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STATE OF WISCONSIN
Before the Arbitrator

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

SUPPLEMENTAL AWARD

In the Matter of Interest Arbitration
Between

DENMARK EDUCATION ASSOCIATION

Case 4

No. 46595

and

INT/ARB-6232

Decision No. 27181-A

THE DENMARK SCHOOL DISTRICT

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the District: William G. Bracken, Director of Employee
Relation Services - Wisconsin Association of School Boards

On Behalf of the Association: Dennis W. Muehl - Executive Director,
Bayland

I. BACKGROUND

On January 2, 1991, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which was to expire June 30, 1991. Thereafter, the Parties met on six occasions in efforts to reach an accord on a new collective bargaining agreement. On November 25, 1991, the Association filed the instant petition requesting that the Commission initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On February 17, 1992, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by February 17, 1992, the Parties submitted to the Investigator their final offers, written positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the Commission, as well as a stipulation on matters agreed upon. Subsequently, the Investigator notified

the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

Based on an order from the Commission and a list provided by them, the Parties selected an Arbitrator. The undersigned was so selected, and his appointment was confirmed by the Commission on March 23, 1992.

A hearing was held on August 18, 1992. Post-hearing briefs and reply briefs were filed. The last of the briefs were received October 2, 1992.

II. ISSUE

The Parties resolved all the issues which arose in their bargaining but one. They were unable to agree on how much the salary should be increased.

The Board proposes that the BA base be increased to \$20,850 in 1991-92 and \$21,700 in 1992-93. This results in average teacher increases as follows:

1991-92	\$1,910/6.1%
1992-93	\$1,859/5.6%

The Association proposes that the BA base be increased to \$20,930 in 1991-92 and \$21,950 in 1992-93. This results in average teacher increases as follows:

1991-92	\$2,032/6.5%
1992-93	\$2,126/6.4%

There is an ancillary issued related to which schools should be considered comparable for purposes of criteria (d).

III. ARGUMENTS OF THE PARTIES

The Parties submitted rather extensive briefs, given the narrow scope of the dispute. In view of this fact, only a summary of the 175 pages of argument that the Parties submitted is practical.

A. The Association

The Association in their exhibits and initially in its brief put forth three groups of intra-industry comparables. The first group is the districts who participate in the Door-Kewaunee Insurance Consortium. They are Algoma, Kewaunee, Southern Door, Denmark, Luxemburg-Casco, Sturgeon Bay, Gibraltar, and Sevastopol. The second group is school districts in Brown County. They are Ashwaubenon, De Pere, Pulaski, BSCEA, Green Bay, West De Pere, Denmark, Howard-Suamico, and Wrightstown. The last, and least important, group of comparables, in their estimation, is the Olympia Athletic Conference consisting of Brillion, Hibert, Valders, Denmark, Mishicot, Wrightstown, Freedom, and Reedsville.

They reject the application of the traditional athletic conference as a comparable group because Denmark is an "edge school." A similar situation occurred in 1983 in Mishicot where Arbitrator Yaffee constructed an expanded set of comparables. They were Algoma, Kewaunee, Souther Door, Sturgeon Bay, Denmark, Brillion, Chilton, Kiel, Valders, Freedom, and Reedsville. Applying his rationale and criteria, they present a "primary" set of comparables for Denmark consisting of De Pere, Luxemburg-Casco, West De Pere, Denmark, Sturgeon Bay, Southern Door, Freedom, Kewaunee, and Valders. They argue, based on case citation, that these are the most appropriate comparables in this case.

The Association also addresses the criteria that they don't feel are particularly relevant. For instance, they contend the Board's use of nonteaching units as comparables under Criteria (e) and (f) is irrelevant. They contend comparisons with other employees, both private and public, should not be made unless there is sufficient data for making comparisons with teachers. Regarding the cost of living criteria, the Association believes that the influence of this can best be measured by the settlement pattern. When considered in this context, the cost of living criteria, submits the Association, favors their offer.

