ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
	)	
Between	)	
	)	
ALGOMA SCHOOL DISTRICT	)	Case 18
	)	No. 46716
And	)	INT/ARB-6278
	)	Decision No. 27239-A
ALGOMA EDUCATION ASSOCIATION	)	
	)	

Impartial Arbitrator

William W. Petrie
217 South Seventh Street, #5
Post Office Box 320
Waterford, Wisconsin 53185

Hearing Held

July 15, 1992
Algoma, Wisconsin

Appearances

For the Employer	WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC. By William Bracken Director, Employee Relations Post Office Box 160 Winneconne, Wisconsin 54986
For the Association	BAYLAND TEACHERS UNITED By Dennis W. Muehl Executive Director 1136 North Military Avenue Green Bay, Wisconsin 54303

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Algoma School District and the Algoma Education Association, with the matter in dispute the terms of a two year renewal labor agreement between the parties covering the 1991-92 and the 1992-93 school years. During their preliminary negotiations the parties settled all items with the exception of the salary schedules to be applicable during each of the two school years covered by the agreement, and the extent of paid health insurance coverage to be provided by the Employer for future early retirees.

The parties exchanged proposals and met on various occasions in their attempts to reach a negotiated settlement, after which the Association on December 18, 1991 filed a petition with the Wisconsin Employment Relations Commission, seeking final and binding interest arbitration of the dispute pursuant to Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on April 21, 1992 issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration; on May 13, 1992 the Commission issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Algoma, Wisconsin on July 15, 1992, at which time all parties received full opportunities to present evidence and argument in support of their respective positions, and they agreed that the record should be kept open for submission of then forthcoming arbitral decisions and awards in the Luxemburg-Casco School District and the Southern Door School District interest proceedings; these decisions were submitted to the Arbitrator and accepted into the record on August 20 and August 13, 1992, respectively. Thereafter, the parties summarized their positions with the submission of comprehensive post-hearing briefs and reply briefs, the last of which was received by the arbitrator on September 21, 1992.

THE FINAL OFFERS OF THE PARTIES

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

(1) The Employer proposes a salary schedule in the renewal agreement similar to the one in the predecessor agreement, with the 1991-92 BA Base at $20,075 and the Schedule Maximum at $37,231, and with the 1992-93 BA Base at $21,085 and the Schedule Maximum at $38,999.

(2) The Association proposes a salary schedule in the renewal agreement similar to the one in the predecessor agreement, with the 1991-92 BA Base at $20,137 and the Schedule Maximum at $37,340, and with the 1992-93 BA Base at $21,211 and the Schedule Maximum at $39,219.

(3) The Employer proposes the addition of a new Section 4.a.1 to Article XI, entitled Early Retirement, which would provide as follows:

(a) Fully paid health insurance for early retirees for their first five years of early retirement which insurance would thereafter be capped at the fifth year level; the retired teacher would thereafter be responsible for any insurance premium increases above the fifth year cap.

(b) Fully paid life and dental insurance contributions to be paid for early retirees, to the same extent that such benefits are made on behalf of all other active teachers.

(c) That teachers providing intention to retire by April 15, 1992 would be governed by the terms of the 1989-91 agreement, with those providing notice after April 15, 1992 governed by the terms of the renewal agreement as described above.

(4) The Association proposes no changes to Article XI of the predecessor agreement.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes governs the disposition of this matter, and it directs the Arbitrator to give weight to the following arbitral criteria:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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 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 sector or in private employment.

POSITION OF THE DISTRICT

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

(1) Preliminarily, that its can be summarized as follows:

(a) That the current economic recession and the uncertainty surrounding the issues of cost controls and levy limits had combined to form a difficult year for collective bargaining; accordingly, that fiscal restraint is the watchword of the state government and that the same fiscal restraint is required at the local level of government.

(b) That the most important issue in the dispute at hand is early retirement, in that this matter involves hundreds of thousands of dollars that will determine the fiscal integrity of the School District, and in light of the fact that the parties are relatively close together on the salary impasse item.

(c) That on the early retirement issue the Board is well aware that it is proposing a change in the status quo, but it is confident that its position is supported by compelling reasons, sound logic and external equity, which support is bringing the district into a more competitive position on this impasse item.

(d) That the Arbitrator in the case at hand should follow the lead of Arbitrator Briggs in his recent decision in Luxemburg-Casco School District, wherein he approved a change in health care from the status quo ante, despite the lack of a quid pro quo. That the overwhelming practice among comparables justifies the Employer proposed health care change; that the Union emphasis upon maintenance of the status quo ignores the realities of explosive health insurance costs, while the final offer of the District would mean that the early retirement benefit in the Algoma School District was still better than the primary comparables by a substantial margin.

(e) That arbitral consideration of the case is made more difficult by the dearth of comparable settlements. That while the parties have agreed upon the districts comprising the primary comparison group, the Kewaunee and the Sturgeon Bay settlements should be ignored since they were reached in a different time frame, and the three schools which settled within the current time frame involved arbitrated settlements which complicate the comparisons; accordingly, that the Arbitrator should turn to others of the statutory criteria for judging which offer is the more appropriate.

(f) That the Board's final offer of a total package increase of 6.9% in the first year and 6.7% in the second year, strikes a reasonable balance between the interests and welfare of the public and the need for a reasonable increase for the teachers; that the Union's final offer which would meet or exceed the 7.0% threshold each year, is simply not justified.

(g) That the parties' economic offers are relatively close, differing by only approximately $100 per teacher per year on

the salary impasse item; accordingly, that the consideration which renders the final offer of the Union unreasonable is its refusal to deal with early retirement.

