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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

MAYVILLE SCHOOL DISTRICT

And

MAYVILLE EDUCATION ASSOCIATION

Case 19
No. 46267
INT/ARB-6141
Decision No. 27105-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street, #5
Waterford, WI 53185

Hearing Held

May 7, 1992
Mayville, Wisconsin

Appearances

For the District

GODFREY & KAHN, S.C.
By Edward J. Williams
219 Washington Avenue
P. O. Box 1278
Oshkosh, WI 54902-1278

For the Association

WINNEBAGOLAND UNISERV
By Armin Blaufuss
UniServ Director
P. O. Box 1195
Fond du Lac, WI 54936-1195

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Mayville School District and the Mayville Education Association, with the matter in dispute the terms of a two year renewal labor agreement covering the 1991-92 and the 1992-93 school years. The parties differ with respect to the salary schedule to be applicable during the term of the renewal agreement, and relative to Union proposed increases in the level of Employer contributions to the Wisconsin Retirement System, an extended early retirement program for teachers, and for certain contractually specified pay dates.

The parties exchanged proposals and met on various occasions in an unsuccessful attempt to achieve a complete negotiated settlement. The Association, on September 24, 1991 filed a petition with the Wisconsin Employment Relations Commission seeking binding interest arbitration pursuant to Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff the Commission, on December 18, 1991, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration; on January 22, 1992, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Mayville, Wisconsin on May 7, 1992, at which time all parties received full opportunities to present evidence and argument in support of their positions. Each party thereafter closed with the submission of post hearing briefs and reply briefs, the last of which was received by the Arbitrator on July 3, 1992.

THE FINAL OFFERS OF THE PARTIES

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

(1) The District proposes retention of the current salary structure, a 1991-92 schedule with a BA base of $22,500.00, and a 1992-93 schedule with a BA base of $23,450.00.

(2) The Association proposes the following: retention of the current salary structure, a 1991-92 schedule with a BA base of $22,650.00, and a 1992-93 schedule with a BA base of $23,765.00; effective September 1, 1991, that the Board pay the 6.1% employees' share of WRS contributions on all monies earned, and effective January 1, 1992, that the figure be increased to 6.2% and, in the event that the employees' share of WRS is reduced, that the Board be obligated to pay the lower figure(s); that language in Article VI, Section F.2, entitled Pay Days, be changed from June 30, 1992 to June 30, 1994; and that the expiration of the early retirement window in Appendix G, entitled Early Retirement, be extended from June 30, 1992 to June 30, 1994.

THE ARBITRAL CRITERIA

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

a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with

the wages, hours and conditions of employment of other employees performing similar services.

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

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

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

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

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

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

POSITION OF THE ASSOCIATION

In support of its position that its final offer is the more appropriate of the two before the Arbitrator, the Association argued principally as follows:

(1) By way of introduction, it urged arbitral consideration of the following factors:

(a) That the items in issue are teacher salaries, District payment of employees' share of WRS payments, the status of early retirement, and wage payments.

(b) In the above connections, that the Association proposes salary cell increases of 5.1% and 4.9% for the two years of the renewal agreement, versus District proposed 4.4% and 4.2% increases, and the Association also proposes that the District continue to pay the employees' share of WRS, as it has in the past, and to continue the wage payment practice and the early retirement benefits negotiated as part of the prior agreement.

(2) It preliminarily indicated that the arguments of the Association will be as follows:

(a) That it will emphasize comparisons used by prior arbitrators, and will urge that the primary comparables should consist of certain Dodge County districts.

(b) That the parties' negotiations history is different from their arbitration history, and that these distinctions should be considered by the undersigned. That the District's relative salary position reached a peak in 1985-86 as a result of a negotiated settlement, that two

successive arbitration awards eroded relative salaries, and that a voluntary settlement in 1989-91 improved but did not restore the earlier relative salaries.

(c) That the District's final offer would further diminish Mayville's relative salary position, while the Association's offer would improve, but not restore salaries to their 1985-86 position.

(d) That the parties previously and voluntarily agreed to District payment of the full employees' share of WRS payments, and, in exchange for a wage payment frequency favoring the District, to an early retirement benefit being made available to eligible employees.

(e) That continuation of the WRS and the early retirement benefits are supported by practices in comparable school districts.

(f) That the early retirement component of the Association's offer is also supported by actual and projected future savings by the District.

(g) That there is no ability to pay question present in these proceedings, and no indication that economic conditions in Mayville are different than those in existence in comparable districts.

(h) That the interest of the public is best served by arbitral adoption of the final offer of the Association, which is well within the collective bargaining pattern of settlements for 1991-93.

(i) That the Union will principally emphasize comparisons, cost of living and the overall level of compensation criteria in support of its position in these proceedings.

(3) That while both parties use the same set of comparables, certain Dodge County districts should comprise the primary comparables.

(a) That such use of County comparables is consistent with various Wisconsin interest arbitration decisions.

(b) That the geographical proximity of the Association proposed Dodge County comparables, rather than the Athletic Conference districts, is more likely to reflect similar living, economic and labor market environments.

(4) That the District's total package costing is questionable, due to its inclusion of certain insurance and early retirement figures; that its insurance cost figures are called into question for the following principal reasons:

(a) That on January 1, 1988, the District unilaterally switched from commercially purchased medical and hospitalization insurance, to a self-insured approach. Under its self-funded plan, on each January 1 it sets a premium rate which it believes will represent the cost of insurance; if it has guessed wrong, it will either profit or will have to contribute additional dollars to make up for a loss.

(b) With an insurance carrier, a fixed rate is established that the District is obligated to pay to the carrier, and the insurance costs for a particular year are known; under a self-insured approach, that the actual cost of the insurance program is not known until the end of the insurance year.

(c) That the District's cost projections have not proven to be reliable.

(d) That a recent ruling by the WERC will probably result in the District returning to a conventional insurance carrier in the future; that a WERC decision is currently under appeal, with result being that the District's insurance costs for 1992-93 are not known.

(e) That the District has not been fully forthcoming in response to Union requests for insurance data on all employees covered by its health and dental self-insurance programs.

(f) For all of the above reasons, that the Arbitrator should place little reliance upon the District's insurance costs, particularly those projected for January 1, 1993.

(5) That the District's "cost" figures for the Association's early retirement proposal are inappropriate, in that neither Mayville nor its comparables have a practice of projecting "costs" for such early retirement programs.

(a) That early retirement programs produce a savings that, overall, eliminates the "cost" of such programs; that if costs are to be considered, savings should also be considered.

(b) That neither early retirement costs nor savings were included in the parties' various costings of their proposals between January of 1991 and April of 1992.

(c) That evidence in the record shows an actual two year savings of $78,169, which represents the difference between retiring teachers' and replacement teachers' salaries, after the subtraction of the early retirement benefit.

(d) On the basis of the above, that the District has no basis for including early retirement "costs" in its costing of the final offers of the parties.

