ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	
Between	
KEWASKUM SCHOOL DISTRICT	Case 21
And	No. 46160
	INT/ARB - 6110
	Decision No. 27092-A
KEWASKUM EDUCATION ASSOCIATION	

Impartial Arbitrator

William W. Petrie
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P.O. Box 320
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Hearings Held

March 4-5, 1992
May 1, 1992
Kewaskum, Wisconsin

Appearances

For the Board

QUARLES & BRADY
By Michael J. Spector, Esquire
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For the Association

CEDAR LAKES UNITED EDUCATORS COUNCIL
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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Kewaskum School District and the Kewaskum Education Association, with the matter in dispute the terms of a renewal labor agreement covering the 1991-1992 and the 1992-1993 school years, with the major items in dispute the salary adjustments to be made during each year of agreement, the rate per mile for authorized mileage driven by teachers, and the matter of teacher contributions toward monthly health insurance premiums.

The parties exchanged initial proposals in March of 1991, they thereafter met on various occasions in an unsuccessful attempt to achieve a complete negotiated settlement, after which the Association on August 23, 1991 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration pursuant to Section 111.70 of the Municipal Employment Relations Act. After preliminary investigation of the matter by a member of its staff, the Commission on November 26, 1991, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order directing arbitration; on January 23, 1992, it appointed the undersigned to hear and decide the matter as arbitrator.

A public hearing took place on the evening of March 4, 1992 in the City of Kewaskum, and the arbitration hearing began on March 5, 1992. Due to certain unanticipated data and costing differences having arisen at the hearing, the record was held open to allow the parties to attempt to reconcile their differences. Neither the efforts of the parties alone, nor a conference call with the undersigned on March 23, 1992 were successful in resolving the differences. The hearing was reconvened on May 1, 1992, at which each party received a full opportunity to present additional evidence and argument relating to their costing differences. Both parties thereafter summarized with the submission of post hearing briefs and reply briefs, after which the record was closed by the undersigned effective June 11, 1992.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral criteria:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. Changes in the foregoing circumstances during the pendency of the arbitration hearing.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public sector or in private employment.

POSITION OF THE ASSOCIATION

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

(1) By way of introduction, it urged that the three major issues before the Arbitrator were salaries, health insurance contribution levels and costing of the offers of the parties.

(a) That the final salary offer of the Association is the more reasonable of the two offers for various reasons: that it more nearly comports with the settlement pattern established within geographically contiguous, comparable school districts; that the interests and welfare of the public as expressed at the public hearing, confirmed the desire of the public to maintain continued association with larger districts in order to remain competitive, thereby encouraging growth in population and industry in Kewaskum; that the economic conditions in the District cannot be shown to be any different than those which existed during the four years of voluntary settlements; and that the District is able to pay the same level of comparable salaries and benefits to the KEA as it has during the last two voluntary settlements.

(b) That the Board is proposing that the KEA contribute an additional 1.5% over two years to health insurance premiums, which proposal is inappropriate for various reasons: that the Board has provided no quid pro quo for its proposal; that the Association has been sensitive and responsive to the rising cost of health care by contributing 3.5% to the cost of the health premiums, by assuming a drug card deductible, and by bargaining with health care providers for lower rates; and that the dominant pattern among comparables is 100% payment of health care premiums.

(c) That the Board has been extraordinarily careless in sharing data with the KEA and in costing its own final offer. That there are multiple contradictions and uncertainties contained in the Board's testimony, which raise questions about the credibility of its witnesses and exhibits.

(2) That the parties' negotiations history over the past four years establishes that the primary external comparables pool now consists of the School Districts of Kewaskum, West Bend, Campbellsport, Slinger, Plymouth, Hartford, Northern Ozaukee, Random Lake and Lomira; accordingly, that these comparisons

should take precedence over the athletic conference comparisons utilized by Arbitrator Malamud in 1987.

(a) That the parties' decision to align themselves with these districts is evidenced in contract language, salary settlements, the public interest, and economic similarities between the districts.

(b) That the comparisons were first set forth in the 1987-89 Master Agreement in Article VI - Pay Schedules, D-Summer School, which provided as follows: "Teachers who volunteer to teach summer school will be paid at a rate to be set each year based on the average dollar amount paid by the school districts that are geographically contiguous to the School District of Kewaskum. These districts are: West Bend, Campbellsport, Slinger, Plymouth, Hartford, Northern Ozaukee, Random Lake, and Lomira."

(c) That the Association has made salary proposals in recent negotiations based upon the above referenced districts, that actual salaries between 1987-91 have been more closely aligned to them than those in the Athletic Conference, and it makes sense to the Association that schools comparable in terms of summer school salaries should be comparable on a year round basis.

(d) That the relationships between Kewaskum and the Association proposed comparables have remained constant since the 1987-88 school year, including student enrollment, FTE, student/teacher ratios, cost per pupil, state aids/pupil equalized valuations/pupil, and levy rates per $1,000.

In summary, that the parties have voluntarily established a comparable group over the past four years of contract negotiations, and the stability of the bargaining relationship and interest of the public with regard to comparables should not be disrupted because the Board, although able to pay, has decided that it does not want to compensate teachers at the same levels as voluntarily negotiated over the past four years.

(3) That the Board failed to inform the Association of changes made in the original employee distribution data provided to the KEA in March of 1991.

(a) That the District was asked to provide a 1990-91 staff distribution to the Association for use in negotiations, and it provided Association Exhibits #32 and #32A; that these data were used by the Association in costing out the 1991-92 and 1992-93 salary schedules.

(b) That the Association first learned of the Board's belief that the KEA was using an incorrect scattergram during the week of March 23, 1992, in a conference call between the parties and the arbitrator.

(c) That the District failed to provide accurate information to the Association as it is required to do by statute, and it failed to notify it of changes in the data.

(d) That the Association relied upon the incorrect information supplied by the Board in drafting its final offer which is under consideration in these proceedings; that these facts must be given significant weight in the final offer selection process. That the KEA must not be penalized for

the Board's failure to provide accurate data, and the KEA final offer must be viewed in the context within which it was certified.

(e) That various possible contract violations may have occurred incidental to the maintenance of the inaccurate data.

(f) That the Board knowingly allowed the KEA to prepare and certify its final offer using data which the Board knew was different than its own; indeed, that the Board never supplied a salary schedule until its last final offer on November 22, 1991.

(g) That an exhaustive recapitulation of the events between March of 1991 and March of 1992 illustrates the unreliability of the data provided by the Employer at several junctures.