(2) That the following costing of the two final offers by the Board indicate that the parties are very close to one another:

(a) 1991-92	Salary Only	Total Package
District	$1,853 (6.1%)	$2,746 (6.9%)
Union	$1,950 (6.5%)	$2,863 (7.3%)
1992-93		
District	$1,948 (6.1%)	$2,845 (6.7%)
Union	$2,050 (6.4%)	$2,968 (7.0%)

(b) That costing of the offers by the Union is identical in the area of salaries, and its total package figures are also very close to those developed by the Board; in this connection that the Union costs its offer at $2,873 (7.2%) for 1991-92 and at $3,003 (7.1%) for 1992-93, and it costs the Employer's offer at $2,756 (7.0%) for 1991-92, and at $2,880 (6.8%) for 1992-93.

(c) That the Board's calculations indicate that the parties are only apart by $6,552 in the first year and $6,888 in the second year; that the combined difference totals $20,014 or a total of $357.39 per teacher over the life of the agreement.

(d) That the Board carries the greatest financial risk by absorbing nearly all of the health and dental insurance increases in 1992-93; that fringe benefits are not automatic, but are an integral part of the teachers' total compensation. That the superior early retirement benefits in Algoma have gone unnoticed and no costs have been factored into any settlement, but recent health insurance increases for early retirees have become a focal point in the negotiations to reduce the Board's exposure to exorbitant health costs.

(3) That the parties have agreed upon the eight school districts which comprise the primary comparison group (ie. Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicot, Sevastopol, Southern Door and Sturgeon Bay), but the Kewaunee and the Sturgeon Bay settlements should be disregarded by the Arbitrator.

(a) While there are five schools settled for 1991-92 and four for 1992-93, the settlements in Kewaunee and in Sturgeon Bay are simply not timely. That the bases for disregarding of these settlement include the following: Kewaunee settled in January of 1991, and Sturgeon Bay in November of 1990; Kewaunee's settlement reflects the second year of its two year settlement, while Sturgeon Bay's 1991-94 settlement reflects the first year of a three year contract that was reached 21 months ago; economic and political changes have taken place during the last 21 months, including the State's attempt to limit cost controls or levy limits for fiscal year 1992-93; in the case of Sturgeon Bay, the Board and the Union agreed on a contract before the Governor submitted his 1991-92 budget that called for cost controls; and both Kewaunee and Sturgeon Bay settled prior to the U.S. becoming involved in the War in the Middle East.

(b) That various Wisconsin interest arbitrators have considered the timing of other settlements and changes in circumstances, in their deliberations and in their final offer selection process.

(c) That evidence in the record shows a significant decline in the economy between November 1990 and the present: that the average annual increase in consumer prices has declined from 4.8% to 3.1%; that there have been significant reductions in the rates of increase in the gross national product and in national personal income; that unemployment rates have increased nationally and in Wisconsin; that gross domestic product has suffered a decline; and that while there was concern about the U.S. economy in November of 1990, the actual extent of the economy was not fully felt until November of 1991.

(d) That the Board has met the various criteria utilized by other Wisconsin Arbitrators, in discounting the weight to be placed upon otherwise comparable settlements, due to the passage of time and changed circumstances.

(e) That the relatively high, three year economic settlement in the Sturgeon Bay District was achieved at a time when the Board received substantial language concessions such as the following: an extended probationary period; a definition of the teaching load; restriction and cutback on child-rearing leave; retention of teacher evaluations on record for five years; and a revision of early retirement language to limit the Board's exposure to escalating health insurance costs.

(f) That the Algoma School Board's offer mirrors the Sturgeon Bay settlement by capping health insurance benefits to early retirees, but its early retirement offer is still twice as large as that provided in Sturgeon Bay.

(g) That it would be unfair for the Board to be held to the same relatively high settlement reached in Sturgeon Bay, without the same kinds of concessions that provided the quid pro quo for the high salary settlement; that in examining the tentative agreements referenced in the record, it is apparent that there were no concessions of the magnitude of those agreed upon in Sturgeon Bay.

(h) In any event that the Sturgeon Bay settlement is an anomaly, it is way out of line, and arbitrators should reject very high or very low settlements when they are so far out of line as not to reflect the true settlement pattern.

(i) That statewide evidence of public school teacher salary settlements have no relevance to the current arbitration case, for the same reasons that similar evidence has been given little or no weight by various Wisconsin interest arbitrators in other proceedings.

(4) That the early retirement issue is the most important of the two impasse items, and it must be resolved in the Board's favor.

(a) That the position of the Board on this item is favored by many considerations and criteria.

(i) That while the parties are only approximately $20,000 apart on salaries during the life of the agreement, they are literally hundreds of thousands of dollars apart on early retirement.

(ii) Currently, that the Board pays 90 percent of the single or family health or dental insurance premium for all employees, and teachers on early retirement are eligible to receive up to ten years of health insurance, dental insurance, and life and disability insurance.

(iii) That the Board is proposing a modest change in early retirement, which would provide unreduced employer health care contributions for up to five years, after which the Board's contributions would remain capped at the fifth year level, with the retiree paying any increases.

(iv) That there are many persuasive and compelling reasons to support the Board's insurance proposal: possible teacher contributions in years six through ten would create external equity in that Algoma teachers would be treated similarly to retirees from other districts; that comparisons favor the position of the Board, even though it would still offer the most lucrative early retirement plan; that the impact of the change would be that if an employee elects to retire prior to age sixty, he or she would bear the cost of any premium increases beyond the fifth year level.

(v) That sky rocketing health insurance premiums support the position of the Board to cap its contributions and to have early retirees share in the cost.