(6) That the parties have corrected certain data submitted at the hearing, but that discrepancies exist in the costing of certain districts' settlements; that the District's figures for Horicon, for Dodgeland and for Hustisford, for example, are incorrect, and that the Association's figures should be used in connection with these settlements.

(7) That consideration of the 1991-92 settlement pattern among comparable school districts supports arbitral selection of the Association's salary offer.

(a) That benchmark analysis of the two final offers should entail utilization of the BA, BA +7, BA Maximum, MA, MA +10, MA Maximum and Schedule Maximum.

(b) In benchmark comparisons of Mayville and the Dodge County districts for 1991-92, that the District's offer of a 4.4% increase at each benchmark is .5% below, and the Association's offer of a 5.1% increase at each benchmark is .2% above the comparables. In comparisons utilizing average percentage and average dollar deviations at each benchmark, that the Association's offer would modestly improve, and the District's offer would substantially erode Mayville's relative salary position.

(c) In comparisons utilizing the full set of comparables, that the Association's proposal is favored at five of the seven benchmarks, and the District's proposal is favored at only the BA and the BA +7 benchmarks. In such comparisons utilizing average percentage and average dollar deviations at each benchmark, the Association's offer would improve Mayville's position at all seven benchmarks, while the District's offer would reduce Mayville's relative position at all seven benchmarks.

(d) That the Association offer for 1991-92 would increase salaries by 6.41% or $2,085 per returning teacher, while the District's offer would provide increases of 5.7% or $1,856 per returning teacher. Within the Dodge County comparables, that teacher increases averaged 6.3%, and such increases within the full set of comparables averaged 6.28%; that Dodge County settlements averaged $1,970 per teacher, while such increases within the full set of comparables averaged $1,978.

(e) With insurance costs excluded, that the Association's total package is almost identical with the Dodge County settlement pattern, and is slightly less than the pattern in the full set of comparables.

(8) That consideration of the 1992-93 settlement pattern among comparable school districts, supports arbitral selection of the Association's salary offer.

(a) That only Horicon and Rosendale-Brandon have fully settled for 1992-93, since the Markesan settlement is not complete.

(b) That the average benchmark increase of 4.9%, the average percentage increase of 5.96% and the average salary dollars per returning teacher of $2,058 are closer to the Association's figures of 4.9%, 6.17% and $2,136, than to the District's figures of 4.2%, 5.46% and $1,879.

(b) Exclusive of costing for insurance and early retirement, that the Association's package totals 6.24% and the District's 5.49%, as compared to Horicon's 6.12% and Rosendale-Brandon's 6.28%; accordingly, that the final offer of the Association is favored by these figures.

(c) Even if the Employer's insurance costs are included, that the total package cost comparisons for the two years favor the final offer of the Association.

(9) That arbitral selection of the final offer of the Association would restore some of Mayville's lost relative position among the various comparables.

(a) Since 1985-86, that the salary position of Mayville teachers has eroded in comparison to the comparables.

(b) That the parties have discussed and recognized the need for some catch up in their negotiations.

(c) That selection of the final offer of the Association would address the need for at least partial restoration of the relative salary losses since 1985-86.

(10) That the pattern of settlements in nearby school districts, is the best indicator of the appropriate application of the cost of living criterion.

(a) During the years of double digit inflation, that teacher salary levels eroded significantly in terms of real dollars; more recently, however, that teacher settlements have somewhat exceeded CPI increases.

(b) That there is a solid benchmark settlement pattern for 1991-92 which exceeds CPI increases; that settling at or above the benchmark settlement pattern, as proposed by the Association, will restore some of the Mayville teachers' 1985-86 relative salary position.

(c) In applying cost of living, that inclusion of the vertical salary structure increment in measuring salary increases, would deny teachers the opportunity to increase their purchasing power.

(11) That the Association's WRS proposal continues a past practice and is supported by the settlement pattern among the comparables.

(a) That while many districts are in the process of negotiating the districts' payment of employees' shares of WRS contributions, various districts already are obligated to pick up the 6.1% and the 6.2% employee contributions for 1991-92 and for 1992-93. That Horicon, Markesan, North Fond du Lac, Oakfield, Rosendale-Brandon and Waupun will pay the full employees share of WRS in both years, and the settlement trend clearly favors the District paying the full amounts during the term of the renewal agreement in the case at hand.

(b) Since 1986, that the District has historically picked up the full cost of the employees' share of WRS, which practice would be continued with the adoption of the final offer of the Association.

(12) That the Association proposed continuation of the current wage payment and paid insurance provisions, reflect the parties' prior voluntary settlements in these areas.

(a) Prior to 1989-91, that the Association had proposed early retirement provisions, and the 1989-1991 agreement continued a voluntarily agreed upon provision for early retirement.

(b) That the primary motivation for the Employer's agreement to early retirement, was the savings potential to the District.

(c) As a quid pro quo for the early retirement provision, that the Association gave the District the favorable wage payment provision contained in Article VI, Section F.

(d) Unless extended in the renewal agreement, the paid insurance benefit and the wage payment provisions will expire on June 30, 1992.

(13) That continuation of the current paid insurance benefit and wage payment provisions represent the agreement that the parties should have voluntarily achieved in their negotiations.

(a) That the primary reason the District agreed to the early retirement provision was that it would save money as a result of the differences between salaries of the retiring and the replacement teachers, even though the provision provided retiring teachers with paid insurance benefits; that significant savings were realized during the term of the old agreement.

(b) That the pay change provides for the payment of salaries in 24 equal installments, instead of having six of the payments due on June 15; that the fact that all bargaining unit members were willing to forego receiving summer paychecks on June 15, underscores how important the early retirement provision is to the membership.

(c) That the negotiated expiration date for the early retirement program was attributable to the Employer's uncertainty relative to whether any savings would result, and the Association was willing to submit to a trial period; that the Association did not agree only to a two-year window of opportunity, but had every expectation that the benefit would be continued.

(d) That the District had every opportunity to seek to change the early retirement benefits, the eligibility period, or any other number of options, but it instead proposed elimination of the program; that given the choice between continuation or elimination of the program, continuation more closely represents what the parties would have agreed upon had they been able to do so.

(14) That the Association acted reasonably in proposing retention of the favorable wage payment provision, in not proposing enhancement of any of the existing benefits of the program, and in proposing extension of the trial period for two years.

(15) That arbitral consideration of the early retirement practices in comparable districts supports the position of the Association in the case at hand.

(a) That Beaver Dam, Hartford, Horicon, Rosendale-Brandon and Slinger have WRS penalty offsets; that Beaver Dam, Hartford UHS, Horicon, Kewaskum, Lomira, Slinger and Waupun have paid health insurance; that the Association has identified Horicon, North Fond du Lac and Rosendale-Brandon as having other cash payments, while the District has identified Beaver Dam, Dodgeland, Hustisford, Kewaskum and Slinger as having such cash payments.