The ability to pay and interest and welfare of the public are also discussed by the Association. The Association first notes that the Board is not pleading an inability to pay. Instead, the issue seems to be, they suggest, an unwillingness to pay. However, they contend that the facts show that the District is not overtaxed nor is there a lack of area income which could mitigate against the Association's offer. Indeed, they submit, based on a detailed financial analysis, that the Board has the resources to fund the Association's offer. In fact, they note the Association's demand is only \$55,126 greater than

the Board's offer. It would result in an increase in taxes for a property owner of a \$70,000 house and a \$200,000 farm of only \$2.02 and \$6.72 respectively for the first year. In the second year the cost, when supplemented by state aids, is \$6.41 for the homeowner and \$21.35 for the farm owner. They also contend that local economic conditions and school cost controls are not negative considerations in this case.

The major thrust of the Association's arguments relate to the settlement pattern in their primary comparable group. They look at the settlements from two perspectives, wage rates adjustments and average wage increases. It is their belief that regardless of the measurement, the Association's offer is supported by the primary comparable settlement pattern. For instance, the average increase in their comparable group at the benchmarks is closer with one minor exception to their offer than is the District's. This is true whether the increases are reviewed on a dollar basis or a percentage basis. For instance, for 1991-92, the average increase of the Associations' offer at all the benchmarks (\$1,388) is much closer to the comparable average increase (\$1,431) than is the average of the Board's offer at all of the benchmarks (\$1,276). The average increase at all the benchmarks under the Association's offer is 4.65%. The comparable average is 4.73%. The corresponding average increase with the Board's offer is 4.27%. The Association's offer is clearly preferred on percentage increases--even though it is again lower than the average--since it is closer to the average than is the Board's offer. They believe the same conclusions can be drawn from the benchmark survey in 1992-93. The Association's offer is closer to the comparable average at every benchmark in dollar terms and percentage measurements.

The Association also looks at the average salary dollar increase among the primary comparables, concluding that it supports their offer. In 1991-92 the average increase per teacher in the comparables was \$2,044 or 6.2%, and the 1992-93 increase was \$2,151 or 6.3%. Thus, they conclude that the Association's offer of \$2,032 and \$2,125 virtually matches the comparable average dollar increase in both 1991-92 and 1992-93. In contrast, the Board offer really misses the mark. They also contend that the Association's offer is also preferred from a total compensation standpoint.

The Association also looks to other comparables including schools in the Insurance Consortium, the Brown County schools, and schools in the athletic conference. In some cases, they also look to statewide averages. To summarize, it is their conclusion that overall, in terms of benchmark analysis

(dollars and percentages) and average increases, their offer more closely tracks any of these comparable groups than does the District's offer.

B. The District

The District addresses the issue of which districts shall be considered comparable. The Board believes that the comparables as proposed by the Union are inferior to the athletic conference schools. They also submit that the athletic conference schools are far superior to the other comparable groups for a number of reasons. First, they note both Parties agree that the athletic conference is comparable and differ only as to the weight to be assigned to it. Second, they view the Association's choice of comparables as self-serving and an attempt to manipulate the data. Third, arbitrators have traditionally held the athletic conference as an appropriate group. More specifically, each of the athletic conference schools have had an arbitration in which arbitrators have ruled that the best comparability pool involves members of the Olympian Athletic Conference. Where the comparable group was expanded, the athletic conference was still the focus, they note. In doing so, arbitrators have rejected insurance co-ops to define the comparables and have rejected the inclusion of larger urban districts, where Denmark has never been used as a comparable. In sum, they do not believe that the Union has sustained its burden of expanding the comparables, nor is there any relevance to statewide averages.