(vi) That the Board's proposal is a modest one, and it would still maintain Algoma's position as having the most lucrative early retirement plan. That the proposal would bind the Employer to pay only five years of full health insurance costs to those who elect to retire prior to age 60, in which case he or she will bear the cost of any increases beyond the fifth year rate.

(vii) That status quo considerations should give way to the persuasive basis for the proposed change which has been established by the Board.

(b) That health insurance premiums have skyrocketed, supporting the Board's offer to cap its contribution and to have early retirees share in the cost.

(i) That evidence in the record shows recent escalation of health care costs for the District at five times the rate of inflation.

(ii) That escalating projected health care costs for future retirees, if not properly addressed, could place a severe drain on the financial resources of the District.

(iii) That the record clearly establishes that escalating health insurance costs are a problem facing every organization in both the public and the private sectors, and the Board is addressing the problem by merely asking for early retirees to have a stake in the cost of maintaining the current health insurance program; that the Union has simply failed to address the problem.

(c) That the Board's offer does not reduce an expensive and valuable benefit, but it merely asks early retirees to pay a portion of its costs to maintain the benefit.

(i) While the early retirement provision has been present since 1978-79, only six employees have taken advantage of the option.

(ii) That three teachers have indicated to the Board their plans to retire early at the end of the 1992-93 school year, two at age 55 and one at age 56; that the potential District costs for health and dental insurance could reach as high as $104,000 per early retiree.

(d) That the Board's offer meets the normal tests for arbitral adoption of a change in the status quo, in consideration of the uniform practices among the comparables, the compelling reason for the proposed change and the existence of an appropriate quid pro quo.

(i) That the need for and the reasonableness of a bargaining proposal for change can be demonstrated by what comparables have done in their bargaining; that the actions of such comparables have provided the need and the justification for the proposed change.

(ii) That the early retirement component of the final offer of the Board would ordinarily have been agreed to in the course of bargaining, given the fact that the overwhelming practice of comparables is to provide three years of paid health insurance for early retirees.

(iii) That many Wisconsin interest arbitrators have approved changes requiring active employees to pay a portion of their health insurance premiums, and such shared premiums are becoming the norm.

(iv) That not only has the Board established a need to change the status quo, but its offer is a reasonable one which strikes a balance between the employee's desire to have health insurance and the Board's need to control health care expenditures, and the proposal does not place an unreasonable burden upon employees.

(v) That if the Arbitrator determines that a quid pro quo is necessary to support the offer of the Board, he should consider two primary factors in exchange for the reciprocity requested of the Union in response to staggering health care costs: the relative sizes of the Board proposed salary increases in each of the two years, including $7,000 in additional costs in the second year, in response to the early retirement concession; and, the outstanding array of fringe benefits retained by teachers.

(vi) That evidence in the record indicates the magnitude of the potential problem and the need for the Board proposed change, in that almost all of the current staff are 45 years of age or older.

(vii) That no traditional quid pro quo is needed to support the change, in light of the fact that substantial increases in health insurance premiums are an economic reality which forces a change and which justifies some premium participation by retirees, and in consideration of the prevailing practice in comparable districts.

(e) That the prevailing practice in comparable districts clearly supports the early retirement component of the final offer of the Board.

(i) That economic comparisons clearly indicate that no other comparable district compares with Algoma's early retirement program; even under the Board's offer, that this Algoma benefit would provide a minimum of $35,678 above the number two district.

(ii) Far from taking away a benefit, that the Board is proposing the continuation of the best existing early retirement plan among comparable districts.

(f) That an examination of the opinions of various Wisconsin Interest Arbitrators supports the selection of the final offer of the Board in these proceedings, in that they have strongly supported employers' good faith attempts to contain sky-rocketing health insurance costs and to make employees more aware of such costs by having them pay a portion of the premium.

(g) Contrary to any Union arguments to the contrary, that the Algoma early retirement plan does not "save" money.

(h) In summary, that the Board proposed change in early retirement is favored by arbitral consideration of the following considerations: substantial recent cost increases; the need to educate retirees relative to the expense incidental to their continued health insurance; the need to save money without placing an undue burden upon employees; the need for future cost containment; the prevailing practice of other employers; the lack of an economic hardship upon early retirees; the existence of an appropriate quid pro quo; the fact that Algoma has been and will remain an early retirement leader; and the support for the Board's insurance proposal which is reflected in the decisions of various Wisconsin Interest Arbitrators.

(5) That arbitral selection of the salary component of the final offer of the Board, versus that of the Union, is justified by the record.

(a) That while comparisons are normally one of the most important of the statutory criteria, it is entitled to less weight in these proceedings due to two major considerations: two schools settled in a significantly different time frame; and the remaining three settlements were the result of arbitration awards. Further, that the salary issue is minor when compared to the early retirement impasse item, the parties' salary offers are relatively close, and either salary offer could be supported by arbitral consideration of the teacher comparisons.

(b) That the record shows that the interest and welfare of the public are best recognized in the final offer of the Board, based upon arbitral consideration of the serious economic problems facing the District's taxpayers, the current economic and political environment, and the relative interest and welfare of Algoma taxpayers at large versus those of the members of the Association.

(i) That Kewaunee County, in which the bulk of the Algoma School District is located, has the highest percentage of agricultural jobs in the Bay Lake Region; that the record is replete with evidence of the serious economic problems besetting the agricultural sector of the economy, and the arbitrator must consider the farmer's ability to pay property taxes at a time them their income has significantly declined.

(ii) That the serious economic straits of the farmer have frequently been recognized by Wisconsin interest arbitrators.

