ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between

SOUTHERN DOOR EDUCATION ASSOCIATION

and

SOUTHERN DOOR SCHOOL DISTRICT

Case 23
No. 46513 INT/ARB-6208
Decision No. 27131-A

ARBITRATOR: John W. Friess
Stevens Point, Wisconsin

UNIT: Southern Door School District
97.5 FTE Teachers

HEARING: April 21, 1992
Brussels, Wisconsin

RECORD CLOSED: May 30, 1992

AWARD DATE: August 8, 1992

APPEARANCES:

For the Employer:

WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.

By: William G. Bracken
Director of Employee Relations Services
132 W. Main Street
P.O. Box 160
Winneconne, WI 54986

For the Union:

BAYLAND TEACHERS UNITED

By: Dennis W. Muehl
Executive Director
1136 N. Military Avenue
Green Bay, WI 54303

ARBITRATION OPINION AND AWARD

Southern Door Education Association
and
Southern Door School District

BACKGROUND AND JURISDICTION

This dispute concerns the negotiation of a collective bargaining contract between the Southern Door Education Association (Association, Union, Teachers) and the Southern Door School District (District, Board, Employer) to replace their old contract which expired on June 30, 1991.

The parties exchanged their initial proposals on May 16, 1991 and met thereafter on two occasions in an effort to reach an accord. On November 8, 1991, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC, Commission) requesting Arbitration pursuant to the Section 111.70(4)(cm) of the Wisconsin Statutes. On January 9, 1992, Coleen A. Burns, a member of the Commission's staff, conducted an investigation which revealed that the parties were deadlocked in their negotiations. On January 10, 1992, the parties submitted their final offers and Investigator Burns notified the Commission that the parties remained at impasse and the dispute was certified by the Commission for arbitration. On January 17, 1992, the Commission submitted a panel of arbitrators to the parties. John W. Friess of Stevens Point was selected as Arbitrator and was notified by the Commission on February 6, 1992.

An arbitration hearing was held on April 21, 1992 at the Southern Door School District Offices in Brussels, Wisconsin. At that hearing exhibits were presented and testimony was heard. It was agreed that briefs would be submitted to the Arbitrator and each party through the mail postmarked by May 22, 1992. Reply briefs, if any, would be sent to the Arbitrator and each party postmarked by May 29, 1992. The parties agreed the record would be closed as of the hearing date for additional evidence other than some items that both agreed could be submitted after the hearing. Briefs were filed with the Arbitrator as agreed, the last one of which was received May 23, 1992. Following filing of briefs, the Union informed the Arbitrator in a letter received on May 29, 1992 that the parties had agreed no reply briefs would be needed and the record could be closed. Subsequently, no other evidence was received and the record was closed on May 30, 1992.

The Arbitrator is granted authority to hear the evidence and issue an arbitration award under Section 111.70(4)(cm) 6 and 7 of the Wisconsin Municipal Employment Relations Act. The Arbitrator is obligated under the terms of the statute to choose the entire final offer of the Employer or the Union. Section 111.70(4)(cm) 7 sets forth 10 criteria the Arbitrator is obligated to utilize in making the decision. These criteria are itemized in the statute and are quoted verbatim in "Appendix A." For this award, these criteria will be identified as: (a) lawful authority; (b) stipulations; (c) interests and welfare of the public; (d) comparisons--other teachers; (e) comparisons--other public employees; (f) comparisons--private employees; (g) cost of living; (h) overall compensation; (i) changes; and (j) other factors.

The employees involved in this proceeding are composed of a collective bargaining unit represented by the Union which consists of certain employees of the Southern Door School District. Specifically, all teachers, including classroom teachers, counselors and librarians. There are approximately 97 FTE employees in the unit.

STIPULATIONS AND FINAL OFFERS

STIPULATIONS

During the certification process the parties submitted the issues to which they agreed. These issues were stated in an eight page document entitled "TA's" and marked "Stipulations" by the WERC. These issues will not be discussed in this award as disputed issues, but may be referred to below in discussions regarding criteria (h) overall compensation.

