Citations omitted) In the interim, nothing stops the Association from enforcing its rights under the collective bargaining agreement under 111.70(3)(a)5 Wis. Stats.

In addition, only seven comparable districts allow associations which represent their teachers to participate in the grievance procedure on their own behalf.

Also, again, no quid pro quo has been offered by the Association.

Association Position:

Under the parties' collective bargaining agreement the Association does not have any independent right to grieve on its own behalf. It can proceed to arbitration, but only if the affected employee files a grievance. The existence of such an independent right can be found in many comparable districts, which supports adoption of the Association's final offer on this issue.

Discussion:

Again, the Association has raised an issue of legitimate organizational concern not clearly addressed in the parties' current collective bargaining agreement. The Board has not challenged the right of the Association to include its proposal in this regard in its final offer, and therefore, the undersigned must address the merits of the Association's proposal. The Board's opposition to the Association's proposal again is based primarily upon comparability and status quo considerations. Though there are concededly alternative legal avenues for the Association to utilize in this regard, no substantive reason has been presented by the Board why the Association should not be permitted to utilize the grievance and arbitration procedure to enforce organizational rights. Though arguments in that regard might be made, they were not made in this proceeding, and absent any persuasive argument that granting the Association such a right would cause the Board undue harm, based upon the ambiguity of the agreement in this regard and the legitimacy of the Association's concerns, the undersigned

deems the Association's position on this issue to be more reasonable than the Board's.

Personnel Files--

Board Position:

Teachers have sufficient protection in the personnel file language already found in the collective bargaining agreement in Article III, section A.8. Teachers also receive sufficient protection under the just cause provision of the agreement, and under state laws governing personnel records. In this regard, Section 103.13 Wis. Stats. specifies limitations on what may be placed in a personnel file. That statute also allows teachers a right to attach their response to any document in their personnel file.

No comparable districts have contract language which prohibits the district from placing an anonymous complaint into a teacher's personnel file. None have language stating that negative documents in a personnel file must be promptly brought to the teacher's attention. A few require that documents must be shown to the teacher before they are placed in the personnel file. Such comparability evidence does not support the Association's proposal in this regard.

Again, no quid pro quo has been offered by the Association for this proposed change.

Association Position:

The rights the Association are requesting are so basic that one does not need comparability to support them.

In fact, District practices and policies are consistent with the Association's request, and the majority of comparable districts have personnel file language. On the other hand, current contract language only gives an employee the right to respond to an evaluation.

Though the District cites the just cause provision to support its position on this issue, it neglects to note that employees may be disciplined or removed without just cause prior to the beginning of year three.

Discussion:

The Association's proposal in this regard affords employees due process rights, some of which they might already have under the just cause standard or under Wisconsin statutes; however, it is clear that all teachers in the District do not have such rights, and dubious at best whether all of said rights are covered by statute. The Board, rather than addressing the merits of the Association's proposal again over relies on comparability and status quo considerations. Absent persuasive arguments indicating why the Association's proposals on these issues are unreasonable or why they would impose an undue hardship on the District, the undersigned believes that the Association's proposals address legitimate concerns about unclear employee rights in a constructive fashion, and accordingly deems the Association's proposal in this regard to be more reasonable than the Board's position on this issue.

Merit Pay--

Board Position:

Since the Board has not implemented a merit pay plan without the consent of the Association, and since the District continues to be willing to meet with the Association on this issue, the Association faces no risk of the Board implementing a merit pay plan against the Association's wishes. In fact, there is nothing unreasonable about the Board's position on this issue, and there is no need for the Association's proposed change.

Again, the Association has proposed no quid pro quo for this proposed change.

Association Position:

Though the parties' have had merit pay language in their agreements since 1982-83, no criteria were ever mutually developed and no merit compensation was ever agreed upon or implemented. The language is antiquated and ill conceived, and it is not supported by comparability.

Discussion:

The Association has failed to persuasively demonstrate that there is a legitimate need to remove the merit pay language from the parties' collective bargaining agreement. Though said language apparently is currently somewhat anachronistic, it does no one any harm, and might provide a future opportunity for the parties to perhaps try to do something

together constructively. The Board's position on this issue is therefore deemed to be more reasonable than the Association's

Insurance --

Board Position:

The Association proposes several significant changes from past contracts. It proposes that the standard for changing insurance carriers or plans from "equivalent" plans to "equal" plans. LTD insurance is added to the list of insurance which this provision covers. The time period for which this provision is applicable is changed from the second year of a two year agreement to both years of the two year agreement.

Long-term disability insurance is not really an issue since the Board's contributions toward that insurance cover the full cost of that insurance now, as was the case in the past.

Eleven of seventeen comparable districts have language comparable to the "equivalent" language contained in the parties current agreement pertaining to health insurance coverage. Six have language supporting the Association's position on this issue. With respect to dental insurance, again, 11 of 17 comparable districts have language similar to the Board's position, while six have language supporting the Association's position.