(iii) As referenced earlier, that the Arbitrator cannot ignore the economic and political conditions as they presently exist, versus those in existence nineteen months ago, the time frame within which two of the otherwise comparable settlements were reached. There is substantial evidence in the record indicating depressed economic conditions in the United States, depressed economic circumstances within the State of Wisconsin, growing political pressure for cost controls and levy limits within the State, and various other forms of intense political pressure to contain school spending in particular and the Wisconsin tax burden in general.

(c) That the interest and welfare of the public are best served by balancing the interest of the Association in higher teacher salaries and a fair increase, the interest of the public in maintaining quality education by attracting and retaining competent teachers, and the interest of the taxpayers of the District in minimizing the ever-increasing cost of public education. That when these considerations are addressed, the selection of the final offer of the Board is indicated.

(i) That the record substantiates that the Board's final offer would afford teachers a real, after inflation salary increase.

(ii) That the record indicates that current Algoma teacher salaries are already high enough to attract and to retain competent teachers.

(iii) That the evidentiary record tends to indicate that Algoma taxpayers have not received income increases comparable to the teachers of the District.

(iv) That various Wisconsin Interest Arbitrators have considered the above factors in the final offer selection process.

(d) That the Board's final offer exceeds the rate of inflation as measured in recent CPI increases, and is favored by arbitral consideration of the cost of living criterion.

(i) That cost of living has been held in check over the past several years.

(ii) That the Board's final offer on a total package basis exceeds the CPI increase for 1991-92 by 2.5 percent, and is projected to exceed the CPI by another 2.8 percent in 1992-93; that the Union's final offer exceeds the CPI increase for 1991-92 by 2.8 percent, and is projected to exceed the CPI by 3.0 percent for 1992-93.

(iii) That the Union, by proposing total package cost increases above 7.0 percent for each year of the two year agreement, has ignored the economic and political realities facing municipal governments in Wisconsin.

(iv) That the cost of living criterion is entitled to relatively greater weight in these proceedings due to the lack of relevant comparable teacher settlements.

(v) That historical evidence over the past decade shows that the Algoma Teachers have made real gains compared to CPI increases, when measured on either a total package or on a pure salary basis.

(vi) That the Board's final salary offer is favored by cost of living considerations as this criterion is normally applied by Wisconsin Interest Arbitrators.

(e) That total package comparisons are the most meaningful way to measure the reasonableness of any settlement.

(i) That the parties have presented comprehensive data showing the health, dental, disability, life and retirement costs for comparable school districts, and have compared overall compensation in accordance with Section 111.70(4)(cm)(7)(h); that they have thus utilized the only proper method of reviewing the various settlements.

(ii) That what is most disturbing to the Board is the fact that the early retirement costs are not captured anywhere, but are just assumed to be present; accordingly, that the Board has never received credit for providing a benefit that is far and away the best among the comparables.

(iii) That various Wisconsin Interest Arbitrators have recognized the appropriateness of total package comparisons, rather than those based on, for example, salary alone.

(iv) That despite the difficulties inherent in projecting health and dental insurance costs for 1992-93 and the fact that the Employer will be responsible for nearly all of any increases assessed by the insurers, the Union has demanded a larger salary increase in 1992-93 than in 1991-92.

(f) That various other considerations also favor arbitral selection of the final offer of the Board in this matter.

(i) That preservation of expensive fringe benefits at an unknown cost is a strong factor supporting the Board's reasonableness, and it should be considered by the Arbitrator in the final offer selection process.

(ii) That part of the tentative agreements is the Employer's agreement to continue to pay 90 percent of the premium for health and dental insurance, which was agreed upon by the Board with some reluctance.

(iii) That in lieu of making an issue of health insurance for active employees, the Board elected to address the early retirement area.

(iv) That the Board's maintenance of the status quo on the lucrative fringe benefits currently received by teachers is a strong factor favoring its position in these proceedings.

(v) That the Board will contribute 0.2 percent more toward the employee's share of retirement than in previous years, which increases its costs and ensures that employees will receive full retirement.

(vi) That the significance of fringe benefits is apparent from a study of the Wisconsin Department of Industry, Labor and Human Relations, which shows the 1988 average cost of state and local government employee benefits in Wisconsin to average 45 percent of the employees' hourly pay rates.

(g) That other comparability data favors arbitral selection of the final offer of the Employer.

(i) That evidence in the record shows that no other employee group in the area, the state or the country, is obtaining settlements on the magnitude of those demanded by the teachers in Algoma.

(ii) That private and public sector comparisons for other than teachers have frequently been utilized by Wisconsin interest arbitrators.

(iii) That teacher to teacher settlement comparisons are of limited value in the instant case.

(6) That the Luxemburg-Casco award sets a precedent for the reasonableness of the Board's proposal.

(a) That the decision involved a dispute comparable to the Algoma impasse, it even included a provision to require early retirees to pay 10% of health insurance premiums, and it is directly on point.

(b) That the Algoma Board's final offer is superior to that accepted by Arbitrator Briggs, in that it provides a significantly higher salary increase in 1992-93; in point of fact, that Table 2 at page 14 of the decision indicates that the Algoma Board's final offer is the highest benchmark average salary increase of all board final offers.

(c) That the rationale of Arbitrator Briggs in Luxemburg-Casco supports the arguments of the Board in the case at hand in many important respects, in that he did not regard the Kewaunee or Sturgeon Bay settlements as controlling, he did not require a quid pro quo for the proposed change in Luxemburg-Casco's already high early retirement program.

(d) Even under the Board's final offer, that Algoma's early retirement benefits are over three times as high as Luxemburg-Casco's.