If there is a need to expand the comparables or look at a second group, the District looks toward some of the schools in the Packerland Athletic Conference, one which Denmark was a member in the early 1980s. However, in any event, the Board strongly objects to inclusion of Sturgeon Bay, Sevastopol, and Gilbrator in the mix of comparables. They believe these schools have unique factors that simply render them incomparable to Denmark. Instead, they look to the area comparable schools comprised of Algoma, Chilton, Kewaunee, Kiel, Luxemburg-Casco, and Southern Door which were selected because they were all of similar size covering a similar geographic region, more to the north of Denmark moving into Door and Kewaunee counties and also picked up two schools to the south of Denmark, Chilton, and Kiel. They also selected this secondary pool because it was with one exception the same pool used in Mishicot when its comparables were expanded beyond the Olympian Athletic Conference by Arbitrator Yaffe.

The District addresses the salary issue by analyzing the statutory criteria in what they believe to be the order of importance. They do not think that

teacher-to-teacher comparisons under criteria "D" should be given the most weight since several of the settlements were in a different time frame. As a result, they believe the other criteria take on controlling influence.

The first criteria addressed by the Union is the interest and welfare of the public. The District believes its offer best serves this interest for a variety of reasons. First, there is a serious economic problem in that the District's tax levy increases have skyrocketed in the most recent year by 21.2 percent. In fact, over the last five years, Denmark's tax levy has increased 75 percent, without equalization aid keeping pace. Moreover, the taxpayer's income is only slightly above average and the farming economy, as well as the economy generally, is not well. When this is considered, along with the political pressure to limit school spending, they argue that acceptance of their offer is in the best interest of the public. The fact is that teachers, even under the Board's offer, will be receiving more of an increase (after inflation) than most District taxpayers. Additionally, they submit Denmark teacher salaries are already high enough to attract and retain competent teachers.

There are other reasons, the Board submits, that its offer should be accepted: They included (1) the fact their offer comes along with paid health insurance (92%) with no increase to the employees and (2) the fact there were other stipulations of benefit to the teachers including an improved early retirement plan.

In spite of believing that teacher-to-teacher comparisons are not the most important criteria, the District contends it, too, favors their offer. When the prevailing per-teacher settlement trend is reviewed, particularly when the more current settlements are emphasized, the District contends its offer is more reasonable. When the most current settlements in the primary comparables are reviewed, the average per teacher settlement was \$1,908 (salary only) and \$2,661 (total package) for 1991-92. For 1992-93 it was \$1,909 (salary only) and \$2,806 (total package). Thus, the Board's offer of \$1,910 (salary only) and \$2,968 (total package) is closer to the settlement pattern than the Association's offer which exceeds the 1991-92 average salary increase by +124 in 1991-92 and +217 in 1992-92. They also believe it is important to take into account some concessions that were bargained in several districts which would allow those districts to offer higher salary settlements. Even when all comparable settlements, regardless of their timing, are considered, the Board's offer is closer to the dollar increases while both Parties are equidistant from the percentage increases.

The Board also looks at their expanded comparables, concluding similarly that the Board's offer is closer to the settlement trend. On the other hand, there are no Districts which have settled at the rates demanded by the Union. The Board states the same is true for a combination of the Olympian Athletic Conference plus the area schools. The analysis shows that the Board's offer hits more dollar and percent measurements of reasonableness than does the Union's offer.

The Board also contends that a benchmark and salary level analysis supports their offer. They make the following conclusions in this regard: (1) Denmark's salary schedule benchmarks rank competitively, (2) the average and median in the comparables compare favorably to Denmark, in fact, Denmark exceeds them substantially, and (3) that Denmark ranks high in average salary, receiving the second highest average overall salary increase and highest total package increase among conference schools over the past five years.

The Board also believes it is significant that no other public or private sector employee has received salary increases of the magnitude offered by the Board. In this regard, they look at wage increases locally, statewide, and nationally.