(b) In looking to the full set of comparables, that the following factors should be considered: seven currently have paid insurance benefits; of those districts which do not have the benefit, six are in negotiations; and eight of the fifteen districts have other forms of cash benefits tied to early retirement.

(16) That current retirees' benefits are jeopardized by the District's final offer, which deletes the existing early retirement provision of the collective agreement effective June 1, 1992.

(a) In its final offer, that the District is silent on the subject of continued benefits beyond June 30, 1992, for those retired teachers currently receiving the benefits.

(b) Without specific language, that the District would be under no obligation to continue to provide benefits to retired employees after June 30, 1992.

(c) Despite testimony of the District confirming its intention to continue to pay benefits to current retirees, that the Association's final offer is the only guarantee that they would continue to receive their insurance benefits.

In its reply brief the Association emphasized the following principal arguments.

(1) That Arbitrator Kerkman's adoption of the Association proposed comparables should be respected by the Arbitrator in the case at hand.

(2) In connection with its early retirement arguments, that the position of the District defies logic.

(a) That the early retirement provision will continue for at least the 1991-92 portion of the renewal agreement.

(b) That the position of the Association relative to what constitutes the status quo, is consistent with the published decisions and awards of various Wisconsin arbitrators.

(c) Contrary to the arguments of the District, that Appendix G does not unequivocally establish the parties' intent for the provision to expire on June 30, 1992; that the provision does not provide that it will not be renewed under any circumstances, and undisputed Association testimony indicated that the expiration date was intended to allow for a trial period.

(d) That the District arguments of costs and the lack of a quid pro quo are not borne-out by the record; that the evidence shows substantial cost savings, and the pay change previously agreed to and now re-proposed by the Association, is not an insignificant item.

(e) That eleven teachers are eligible for early retirement, and will have a need for the provision if they retire in 1992-93 or in 1993-94.

(f) That if the District felt that the provision was overly generous, it could have sought modification.

(g) That the Arbitrator should seek to determine what the parties would have agreed upon had they been able to do so, which necessitates either continuation of the benefit and its quid pro quo for another two years, or elimination of these items.

(3) That an examination of the record indicates that the District's salary offer is substandard.

(a) That the District's arguments based upon rank order among a limited number of comparables is not persuasive for various reasons: it avoids comparison with Mayville's 1985-86 salary status; it does not consider the 1990-91 salary settlement; it emphasizes the salary schedule placement of Mayville teachers; and it focusses upon dollars per teacher, while ignoring the benchmark salary only and package percentage increases. That the District is undertaking a dismal effort to distract the Arbitrator's attention from the very negative impact of its offer upon Mayville's salary position among the comparables.

(b) That the District's characterization of Mayville as a salary leader within the Athletic Conference has not been true since the 1985-86 school year; since this time, that the District has become a wage loser.

(c) That while the parties addressed some of the salary structure damage in their 1989-91 voluntary settlement, the District now apparently wishes to take some of this back in an effort to justify its substandard salary offer.

(d) That Mayville teachers are more experienced and have greater training, which results in average salary increase figures that are skewed toward the higher paid salary steps, and which results in comparatively higher average teacher salaries.

(e) That the District has tried to capitalize upon the experience and training of Mayville teachers by comparing Mayville's average salary increases in terms of dollars per teacher; that this smoke screen is quickly blown away when settlements are compared on the basis of percentages.

(f) That there is no appropriate basis for concluding that Mayville should settle for a lower percentage settlement due to teacher placement; that a salary structure is designed to provide incentives to retain teachers and to encourage them to take additional courses, which has resulted in Mayville.

(4) That the District's total package costing is not fully credible in various respects.

(a) That the District has objected to the District's costing of its self-funded insurance plans and to the inclusion of early retirement costs.

(b) That the district was not fully forthcoming in producing data to support its insurance experience.

(c) That the Association does not object to the inclusion of verifiable insurance costs, but the problem at hand lies in

the highly speculative nature of the rates that the District assesses itself for health and dental insurance, regardless of whether a third party is employed by the District to determine the rates.

(d) That the District's inclusion of early retirement costs ignores the real and actual savings generated by those costs; that neither Mayville nor comparable districts have included early retirement costs in their total package costing.

(5) That evidence relating to other public and private sector settlements should be disregarded.

(a) That the Arbitrator has previously determined that such settlements have little or no weight in public school interest arbitrations, and has placed primary weight upon intraindustry comparisons.

(b) That evidence of other private and public settlements advanced by the District does not address lump sum payments and cola, and thus is neither reliable nor credible.

(6) That the District is proposing a change in the status quo in relationship to WRS payments, in that it has historically paid the full amount of the employees' share of WRS contributions, expressed as a percentage, and the Association is merely seeking continuation of this practice.

(7) In connection with consideration and application of the interest and welfare of the public criterion, that the District has the ability to pay.

(a) That most economic conditions present in the instant dispute, are the same as those present during the parties' 1989-91 collective agreement, and those facing comparable districts.

(b) Under the Association offer, that Mayville teachers would receive a salary only increase during 1991-93 of 12.58%, which compares favorably to the increase of 12.24% in comparable school districts.

(c) On the basis of considering the cost of the settlement and the public interest in educational excellence and fair and equitable salaries and benefits for teachers, that the interests and welfare of the public criterion does not definitively favor the position of either party in the case at hand.

(8) In summary, that the record supports the selection of the final offer of the Association for a variety of reasons. The Association is not seeking an increase in wages that significantly exceeds the average: that its final offer is favored on a percentage comparison basis, and the $107.00 higher average dollar increase per teacher is generated by Mayville teachers' greater experience and training; that the final offer of the District is lower on the basis of either average percentage and/or average dollars. The Association's second year wage proposal is supported by the comparables; that its proposed salary increase offer of 6.17% and $2,136 per teacher is supported by the settlement pattern of 5.96% and $2,058 per teacher. The Association is

making a concession to soften or offset the impact of its offer, in the form of its proposed continuation of the pay day provisions in addition to continuation of the early retirement program. That the alleged WRS contribution increase sought by the Association merely reflects continuation of the historic practice of the District. The Association's final offer does not entail a change in a major and fundamental aspect of the parties' negotiated agreement, but rather reflects the settlement the parties should have reached in contract negotiations, had they been able to do so.

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Employer argued principally as follows:

(1) That the primary external comparables should consist of the members of the Wisconsin Flyway Athletic Conference.

(a) That two comparison pools have been proposed, one consisting of the members districts in the Conference, and the second consisting of the districts in the conference in addition to those non-member schools located within 25 miles of Mayville.

(b) That Arbitrator George Fleischli in 1989 utilized the Athletic Conference as the primary comparables, at least partially due to the dearth of settlements among districts located within 25 miles of Mayville; thereafter, that Arbitrator Joe Kerkman concluded that Arbitrator Fleischli would also have used various school districts within the 25 mile radius if their settlements have been available for use, and concluded that Beaver Dam, Dodgeland, Hartford UHS, Hustisford, Kewaskum, Slinger and Waupun should be added to the Athletic Conference, to comprise the primary external comparison group.