(6) That benchmarks are the only reliable elements of data in the parties' final salary offers, and that when considered against the comparables, the benchmarks support the selection of the final offer of the Association.

(a) That benchmark comparisons have been widely used by Wisconsin interest arbitrators, particularly where there is some confusion in connection with respect to other available data.

(b) That the benchmarks traditionally used by arbitrators include the BA Minimum, BA-7, BA Maximum, MA Minimum, MA-10, MA Maximum and Schedule Maximum.

(c) That the benchmarks of the Association's comparables increased an average of 4.63% in 1991-92, which compares with the KEA proposed average increases of 4.64% and the Employer proposed average increases of 3.42%.

(d) On an overall basis, that adoption of the Board's offer would cause an extreme loss of value at the various benchmarks; further, that the quid pro quo for the voluntarily negotiated medical insurance contribution would be gone, while the employee contribution would actually be increased.

(e) That even when comparing the parties' final offers against the Board's comparables, it is evident that the Board's offer is substandard.

(f) Since there are no settlements among its proposed comparables for 1992-93, the Association has elected to replicate the same 4.66 per cell increase that it proposed for 1991-92.

(7) That the Board has failed to provide a quid pro quo for the concession it seeks in increasing employee contributions to health premiums in the renewal agreement; in addition, it seeks to remove through arbitration the quid pro quo which it agreed to in 1989-90.

(a) That in agreeing to pay 3.5% of the health insurance premium in the 1989-91 bargain, the KEA understood that their relationship would have a long term impact; that employee contributions have automatically increased with increases in premiums.

(b) That the Board proposed additional 1.5% increase in employe contributions reduces the value of the salary proposal by reducing the real income of the teachers.

(c) That other Wisconsin interest arbitrators have recognized the necessity for an additional quid pro quo in analogous situations.

(d) That the KEA has already agreed to changes in voluntary early retirement, increased deductibles on drug care, and has worked hard in attempting to control health care costs.

(e) Among the comparables, that only one other district (Northern Ozaukee) requires health insurance premium contributions. That while others have negotiated modifications in their coverage, such changes were supported by quid pro quos in each case.

(f) That there is no ability to pay question in the matter at hand.

In its reply brief, the Association emphasized the following principal arguments and considerations:

(1) That the arbitral history regarding comparability is irrelevant, in that the parties have enjoyed stability over the past four years in following the summer school comparables identified in the agreement.

(a) That the Board has misstated the substance of various arbitral awards bearing upon the matter of use of the schools in the Eastern Wisconsin Athletic Conference as comparables.

(b) Over that past four years, that the parties have substituted the comparables urged by the Association in these proceedings, for the athletic conference comparables approved in their 1986 arbitration.

(c) That the Board's refusal to accept the summer schools for comparison purposes, as they have been used by the parties over the past four years, represents an attempt to camouflage its refusal to match the settlement patterns of the comparables.

(d) That the parties have not maintained a bargaining relationship with the athletic conference over the past four years, and any that once existed has been severed.

(e) That the relative considerations of size, location athletic conference, average pupil enrollment, per pupil operating cost, full value tax rates, equalized valuation per pupil and equalized value have not changed significantly over the past four years of voluntary settlements.

(2) That arbitral consideration of the cost of living criterion favors the wage component of the Associations' final offer.

(a) Over the past twenty-two years, that salaries have failed to keep pace with increases in the CPI, which has resulted in a loss of purchasing power for the teachers.

(b) That teacher increments should not be included in any cost of living analysis, which practice would otherwise deny them

the ability to increase their purchasing power.

(3) That the Association did not fail to seek agreement on base costing information, and it was not at fault with respect to the incorrect costing which became apparent at the hearing.

(4) That the only reliable data in the record for salary comparison purposes are the salary schedule benchmarks contained in the final offers.

(a) That the law does not allow the District to change its final offer.

(b) That since final offers cannot be modified, the only reliable comparison is the benchmarks that exist in the salary schedules in the respective final offers.

(c) That the KEA should not be penalized for a lack of care on the part of the Board.

(d) That even if the Board's errors were not intentional, it has responsibility to be accountable for it's own product.

(5) That the Board was inconsistent in the number of districts used in comparing the Athletic Conference against $/FTE Data and Rankings.

(6) That the quid pro quo bargained in 1989 was not recognized as a buyout for any future Board proposed increases in health insurance premium contributions.

(a) That the position of the Association is consistent with various Wisconsin interest arbitration decisions and awards.

(b) That there is no suggestion in the record that the teachers have ever abused the health insurance program, and that the opposite is actually true.

(7) That the Section 125 plan offered by the Board does not constitute a quid pro quo.

(a) That the cost of the additional premium contributions reduces the value of the Board's salary offer.

(b) That the majority of the Association proposed comparables still pay 100% of the health insurance premium costs.

(c) That while the IRS Section 125 Plan offsets the de-minimis taxable portion of the employee contribution, it will only do so as long as the govenment allows it to exist; this is why the KEA did not consider this to be a quid pro quo in 1989.

(8) That there is insufficient data in the record to allow a valid comparison of the KEA with other District employees.

For all of the reasons contained in its briefs, the Association requests the Arbitrator to selection its final offer in these proceedings.

POSITION OF THE DISTRICT

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

(1) That the principal issues before the Arbitrator are two in number: first, whether the comparable school districts selected by Arbitrator Malamud in the 1987 Kewaskum arbitration should be used in these proceedings; and, second, which of the final offers is the more reasonable in light of the statutory criteria?

(2) In connection with the question of comparables, that the following considerations favor arbitral use of the same districts used for comparison purposes by Arbitrator Malamud.

(a) That voluntary settlement is a primary goal of the Wisconsin public sector collective bargaining laws, and the likelihood of such settlements is increased if the parties know, during bargaining, which districts are comparable for the purpose of interest arbitration under Section 111.70 of the Wisconsin Statutes.

(b) That the comparables first identified by Arbitrator Michael Rothstein in a 1982 teacher arbitration, subsequently accepted by Arbitrator Sherwood Malamud in the most recent teacher arbitration in 1987, and implicitly approved by Arbitrator David Johnson in a 1990 Kewaskum auxiliary personnel interest arbitration, should be used in this proceeding, unless the Association shows some extraordinary change in relevant facts and circumstances.

(c) That the public interest in predictability and stability imposes a heavy burden of proof on the Association to justify a change.