(e) That the entire Luxemburg-Casco award should be reviewed and it should be accorded substantial weight in these proceedings, in that it deals with the same issues, the same comparables, the same arguments, the same exhibits and the same advocates.

In summary and conclusion the Board submitted as follows: that the parties are in basic agreement on the total package costs of the final offers, with the Board's offers at 6.9% for 1991-92 and 6.7 for 1992-93, and with the Association's offers at 7.2% for 1991-92 and 7.0% for 1992-93; that the parties agree on the primary comparables to be used for comparing settlements but they remain apart on the weight to be accorded prior settlements which occurred in a different economic environment; that the early retirement issue is the most important one and should dictate the outcome of the case; that the Board's final offer would still retain the number one early retirement ranking among the primary comparables; that the interest and welfare of the public criterion is the most important of the various arbitral criteria in these proceedings in that Algoma taxpayers face serious economic problems, and current economic and political considerations dictate moderation, and that residents of the District have not received income increases comparable to those received by the teachers; that the Board's final offer is favored by arbitral consideration of the cost of living criterion; that the Union has failed to justify crossing the 7% threshold in each of the two years of the renewal agreement, which flies in the face of CPI data and the economic and political uncertainties; that the Board has agreed to absorb almost all of the unknown insurance cost increases in 1992-93; that since the parties are only approximately $100 apart on salary each year, neither offer is significantly more reasonable than the other, and that either is reasonable and competitive; that decisive weight cannot be placed on the salary issue when hundreds of thousands of dollars may be paid to hourly retirees; and that the Union's evidence simply fails to justify its excessive final offer.

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

(1) That it is not only appropriate to consider salary increases received by non-teaching employees, but that the Arbitrator is statutorily required to do so. With the limited amount of timely settlements in the record, that these comparisons should receive more than the normal amount of weight, and that the Kewaunee and Sturgeon Bay settlements should be ignored as they were not developed and bargained for in the same time frame as the Algoma negotiations.

(2) That the most important historical COL information is that teachers have exceeded CPI increases since 1981; all things being equal, that the cost of living criterion favors selection of the final offer of the Board.

(3) That while the Board can afford the final offer of the Association, the question is whether the taxpayers can afford it; that the early retirement benefit is the item of major financial significance.

(4) That all statutory criteria, not merely comparisons, should be considered by the Arbitrator in the final offer selection process; on balance that the local economic conditions, including the unemployment rate, the current recessionary environment, the drastic reduction in milk prices over the term of the agreement, and the small increases received by others dictate moderation in any increase to be received by the teachers.

(5) That while mandatory cost controls are not a reality at the present time, the current environment is far from one supporting free-wheeling spending by school districts. That the State of Wisconsin is looking over the Board's shoulders to make sure that it is spending in a restrained manner, the 7% settlements granted in the past are simply too high, and the cost controls issue is a critical factor in weighing the reasonableness of the two final offers.

(6) That the Board's final offer is neither flawed nor unfair, that the Association has not been forthcoming in assisting the Board in controlling escalating health insurance costs, and that compelling reasons have been advanced for the proposed change in the early retirement plan.

(7) That salaries paid to career teachers in Algoma are not so far out of line as to be unreasonable, which fact has been recognized in past arbitration awards governing the District.

(8) That Union reliance upon the Kewaunee School District case is misplaced in that it did not deal with health insurance at all, and its reliance on a Fort Atkinson School District case is also misplaced since the facts were completely different; in the latter case, that the Union proposed to reduce the Board's insurance exposure by reducing its health insurance exposure from 15 years to 10 years.

(9) That the Board's projections on the costs associated with the early retirement issue are valid, are tailored to Algoma, and they properly acquaint the Arbitrator with the cost implications of the final offers.

(10) That there is no question but that the Board's offer will have an impact on employees' decisions to retire early, but the Union has never presented information on why such teachers had to retire as early as age 55.

(11) Contrary to the assertions of the Union that nobody retires at 55, that the Board has two teachers who will be retiring following the 1992-93 school year at age 55, and a third teacher at age 56; that these decisions justify the concerns of the Board relative to the potential costs associated with the retention of the previous early retirement health insurance coverage.

(12) That the early retirement plan negotiated over ten years ago, does not fit the modern world of health insurance; that it should not survive in the 1990s given the tremendous increases in health insurance costs and the fact that all employers, both public and private sector, are struggling for ways to get a handle on health insurance costs. That the Association has failed to make a convincing case for maintaining the outdated status quo, in light of the new realities of health care.

(13) That the salary settlement pattern supports the District's offer in 1991-92 and in 1992-93. That the Arbitrator should not use comparisons deriving from districts which did not bargain in the same economic and political environments.

(14) That the Arbitrator should not adopt the Union's argument that the salary dispute should outweigh the hugh financial implications involved in the early retirement impasse item; using actual cost history, that the Board will spend $66,365 per early retiree under the Board's offer and $82,552 under the Union's offer over a ten year period; that this difference of $16,187 per early retiree will continue to grow at the same rate that health and dental insurance costs increase, and they will never be lower than they are at the present time.

(15) That it is clear that the difference of $16,187 per early retiree is much more significant that the $20,000 difference in total package costs over two years for an agreement covering 56 teachers.

(16) That the Arbitrator should accept the Board's attempt to contain health insurance costs in its lucrative early retirement plan, in a manner similar to that approved by the Arbitrator in the Luxemburg-Casco case.

POSITION OF THE ASSOCIATION

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

(1) Preliminarily it emphasized that there were two issues before the undersigned, the salary issue and the early retiree insurance issue; in connection with the salary components of the final offers, it emphasized the following considerations:

(a) That the parties are in agreement on the basic salary schedule structure.