(c) That other Wisconsin arbitrators, including certain of those determining the composition of primary external comparison groups for other Wisconsin Flyway Athletic Conference Schools, have utilized athletic conference comparisons as the primary comparison pool, due to such considerations as high school size, student enrollment, athletic competitiveness and geographic proximity.

(d) That student enrollment and full-time equivalency staff comparison data support the use of the Wisconsin Flyway Athletic Conference Schools as the primary comparison pool.

(2) That the Association proposed early retirement provision represents a change in the status quo, in that it entails extension of the termination date of the provision beyond the June 30, 1992 expiration date provided in the expiring agreement.

(a) That the Association has a dual burden to justify the change in the status quo, and to prove a compelling need for this new benefit.

(b) That the early retirement provision was added to the contract effective with the 1989-91 agreement, after the

adoption of an early retirement window by the Wisconsin Legislature.

(c) That there were no prior discussions between the parties of any possibility for extending the negotiated window, which expressly expired on June 30, 1992.

(d) That it is a well established principle that the proponent of change in the status quo has the burden of establishing the need for such change and an adequate quid pro quo; in the case at hand, that the Union has met neither of these requirements.

(e) That changes in negotiated effective dates and/or expiration dates, have been recognized by various Wisconsin interest arbitrators as proposed changes in the status quo.

(f) That there are substantial dental and health insurance, and sick leave costs associated with the Union proposed extension of the early retirement window, which could potentially exceed $100,000 over two years; that the potential cost of the proposed change would necessitate a substantial quid pro quo.

(g) That not only has the Union failed to provide a quid pro quo for the proposed change in the early retirement benefit, but it has also proposed change in the pay day and in the WRS provisions, while simultaneously demanding an above average pay increase.

(h) That comparison with other conference schools, and/or with the secondary comparables, do not support the Union's early retirement demand.

(3) That the Board's final offer is the more reasonable when compared with the salaries and benefits received in comparable school districts.

(a) That benchmark comparisons within the athletic conference support arbitral selection of the final offer of the Board.

(b) In the above connection, that the District ranks first, second or third in five of the eight benchmarks, and this would be maintained by arbitral adoption of the final offer of the Board.

(c) In connection with the secondary comparables, that the District has also shown an improvement in benchmark rankings in recent years.

(d) That the use of the benchmarks selected by the District for comparison purposes (BA, BA +10, BA +20, BA +30, MA, MA +10, MA +20), are appropriate when current teacher placement within the salary structure is considered; in this connection that by the end of the 1991-93 contract, over 60% of the teachers will be at or above Step 13 in the schedule.

(e) That when the benchmark salaries in the District are compared to Conference averages, they are above average at six of the eight benchmarks (including longevity at the BA Maximum, the MA Maximum and the Schedule Maximum levels).

(f) That the record is clear that Mayville teachers are not in a catch-up position, and that arbitral consideration of total compensation, cost of living, and private wage comparisons support the reasonableness of the Board's wage offer.

(4) That the Board's salary offer is more reasonable in light of the comparable settlement patterns.

(a) That the average athletic conference wage increase between 1990-92 was $3,914, and the average total package increase was $5,553. That the Board's offer would entail a two year total wage increase of $3,924 and a total package increase of $5,749; that the Union's offer would entail a two year wage increase of $4,153 and a total package increase of $6,071.

(b) That arbitral consideration of the municipal and county settlements received by City of Mayville and Dodge County employees, supports the selection of the final offer of the Employer.

(c) That various private sector comparisons favor the selection of the final offer of the District.

(5) That the District's total package costing is an accurate measure of the parties' final offers.

(a) That the Association's costing is seriously flawed, in that it does not include any costs attributed to health, dental or early retirement insurance benefits.

(b) That the insurance costs of the district are appropriately includable, despite the fact that the benefit is self-funded; in this connection, that the District's "premiums" are not out of line with the comparables.

(c) Contrary to the arguments of the Union, that early retirement insurance costs should be included in the total package costing and comparisons.

(d) That considerable arbitral authority supports consideration of employer paid insurance benefits when calculating total package costs and, accordingly, the District's costing figures must be preferred.

(6) That Association proposed changes in the status quo on <u>pay day language</u>, and on the <u>levels of WRS contributions</u>, represent overreaching.

(a) While neither of the items is a controlling issue, it must be noted that both are changes in the status quo, and they represent additional costs to the District.

(b) That the Association has identified no compelling need and offered no quid pro quo for the pay day proposal.

(c) That the additional WRS contributions proposed by the Association would cost $15,535 over the two years of the renewal agreement; when these costs are added to the early retirement and to the salary increase costs, it is clear that no adequate quid pro quo had been offered in support of the Association's proposal.

(d) That the Association is proposing cost increases above those of the District of $2,071 per teacher; that its proposal for teachers to receive their checks on a monthly basis during summer months rather than in a lump sum in June, could not constitute an adequate quid pro quo for its proposed changes in the early retirement and the WRS provisions.

(7) That the final offer of the District is favored by arbitral consideration of the cost of living criterion.

(a) Not only have Mayville teachers kept pace with inflation, they have far surpassed it.

(b) In reviewing cost of living considerations, that the Arbitrator must consider the fact that those in the bargaining unit are insulated against cost increases by medical insurance premiums that are fully paid by the Employer.

(8) That the interests and welfare of the public criterion favors arbitral selection of the final offer of the District.

(a) That the Mayville School District has experienced the highest percentage tax increases in the Athletic Conference over a five year period; when the secondary comparables are considered, that the District has experienced the second highest percentage increase.

(b) During the same period, that student enrollment has dropped 15.55%, the largest decline in the Conference, and the District's cost per student has increased more than 64%, the largest increase in the Conference.

(c) That the Board proposed increases strike a reasonable balance between the interest of the public and those of its staff.

(d) That the Board offer equals a two year increase of 11.54% or $5,434 per teacher, versus the Association proposed increases of 14% or $6,610 per teacher; that the Board proposal is higher than those received by others living and working in the Mayville community and in Dodge County, while the Association proposal would exceed any relevant economic indicators.

(e) In summary, that the final offer of the Board is realistic, and it best serves the interest and welfare of the public.

In its reply brief, the District emphasized the following principal arguments.

(1) That the Association in its brief has relied upon innuendo, conjecture and mischaracterization of testimony.

(a) That its demands in the areas of WRS, pay day and early retirement, do not reflect established practices, but rather would change previously negotiated provisions.

(b) That the fact that the Union has been unable to justify its previously proposed changes in the status quo in prior interest arbitrations, is immaterial in these proceedings.

(c) That current contract language provides for the Employer to pay the 6% employees' share of WRS contributions, not the 6.1% and the 6.2% levels of contribution demanded by the Association for the two years of the renewal agreement.