(3) In connection with the final offer selection process, that the Arbitrator should choose the final offer of the District for various reasons.

(a) Because it strikes the most reasonable balance between fair salaries to the teachers when measured against both comparables and cost of living, and a reasonable contribution by District employees toward escalating health insurance costs.

(b) That although both offers deviate from the general norm of the settled comparables, the Association's offer is less reasonable; that the Association's overreaching on salary, particularly for the 1992-1993 school year, goes beyond what is reasonable.

(c) That the modest Board proposed changes in premium sharing for 1991-1992 and 1992-1993, do not require a quid pro quo of the type which accompanied the 1989-1990 contract change from 100% to 96.5% Board payment.

(d) That the Association has not shown any need to change from the long-standing bargain-by-bargain approach, rather than an IRS approach to mileage reimbursement.

(4) That the comparable districts identified by the Board best meet accepted tests for selection of comparables.

(a) That Arbitrator Rothstein in his August 1982 decision for the District, relied on six criteria for determining comparability: geographic proximity; relevant athletic conference; average pupil enrollment; per pupil operating costs; full value rates; and equalized valuation per pupil.

(b) That Arbitrator Malamud in his June 1987 decision for the District, relied upon the six criteria cited above, and added total equalized value of property available for taxation as a seventh factor.

(c) That the Board proposed comparables consist of the school districts located in the Eastern Wisconsin Athletic Conference, Chilton, Kiel, New Holstein, Plymouth, Sheboygan Falls and Two Rivers. That these districts were utilized by Arbitrator Malamud, who significantly relied upon the earlier the Rothstein decision; further, that Interest Arbitrator David Johnson in his 1990 decision for Kewaskum Auxiliary Personnel, recognized the appropriateness of the athletic conference comparisons for teachers.

(d) That there is substantial arbitral authority in Wisconsin for the use of athletic conference comparisons in teacher interest arbitrations, based upon such factors as similarity, and predictability and stability in the bargaining relationship. In this connection, that arbitrators have recognized that comparables should not vary based on capriciousness or particular strategies of the parties, but should normally remain consistent over long periods of time.

(e) That recent changes in Wisconsin's Municipal Employment Relations Act have not been accepted as providing a statutory basis for changing historic comparables.

(f) That arbitral decisions within the Eastern Wisconsin Athletic Conference have generally limited comparisons to the conference, with the exception of Two Rivers, which has a long history of excluding Kewaskum.

(g) On the basis of the above, that the final offers of the Board and the Association should be evaluated in comparison to the Eastern Wisconsin Athletic Conference; that this pool of districts provides the Arbitrator with the most appropriate and meaningful basis for analysis, based on historical precedent and other factors generally utilized by arbitrators.

(5) Apart from the negotiations history considerations referenced above, that various other criteria favor the comparables urged by the District.

(a) That full time enrollment and full time staff equivalency are vital elements in establishing comparability: that enrollments range from 1,286 to 2,366 within the Board comparables, with an average of 1,705, versus Kewaskum's enrollment of 1,790; that staff FTEs range from 70.6 to 126.8, with an average of 99.9, versus Kewaskum's staff of 110.1; that Arbitrator Malamud specifically rejected West Bend as too large, and Campbellsport, Fredonia (Northern Ozaukee), Lomira and Random Lake as too small to be comparable.

(b) That per pupil operating costs are also important: that the 1990-1991 per pupil costs within the Board urged comparables, range from $3,918.90 to $4,631.45; that Kewaskum with costs of $4,164.55 is near the average.

(c) In addressing levy rate and equalized value, that the following figures are important: full value tax rate (levy

rate) varied from $13.16/$1,000 to $15.56/$1,000; that Kewaskum at $13.99/$1,000, was fourth of the seven districts, and that it ranked first with respect to equalized valuation per pupil at $159,117.

(6) That the Association suggested comparables include Campbellsport, Hartford UHS, Lomira, Random Lake, Slinger, West Bend, and sometimes Northern Ozaukee (Fredonia) and Plymouth.

(a) That while the Association urges that the districts are comparable on the basis of geographic proximity, size, per pupil cost, equalized valuation and levy rates, careful analysis reveals that they have been selected more because of the content of the Association's final offer, than for any neutral principle.

(b) In considering pupil population, that West Bend is 3.38 times larger than Kewaskum, while Lomira and Northern Ozaukee are only half as large as Kewaskum; that these disparities are why Arbitrator Malamud discounted these districts as comparables.

(c) In considering some of the Association's own school data, it is apparent that West Bend cannot be considered comparable, because it receives 3.44 times the state aid per pupil and 3.12 times the final 1990 equalization and TIF aid; that Hartford, with 3.27 times the equalized valuation pe pupil, has a levy rate less than half that of Kewaskum.

(4) In the parties' two prior arbitrations within the last ten years, that the Association has attempted to create a list of comparables outside of the Eastern Wisconsin Athletic Conference, but in each instance the attempt was rejected by the arbitrator. That the Board's comparables should be adopted because they are reasonable and have a very strong historical precedent; further, that it should not be necessary to re-litigate the issue of comparability in every arbitration proceeding.

(7) That the Board's salary offer provides teacher salaries for 1991-92 and for 1992-93, which are competitive with the comparables, consistent with cost of living considerations, and which are more reasonable than those provided in the Association's offer.

(8) That inadvertent scattergram errors of both parties has resulted in the unusual situation of substantial differences in the costing of the parties' salary schedules and total package exhibits; accordingly, that the Arbitrator should utilize the time honored approach of neutrals when faced with ambiguity, that of attempting to effectuate the intent of the parties.

(a) That the exhibits and testimony of both parties show that during face to face negotiations and in the entire post-petition investigative process, each stated their respective two year positions in a consistent manner: the Board in terms of average dollars per returning teacher and the KEA in terms of per cell improvement and average dollars per returning teacher. That the first and only time that the District presented proposed salary schedules was in conjunction with the final step of the certification process.

(b) That the Board feels that the following proposed resolution of salary schedule and total package costing issues is

consistent with the intent of the parties and the integrity of the process.

(a) That AX #137 is a fair representation and costing of the final offer intended by the Board for 1991-92, ie $1,700 per returning teacher using accurate scattergrams.

(b) That AX #138 is a fair representation and costing of the final offer intended by the Board for 1992-93, ie $1,800 per returning teacher using accurate scattergrams.

(c) That AX #139 is a fair representation and costing of the KEA's proposed 4.66% per cell increase for 1991-92 using accurate scattergrams.