FINAL OFFERS

Both parties have submitted proposals for a two-year contract. Based upon the final offers there is one issue involved in this dispute: the salary schedule. The following are the positions of the parties on this issue:

Salary Schedule

Both parties are proposing a similar salary schedule structure. The Union is proposing a 1992 BA Base of $21,100, and a 1993 BA Base of $22,270. This amounts to an average per teacher increase of $2,004 or 6.3% in 1992 and $2,183 per teacher or 6.4% in 1993. The total package cost of the Union's offer in 1992 is $2,989 or 6.9% average per teacher, and in 1993 is $3,286 or 7.1% per teacher.

The Employer proposes a 1992 BA Base of $21,004, and a 1993 BA Base of $21,970. This amounts to an average per teacher increase of $1,854 or 5.8% in 1992 and $1,854 per teacher or 5.5% in 1993. The total package cost of the Board's offer in 1992 is $2,919 or 6.5% average per teacher, and in 1993 is $2,998 or 6.3% per teacher.

ISSUES SUBJECT TO ARBITRATION

As mentioned above, there is only one issue related to the final offers of the parties: the salary schedule. In addition, the parties have some minor differences over the selection of the appropriate comparables, as well as two evidentiary/procedural issues. The parties' positions and the Arbitrator's thinking and decisions on these issues will be addressed in the DISCUSSION below.

DISCUSSION

INTRODUCTION

The Arbitrator in these cases is charged with determining the more reasonable (or sometimes the less unreasonable) of two offers, and to order the implementation by the parties, in full, either one or the other. On the face of it, in this case the parties both have certainly developed what appears to be very reasonable offers--ones that are fairly close in terms of economics. The Employer states that according to its calculations, the parties are a total of $18,022 apart in the first year and $56,825 apart in the second year. This amounts to a total of $74,847 or $767.76 per teacher over the two year contract. This is not very far apart in a school district where the total compensation costs are projected at $4.5 million in 1992. This translates into only .4% of total compensation the first year and 1.1% the second. Close offers, though, do not make for easy arbitration decisions.

At this point there is a question about how difficult the Arbitrator should make of a fairly simple, straight forward case. The parties submitted "reams" of exhibits (at least 150 for the Union and 281 for the District) including graphs, charts, documents, publications, arbitration awards, newspaper articles, contracts, maps, salary schedules, correspondence, etc., etc. They filed lengthy briefs (42 pages for the Union and 102 for the Employer) to argue their cases. (Fortunately, they agreed not to file reply briefs!) With all of this information and paper, it is easy to think the parties believe this is a complex case and want the Arbitrator to spend many hours pouring over the exhibits and briefs, studying and responding to every argument and minor issue, and creating a arbitration award at least equal in length to their briefs.

But I am not sure this is the case. In pre-hearing discussions both parties admitted this was a simple case, and indicated a short opinion and award would be adequate. But even more to the point, I am not sure it would be in the best interest of the public (the tax payers and employees of the Southern Door School District) for this Arbitrator to commit substantial time and expense to creating an award for offers that are less than four tenths of one percent of the total compensation package the first year, not to mention the miniscule percentage it probably is for the entire school district budget. Therefore, while I will take into consideration all the criteria, evidence, and arguments before me in the record, this Opinion and Award will only contain a report of the most important considerations.

The report of my thinking and decisions will be accomplished in this DISCUSSION section. I will provide a brief summary of each of the parties arguments and positions for the criteria as I discuss them. "////" follows the summary of the parties' positions and indicates the start of the Arbitrator's analysis and opinion. Before discussing the substantive issues, the evidentiary and procedural issues will be discussed, and parameters for the analysis of the evidence and argument will be established.

EVIDENTIARY/PROCEDURAL ISSUES, OBJECTIONS, AND MOTIONS

The Union, at the hearing and in its brief (p. 10), objected to the Employer's inclusion of Board Exhibits 110-126 and 132-140 due to their reliance on hearsay and irrelevance. In addition, the parties propose slightly different comparables from which to make salary comparisons. I will deal with these issues here.

Submitted Evidence

The Association objects to the Employer's submission of Board Exhibits 110-126 and 132-140 due to their reliance on hearsay and irrelevance. There are actually two types of exhibits here that need separate discussion.

General National/State/Regional Statistics

The Union does not like Employer Exhibits 110-126 because, for the most part, they represent reporter reactions to the "general state of things" without any perspective in terms of the Southern Door School District and its comparability group.