(d) Not only did the Association fail to propose a quid pro quo for its WRS demands, but it arrogantly demands new early retirement benefits for the 1991-93 contract, and higher than justified salary increases.

(2) That there is nothing in the record to justify the Association's catch-up arguments.

(a) Under the District's offer, that the teachers would receive equitable salary increases and would maintain favorable rankings among the comparables.

(b) That there is no appropriate basis for the Arbitrator to reconsider past settlements or past arbitrations, in connection with the Union's catch up arguments.

(c) That arbitral consideration of the entire record indicates that the teachers will not be disadvantaged with the adoption of the final offer of the District.

(3) That no question has been raised as to the continuation of insurance benefits to teachers who have already retired.

(a) That the Association is not looking to protect those who retired under the 1989-91 agreement, but is proposing the addition of a new benefit for current employees.

(b) As confirmed at the hearing, there is absolutely no intention on the part of the District to cease insurance payments on behalf of the previous early retirees.

(4) That Association advanced arguments relating to purported savings based on current retirees and replacement teachers should be rejected by the Arbitrator.

(a) That nowhere in the Association's calculations does it consider the cost of the replaced teachers' insurance.

(b) That when the above costs are included, it is clear that the alleged savings urged by the Association are non-existent.

(5) That the Association has attempted to distort the record through mischaracterization of testimony, and irrelevant issues.

(a) That the Association's contention that it only wishes to extend an existing benefit for another two years, in connection with its early retirement proposal, is simply not factual; to the contrary, that the parties' prior agreement was a one time only item, which was triggered by the 1989 enactment of Wisconsin Act 13.

(b) Despite the Union's arguments to the contrary, that the District's method of funding for insurance is not in issue in these proceedings: that the third party administrator's recommended premiums for the years in question are right in line with the comparable districts; that there is nothing in the record to support a contention that the Association

was denied access to information on this item; that a recent WERC decision relating to the District's right to self-fund has no bearing on these proceedings; and that the 1991-93 agreement is the third contract with self-funded insurance.

(c) That the District's final offer, maintaining the status quo and providing equitable wage increases, is the most reasonable of the two offers before the Arbitrator.

(6) In summary, that the record supports the position of the Employer in these proceedings: that the Board offer is an equitable wage increase for the two years in issues; that the Association would add an otherwise unavailable benefit to the 1991-93 agreement, but it offers nothing in exchange for the benefit; that providing early retirement benefits into the 1992-93 agreement mortgages the future; the catch-up arguments are simply unsupported by the record; that the benefits of those who retired early under the terms of the prior agreement will not be disturbed under the Board's offer; that the early retirement proposal of the Association would not save money for the District; and that the Association's references to the method of funding insurance, continuation of retiree benefits, WERC decisions, and the alleged non-production of information are diversionary, and have nothing to do with the merits of the case.

FINDINGS AND CONCLUSIONS

Prior to directly addressing the evidence and the arguments of the parties in light of the various arbitral criteria, and selecting the more appropriate of the two final offers, it is noted that the parties are apart on a variety of preliminary considerations, including the composition of the primary intraindustry comparison group, the materiality and relevance of certain evidence relating to past salary history and past CPI movement, the question of which elements of the final offer of the Association, if any, represent continuation of the status quo, and which, if any, reflect significant proposed changes in the status quo ante, and which costing data and forms of comparison should appropriately be used in these proceedings. After some preliminary observations relative to the nature of the interest arbitration process in Wisconsin, each of these considerations will be addressed by the Arbitrator, prior to applying the statutory arbitral criteria and selecting the more appropriate of the two final offers of the parties.

The Nature of the Statutory Interest Arbitration Process in Wisconsin, the Application of the Statutory Criteria, and the Role of an Interest Arbitrator in the Final Offer Selection Process

While the Wisconsin Legislature has mandated in Section 111.70(4)(cm)(7) of the Wisconsin Statutes that interest arbitrators shall give weight to the various listed arbitral criteria, they have not established a hierarchy of relative importance for the various criteria, thus leaving this determination to be made by individual arbitrators on case-by-case bases. It is widely recognized in Wisconsin and elsewhere that the comparison criterion is normally the most important of the various arbitral criteria, and that the so-called intraindustry comparison criterion is generally the most important of the various possible comparisons. While the term intraindustry comparison reflects private sector terminology, the underlying principle is valid in all interest proceedings, including statutory interest arbitration within the State of Wisconsin. In the case at hand, the intraindustry comparisons would be applied between Mayville and other comparable school districts within the State of Wisconsin.

The normal goal of interest arbitrators in the final offer selection process is to operate as extensions of the contract negotiations process, and to attempt to place the parties into the same position they would have reached over the bargaining table, had they been able to achieve a complete negotiated settlement. In carrying out this responsibility, Wisconsin interest arbitrators look closely to the parties' past agreements and to their negotiations history, both of which fall well within the general scope of sub-section (j) of Section 111.70(4)(cm)(7) of the Wisconsin Statutes.

The Composition of the Primary Intraindustry Comparison Group

During the course of these proceedings, the parties have differed with respect to which external "intraindustry" comparables should receive primary arbitral consideration in these proceedings. They are in agreement that fifteen school districts, including Mayville, should comprise the external comparison group, which group is composed of the eight members of the Wisconsin Flyway Athletic Conference (Campbellsport, Horicon, Lomira, Markesan, North Fond du Lac, Oakfield, Rosendale-Brandon and Mayville) and certain non-athletic conference districts falling within an approximate twenty-five mile radius of Mayville (Beaver Dam, Dodgeland, Hartford UHS, Hustisford, Kewaskum, Slinger and Waupun). The Employer, however, advances the proposition that the primary comparison group should consist of the members of the Athletic Conference with the remainder of the group relegated to secondary status, while the Union urges that the primary group should consist of those school districts located in Dodge County (Beaver Dam, Dodgeland, Horicon, Hustisford, Lomira and Mayville), with the remainder relegated to secondary status.

Parties to interest proceedings frequently disagree with respect to the composition of the primary intraindustry comparison group, with each party frequently urging arbitral utilization of the group which it perceives as most persuasively supporting its position. When an interest arbitrator is faced with the need to initially determine the composition of a primary intraindustry comparison group a variety of considerations may be utilized in arriving at an appropriate decision. As referenced earlier, however, interest arbitration is an extension of the collective negotiations process, and where the parties' bargaining history indicates that they have already established and utilized a particular intraindustry comparison group in the past, including the establishment of such a group in prior interest arbitration proceedings, arbitrators are very reluctant to abandon, to modify or to vary either the composition of or the weight historically placed upon such comparisons. This principle is described as follows in the authoritative book by Irving 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 to create a differential.....
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> * * * * *
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> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of

comparison, there is virtually nothing to dissuade him from doing so again..."[1]

The force of bargaining history in arbitral selection and utilization of the intraindustry comparison criterion is also briefly addressed in the following excerpt from the widely cited book by Elkouri and Elkouri:

> "Where each of various comparison 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."[2]

On the basis of the above, and principally in consideration of the 1989 interest decisions authored by Arbitrators Fleischli and Kerkman, it is clear to the undersigned that the parties' bargaining history strongly and clearly supports the continued use of the fifteen district primary intraindustry comparison group, comprised of the members of the Wisconsin Flyway Athletic Conference and those districts located within an approximate twenty-five radius of Mayville; and no appropriate basis has been advanced to justify arbitral fractionalizing of this established intraindustry comparison group, into primary and secondary comparison groups.