(d) That AX #140 is a fair representation and costing of the KEA's proposed 4.66% per cell increase for 1992-93 using accurate scattergrams.

(e) That the BA 7 and MA 10 steps of the Board and the KEA 91-92 and 92-93 salary schedules are proper comparisons to the BA 6 and MA 9 steps of the Eastern Wisconsin Athletic Conference benchmarks, per BX #18, #19, #23 and #24, due to the fact that the Kewaskum schedule starts at Step 1 rather than Step 0.

(f) That it is reasonable to extrapolate revised total package costing for the respective offers from AX #47, #132, #137, #138, #139 and #140, along with the assumption of a 17% health insurance premium increase, effective December 1, 1992.

(9) That the Board's salary offer is more reasonable, when measured against all relevant criteria.

(a) That consideration of the combined average dollar and average percentage increases for all Eastern Wisconsin Athletic Conference Schools for 1991-92 and 1992-93, supports arbitral selection of the final offer of the District, rather than the Association.

(b) That the average dollars per returning teacher for the two year period, for the four conference schools which have settled is $3,857, versus the Board's offer of $3,502 and the Association's offer of $4,371. That the average percentage increase per returning teacher for the two year period for the four conference schools which have settled is 12.25%, versus the Board's offer of 11.9% and the Association's offer of 14.1%. Accordingly, that although both offers vary from the norms, the Board's offer is more reasonable than that of the Association.

(c) That cost of living considerations favor the selection of the final offer of the Board. That the September 1991 CPI, All Urban Consumers increase over September 1990 was 3.4%, which projects to 6.8% over two years. That the Association proposed, two year combined increase of 9.3% per cell is far in excess of CPI increases, even without consideration of the 1.7% annual increment cost; that the Board proposed two year combined increase of 6.9%, on the other hand, is virtually identical to the two year projected CPI increase.

(d) That Kewaskum teachers have significantly outpaced inflation by a total of 11.3% between 1984 and 1991.

(e) That the Board's offer generally maintains the District's ranking among the comparables.

(f) Notwithstanding the fact that the Board's offer is lower in average dollars per returning teacher than in the comparable districts, it is within a range of reasonableness because 68% of the District's teachers would continue to rank at or near the top.

(10) That the Board's offer for a modest increase in premium sharing for health insurance is reasonable.

(a) That the interests and welfare of the public demand that the Board address the astronomical rise in health insurance costs; in the application of this criterion, that arbitrators should utilize an approach that considers both employee interest and general public interest. That the Board's health insurance proposal, with its modest .5% and 1.5% increases in premium sharing, seeks to alleviate the property tax burden in a phased manner while imposing only a slight incremental increase on those who participate in the health insurance program.

(b) That a modest increase in cost sharing is a reasonable response to the rising costs of health insurance, and Wisconsin interest arbitrators have begun to recognize this principle.

(c) That the Board extended a significant quid pro quo to the Association when it voluntarily agreed to premium cost sharing in the 1989-91 contract negotiations, including the following: a significantly improved salary index, including movement to a 2.0 to 1 ratio between the schedule maximum - BA 1 relationship; more money per returning teacher than in comparable districts without premium sharing; an improvement in the co-curricular salary schedule; insurance benefits for early retirees; and the establishment of an IRS Section 125 Plan. That the Board's proposal to increase the amount of contribution from 3.5% to 4.0% in the 1991-92 school year, and to 5% in the 1992-93 school year, does not represent such a change in the status quo as to require another substantial quid pro quo.

(d) That the additional premium sharing included in the Board's offer may be reduced through participation in the District's IRS Section 125 Plan. Because the plan allows employees to pay for health insurance premiums on a pre-tax, non-FICA basis, an Employee's taxable income and tax liability can both decrease by as much as 4%.

(e) That the phased change to a 5% contribution level is consistent with the premium sharing applicable to all other district employees, and that internal comparisons should command significant weight in insurance issues.

(f) That the phased in 5% premium share will be consistent with the practice of certain other districts within the athletic conference comparison group.

(11) That the Board's mileage reimbursement offer retains the teachers'

position relative to the comparables.

(a) In its final offer, that the Board proposes increase mileage reimbursement from $.21 to $.275, which would bring the teachers in line with the IRS standard mileage reimbursement rate, and would equal the highest level of reimbursement of any of the comparables.

(b) That mileage reimbursement has historically been negotiated between the parties and has frequently differed from the IRS rate; that the Association has failed to justify changing the status quo into an essentially non-negotiable formula.

In its reply brief the Board emphasized the following principal arguments and considerations.

(1) That the Association's attempt to take advantage of errors made by both parties should not be rewarded in these proceedings.

(a) That the attempted actions of the Association at the March 5, 1992 hearing, cannot disguise the two key issues of the dispute: first, does the Association's two year salary proposal unreasonably overreach, however measured; and, second, is the Board's proposed, modest, increase in health insurance premium payable by teachers reasonable?

(b) That the fact of the Board's inadvertent scattergram errors does not absolve the Association from responsibility for either its costing mistakes or, its unsuccessful effort to gain the advantage of surprise in the arbitration hearing.

(c) Prior to submitting its exhibits at the March 5, 1992 hearing, the Association concluded that the Board's final offer salary schedules were inconsistent with the $1,700 and $1,800 average salary dollar per returning teacher component of the final offer; instead of calling the District Administrator and asking about the apparent inconsistency, the Association portrayed the Board's final offer as approximately $300 less than its true value.

(d) That it is now clear that the Association erred in using the scattergram provided it when costing its final salary schedule; rather than reading the correct date on 1991-92 scattergram, it incorrectly assumed that it was for the 1990-91 year, and it miscalculated its costing based upon this mistake. The Board had no knowledge of this error until the March 5, 1992 hearing.

(e). That the Board gave the Association what it, in good faith, believed to be accurate figures; that Association had a duty to check the information for any inaccuracy and, failing to do so, it cannot now blame the Board for its lack of care.

(f) That the Association was not prejudiced by the error in any way, since it consistently sought a 4.66 per cell increase for the first year, and a counterpart increase for the second year; similarly, the Board always made clear that its final offer included a $1,700 average increase per returning teacher in 1991-92, and an $1,800 average increase per returning teacher in 1992-93.

(g) That the errors committed by both sides are rectifiable, and the integrity of the arbitration process requires that the final offers of both parties be rationally appraised using

accurate scattergrams.

(h) That giving the Association an advantage in the factual context of the hearing would only encourage gamesmanship in the future, and the Association should not be rewarded for its actions.