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Generally, arbitrators are pretty liberal in allowing evidence of this sort into the record. The Union even has some news articles, while generally more specific to Door County and the economy of the region, tend to be on the "general state of things" too.

But the Union makes a good point: If the parties stayed away from data that were general in nature, perhaps the number of exhibits could be reduced.

I find that all exhibits that have been entered into the record will remain in the record. Greater weight is be place on exhibits that are specific in nature, highly relevant, and credible.

Surveys

The Union also objects to some surveys that the Employer has entered into the record--e.g. Employer Exhibit 113 and 132-138. The Association objects to these because they are based on hearsay and are irrelevant.

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One of the statutory criteria, (f) comparisons--private employees, calls for the evaluation of the offers using a comparison with other employees in private employment. These documents to which the Union is objecting, are surveys of private employers, and are the attempt of the Board to generate data to make these comparisons.

Surveys are always problematic. Based on the nature of the method, it is very difficult to maintain the integrity of the data collection and reporting procedures. But, at this point, this is the only way to get information to conduct an analysis of the offers on this criterion. The Union makes a good point here, though. Hopefully, some day good, reliable data will exist in the private sector as currently exist for the schools.

The surveys will remain in the record, but, based upon the concerns of the Union, will have lesser weight than other data, especially those related to the comparability grouping.

Comparable Grouping

The parties, in general, accept the Packerland Athletic Conference as the comparable group. Three previous arbitration awards utilized this Conference as the comparable group. The Union wants to eliminate Mishicot, Oconto, and Oconto Falls from the group. The Employer accepts the Group, but proposes that Sturgeon Bay be discounted.

The Union proposes for comparables what it identifies as the "Peninsula Schools" which is the Athletic Conference minus Mishicot, Oconto, and Oconto Falls. The Union recognizes the secondary nature of the three school districts, but disputes the Board's position that they should be given the same weight in this matter as the eight other schools the parties agree as primary comparables. The three schools not in the "Peninsula" grouping are not in the WEA Insurance Group Consortium, lack the community of interest defined by that group, and should be rejected as part of the primary comparable group by the Arbitrator.

The Employer states that the issue of the comparable group has been settled long ago. This issue has already been litigated, and three arbitrators (Gundermann, Weisberger, and Yaffe) have all agreed that the Packerland Athletic Conference is the appropriate comparables for Southern Door. The District argues that consistency demands that the same group be utilized by this Arbitrator in this case. While the District proposes the Athletic Conference as the comparable group, it maintains that four settlements (Kewaunee, Oconto, Oconto Falls, and Sturgeon Bay) were settled prior to the 1991-93 round of bargaining and should be discounted. The Board also believes that Sturgeon Bay should be further discounted because its relatively high economic settlement was accompanied by other concessions, some thing that is not present with the Southern Door offers.

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It is interesting to consider the arguments of the parties for this issue that should be settled with those three arbitration decisions. I also find that the Packerland Athlete Conference is the most appropriate comparable group for Southern Door School District.

Regarding the District's suggestions that some of the school districts in the Conference be discounted, I do not favor the idea very much mainly for practical reasons. How would that work? The comparisons the parties, and arbitrators, make require data--averages, ranking, and so forth. How could one weight, or discount, those districts mathematically? What objective, consistent criteria could be applied to make these mathematical adjustments? How deep into the settlement would the parties, and an arbitrator, go in making these discounts/adjustments? On and on.... It just becomes too complicated and "full of worms".

Regarding the Employer's concern that Sturgeon Bay's settlement is "out of the park" because of other concessions, etc., I do not think this can be helped. This is the nature of collective bargaining--settlements will be different. But this is why the parties, and arbitrators, use averages and make sure there are enough settlements to generate statistics that fairly accurately reflect the settlement pattern. And this is why parties, and arbitrators, use total package cost comparisons--to get a handle on the full economic impact of the settlement, including "fringe" benefits, on a district.

The concern of the Employer that there are just not enough settlements to have a pattern would be true if certified final offers are not considered. I think a picture of the labor economic conditions can be determined not only through settlements and arbitration decisions (completed negotiations), but also from the bargaining positions of the parties by way of certified final offers. While not providing finalized data, final offers provide a range of settlement possibilities to which the parties final offers can be compared. I accept the Union's proposal to include certified final offers as part of the "settlement" data for the comparable group.