The Materiality and Relevance of Certain Evidence Relating to Past Salary History and to Past CPI Movement

Initially it will be noted that the parties differed with respect to the materiality and relevance of certain evidence addressing historic wage and cost of living considerations. The Union urged arbitral consideration of long term cost of living and historical salary data, which preceded the effective date of the parties' 1989-91 agreement, in arguing that Mayville teachers had suffered an erosion of earning power and had slipped in relative salary position versus those in the intraindustry comparison group. The Employer submitted that the Association was improperly attempting to renegotiate and/or relitigate past settlements, argued that the requested arbitral consideration of such data was improper, and cited an excerpt from the opinion of the undersigned in Hustisford School District, Decision No. 24380-A, 1/14/88.

While, as referenced earlier, Wisconsin interest arbitrators will carefully consider the parties' bargaining history in the final offer selection process, this should not be interpreted as allowing base period manipulation in the application of various arbitral criteria. To avoid such problems, interest arbitrators, including the undersigned, have consistently refused to go beyond the last time that the parties went to the bargaining table, and either reached a negotiated settlement or completed the process through the use of interest arbitration. Although he is speaking principally within the context of cost of living considerations, this principle is well described 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

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

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

negotiations disposed of all the factors of wage determination. 'To go behind such a data,' a transit board had 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 demonstrates that this issue was considered, the holding becomes so much the stronger."[3]

In accordance with the above, the Impartial Arbitrator has preliminarily concluded that the salary erosion arguments and historic cost of living and salary comparison data relied upon by the Association, which preceded the effective date of the parties' 1989-91 collective agreement, should not be specifically considered and utilized in the final offer selection process. As discussed earlier, however, various general elements of the parties' bargaining history may be utilized in the final offer selection process.

Status Quo Considerations

Both parties recognize that Wisconsin interest arbitrators, including the undersigned, have generally assigned a significant burden of persuasion to the proponent of significant changes in the status quo ante, and have also frequently recognized the necessity of an adequate and appropriate quid pro quo in support of such changes. The parties differ, however, with respect to the appropriate characterization of those portions of the Association's final offer proposing an increase in the level of the Employer's WRS contributions, and an extension of the teachers' early retirement program. The Union urged that each of these proposals entailed a continuation of the negotiated status quo, while the District argued that each represented a change in the status quo which the Association had failed to justify.

When required to determine if a portion or portions of a final offer represent a significant change in the status quo ante, arbitrators may examine a variety of considerations, including the nature and the language of the proposal itself, the contents of predecessor agreements, and other elements of the negotiations history of the parties. In this connection it will be emphasized that certain language changes and/or proposed changes in benefits levels do not necessarily constitute a significant change in the status quo. If an employer has a negotiated history of paying a particular percentage of medical and hospitalization costs, for example, which percentage has been identified in specific dollar amounts in prior agreements, a Union proposal to maintain the Employer's percentage contribution level would not constitute a significant change in the status quo, even if the dollar contribution level specified in the contract were increased. It must be emphasized at this point, however, that the hypothetical employer's increased expenditures for insurance premiums would be reflected in the total package costs of the negotiated settlement.

What of the Union proposed increase in the levels of Employer paid WRS contributions from 6.0% to 6.1% in the first year, and to 6.2% in the second year, to reflect the higher mandated levels of employee WRS contributions for the two years? For a period of several years, the negotiated agreements have required the Employer to pay the full employee WRS contributions, which requirement has been specified as a percentage figure in the contracts, and it is reasonable to infer that the continuation of this practice was at least implicitly within the expectations of the parties. In consideration of the nature of the benefit and the parties' negotiations history, the Impartial Arbitrator has preliminarily concluded that the Union proposed increases in the Employer's WRS contribution levels does not constitute a substantial

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[3] The Arbitration of Wages, pg. 75. (footnotes omitted)

change in the status quo. While the Employer can obviously include the impact of the proposed increases in total package costs, the nature of the Union's proposal is simply not that type of change in the status quo ante, which would require substantial independent justification and/or a separate quid pro quo.

What next of the Union's proposal to extend the early retirement option from the prior expiration date of June 30, 1992, to June 30 1994? The early retirement option was added by the parties during their negotiations for the 1989-91 labor agreement, and is distinguished from the Union's WRS proposal in the following respects:

(1) The testimony of both parties indicated that the early retirement option was neither explicitly nor implicitly regarded as a benefit which would be automatically continued into future contracts. The Employer offered testimony that it had been intended to be a one time opportunity, arising from the Wisconsin Legislature's 1989 enactment of an early retirement opportunity for certain long service employees, between May 16, 1989 and July 1, 1990. The Association indicated that the June 30, 1992 expiration date was included in Appendix G of the prior agreement, due to the Employer's desire for a trial period to determine if the provision should be continued.

(2) In recent years, many employers have either unilaterally offered temporary early retirement incentives for unrepresented employees for the purpose of reducing their payrolls, and many employers and unions have negotiated similar arrangements for fixed periods of time.

(3) The early retirement option in Appendix G expired by its terms on June 30, 1992, or during the term of the 1991-93 renewal agreement in issue in these proceedings. When parties negotiate a benefit which has a fixed duration which extends into the term of a subsequent labor agreement, it rather clearly supports an inference that they intended it to have a life separate and distinct from the contract duration.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the Union proposed extension of the early retirement option beyond its expiration date of June 30, 1992, represents a substantial change in the status quo ante, upon which the Union has the burden of persuasion.

The Costing Data and the Methods of Comparison

In these areas the parties differ relative to the specific costing of the Union's early retirement proposal and the Employer's self-insured program of medical and hospitalization insurance, and as to the best method(s) of comparison to use in connection with evaluating the two salary offers.

(1) The Association challenged the Employer's method of costing the early retirement option, urging that it had estimated the costs of the program without considering the savings associated with the replacement of long service retirees with younger teachers, and it also questioned the Employer's determination of its own insurance premium costs in connection with its self-insured program. It urged that no costs should be considered in connection with early retirement, and argued that little arbitral reliance should be placed upon the Employer advanced medical and hospitalization insurance costs.

(2) The Association favors the use of salary benchmark and salary percentage increase comparisons, and it takes issue with Employer use of comparisons based upon average salary increase dollars per teacher; in the latter connection it urges that since a very high percentage of Mayville teachers have long service, comparisons based upon average salary increase dollars per teacher should not be used. The Employer used benchmark ranking, utilizing different benchmarks from those urged by the Association, and it also urged arbitral consideration of comparisons based upon percentage and average dollar increases per teacher.