(2) That the Board's comparables should be selected and utilized in these proceedings.

(a) Contrary to assertions by the Association, that the parties have not agreed on a group of comparable school districts that differ significantly from those named by Arbitrator Malamud in his 1987 decision.

(b) In the above connection, that the unambiguous wording of Article VI limits the use of the districts mentioned and relied upon by the Association for the limited purpose of determining summer school teaching rates only; if the parties had intended to change the previously determined comparable group, they would have so provided in the master agreement, but they did not do so.

(c) That the evidentiary record indicates that the parties have continued to use the traditional comparables over the past four years.

(3) In any event, that there are no settled districts in the Association proposed set of comparables, which requires the rejection of its proposed comparables.

(a) That the districts urged as comparables by the Association, have not yet settled for 1992-93; that the Association, therefore, would not only change the traditional group of comparables used by the parties, but would also create a group for which no comparison data is available.

(b) In contrast to the above, that four of the six other districts in the Eastern Wisconsin Athletic Conference have settled for the 1992-93 school year.

(4) That the Board's offer most reasonably maintains the Districts position among comparables.

(a) That benchmark comparisons are not the only reliable data to determine the reasonableness of offers; that factors such as cost of living, average dollars per returning teacher, and average percentage increases in both dollars and total package amounts must be considered. That when measured against all relevant criteria, the Board's offer is more reasonable than the Association's.

(b) That the Association's offer overreaches the average dollars per returning teachers among the comparables; although both offers vary from the average, the Board's offer is closer to the average and, thus, more reasonable than the Association's.

(c) That the Association's offer overreachers the average total package percentage increases among the comparables; that the Board's offer is much closer to the average total package percentage increase than is the Association's.

(d) That the Board's final offer is more reasonable in light of

all relevant factors: that the salaries of Kewaskum teachers have outpaced inflation; that the Association proposal would rapidly increase the benchmark rankings of Kewaskum among comparable districts; and that the Board's offer would maintain the rankings among the comparables.

(5) That the Association's attempt to wrest another quid pro quo from the District for a slightly increased percentage of teacher contribution for health insurance is unreasonable.

(a) That the board has already paid a substantial quid pro quo for teachers' contributions to health care premiums.

(b) That the cases cited by the Union in support of its quid pro quo argument are distinguishable from the case at hand.

(c) In the case at hand, that the Board is merely proposing a de minimus increase in premium sharing which, in two years, would bring the teachers' contribution to the same level as all other District employees.

(d) That the quid pro quo for a minimal increase in teachers' ' health contributions could be the actual dollar value of a 7.5% increase in premiums costs in 1991-92, and an estimated additional increase of 18% in 1982-83. That the Board will pay approximately $940 more per teacher in 1991-92 for family coverage than it did in 1990-91; that the estimated increase in contributions for 1992-93 over 1991-92 is $1,100 more per teacher.

For all the reasons referenced in the original and in the reply brief, the Board urges the Arbitrator to select its final offer.

FINDINGS AND CONCLUSIONS

The hearing in this proceeding was relatively long, the record is complex, the briefs of the parties are detailed, and the Board and the Association differ on some very basic considerations in presenting their respective cases. Prior to reviewing the evidence and arguments in light of the statutory criteria, and selecting the more appropriate of the two final offers, the Arbitrator will preliminarily address the following matters:

(1) The normal role of an interest arbitrator in the final offer selection process;

(2) The nature of the interest arbitration process in Wisconsin, and the application of the statutory criteria;

(3) The determination of the makeup of the primary intraindustry comparison group in this case;

(4) The significance of the incorrect information supplied to and/or utilized by the parties.

The Role of an Interest Arbitrator in the Final Offer Selection Process

It is widely recognized in Wisconsin and elsewhere that interest arbitrators operate as extensions of the contract negotiations process, and they normally attempt to put the parties into the same position they would have reached over the bargaining table, had they been able to achieve a negotiated settlement. This principle is addressed as follows in the widely cited book by Elkouri and Elkouri:

"In a similar sense, the function of the 'interest' arbitrator is to

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

> 'Arbitrator of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely expanded their negotiations - they have left to this Board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each item, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...' "[1]

In carrying out the above described duties, Wisconsin interest arbitrators will closely consider the parties' past agreements and their negotiations history (including any past interest arbitrations). Although neither of these criteria are specifically referenced in Section 111.70( )(cm)(7), they fall well within the scope of sub-section (j) of this section of the Wisconsin Statutes.

The Nature of the Interest Arbitration Process in Wisconsin and the Application of the Statutory Arbitral Criteria.

In defining the arbitral criteria in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the legislature avoided prioritizing the various items. It is widely recognized in Wisconsin and elsewhere, however, that the comparison criterion is normally the most important of the various arbitral criteria, and that the so-called intraindustry comparison is the most important and persuasive of the various possible comparisons. These considerations are very well described in the following excerpts from a highly respected and authoritative book by Irving Bernstein:

> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first ranking of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
>
> Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for arbitrators as may be uncovered in social affairs. The loyalty of arbitrators to this criterion at the general level could be documented at length..."[2]

In translating the above observations to public sector terminology, it will be noted that the so called "intraindustry comparison" refers to comparable public employers, employing similar groups of employees. In the

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

[2] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, page 56.

case at hand, of course, this would consist of comparable school districts.

Both parties to this dispute recognize the significant importance of the intraindustry comparison criterion in the final offer selection process, and each has emphasized such comparisons in arguing their respective cases. They are, however, in significant dispute over the composition of the primary intraindustry comparison group, with the Employer urging that it should consist of the members of the Eastern Wisconsin Athletic Conference, ie. Kewaskum, Chilton, Kiel, New Holstein, Plymouth, Sheboygan Falls and Two Rivers, and the Union urging that the group should consist of Kewaskum, West Bend, Campbellsport, Slinger, Plymouth, Hartford, Northern Ozaukee, Random Lake and Lomira. When parties disagree as to the makeup of the primary intraindustry comparison group, interest arbitrators will normally first look to the parties' bargaining history (including past interest arbitrations), and they are extremely reluctant to abandon, to change, or to distinguish such comparisons established and used by the parties in the past. This principle is well described as follows by Bernstein:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential...
>
> * * * * *
>
> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..." [3]

The force of bargaining history in the application of wage comparisons is also briefly explained in the following additional excerpt from the Elkouris' book:

> "Where each of the various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past."[4]

Determination of the Makeup of the Primary Intraindustry Comparison Group to be Utilized in the Case at Hand

Both parties submitted and argued bargaining history considerations in support of their recommended primary intraindustry comparison groups, with the Employer urging respect for the determinations of Arbitrators Michael Rothstein in 1982, and Sherwood Malamud in 1987, at which times each arbitrator recognized and utilized a primary intraindustry comparison group which was essentially consistent with that urged by the Employer in these proceedings. The Association, on the other hand, urges that the parties, beginning with their 1987 negotiations, had abandoned the athletic conference comparisons, and had utilized the primary intraindustry comparison group urged by it in these proceedings.