IV. OPINION AND DISCUSSION

A. Primary Comparables

The Parties are as sharply divided, if not more divided, on the issue of comparables than they are on the issue of salary. The salary issue is actually quite narrow. Indeed, it makes the Arbitrator long for the good old days when he wore two hats--mediator and arbitrator--and could mediate without consent of the parties. The Parties are approximately \$55,000 apart on a total package over a two-year period. While this might seem like a lot to any one individual, it is not greatly significant when viewed relative to the District's overall budget or relative to what it means on a pro rata basis to any individual teacher. This amount is significantly less than 1% of the School District's budget (approximately .65) for teacher salaries over two years. Averaged annually over the two years of the contract less than one-third of 1% of the school's budget for salaries separated the Parties.

In terms of what this difference means to the teacher if it fell totally on their backs, it is observed that the total package difference is \$617.00 per

teacher. When looked at in terms of salary only, (money out of their pockets), the difference is even smaller. On a salary-only basis, the difference between the offers is \$389 over two years or \$16.20 per month or about \$4.05 per week before taxes.

This all means that a compromise, even splitting the difference down the middle, would have little impact on the Parties. Splitting the difference would have meant an increase in the District's total annual package cost of one-sixth of 1% per year over their final offer, and it would have meant a sacrifice of \$2 per week--out of their pockets--to an individual teacher.

Perhaps since this is the Parties' first arbitration and comparables had never been established, principle got the better of practicality. In any event, it is necessary to resolve the comparable issue prior to assessing final offers.

At the outset it can be easily seen that neither Parties' primary comparable group is acceptable. The Association, in rejecting the Olympian Athletic Conference and in carving out its primary comparable group, relies on the fact Denmark is geographically an "edge" school and emphasizes the rationale in Arbitrator Yaffe's award in Mishicot. It isn't clear in this record that Mishicot's status as an "edge" school was the jumping-off point for the development of Arbitrator Yaffe's expanded comparable pool. However, what is clear is that while the Association uses Arbitrator Yaffe's decision for its jumping-off point, they jump into an entirely different "pool" than he did. As the District stated in its brief, the Association uses the rationale of Mishicot but not the result. This inconsistency is difficult to accept.

More specifically, one's curiosity is aroused as to how the Association can rely on the Mishicot award which found Mishicot comparable to other Olympian Athletic Conference schools, such as Denmark, Brillion, and Reedsville, among others, but not consider Denmark comparable to any of them, including and especially Mishicot.

Arbitrator Yaffe's award is valuable as precedent, and there is no quarrel with it. However, it is only one of seven schools in the athletic conference that has had awards that reflected on the comparables. These are as important, if not more important, for their results as for their rationale. Generally speaking, if there is a pattern, arbitrators, in these cases, have found the Olympian Athletic Conference schools to be at the core of the comparable groups, but have made additions as they deemed appropriate in any particular case.

When these awards are reviewed, the most noteworthy fact in regard to the Association's primary comparable group is that none of these arbitrations, including Yaffe in Mishicot, has ever found an Olympian Athletic Conference school comparable to De Pere or West De Pere. In short, the Arbitrator can just not understand how the Association can take the result in Mishicot--which merely relies on standard criteria of comparability--and square it with its exclusion of conference schools such as Reedsville, Brillion, and Mishicot itself and the inclusion of West De Pere and De Pere, or for that matter, Green Bay or any other of the districts in Brown County, such as Howard-Suamico or Ashwaubenon or Pulaski.

The Arbitrator also sees the arbitral precedent in the athletic conference as a basis for rejecting the District's lock-step adherence to only the Olympian schools. More often than not this group has been expanded as deemed appropriate. In this case the size of Denmark relative to the many athletic conference schools would be the primary motivation in expanding the comparable group beyond the Olympian schools. In fashioning a special comparable group, there is no compelling reason to exclude, as Arbitrator Yaffe did, Hilbert or Wrightstown. It is also deemed appropriate, based on standard comparability criteria, to add to the athletic conference schools for comparability purposes as did Arbitrator Yaffee, Algoma, Kewaunee, Southern Door, Kiel, and Chilton. The inclusion of Luxemburg-Casco is compelled because of its similar size, orientation to Green Bay, and the fact it is contiguous to Denmark.