Interest arbitrators are generally not well equipped to make specific costing determinations when the parties are in disagreement with respect to the accuracy of such figures, but certain arbitral conclusions are appropriate with respect to the utilization of costing data.

(1) Regardless of the purported practices of other employers, there are obviously short and long terms savings and costs associated with the early retirement program proposed for renewal by the Union, and these costs and savings are appropriate for arbitral consideration in the statutory interest arbitration process. The Arbitrator is not, however, fully satisfied with the early retirement costing data provided by either party in these proceedings.

(2) Contrary to the arguments of the Association that insurance costs should be disregarded or minimized in these proceedings, the Employer must pay the actual costs of any covered medical and hospitalization services utilized by its employees, regardless of whether the benefits are provided through a commercial insurer or provided under a plan of self-insurance. A commercial insurer will generally provide a short rate guarantee based upon its best estimate of what insurance usage will be, after which an employer is frequently experience rated thereafter; the employer is thus paying for actual medical and hospitalization costs incurred, plus a retention factor assessed by the insurer, from which its administrative costs and a margin of profit are derived. When an employer self-insures, it must still pay for the same covered medical and hospitalization costs, but it might derive savings from what otherwise would comprise an insurer's costs and profit. The Association's suggestion that the Arbitrator should disregard actual insurance costs in evaluating the final offers of the parties is simply not appropriate; if it feels that the Employer is overstating the prospective costs of medical and hospitalization coverage, it could propose more realistic cost estimates which could be derived from a variety of sources, including reviewing comparable costs elsewhere, soliciting independent estimates of insurance costs, and/or requiring the appearance in arbitration of the individual or individuals responsible for determining self-insurance costs.

(3) Benchmark comparisons of various kinds, as well as average percentage and average salary increase dollars per returning teacher are valid methods to use in comparing earnings. Benchmark comparisons are more likely to identify specific areas within a wage or salary structure where parties are either competitive or non-competitive, while average percentage and dollar increases per returning teacher will accurately measure the impact of wage increases upon a specific work force. Applying a fixed percentage increase to a wage or salary structure will obviously result in larger wage or salary increases when a work force is concentrated in the higher labor grades in an industrial setting, or when an

educational bargaining unit is predominantly composed of high service teachers. Contrary to the arguments of the Association, the use of average percentage and/or average dollar increases per teacher are valid and persuasive methods of costing final offers for comparison purposes, particularly when the wage or salary structure itself is not in issue. Comparisons based upon actual dollars represent real costs, are very persuasive in the interest arbitration process, and should neither be disregarded or minimized merely because many employees are in the higher levels of a wage or salary structure.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded as follows: any actual costs and savings deriving from an early retirement program are appropriate for arbitral consideration, but the undersigned is not satisfied with the early retirement costing data provided by either party in these proceedings; there is no basis for disregarding the actual medical and hospitalization insurance costs incurred by the Employer, regardless of whether such coverage is purchased through a commercial insurer or through a program of self-insurance; benchmark comparisons of various kinds, as well as average percentage and average salary increases per returning teacher are valid methods to use in comparing earnings; comparisons based upon actual dollars per employee are very persuasive in the interest arbitration process, and should neither be disregarded nor minimized merely because large numbers of employees are in the higher levels of a wage or salary structure.

The Salary Increase Impasse Item

The criterion principally emphasized by the parties in connection with their salary increase proposals is intraindustry comparisons, with lesser emphasis placed upon cost of living considerations, certain other comparisons, and the interests and welfare of the public.

In addressing the wage increase components of the intraindustry comparisons summarized in Employer Exhibits #34 and #35, and in Association Exhibits #31 and #35, the process is complicated by the fact that the dollar figures and/or the percentages reported by the parties, differ for various of the districts. As referenced earlier, interest arbitrators are not generally well equipped to resolve costing differences between the parties, but the undersigned has acted as follows to clarify the record.

(1) Association Exhibit #31 indicates that the Horicon Association and the Board had used different costing methodologies for 1991-92, as a result of which the Horicon Association's reported figures were 1% and $277 per teacher higher than those reported by the Horicon District and utilized in Employer Exhibit #34. Since no additional explanation of the higher settlement figures reported by the Horicon Association has been provided, the Arbitrator has accepted the figures reported by the Employer.

(2) Minor differences were reported by the parties in the figures for the Dodgeland and the Rosendale-Brandon Districts, so the Arbitrator has averaged the percentage and the dollar figures for these districts; the different reported percentage figures for the Hartford UHS have also been averaged.

(3) Because of the significant differences in the 1991-92 reported figures for the Markesan District, the figures were dropped from the comparison.

With the above described adjustments, the 1991-92 Salary Increases among the settled intraindustry comparables, consist of the following:

District	$	%
Campbellsport	$1986	6.55%
Dodgeland	$1830	6.26%
Hartford UHS	$2100	5.37%
Horicon	$2069	5.79%
Hustisford	$1939	6.53%
Lomira	$2009	6.6%
Markesan	-	-
No. Fond du Lac	$2025	6.65%
Oakfield	$1800	5.79%
Rosenfeld-Brandon	$1900	6.57%
Waupun	$1900	5.97%
Averages	$1955.80	6.21%
Mayville		
Board	$1856	5.7%
Assoc.	$2085	6.41%

The 1992-93 Salary Increases among those intraindustry comparables which have settled are correctly reported in Employer Exhibit #35, and consist of the following:

District	$	%
Horicon	$2075	5.49%
Markesan	$1847	5.39%
Rosendale-Brandon	$1969	6.10%
Averages	$1973	5.66%
Mayville		
Board	$1879	5.46%
Assoc.	$2136	6.1%

The above figures indicate that the District is somewhat below and the Union somewhat above the average two year salary increases for the primary intraindustry comparables, with the parties equidistant from the average percentage increase, and the Union $292.20 above and the Employer $193.80 below the average dollar increase over the two years. Accordingly, the Arbitrator has preliminarily concluded that consideration of the intraindustry comparison criterion favors the selection of the salary increase component of the final offer of the Employer.

In next addressing cost of living considerations, the Arbitrator will reiterate the point made earlier that the only cost of living changes that are material and relevant to the final offer selection process in these proceedings are those which have taken place since the beginning of the 1989-91 labor agreement. It is a generally accepted principle that the CPI, for a variety of reasons, tends to overstate the impact of cost of living changes upon individual consumers; those in the bargaining unit, for example, have been shielded from certain costs which are part of the market basket of goods and services which is utilized by the BLS in measuring changes in consumer prices, most notably the medical and hospitalization components of the CPI.