(b) That the parties' final salary increase offers differed by only $87.85 or .3% per teacher for 1991-92, and by $90.15 or .3% per teacher for 1992-93.

(c) That the figures utilized by the Board in the costing of the final offers are virtually identical to those utilized by the Association.

(2) In connection with the early retiree insurance components of the final offers, it emphasized the following:

(a) That the Board is proposing a change from the prior agreement, which would reduce the period within which early retirees would continue to receive unreduced health insurance premiums paid by the Employer.

(b) That the Association is proposing no change from what was provided for in the 1989-91 agreement between the parties.

(3) That the statutory criteria contained in Section 111.70 of the Wisconsin Statutes should be applied by the Arbitrator in accordance with the following principles.

(a) That the Board's emphasis upon public and/or private non-teaching units as comparables is inappropriate for various reasons: that there is insufficient data in the record to support such comparisons; that Wisconsin interest arbitrators have historically placed relatively little weight on such comparisons; that teacher comparisons within the primary comparison group of the Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicot, Sevastopol, Southern Door and Sturgeon Bay school districts should be the determining factor in these proceedings.

(b) That the relative importance and the weight of the various statutory criteria in these proceedings should be as follows: comparisons with other teachers - majority of weight; overall compensation - substantial weight; interests and welfare of the public - substantial weight; cost of living - small weight; stipulations of the parties - small weight; comparisons with other public employees - little weight; comparisons with private employees - little weight.

(c) That the pattern established by the settlements in the Sturgeon Bay and Kewaunee settlements, and the arbitral awards in the Gibraltar and the Southern Door impasses clearly support the selection of the final offer of the Association in these proceedings.

(4) That arbitral consideration of the cost of living criterion favors the selection of the final offer of the Association in these proceedings.

(a) That the settlement pattern in comparable communities best reflects the appropriate application of cost of living considerations.

(b) That strict adherence to CPI measurements could easily result in awards supported by neither the settlement pattern nor the labor market conditions which affect an individual occupation.

(c) That historical cost of living considerations emphasized by the Board and dating from 1980, do not completely reflect the parties' overall cost of living experience.

(d) That salary increases based upon experience steps in the salary schedule should not be utilized in comparing salary

history versus cost of living considerations; and that the position of the Association relative to the cost of living criterion is consistent with the decisions of many Wisconsin interest arbitrators.

(5) That the Board has the resources to fund the Association's offer.

(a) That it has not pleaded inability to pay, and there is no evidence of difficulty to pay, budgetary inflexibility, a greatly reduced contingency fund, a cutback in programming, or a reduction in staff.

(b) That the parties are only $6,550 apart on total package costs in the first year, and $13,476 apart in the second year.

(c) That the teachers are entitled to a pay raise commensurate with that given other teachers in the area, and there are simply no extenuating circumstances which mitigate against the selection of the Association's offer.

(6) That local economic conditions are not negative considerations in this case:

(a) That farm income has been competitive with city income ranges recently, and although it was down in 1991, it is projected to improve in 1992.

(b) That Wisconsin farm owners derive a substantial amount of their income from sources other than farming, just as many families in the non-farm sector need two incomes.

(c) That farm income is projected as increasing 136.3% from 1983 to 1992, during which period teachers' incomes have advanced at a lesser rate.

(d) That farm equity grows at a significant rate and constitutes an investment much like stocks and bonds.

(e) That the Board has simply failed to show that local economic conditions are in such disarray as to justify a lower salary increase to Algoma teachers than provided in the four settlements in the Peninsula Schools.

(f) That the Board has been very generous with its administrative staff.

(g) That taxpayers saw significant tax relief in 1991-92 and they enjoyed an increase in state aid.

(7) That School District cost controls are not a factor in the final offer selection process in these proceedings.

(a) That such controls did not materialize and, accordingly, it is business as usual.

(b) That Wisconsin interest arbitrators have rejected similar cost control arguments in other proceedings.

(8) That the final offer of the Board is a flawed one.

(a) That it is attempting to modify the status quo by reducing a benefit that has existed since the 1980-81 agreement, but it has failed to make a persuasive case for its unfair proposal.

(b) That while Algoma's salaries trail most of the comparables, the Board proposes to take away more.

(c) That while the Algoma early retirement benefit is unusual among the comparables, active Algoma teachers pay a greater proportion of their health insurance premiums than do their comparable colleagues.

(d) That the parties have co-existed with the current benefit for over ten years, and the Employer has shown no compelling need for change and has proposed no appropriate quid pro quo in support of the proposed benefit reduction.

(e) That the development of a fringe benefits package occurs through a series of collective bargaining agreements, during which process both parties make certain concessions and an agreement takes form.

(f) That the cost savings to the Board pale in comparison to the costs assumed by those teachers eligible for early retirement.

(g) That Algoma teachers at the lane maximums are among the lowest paid in the comparability group based upon their age, educational attainment and service for the District.

(h) That the Board's cost assumptions are based upon neither actual considerations nor real probabilities.

(i) That the Board has simply failed to meet the normal Wisconsin interest arbitration tests to justify a significant change in the status quo.

(9) That the salary settlement pattern among comparables supports the selection of the Association's final offer for 1991-92 and 1992-93, whether measured on the basis of comparable wage rate adjustments or on the basis of average wage increases.

(a) That schedule comparisons favor the Association's offer when measured by the settlements at the benchmarks; that four of eight comparable schools are settled for 1991-92 and these settlements favor selection of the Association's final offer when considered on either a dollar or a percentage increase basis.