So far, these are all schools that both the Parties believe to be comparable to some degree. The Arbitrator intends to consider them all primary comparables. Board exhibits show this to be a fairly homogenous group in terms of cost, equalized value, levies, and resident income. Student count and FTEs are in an acceptable range as well. The only remaining question is whether Sturgeon Bay should be included as a comparable as urged by the Association and as it was by Arbitrator Yaffe. It is the conclusion of the Arbitrator that it should not since the consensus of the decisions on comparability in the Olympian Athletic Conference has been not to include it. Accordingly, the following schools are considered to be the primary comparables for Denmark:

Algoma	Luxemburg-Casco
Brillion	Mishicot
Chilton	Reedsville
Freedom	Southern Door

Hilbert
Kewaunee
Kiel

Valders
Wrightstown

B. The Salary Issue

It is no secret that of the criteria the Arbitrator is required to consider under the statute, the most important is Criteria "D," as exhibited by teacher-to-teacher comparisons, particularly voluntary settlements. It is presumed that parties, when they bargain, take into consideration all the criteria and give them their appropriate and due weight in arriving at a final settlement.

One of the most commonly used methods to compare teacher settlements is the average dollar increase per teacher. This is probably a more important indication than percentage increases because it results in more wage-level uniformity. If equal percentages were emphasized, there would be increasing stratification. The rich would get richer and the poor would get poorer. The following reflects the average dollar increase per teacher in the primary comparables in each year and for the two-year total:

	<u>1991-92</u>	<u>1992=-93</u>	<u>Two-Year Total</u>
Comparables	1,938	1,961	3,899
Board	1,910	1,859	3,769
(Difference to Ave.)	-28	-102	(-130)
Association	2,032	2,126	4,158
(Difference to Ave.)	+94	+165	(+259)

Viewed from this perspective, while both offers are off the mark, the District's offer is closest to the mark. Moreover, the Association's offer would be the highest of all comparables in 1991-92 and the second highest in 1992-93. There is no need demonstrated in the record, such as catch-up, to justify a significantly larger increase than received on average.

Additionally, a benchmark analysis does not dissuade the preference indicated by the average dollar increase data. The rankings from 1991-92 are

changed only slightly. There is some slippage under the Board's offer at the MA Max (from 2 to 3) and schedule max (from 2 to 4). However, this is mitigated by the fact Denmark has been a leader at these benchmarks. There was improvement at the BA+6 (from 5 to 4) and MA Base (from 11 to 9) and no rank change at BA Base and BA Max. Further, a study of the actual dollars at the benchmark relative to the average does not show any significant changes in Denmark's historic relationships.

When the teacher-to-teacher comparison, which favor the Board, are taken into consideration, along with the other statutory criteria which also generally favor the Board, the Arbitrator must conclude that, while lower than it should be, its offer is more reasonable.

AWARD AFFIRMED

The final offer of the Board is selected.

Gil Vernon, Arbitrator

Dated this ___ day of December 1992.

*(Report of Arbitrator indicates Award
should be dated 12-21-92.*

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

DENMARK EDUCATION ASSOCIATION

To Initiate Arbitration
Between Said Petitioner and

Case 4
No. 46595 INT/ARB-6232
Decision No. 27181-A

DENMARK SCHOOL DISTRICT

INTERIM AWARD

Upon the initiative of the Arbitrator, the Parties and the Commission agreed to a procedure whereby an interim award would be issued within the time limits and whereby the rationale and opinion to support that award would follow subsequently. Accordingly, the Arbitrator issues the following Award in the above-captioned matter.

Award

The final offer of the District is selected.



Gil Vernon, Arbitrator

Dated this 27th day of November, 1992.