The appropriate comparable group for this decision and award then is the Packerland Athletic Conference including the ten other school districts of: Algoma, Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicot, Oconto, Oconto Falls, Sevastopol, and Sturgeon Bay. Of these, data are missing on only one (Sevastopol) for 1990-91 and 1991-92. For 1992-93 data are missing on four districts (Kewaunee, Sevastopol, Oconto, and Oconto Falls) in this group. This leaves nine out of ten for the first year (1991-92) comparisons, and six out of the ten for the second year (1992-93). Not a very big group in the second year, but perhaps enough, given the circumstances.

A Priori Summary Judgement

The Employer proposes (Employer Brief p. 78) that the Arbitrator reject out-of-hand the Association's final offer because it contains a "fatal flaw". The Employer points out that the Union's total package costs of its final offer is higher in the second year than the first, that this constitutes a "fatal flaw" in the Association's offer, and, therefore, the Arbitrator should reject the Union's offer "on its face".

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In order to determine the validity of the Employer's proposition here, I compared the final offer of the Association to the final offers and settlements of the comparables on the total package costs. While there is no clear pattern on this question, there are a number of other districts that the

second year total package costs increases (dollars and percentage) are larger the second year (Union Exhibits 29A and 30A). Further, average dollar and percentage per teacher increases (see charts on pages 8-9) indicate that, generally, the comparables offered or settled at higher amounts in the second year. I believe this constitutes enough evidence to reject the Employer's "motion" for an "a priori" rejection of the Union's final offer.

Therefore, the Union's final offer is not rejected as unreasonable on its face, and the standard reasonableness tests will apply to both final offers to determine which is more reasonable.

REASONABLENESS TESTS

The ten statutory criteria are sufficient for determining the reasonableness of the final offers in this case. Each criteria will be discussed and weighted based primarily upon how the parties indicated they should be weighted.

Relevant Statutory Criteria

The parties presented little or no evidence relating to some of the criteria. Thus, these criteria will receive little or no weight in this arbitration decision: (a) lawful authority of the Employer; and (i) changes. Also, no other criteria that might be appropriate under (j) other factors are found to be applicable. The other statutory criteria--(b) through (h)--will be ranked and weighted below.

Weighting of Criteria

The District argues that because there are so few settlements, the Arbitrator should give more weight to the other criteria. The Employer points out that interest arbitrators have historically turned to teacher-to-teacher salary comparisons for deciding cases where a discernable settlement pattern can be found. The Board contends that in this case, it is impossible to find a discernable settlement pattern, and so the traditional teacher-to-teacher comparability criterion must "take a back seat" to the other statutory criteria.

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I can't agree with the District that there is no discernable pattern here, or actually, a lack of enough data, to make the traditional teacher-to-teacher comparisons. Sure, if one eliminates some of the settlements because they were not negotiated during the appropriate time period, and if one eliminates more settlements because they are out of range, and if one disregards the certified final offers of other unsettled districts in the comparable group, then one ends up with not enough data to determine a pattern. But, as I pointed out above, including certified final offers of non-settled districts along with all the settlements in the group, does give us enough bargaining data in this case to make the traditional teacher-to-teacher comparisons.

In my mind the only way to over come the traditionally high weight placed by arbitrators on teacher-to-teacher comparisons when enough data exists, is for the district in question to show it is significantly different in some way than the other comparables. While the Employer does point out some differences between Southern Door and the other districts in the Conference, in my opinion none are really significant enough to warrant Southern Door receiving special or exceptional consideration--in essence, an exemption from the increases provided/proposed by other comparable districts.

Based on this, I find no reason to place less weight than is normally placed on criterion (d) comparisons--other teachers in favor of more weight on the other statutory criteria.

For this award I rank and place weight on the seven remaining criteria in this order:

(d) comparisons--other teachers	Majority
(h) overall compensation	Substantial
(c) interests and welfare of the public	Substantial
(g) cost of living	Small
(b) stipulations	Small
(e) comparisons--other public employees	Little
(f) comparisons--private employees	Little

ANALYSIS AND OPINION

In this section I will discuss the issue in this dispute based on the criteria described above. Most of the discussion and emphasis of this decision will be place on the criteria of highest priority and weight. In the interest of saving time and space, this discussion will only highlight my thinking and decisions on this issue.