(b) That arbitral consideration of evidence showing the settlement average in 368 of 432 schools reported to have settled in 1991-92, supports the selection of the final offer of the Association in these proceedings.

(c) That with 167 of 432 schools reporting relative to the 1992-93 school year, the statewide benchmark average increase is $1469, versus the Association's offer of $1471 and the Board's offer of $1383; that the Association's offer is virtually identical to the statewide average, therefore, while the Board's offer would substantially trail the statewide figures.

(d) That consideration of the average dollar salary increases among the primary comparables supports the selection of the final offer of the Association; in this connection that the Board's final offer is between $175 and $200 per teacher below the average settlement over the contract duration, depending upon the outcome of pending negotiations.

(10) That the Association's final offer is also preferred when considered from a total compensation standpoint.

(a) Although the Association does not favor total compensation comparisons in disputes such as the one at hand, the record does not support the selection of the final offer of the Board on the basis of total compensation.

(b) That the Association's final offer is much closer to the average package increases for 1991-92 and 1992-93 within the primary comparison group, regardless of whether the comparison is based upon the Association's or the Board's costing figures.

(c) From a total package standpoint that the Association's offer more closely follows the settlement pattern, while the Board's offer would push Algoma further behind their colleagues in the Door/Kewaunee area.

(11) That various other factors support the selection of the final offer of the Association.

(a) Upon closer review of the exhibits presented by the Board and the Association, it is clear that the Wisconsin economy is not on the same down trend as the national economy.

(b) That while the Board will argue that Kewaunee County is suffering from high unemployment, many Kewaunee residents work in surrounding counties and bring their incomes back to the County.

(c) That the District has experienced a significant drop in the levy rate, which it promptly shared with area residents in 1991-92.

(d) That the District awarded its administrators 7% increases in 1990 and 10% increases in 1991-92, based upon a comparability group similar to that urged by the Association in the dispute at hand; by way of contrast, that the Board offers the teachers less and attempts to reduce a significant benefit at the same time.

(e) That there is nothing in the record to support the Board's offer over that of the Association, particularly in light of the district's recent drop in per pupil cost and recent taxpayer property tax relief.

(f) That the Gibraltar, Kewaunee, Southern Door and Sturgeon Bay settlements support the Association's offer and, in the absence of mitigating circumstances to the contrary, set the pattern for deciding this case.

By way of summary and conclusion, the Association urges as follows: that while the early retirement issue is a very important one, it cannot be separated from the salary dispute' that the Board offers nothing in return for its proposed erosion of the early retirement benefit, in that its salary offer falls far short of the average in comparable schools; that the Board proposes the smallest salary increase among the settled comparables and also expects a benefit erosion; that the Association is not reaching and it is not requesting catch-up, rather that its offer represents the framework of the voluntary settlement that might have been reached had one been possible; and that the selection of its offer is also indicated by arbitral consideration of the decisions of other Wisconsin interest arbitrators when faced with similar disputes.

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

(1) That the Board first manipulated the settlement date to suit its needs, and it then ignored certain conclusions because of the unfavorable results.

(a) That the Board submitted that the parties economic offers were relatively close, it concluded that either offer was reasonable, and it then dropped the salary issue and devoted its entire attention to the Association's refusal to deal with the Board proposed erosion of the early retirement language.

(b) That the Board concluded early in its presentation that the settlement pattern in the "peninsula schools" comparability group did not support its offer, and it initially argued that the earlier settlements in Sturgeon Bay and Kewaunee should be discounted because of the "timing" of the settlements; that the timing arguments, however, have previously been rejected by Arbitrators McAlpin and Friess in Gibraltar and the Southern Door arbitrations.

(c) Shortly before the record was closed, that a decision favorable to the Board was issued by Arbitrator Briggs in Luxemburg-Casco.

(d) On the bases of the above, that the Arbitrator has four settlements that favor the Association's offer and one that supports the final offer of the Board.

(e) In writing its initial brief the Association anticipated the issuance of the Luxemburg-Casco award, it analyzed the data on the basis of both possible outcomes, and the final offer of the Association in Algoma is closer to the settlement pattern regardless of the Luxemburg-Casco outcome.

(2) That the Board overlooks important considerations when it juxtaposes the Luxemburg-Casco Award and the instant case.

(a) That Arbitrators McAlpin and Friess concluded that Sturgeon Bay was a reliable comparable, and Arbitrator Briggs concluded to the contrary in Luxemburg-Casco; that it is unfortunate that Arbitrator Briggs did not have the benefit of the two earlier decisions on the issue of comparability.

(b) That Arbitrators McAlpin and Friess reached their decisions independently of one another, as neither decision was introduced as evidence in the other proceeding.

(c) That Arbitrator Briggs did not favor the Association's final offer in Luxemburg-Casco, because he believed that it was higher than what he believed the pattern would ultimately be; that the evidence shows that he was wrong in this respect.

(d) That the salary offer of the Association is more reasonable than that of the Board, regardless of the outcome of the Luxemburg-Casco School District arbitration.

(3) That the Board's arguments relative to the early retirement issue disregard the rest of the story.

(a) That the Board references the retirement dispute as the most important issue in the case, but its projection of hundreds of thousands of dollars in dispute is simply gross exaggeration.

(b) That while the Board repeatedly states that employees/retirees should pay a portion of premiums, it overlooks the fact that they already pay a significant portion of health insurance and dental insurance premiums.

(c) That in Luxemburg-Casco, early retirees received fully paid health and dental insurance while active employees had a 10% premium contribution, which Arbitrator Briggs felt was unfair; that a similar inequity does not exist in the case at hand, where both retirees and active employees contribute equally to the insurance program.