In light of the above referenced tendency of the CPI to overstate cost of living changes, the relative stability in the index since the parties last went to the bargaining table, the salary increases enjoyed by those in the unit since the effective date of the last agreement, and the 1991-92 and 1992-93 increases proposed by both the District and the Association, it is clear that recent salary increases have outstripped cost of living during the

appropriate base period, and that this consideration favors the selection of the final offer of the Employer. The cost of living criterion, however, is entitled to significantly less weight in these proceedings than other considerations such as the intraindustry comparison criterion discussed above.

What next of the municipal and county public sector salary increase data referenced in Employer Exhibits #38 and #39, and the general private sector wage increase data contained in various of its later exhibits, which factors were relied upon by the Employer in support of the salary component of its final offer in these proceedings? The Association is quite correct that the other public and private sector wage and salary data offered by the District are neither comprehensive nor definitive enough to justify significant weight in the final offer selection process. While such comparisons are specifically included among the statutory criteria, even if more comprehensive evidence had been offered by the Employer, the comparisons would be entitled to far less weight than the intraindustry comparisons and various other arbitral criteria.

In next addressing the interests and welfare of the public criterion in connection with the salary increase impasse item, the Arbitrator will merely paraphrase with approval, his observations from a prior interest decision which was referenced in the Association's reply brief, Twin Lakes #4 School District, Decision No. 267592-A, 3/2/91. There is neither an inability nor an impaired ability to pay alleged in the case at hand, and while the taxpayers have an obvious interest in the outcome of labor negotiations, both educational excellence and fair and equitable salaries and benefits for teachers, also serve the interests and welfare of the public. After a careful examination of the record and the arguments of the parties, the Impartial Arbitrator has preliminarily concluded that the interests and welfare of the public criterion cannot be assigned determinative weight in the final offer selection process in these proceedings.

For all of the reasons discussed above, and principally upon consideration of the intraindustry comparison criterion, the Arbitrator has preliminarily concluded that the record favors the salary increase component of the final offer of the Employer, rather than that of the Association.

The WRS Contribution Level Impasse Item

As previously discussed, the Arbitrator has preliminarily concluded that the Association proposed increases in Employer payment of employee WRS contributions to 6.1% in 1991-92, and to 6.2% in 1992-93, do not represent significant changes in the status quo. As urged by the Association in its briefs, and as referenced in Association Exhibit #39, the majority of the intraindustry comparables which have reached agreement in their contract renewal negotiations, have agreed to an increase in employer WRS contributions beyond the previous 6% level. Accordingly, the Arbitrator has preliminarily concluded that while it is a bona fide cost item, the record favors the selection of the final offer of the Association on the WRS contribution level impasse item.

The Early Retirement and the Pay Day Language Impasse Items

As discussed in significant detail above, the Arbitrator has preliminarily concluded that the Association proposed extension of the early retirement option beyond its expiration date of June 30, 1992, represents a change in the status quo ante, upon which the Union has the burden of persuasion. Not only does it have the obligation to establish a very persuasive case in support of the proposal, but an adequate quid pro quo is a quite common requirement in such cases.

In addressing this item, the Arbitrator will note that he agrees with the Association that there appear to be substantial short term savings in connection with the replacement of long service teachers at lower salary levels, but the District is also quite correct with respect to the significant retiree insurance and sick leave costs of the program. While the Union argues that it gave up a significant quid pro quo in the form of the pay day change, it must be recognized that this element of the Association's final offer also expired on June 30, 1992, under the terms of the prior agreement. It will also be noted at this point,that there is no fixed and uniform practice with respect to early retirement rights, within the primary intraindustry comparison group.

After carefully examining the entire record and the arguments of the parties, including those items addressed earlier, the Arbitrator has preliminarily concluded that the Union had not made the requisite persuasive case for the extension of the early retirement program beyond its negotiated expiration date of June 30, 1992. Accordingly, arbitral consideration of the early retirement impasse item, and the Union proposed extension of the pay day language contained in Article VI, Section F.2, significantly favor selection of the final offer of the District.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) While the Wisconsin Statutes do not prioritize the various arbitral criteria, it is widely recognized that the comparison criterion is the most important, and that intraindustry comparisons are the most persuasive of the various possible comparisons.

(2) The primary intraindustry comparison group in the case at hand consists of fifteen districts, comprised of the members of the Wisconsin Flyway Athletic Conference and those districts located within an approximate twenty-five mile radius of Mayville; no appropriate basis has been advanced to justify arbitral fractionalization of the intraindustry comparison group into primary and secondary groups.

(3) Specific historic cost of living and salary comparison data which precedes the effective date of the parties' 1989-91 collective agreement, should not be considered in the final offer selection process, but general elements of the parties' bargaining history may be appropriately utilized.

(4) Wisconsin interest arbitrators, including the undersigned, have assigned a significant burden of persuasion to the proponent of significant change in the status quo ante, and have also frequently recognized the necessity of an adequate and appropriate quid pro quo in support of such changes. The parties differ, however, with respect to whether the Union proposed increases in the Employer's WRS contribution levels, and its proposed extension of the teachers' early retirement program, constitute changes in the status quo.

(a) The Association proposed increases in Employer payments of employee WRS contributions, does not constitute a substantial change in the status quo.

(b) The Union proposed extension of the early retirement option beyond its expiration date of June 30, 1992, represents a

substantial change in the status quo, upon which the Union has the burden of persuasion.

(5) In considering the costing data and the methods of comparison, the Arbitrator had preliminarily concluded as follows:

(a) Any actual costs and savings deriving from an early retirement program are appropriate for arbitral consideration, but the undersigned is not satisfied with the early retirement costing data provided by the parties to these proceedings.

(b) There is no basis for disregarding the actual medical and hospitalization insurance costs incurred by the Employer, regardless of whether such coverage is purchased through a commercial insurer or through a program of self-insurance.

(c) Benchmark comparisons of various kinds, as well as average percentage and average salary increases per returning teacher, are valid methods to use in comparing earnings, although their persuasive value will vary with the types of dispute in which they are used.

(6) In addressing and considering the salary increase components of the final offers of the parties, the Arbitrator has concluded as follows:

(a) Consideration of the intraindustry comparison criterion favors the selection of the salary increase component of the final offer of the Employer.

(b) Cost of living considerations favor the selection of the salary increase component of the final offer of the Employer, but this factor is not entitled to determinative weight in these proceedings.

(c) The interests and welfare of the public cannot be assigned determinative weight in evaluating the salary increase components of the final offers of the parties.

(d) Arbitral consideration of the record as a whole, favors the salary increase component of the final offer of the Employer, rather than that of the Association.

(7) Arbitral consideration of the record as a whole, favors the selection of the final offer of the Association on the WRS contribution level impasse item.

(8) Arbitral consideration of the record as a whole, favors the selection of the final offer of the Employer on the early retirement and the pay day language impasse items.

The Final Offer Selection Process

Based upon a careful consideration of the entire record in these proceedings, including a review of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the District is the more appropriate of the two final offers before the Arbitrator.

AWARD

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

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

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

WILLIAM W. PETRIE
Impartial Arbitrator

September 2, 1992