With respect to long-term disability insurance, the Board proposes continuing current contract language which places no restrictions on changing long-term disability carriers or plans, provided that the benefit equals 90 percent of salary and the benefits start after a 60 day waiting period. The Association proposes the same "equal" benefit standard applicable to their proposal with respect to health and dental insurance.

Only three comparable districts have such restrictions on changes in long term disability insurance.

There is no need for the Association's proposed insurance changes. No change in health, dental or long term disability insurance carrier or plan has even been made against the will of the Association. Use of the "equivalent" benefits standard has not been a problem for the parties.

No quid pro quo has been offered for this proposed change.

Association Position:

It is reasonable to expressly provide in the agreement for full payment of LTD benefits for internal consistency re other insurance benefits, and because the underwriting guideline for the LTD plan requires 100% Board payment. A cap on LTD premium amounts is almost non-existent among the comparables.

Because there is no LTD contract language establishing a standard for changes, there is a need for such a standard, which should be the same as is applicable to dental and medical insurance.

Benefit standards can best be understood by attaching the actual benefit plans to the collective bargaining agreement.

On the basis of comparability, the Association's request for an "equal" standard for change is no less reasonable than the Board's position on this issue.

The "equivalent" standard is bound to be the root of many grievances. (Citation omitted) The Association's offer is designed to remedy this problem.

In addition, under the Board's proposal there is no standard for insurance equivalency during the first year of the agreement. This is simply nonsensical and without comparability.

Discussion:

On the standard for change issue, the Association has failed to demonstrate either by evidence or argument that there is a legitimate need to change the standard from "equivalent" to "equal". No hardship or problems have arisen under the parties' current agreement, and clearly there is no uniform comparability evidence supporting the Association's position on this issue.

Similarly, no persuasive case has been made for the need to change provisions in the parties' agreement pertaining to long term disability insurance.

Though other issues have been raised pertaining to insurance, the failure of the Association to justify its proposed change to an "equal" standard requires

the undersigned to determine that the Board's proposal on this issue is more reasonable than the Association's.

Retirement Benefits--

Board Position:

With respect to cash payments, seven comparable districts offer no cash payment for retirees, and five other districts offer a sick leave buyout which is either inferior to or equal to that offered by the Board. Thus, eleven of 17 comparable districts offer payments supportive of the Board's final offer.

With respect to health insurance for retirees, eight districts do not offer paid insurance to retirees, seven districts offer single and family coverage, with varying amounts paid by the Board, and two districts offer only single coverage. This comparability evidence does not clearly support either final offer.

Though the Association's proposal would clearly be desirable for retirees, there has been no showing that a need for these changes exists, either in terms of the District's ability to attract and retain competent teachers, or based upon hardship experienced by retired teachers.

Though the Association argues that the Board's provision providing for a retirement incentive is illegal, it provides no evidentiary support for that contention, and in fact, there is no such evidence

There has also been no quid pro quo offered for this proposed change.

Association Position:

In direct contrast to the Board's reduction of benefits for early retirees as seniority increases, the Association's offer would provide an early retirement benefit based on years of experience in the District

The Board's age-based payment language is nothing more than a shallow subterfuge to boost poorly paid teachers' salaries up during the final year of service to increase their retirement pension, and that is illegal, since the law excludes final year bonus payments from final average earnings used to calculate a teacher's retirement benefit from WRS.

In addition, by penalizing employees who choose to work beyond its age based eligibility window, the Board's final offer coerces employees to retire involuntarily, which presents a great risk of violation of federal and Wisconsin prohibitions against age discrimination. (The Board's offer provides that "...salary shall be increased by \$500 times the number of years less than age 70") The risk of such violations inherent in the Board's final offer make it less meritorious. In contrast, the Association's final offer was explicitly designed to be age-neutral. It creates no age-based classification.

While other contracts contain WRS pick-up language, the Association proposes its deletion as a quid pro quo in order to get a health insurance benefit available to other school employees.

The Association's final offer on these issues is nearly identical to the High School benefits.

The majority of comparable districts provide paid health insurance benefits to retirees.

Discussion:

The Association has failed to demonstrate justification for its proposed changes in this regard by strong, relatively uniform comparability evidence, by persuasive argument or evidence indicating that the parties' current agreement, or provisions similar thereto, have ever been determined to be illegal by a court of competent jurisdiction, or by evidence indicating that the District's current retirement benefits have resulted in hardships among affected individuals which need to be addressed. Absent any of the foregoing, the undersigned is not persuaded that a change in the status quo is warranted, even with the quid pro quo offered by the Association, and therefore, the Board's position on retirement issues is deemed to be more reasonable than the Association's.