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[3] The Arbitration of Wages, pages 63, 66.

[4] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, page 811. (footnotes omitted)

While arbitrators apply a variety of considerations and tests when they are called upon to initially determine the appropriate makeup of a primary intraindustry comparison group, they generally need no such analysis to approve the continued use of the same comparables previously utilized by the parties. As referenced above, the principal role of a Wisconsin interest arbitrator is to put the parties into the same position they would have achieved but for their inability to reach a full agreement at the bargaining table and, in so doing, the neutral will normally pay close attention to the parties' bargaining history, including past interest arbitration decisions, and will require very persuasive evidence to justify changes in the historic makeup of the primary intraindustry comparison group. This principle is also reflected in the decisions of various of the Wisconsin arbitrators cited by the Employer in its post hearing briefs.

In support of its position, the Association introduced testimony that the Association had used the new comparison group in formulating its proposals and in evaluating the Employer's proposals and counter-proposals, and it placed heavy reliance upon the parties' voluntary agreement in Article VI, Section D of the agreement to base compensation for those who teach summer school upon "..the average dollar amount paid by the school district that are geographically contiguous to the School District of Kewaskum. These districts are: West Bend, Compbellsport, Slinger, Plymouth, Hartford, Northern Ozaukee, Random Lake and Lomira."

The Employer relied upon the parties' historic use of the athletic conference comparisons, referenced extensive use of such comparison groups in Wisconsin interest arbitration and urged that the provisions of Article VI, Section D are, by their very terms, limited to determining summer school compensation. It submits that had the parties' mutually intended to modify the primary intraindustry comparison group, they would have so provided and, not having done so, it must be concluded that the athletic conference comparisons remain the primary intraindustry comparison group for arbitral use in these proceedings.

Despite the well founded admonitions of Bernstein that the primary role of an interest arbitrator should be to determine wages, and not to define the intraindustry comparison group or change the methods of wage determination, this is what the Association is urging in these proceedings. In determining whether the Association has provided the requisite very persuasive evidence of a mutual change in the primary intraindustry comparison group, the Arbitrator finds the following considerations to be determinative.

The Union's arguments in these proceedings that the parties have recently negotiated on the basis of a new intraindustry comparison group, and one which is independent of the athletic conference, are virtually identical to those apparently presented to and rejected by Arbitrator Malamud in 1987, as is reflected in the following excerpts from his decision and award:

> "The essence of the Association argument is presented through the following quotes from its reply brief:
>
> > The parties have established a five year settlement pattern which has kept pace with school districts to which it has been historically compared in previous arbitrations. This is true, even when observing that the last three settlements had been reached through voluntary agreement by the parties. Kewaskum has voluntarily maintained or improved its ranking at the benchmarks among the school districts over the past five (5) years. Now the District, for some reason, proposes, that Kewaskum should abort itself from the settlement pattern and 'rove with the athletic conference pack'. This group of school districts has established a distinctly different settlement pattern over the years...
>
> * * * * *

> The Association dedicates 10 pages of its 74 page brief to argue in support of the school districts which it has identified as those which are comparable to Kewaskum and should be used by the Arbitrator to determine this dispute....The Association argues that to employ only the Eastern Wisconsin Athletic Conference Schools to the exclusion of all the other districts noted by Arbitrators Rothstein and Mueller as comparables, it to ignore the history of the parties' bargaining process....
>
> * * * * *
>
> This arbitrator does not believe that the WIAA (Wisconsin Intercollegiate Athletic Association) should control the level of salaries to be paid to teachers on the basis of schools included or excluded from a particular athletic conference. However in applying the factors noted by Arbitrator Rothstein and quoted above, together with the factor-the total equalized value of property available for taxation to a particular school district-, the Arbitrator concludes that the school districts of Chilton, Kiel, New Holstein, Plymouth, Sheboygan Falls and Two Rivers are appropriate comparables to Kewaskum. These schools comprise, together with Kewaskum, the Eastern Wisconsin Athletic Conference." [5]

After having already litigated the makeup of the primary intraindustry comparison group on multiple past occasions, it is only reasonable to infer that if the parties had thereafter mutually changed the makeup of the group, they would have definitively memorialized the action; this is particularly true in light of the above described arguments which had been advanced by the Association in the 1987 arbitration. The agreement of the parties relating to summer school earnings, falls well short of definitively evidencing a mutual intention to abandon the previously established athletic conference comparison group, in favor of the group advocated by the Association. Stated simply, the Association has failed to produce the requisite very persuasive evidence, to justify an arbitral decision recognizing a primary intraindustry comparison group, other than that utilized in the parties' prior bargaining.

On the basis of the above, the undersigned has preliminarily concluded that the primary intraindustry comparison group in these proceedings should continue to consist of the member schools of the Eastern Wisconsin Athletic Conference.

The Significance of the Incorrect Information Supplied to and Utilized by the Parties

During the course of their negotiations, the Employer principally advanced the proposition that it was prepared to offer $1,700 per returning teacher during the first year, and $1,800 per returning teacher during the second year of the renewal agreement, while the Union requested 4.66% increases to the salary structure for each of the two years of the renewal agreement. At the first day of the arbitration hearing on March 5, 1992, the Association, for the first time, challenged the accuracy of the Employer's offer, urging that its proposed salary schedule would entail only an approximate $1,400 per returning teacher during the first year of the renewal agreement.

The parties were unable to resolve their costing differences during the scheduled hearing and, accordingly, they agreed to meet and confer following the nominal end of the hearing, for the purpose of resolving their differences and providing corrected information to the Arbitrator. Thereafter, a conference call took place between the parties and the Arbitrator, at which time it became apparent that each party had preliminarily erred in connection

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[5] Board Exhibit #36, at pages 5, 6 and 10.

with the subsequent costing of the respective offers. In response to an apparent Union request for a 1990-91 scattergram upon which to base its costing, the Board apparently erroneously provided a 1991-92 scattergram, a copy of which was introduced into the record as Association Exhibit #32; although the document is identified on its face as covering 1991-92, the Association apparently concluded that it covered 1990-91, which ultimately created the costing discrepancies between the offers of the parties. A second hearing day was scheduled for May 1, 1992 to facilitate clarification of the record.