For its arguments, the Employer relies heavily on convincing the Arbitrator that there are not enough data to make teacher-to-teacher comparisons, therefore other criteria should be weighted higher and be given greater consideration. The Employer presents much evidence and argument showing the poor economic conditions in Door County, as well as cost of living data that support a lower settlement for the teachers for these contract years. The Employer argues that Southern Door has very expensive "fringe" benefits and, with the already agreed upon stipulations, the total package cost to the District warrants a lower salary offer.

The Union argues that there are enough data for traditional teacher-to-teacher comparisons, and when making those comparisons with other teachers in the Conference the Union's offer is more reasonable. The Teachers argue that the economic conditions in Door County and the Southern Door district are not negative considerations in this case. And the Association (almost parenthetically) simply points out that the Union's offer is more reasonable because the Board's offer is so low on every measurement it is below the settlement pattern even if every Board "wins" in all the other pending cases in the comparable group.

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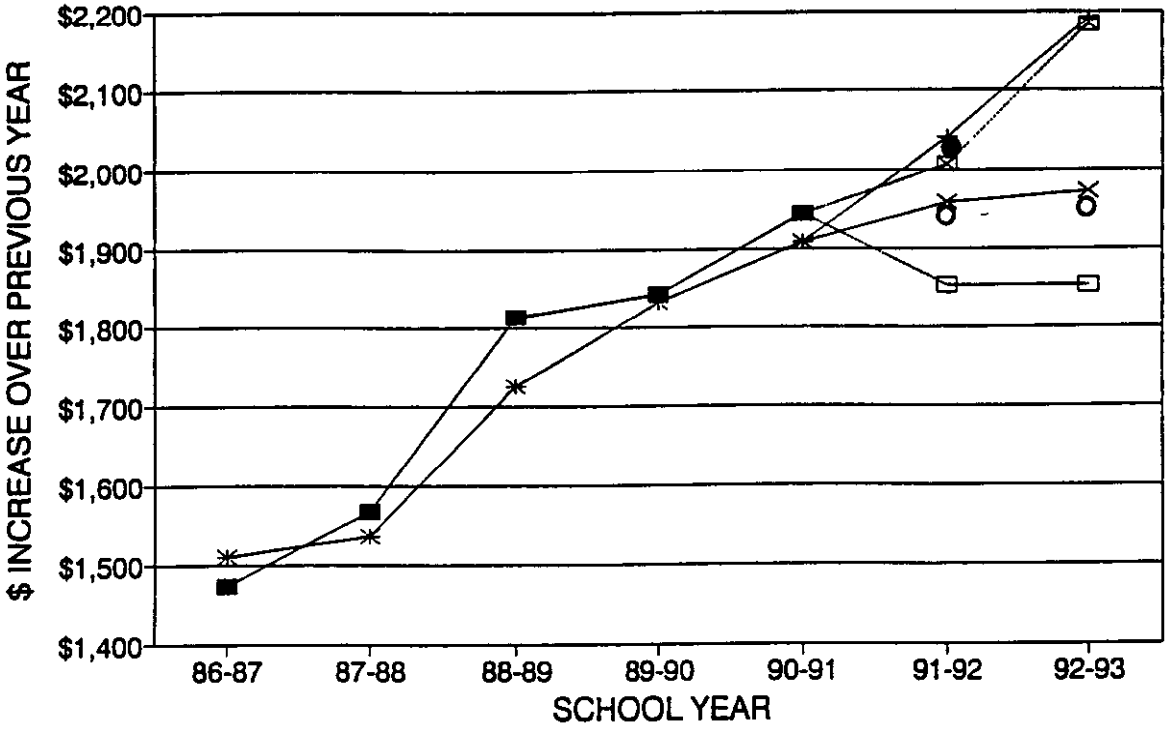
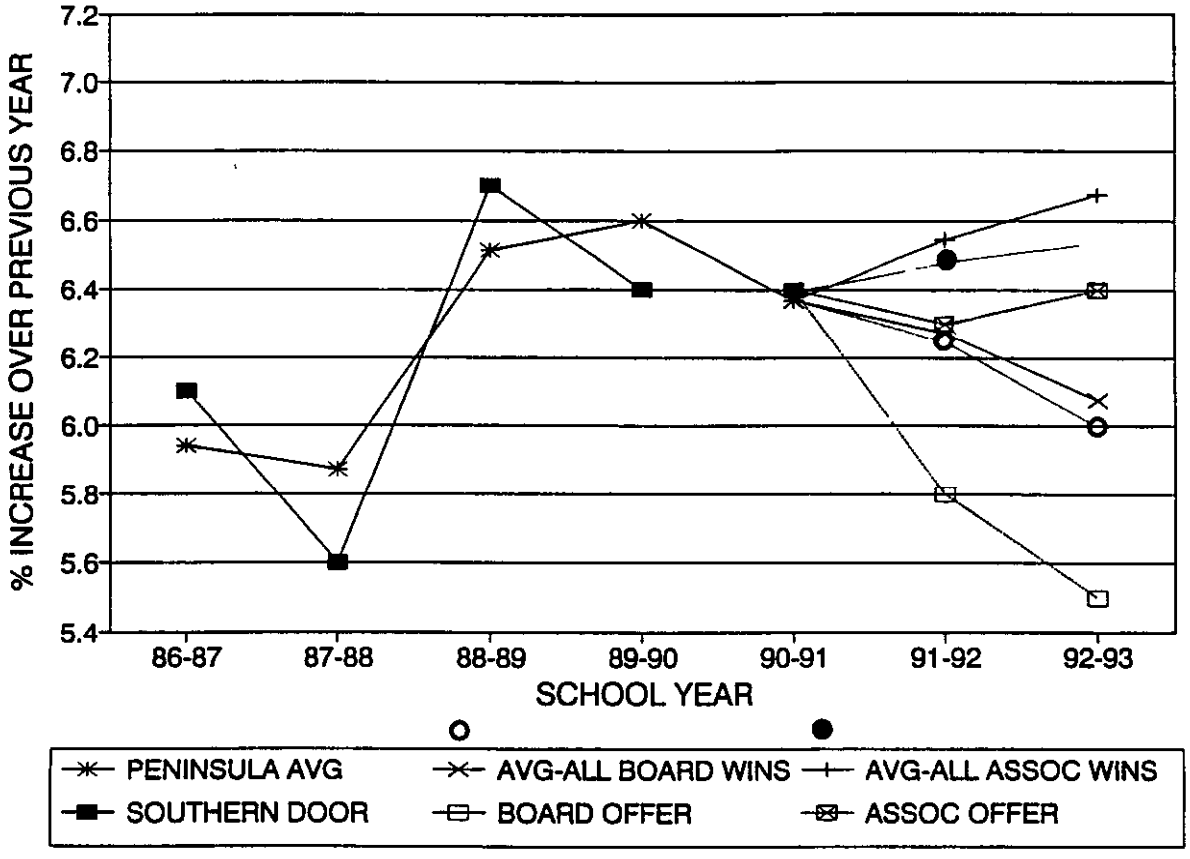
The most important and convincing evidence in this very close case are the charts and graphs prepared by the parties to show teacher-to-teacher comparisons of dollar and percentage increase of the parties' final offers here in Southern Door with the settlements and final offers of the comparables. Neither party's data sheets and charts can be used, though, because of missing/omitted data: the Employer only uses four of the ten other districts; the Union uses only seven of the ten. In order to gain the full picture, I combined the data from the parties and recalculated the averages. The result is the charts on the next two pages, which are duplications of the Union's Exhibits 27B, 28B, 29B, and 30B with my additions.

The charts on the following pages provide a comparison of settlements of Southern Door with the other districts over a seven year period. Then for the two years in question, averages were calculated as if 1) all the associations won their cases and 2) all the school boards won their cases. A better comparison, of course, would be to compare the Board's and Association's