Annexation, Consolidation, Cessation of Operations, or Other Reorganization-

Board Position.

Fifteen comparable districts have no contract language relating to consolidation or annexation.

Though there have been discussions of consolidation in the past, the Board has uniformly resisted attempts at consolidation. Thus, there is no need for the Association's proposed changes.

In addition 117.25 Wis. Stats. already provides teachers with sufficient protections from consolidation, since said statute already provides for a continuation of collective bargaining agreements after consolidation, and for the employment of teachers of the old districts by the new consolidated district.

The Board also believes that if the Association's proposal is adopted, it would apply even if no one's job were in danger, and where there would be no risk of cessation of operations, e.g., the attachment of a small parcel of territory to the District would activate this language. This would place an undue burden on the Board and the taxpayers in the District.

Lastly, the Association has proposed no quid pro quo for this change

Association Position:

By the very nature of the school system, one of the smallest K-8 districts in the state, it is most vulnerable to annexation and/or consolidation. The Board is meeting with the Trevor Elementary Board to consider what elements of combination may result in a more efficient operation. The current Board President was one of the signatories to a petition to consolidate. These facts alone are compelling. While the record indicates that the District is not currently interested in giving up what it describes as its local voice, the Board and the State legislature both have unilateral rights, the result of which may place Wilmot Elementary teachers in great jeopardy.

No weight should be given to comparability with respect to this issue in K-12 systems, which do not generally need such language. Wilmot High School provides for this exact same annexation and consolidation language. One half of the school districts settled within the Wilmot system also currently have such language

Though comparability evidence is mixed with respect to this issue, much more compelling are the risks involved if this issue is not addressed.

Though it is true that Section 117.25 Wis. Stats addresses these issues, said proviso only provides for continuation of the collective bargaining agreement through its expiration, and does not protect affected employees from layoffs and their consequences.

Discussion.

Though the Association's proposal addresses a serious, legitimate issue in districts such as this, and though it has some comparability support, the problems and complexity of the proposal, to the extent that it attempts to deal with issues in ways which might or might not be possible or permitted by law, forces the undersigned to conclude that although the issue should be addressed by the parties, absent imperative evidence that it needs to be promptly addressed in this interest arbitration proceeding, it should not be. That is not to say that the Association's proposal is unreasonable; it simply reflects the undersigned's discomfort with changing the status quo in this regard where the consequences of such a change are so uncertain, and where the problems created by the change might be as great as the problems which might arise if no change in the status quo occurred. Therefore, the undersigned will opt for the status quo outcome on this issue absent strong evidence that it needs to be addressed in this proceeding. The record is clear in that regard that it need not be.

Calendar--

Board Position:

Thirteen of 17 comparable districts support the Board's proposed continuation of 180 teacher-pupil contact days.

The net effect of the Association's proposal is to give teachers one less day of face-to-face instruction of pupils and one additional day of paid time. Since the teachers would perform the preparation and paperwork in any case, the net effect of the Association's proposal is one less day of work.

Also, though high school teachers grade on a semester basis, there is no evidence in the record indicating that District teachers either give pupils semester tests or permanently record semester grades. Also, contrary to the Association's contention, the record does not indicate that District teachers work one day more per year than teachers at Wilmot UHS.

Again, no quid pro quo has been offered for this proposed change.

Association Position.

The Association's position on this issue is consistent with this important element of the Union High School calendar.

The issue here is the need to schedule adequate time at the end of the first semester to prepare records, finalize grades, meet with parents and administrators, spend time with specialists in preparation for the second semester course work, etc.

Also, Wilmot Elementary teachers work one additional day when compared to the High School calendar even though both campuses concluded that they have 180 student-teaching days. This is due to the way the DPI permits days to be counted.

Requiring Wilmot Elementary teachers to work an additional two uncompensated half days when the High school and a majority of other feeders do not simply cannot be supported by statutory criteria.

Discussion:

The Association has failed to demonstrate that either comparability or equity require adjustment of the school calendar to provide teachers with additional non student contact time. Absent strong comparability evidence in this regard, the undersigned believes the Association has failed to make a persuasive case for its proposed change in the status quo.

Paycheck Schedule--

Board Position:

Most comparable agreements are not so specific as to determine whether or not the first paycheck arrives before or after the first workday of a school year.

The practice of paying teachers before the first day of work resulted in a new teacher receiving and cashing a paycheck, though she subsequently resigned without ever having worked. The District's auditors therefore recommended the change found in the Board's offer.

Under the Board's proposal, teachers will continue to be paid in 26 equal installments. The net effect of this change is that teachers may have to wait three weeks between paychecks in those years when there would otherwise be 27 payrolls.

Association Position:

The Association will not oppose the District's proposal on this issue in the successor 92-94 agreement. That will afford teachers the opportunity to plan for the three week "stretch" that will be necessary if a pay date is moved to a week later.