When faced with apparent discrepancies or errors in exhibits, an interest arbitrator has two basic concerns: first, he or she will do whatever is possible to ensure the accuracy of any figures that will be used in the final offer selection process; and, second, he or she will attempt to ensure that neither party is prejudiced or seriously disadvantaged in the final offer selection process, by having been supplied with inaccurate data by the other party. Since the Union's offer was predicated upon its demand for 4.66% increases for each of the two years, since the Employer's offer was predicated upon $1,700 and $1,800 average salary dollars per returning teacher for each of the two years, and since neither of these offers was affected by the costing errors, it is apparent to the undersigned that neither was prejudiced by the costing errors described above.

Had the Union, hypothetically, prepared an incorrect or an inappropriate offer based upon erroneous information mistakenly provided by the Employer, the Arbitrator would have allowed additional time for the preparation of corrected exhibits, and would have facilitated an agreement to allow it to appropriately modify its final offer. Had a hypothetical discrepancy existed between the Employer's proposed $1,700 and $1,800 per returning teacher, and its proposed salary structure, and had the Arbitrator been required to interpret the final offer, I would have taken cognizance of the fact that the Employer had historically negotiated salaries on the basis of average dollars per returning teacher; indeed, in the parties' 1989 negotiations, they apparently agreed that the Association could incorporate the average dollars per returning teacher into a new salary schedule, subject only to a ratio limit between the bottom and the top of the new salary schedule. In any case, since no prejudice or serious disadvantage existed in the case at hand, no request was made to modify the final offers, and there is no basis for penalizing either party in the final offer selection process.

In next addressing the application of the statutory criteria to the final offers, the Arbitrator is faced with three impasse items: the salary levels to be applied during the renewal agreement; the extent of employee contributions for medical insurance premiums to be required during the agreement; and the method of determining the mileage reimbursement allowance. The salary dispute is, rather obviously, the most important of the three items, the underlying principles involved in the medical insurance controversy make it second in importance, and the mileage reimbursement dispute is third in relative importance.

The Salary Impasse Item

As discussed earlier, the most important and persuasive of the various arbitral criteria in the determination of wages or salaries is the intraindustry comparison criterion. Although the makeup of the appropriate intraindustry comparison group has been determined above, the parties still differ relative to how the comparisons should be made. The Employer urges simple percentage and dollar comparisons of the proposed increases, while the Association urges the use of benchmark comparisons; each party is obviously urging the method of comparison which places its final offer in the best light.

To facilitate the most meaningful application of the comparison criterion, the Arbitrator has again considered the bargaining history of the

parties leading to the impasse. During the course of their salary negotiations, each approached the salary increase question from a somewhat different perspective. The Employer consistently addressed the matter from the perspective of average dollars per returning teacher, while the Union consistently addressed it from the perspective of a percentage increase to each of the cells in the salary structure; these differences in approach were described in testimony at the hearing, and are reflected in the certified final offers of the parties.

(1) Item number 5 in the final offer of the Employer dated November 22, 1991, provides as follows:

"Salary:

1991-92 $1.700 average per returning teacher
1992-93 $1,801 average per returning teacher"

Unrefuted testimony in the record indicates that the salary schedules appended to the Employer's final offer were first generated for inclusion with the final offer submitted on November 22, 1991.

(2) Item number 5 in the final offer of the Association dated November 12, 1991, provides as follows:

"Salary:

1991-92 $2098/FTE (6.18%) (4.66%/cell)
1992-93 $2117/FTE (5.88%) (4.66%/cell)"

Although both methods of comparison urged by the parties are frequently used in the Wisconsin interest arbitration process, the undersigned has preliminarily concluded that the most appropriate comparisons for use in these proceedings are those which derive from the negotiations history leading to this impasse; since the parties negotiated from the perspective of average dollar increases per returning teacher per year, and percentage cell adjustments to the salary structure each year, it is logical to compare the relative merits of these proposals on these same bases. Although not presented in exactly this manner, the Board utilized the following dollar and percentage comparisons in its brief, using those schools within the Eastern Wisconsin Athletic Conference which had settled for 1991-92 and 1992-93:

"Average Dollars Per Returning Teacher for 1991-92 and 1992-93 - Salary Only

	Dollars
Kiel	3,336
New Holstein	3,849
Plymouth	3,871
Sheboygan Falls	3,873
Average	3,857
Kewaskum Board	3,502
Association	4,371

Average Percentage Per Returning Teacher for 1991-92 and 1991-93 - Total Package

	Percentage
Kiel	11.4
New Holstein	12.7

Plymouth	12.0
Sheboygan Falls	12.9
Average	12.25
Kewaskum Board	11.9
Association	14.1" [6]

Neither of the final offers is identical to the averages within the primary intraindustry comparison group, with the Board somewhat lower and the Association somewhat higher than the comparables. Since the final offer of the Employer is closer to the dollar and percentage averages, however, the Impartial Arbitrator has preliminarily concluded that consideration of the intraindustry comparison criterion favors the selection of the final offer of the Board.

What next of the arguments of the parties relating to cost-of-living considerations, and their claims that consideration of this arbitral criterion favored the selection of their wage offer? In this connection the Association urged the long term view that CPI increases had consistently outpaced bargaining unit salary structure increases at various benchmarks, since 1970-71. The Employer, on the other hand, submitted that the salary increases of teachers at the schedule maximum between 1984 and 1991 had outpaced CPI increases by some 11.3%, and it also urged that the Association proposed 4.66% cell increase for each of the two years of the renewal agreement would significantly exceed any reasonable estimate of cost of living increases during the term of the agreement.

Both parties are emphasizing different base periods in their arguments, which is a common problem in connection with arbitral application of the cost-of-living criterion. This problem, and his normal handling in the arbitration of wages is discussed in the following additional excerpt from Bernstein's book:

> "Base period manipulation..presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost of living in their negotiations. Where the legislative history demonstrated that this issue was considered, the holding becomes so much the stronger." [7]

Pursuant to the above, only those CPI increases which have occurred since the parties last went to the bargaining table may appropriately be considered in the final offer selection process, and any excess of such increases beyond those anticipated and provided for by the parties in their last negotiations, should be considered in determining subsequent wage increases; if an arbitration takes place after a substantial part of the renewal agreement has already run, of course, CPI movement during this time period can also be considered, which would somewhat change consideration of

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[6] Employer's Post Hearing Brief, page 13.