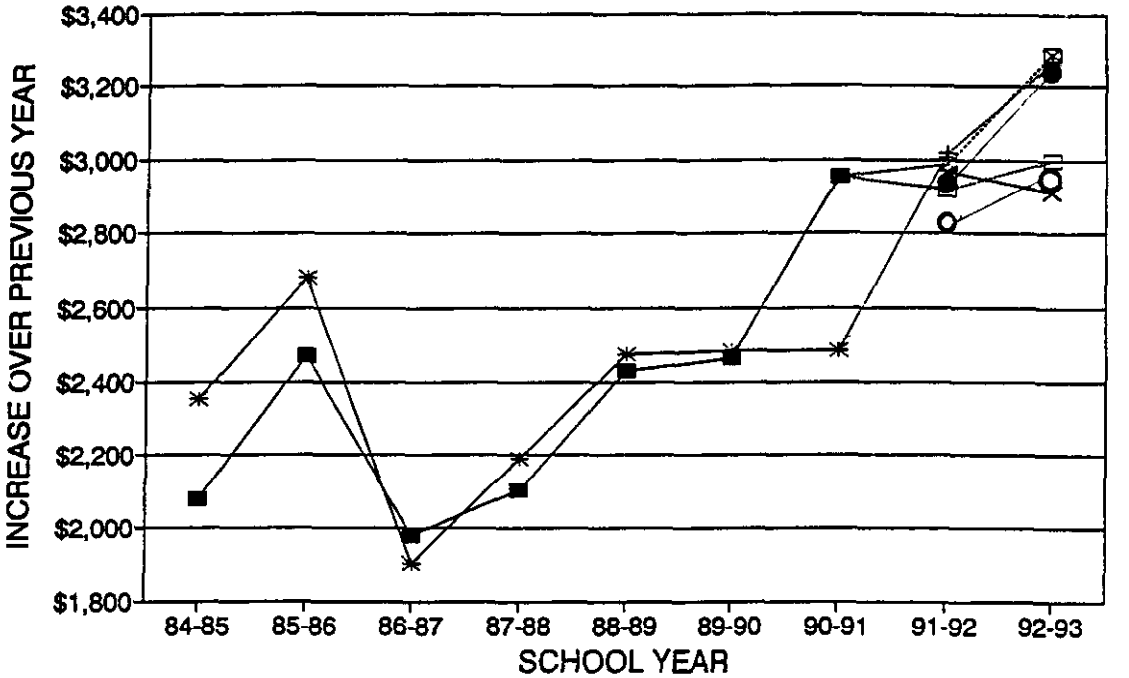
DOLLAR INCREASE IN SALARY PER TEACHER SOUTHERN DOOR AND PENINSULA SCHOOLS



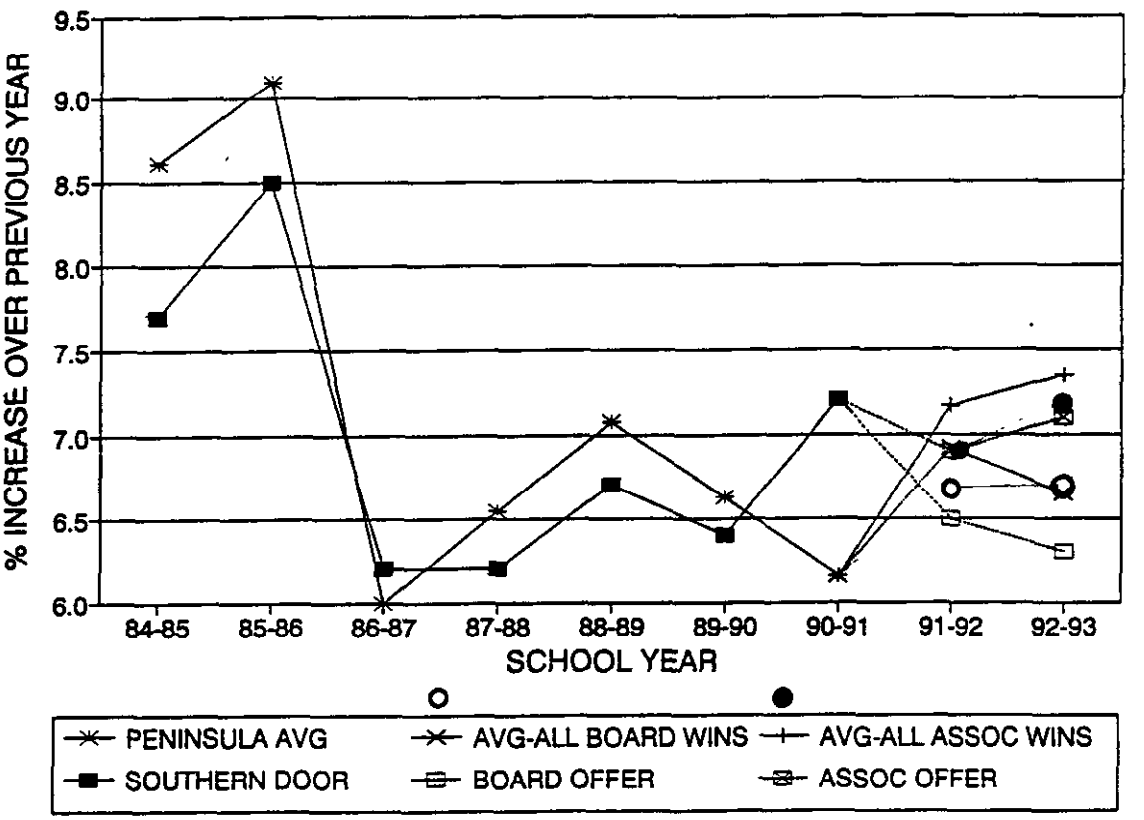
PERCENT INCREASE IN SALARY PER TEACHER SOUTHERN DOOR AND PENINSULA SCHOOLS



DOLLAR INCREASE/TEACHER - TOTAL PACKAGE SOUTHERN DOOR AND PENINSULA SCHOOLS



PERCENT INCREASE/TEACHER--TOTAL PACKAGE SOUTHERN DOOR AND PENINSULA SCHOOLS



offers with the average of the settlement and bargaining data. But I think to create such averages in this case would be very speculative and not very sound because of the large number of final offers that are part of the bargaining data. It is clear that if true settlement averages existed for this comparable group, the result of this arbitration could be quit different. Sadly, decisions like this must be made with imperfect data.

Upon close inspection of these charts, even with the new averages, the Union's point about the Employer's offer being below even all-Board-wins average is very apparent. With only one exception (total package dollar increase per teacher) the Employer's offer is below the average of the settlements and final offers if all the Boards won their cases. On the other hand, the Association's offer is in all cases close to the average of settlements and final offers if all the Associations won their cases.

The Employer's position that its lower salary offer is more reasonable because the District's total package costs are higher than other districts' is somewhat supported by this evidence--particularly the top chart on page 9. This shows that the Board's offer in terms of total package dollar increase per teacher in Southern Door is the same as the other district's Board offers in 1991-92 and somewhat higher in 1992-93. However, when comparing the percentage per teacher total package increases (bottom chart), again the Board's offer looks low.

Since the evidence shows that Southern Door has always settled close to the average of the comparable districts, and the Board's offer is so much lower than the average of the other districts' Boards have settled at or are offering, the Board offer is found to be less reasonable than the Union offer.