It would make no sense to have this provision applied retroactively for two years, when the two years are nearly over.

Discussion:

Clearly the Board has demonstrated that a legitimate problem exists which needs to be addressed, and it has addressed that problem in a reasonable way. The Board's proposal in this regard is clearly preferable to that of the Association.

Total Package--

Board Position:

Arbitrators dislike use of the arbitration process for changes in the status quo. (Citations omitted) Many arbitrators require not only that a moving party show a need for change, but the proposed change must also meet the need without imposing undue hardship on the other party. (Citations omitted) Arbitrators have applied this burden on parties seeking to change the status quo on both cases of changes in salary schedule structure and changes in contract language. (Citations omitted)

In order to meet the aforementioned burden, several tests have been utilized. First, there must be a showing that there is a uniform practice among comparable districts supporting the change. Second, there must be proof of need for the change. Third, there must be evidence indicating that the change will meet the need which justifies the change, without placing an undue hardship on the other party. Finally, the moving party must show evidence of an equitable quid pro quo for the change.

If these tests are applied in this proceeding, the Association does not justify the changes in the status quo which it seeks. In this regard, the record clearly demonstrates that the practice in comparable districts is anything but uniform in support of the changes sought by the Association. In fact, in many cases the practice in comparable districts uniformly supports continuation of the status quo.

Though the public has an interest in a district's ability to attract and retain competent teachers with wages, hours and conditions of employment comparable to those of similar employees, it also has an interest in controlling school district costs. (Citations omitted)

The combined Wilmot Grade School/Wilmot Union High School tax levy rate was higher than any comparable combined tax rates for K-8s and union high school districts. The record suggests that the property tax payers of Wilmot Grade School are paying enough property taxes.

The District has not had an unusual turnover problem. Of the 23 positions that have turned over in the last five years, 15 were part time positions. If the Association's final offer were selected, teachers would probably continue to leave part time positions in the District to take full time positions elsewhere.

The salary and total package cost increase found in both final offers far exceeds recent changes in the consumer price index.

Association Position:

Recently, arbitrator Kerkman address status quo change criteria in Plum City (INT/ARB-5778, 10/17/91). In said award he stated in pertinent part:

"... To refuse to consider a proposed change in the status quo merely because it should be bargained and not arbitrated defeats the purposes of these proceedings, because if no change in the status quo can be made via the arbitration route, an impasse will always be resolved in favor of no change even though a compelling case for change might be supported by the evidence. While there is the line of arbitral authority cited by the Association which stands for the proposition that the status quo should not be altered, there is also extensive arbitral authority to support the proposition that the status quo may be changed if the proponent of the change establishes a compelling need for the change it proposes. This Arbitrator subscribes to the latter view...."

If undue hardship is demonstrated no quid pro quo is necessary, especially among language items. The latter standard is more often applied in take away circumstances. If undue hardship or overwhelming comparability are present, the quid pro quo requirement is often negated.

Arbitrator Vernon stated in Bloomer School District (Dec. No. 24342-A, 10/19/87):

"Arbitrators should be reluctant to disturb voluntarily bargained wage relationship absent compelling justification. Occasionally, special sets of circumstances, even in spite of past voluntary agreements compel catch-up. It is helpful when there is a showing that these disparities are significant, historically routed and increasing over time."

In this case, unlike many others, one half of the athletic conference school systems are not K-12 configured. To eliminate 50% of the comparisons base makes no sense.

A review of K-8 arbitrations since the statutory criteria changed reveals that only one other arbitrator has recently charted the course of K-8

comparability, and that was arbitrator Petrie in Twin Lakes I/A-5487, 3/2/91. In relevant part he stated therein:

" . . . Any decision that would hypothetically exclude otherwise comparable elementary school teachers from being compared to one another, merely because one was employed in a K-12 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. . . . 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 the comparison with elementary schools and vice versa."

Discussion:

Though the Association has persuasively demonstrated that there is a need for a change in the status quo on many significant issues in the District, including, most importantly, salaries, for the reasons discussed above, its proposals for change are frequently not well designed to address the problems it has identified. Accordingly, because the Board's salary proposal has been deemed to be more reasonable than the Association's, and because the Association's proposals for change regarding indemnification in fair share disputes, the standard for changing insurance benefits, retirement benefits, and the school calendar have been deemed to be less reasonable than the Board's status quo position on these issues, the undersigned must conclude that the Board's overall proposal is more reasonable than the Association's.

Accordingly, for all of the reasons discussed above, the undersigned hereby renders the following:

ARBITRATION AWARD

The Board's final offer shall be incorporated into the parties 1990-92 collective bargaining agreement.

Dated this 19th day of December, 1992¹ at Madison, Wisconsin

Byron Yaffe
Arbitrator