[7] The Arbitration of Wages, page 75. (Included quote from Public Service Coordinated Transport, 11 LA 1050)

cost of living in the next contract renewal negotiations. Even after movement in the index is measured, however, it is widely recognized and accepted that it somewhat overstates the actual impact of inflation upon employees, due to the makeup of the market basket of goods and services upon which price changes are measured. It should also be noted that the weight accorded cost of living considerations by interest arbitrators will vary with the degree of volatility in the index, increasing during periods of significant movement in the index, and decreasing during periods of relative price stability.

In light of the extended base periods urged for arbitral consideration by the parties, the lack of any negotiations history on the cost of living item, the built-in inaccuracies contained in the CPI, and the recent relative stability in the index, the Arbitrator has preliminarily concluded that it is not entitled to significant weight in these proceedings.

On the basis of all of the above, including the application of the intraindustry comparison criterion, the Impartial Arbitrator has preliminarily concluded that record favors the position of the Employer on the salary increase impasse item.

The Health Insurance Premium Sharing Impasse Item

While this item is of significantly less immediate importance than the salary impasse, both parties have strongly based opinions on the item.

(1) The Union argued that it did not anticipate further proposed increases in the level of employee contribution for medical insurance premiums when it agreed to the 3.5% contribution level during the negotiation of the prior agreement, and it urged that the Employer had proposed no quid pro quo for the proposed .5% increase in employee contribution in 1991-92, and the additional 1% proposed increase in 1992-93.

(2) The Employer urges arbitral consideration of the substantial quid pro quos provided in exchange for the adoption of employee premium contribution during the prior negotiations, submits that no new quid pro quo is required for the relatively modest increases during the term of the renewal agreement, cites the fact that all full time District employees will be paying 5% of their health insurance premium costs effective September 1, 1992, and urges arbitral consideration of the fact that three other districts within the primary intraindustry comparison group already provide for 5% premium contributions by employees.

In reviewing the positions of the parties the Arbitrator has concluded that the Employer is correct with respect in its argument that the currently proposed increases in the health insurance premium contribution, aggregating 1.5% over the life of the renewal agreement should not require a new quid pro quo, but rather should be evaluated on the same bases as any other components of the final offers of the parties. While the Union urged that it had not anticipated future increases beyond the 3.5% contribution rate agreed upon in the prior agreement, there is nothing in the contract or in the negotiations history to suggest any overt or tacit agreement to freeze future premium contributions at this level. The Employer is additionally correct with respect to the greater persuasiveness of internal comparisons when dealing with such benefits as health insurance, rather than wages. Finally, it is noted that Employer Exhibit #38 shows that the three other districts in the primary comparison group which utilize employee health insurance premium contributions, utilize a 5% contribution level.

On the basis of the above considerations, the Impartial Arbitrator has preliminarily concluded that the record favors the position of the Employer on the health insurance contribution impasse item.

The Mileage Reimbursement Impasse Item

In finally addressing the mileage reimbursement component of the final offers of the parties it is noted that the parties have agreed to an increase from 21 cents to 27.5 cents per mile, the highest among the primary external comparables, and they are in disagreement only with respect to whether future mileage rates should automatically change with IRS adjustments to cost per mile allowances, or whether it should continue to be subject to negotiations between the parties. The arbitrator has carefully examined the record and finds that no persuasive statutory bases have been advanced in support of this proposal; since the risk of non-persuasion is borne by the party proposing a change in the status quo, the Arbitrator has preliminarily concluded that the record favors the position of the Employer on this item. Since this impasse item is of significantly less importance than either the salary or the health insurance premium contribution impasse items, it will not carry significant weight in the final offer selection process.

Summary of Preliminary Conclusions

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

(1) Wisconsin interest arbitrators operate as extensions of the parties' collective negotiations, and they seek to arrive at the same position the parties would have reached at the bargaining table, had they been able to do so; in carrying out these responsibilities, arbitrators will closely consider the parties past agreement and their negotiations history (including and past interest arbitrations).

(2) The comparison criterion is normally the most important of the arbitral criteria, and the so called intraindustry comparison is normally the most important and the most persuasive of the various possible comparisons.

(3) When parties disagree as to the makeup of the primary intraindustry comparison group, interest arbitrators will normally first look to the parties' bargaining history (including past interest arbitrations) and they are extremely reluctant to abandon, to change, or to distinguish such comparisons established and used by the parties in the past.

(4) The primary intraindustry comparison group in these proceedings should continue to consist of the member schools of the Eastern Wisconsin Athletic Conference.

(5) When faced with apparent discrepancies or errors in exhibits, an interest arbitrator has two basic concerns: first, he or she will do whatever is possible to ensure the accuracy of any figures that will be used in the final offer selection process; and, second, he or she will attempt to ensure that neither party is prejudiced or seriously disadvantaged in the final offer selection process, by having been supplied with inaccurate data by the other party. Neither party was prejudiced or disadvantaged by the costing errors which became apparent during the course of these proceedings.

(6) Although various methods of wage comparison are frequently used in Wisconsin's interest arbitrations process, the most appropriate comparisons for use in these proceedings are those which derive from the negotiations history leading to this impasse; since the parties negotiated from the perspectives of average dollar increases per returning teacher, and percentage adjustments to the salary structure each year, it is logical to compare the relative

merits of the two proposals on these bases.

(7) Arbitral consideration of the intraindustry comparison criterion favors the selection of the salary component of the final offer of the Board.

(8) The cost of living criterion is not entitled to significant weight in the final offer selection process in these proceedings.

(9) The record favors the position of the Employer on the salary increase impasse item.

(10) The record favors the position of the Employer on the health insurance contribution impasse item.

(11) The record favors the position of the Employer on the mileage reimbursement impasse item.

Selection of Final Offer

Based upon a careful examination of the entire record in these proceedings and a review of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded, for the reasons discussed above, that the final offer of the Board is the more appropriate of the two final offers.

AWARD

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

(1) The final offer of the Kewaskum School Board is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the School Board, hereby incorporated by reference into this award, is ordered implemented by the parties.

/s/WILLIAM W. PETRIE
WILLIAM W. PETRIE
Impartial Arbitrator

August 11, 1992