The parties discuss in some detail the other criteria, especially overall compensation, the interests and welfare of the public, and cost of living. As mentioned above, I find nothing in the Employer's evidence that would exempt it from an offer at least equal to the other board offers in the other comparable districts. While the economy is not the best in Door County as the Board's evidence shows, three other districts in the comparable group are in Door County too. Moreover, five others are either contiguous to Southern Door or are close enough to have similar economic conditions. Each of these eight comparable districts have either settled, or proposed final offers with increases, higher than the Southern Door Board has offered here. With the lack of showing by the Board of a significant exception in Southern Door District's case, the Employer offer should at least be come close to the other comparable district's Board offers.

CONCLUSION

Based upon the reasons stated above, and taking into consideration all the evidence before me, weighing the issues and statutory criteria, and deciding the reasonableness of each of the parties' proposals on the issue of the salary schedule, I find, overall, the Board's offer to be less reasonable than the Association's offer and make the following:

AWARD

The final offer of the Southern Door Education Association, along with the agreed upon stipulations, shall be incorporated into the 1991-92 and 1992-93 collective bargaining agreements between the parties.

Dated this 8th day of August, 1992 at Stevens Point, Wisconsin.

John W. Friess
Arbitrator

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering an award under Section 111.70(4)(cm) 7 of the Wisconsin Statutes are as follows:

"(7) 'Factors Considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

(a) The lawful authority of the municipal employer.

(b) Stipulations of the parties.

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

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

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

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

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

(h) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 and otherwise between the parties in the public service or in private employment."