(d) Contrary to the Board's exaggeration, that retirees do not receive LTD and life insurance benefits, which are reserved only to those who receive wages, as the benefits are determined by income.

(e) That the change in early retirement language is a major benefit reduction, but only six teachers have utilized the benefit and only three more have expressed an interest in early retirement.

(f) That the Board's expressed interest in bringing the Algoma early retirement program closer to that offered by comparables, is inconsistent with its reluctance to bring Algoma teacher salaries to the level of the comparables.

(g) That several arbitrators have opined that catch-up is not appropriate under certain circumstances because someone has to be last. That the same rationale should apply to those who lead, and Algoma teachers have always enjoyed the long-standing early retirement language in spite of their lower salary position; that the Board offer does not maintain the prior balance, but rather would take away from both early retirement and from salaries in its final offer.

(4) That the Board offer peels away a piece of the contract and causes a fundamental change in the relationship between the parties.

(a) That the Board here seeks something it would never have achieved at the bargaining table.

(b) That contract provisions should be preserved short of a buy-back or other equitable quid pro quo.

(c) That the Board has failed to meet its burden of proof to support the change in early retirement health insurance.

(d) That escalating insurance premiums and the national debate on this item do not support its early retirement proposal.

(e) That the Association has not refused to face spiraling health care costs; indeed, that comparable schools, with the exception of Mishicot, have joined in an association to provide insurance benefits through a single insurance carrier on a large experience rated basis, thus allowing a small employer, such as Algoma, to participate on a more cost effective basis. That the Association is willing to do its share on the issue, but is not willing to shift costs to its retirees who already pay ten percent of the premium for their insurance coverage.

(f) That the position of the Association relative to the need for a bargaining quid pro quo, is supported in many Wisconsin interest arbitration decisions.

(g) That the Luxemburg-Casco decision is distinguishable in that the Arbitrator was dealing with a situation where early retirees enjoyed a benefit which exceeded that for active employees.

FINDINGS AND CONCLUSIONS

The two impasse items are the final salary offers of the two parties and the Employer proposed change in the maximum time period within which the Employer will pay unreduced health insurance premiums for early retirees. Prior to reaching a decision and selecting the more appropriate of the two final offers, the Arbitrator will offer some observations about the interest arbitration process, will briefly discuss the application of the statutory arbitral criteria, will separately discuss the Employer proposed change in early retiree health insurance premium payments and the final wage offers of the parties, and will then address the remaining statutory criteria.

The Nature of the Interest Arbitration Process

At this point the undersigned will reemphasize a point that he has made in many prior interest proceedings, that the interest arbitrator operates as an extension of the negotiations process and that he or she attempts to place the parties into the same position they would have reached in negotiations, but for their inability to reach a complete settlement at the bargaining table. Arbitrators will examine the parties' past agreements, their past practices and their negotiations history, in their attempts to determine which of the offers is the more appropriate for selection. These considerations are discussed as follows in the widely cited book by Elkouri and Elkouri:

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the Arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
>
> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of

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

The Application of the Statutory Arbitral Criteria

The Arbitrator will also reiterate at this point that while the Legislature has not seen fit to prioritize the various criteria which are described in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is widely recognized in Wisconsin and elsewhere that the comparison criterion is normally the most important of the various statutory interest arbitration criteria and, unless otherwise indicated in the bargaining history of the parties, the so-called intraindustry comparisons are the most persuasive of the possible comparisons. Within a public sector context, of course, the intraindustry comparison group would consist of other comparable school districts, and the parties are in full agreement in this case that the primary intraindustry comparison group consists of the Algoma, Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicott, Sevastopol, Southern Door and Sturgeon Bay School Districts.

Apart from comparisons, the remaining arbitral criterion will vary in their relative importance, depending upon such factors as the bargaining history and the surrounding circumstances. Perhaps the best example of the varying weight which may be placed upon a single criterion is cost of living considerations; during periods of high inflation, for example, this factor assumes far greater importance, while during periods of price stability it declines significantly in weight.

The Employer Proposed Change in the Area of Early Retiree Health Insurance Premium Payments

The Employer proposed reduction from ten to five years in the maximum period during which the Employer would continue to pay health insurance premiums for early retirees on the same basis as for active teachers, raises issues that are increasingly being confronted by Wisconsin Interest Arbitrators. To what extent should such arbitrators adopt employer final offers containing some form of increased cost sharing between employers and employees? Certain underlying principles governing the handling of proposed changes in the status quo in the public sector have previously been addressed as follows by the undersigned:

"Certain important considerations must be kept in mind in addressing status quo questions in the interest arbitration process. It must be recognized that there is a significant distinction between private sector interest impasses, where the parties have the future right to strike or to lock out in support of their bargaining goals, versus public sector impasses, where the parties lack the right to undertake strikes or lockouts. A complete refusal to allow innovations or to consider changes in the status quo in the latter context, would operate to prevent unions from gaining the progressive and innovative changes achieved by their private sector counterparts in across the table

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

bargaining, and such a refusal would also operate to prevent public sector employers from gaining important changes through the collective bargaining process, which changes have already been enjoyed by certain private and/or public sector counterparts.

The distinction between the public and the private sector interest arbitration processes, and the need for greater arbitral flexibility in consideration of proposed innovation or changes in the status quo in public sector disputes, where the parties lack the ability to strike or to lock out, has been addressed as follows by Arbitrator Howard S. Block:

> 'One of the most compelling reasons which makes it necessary for neutrals in public sector disputes to strike out on their own is the dearth of public bargaining history. The main citadels of unionism in private industry have a continuity of bargaining history going back to the 1930s. Public sector collective bargaining, on the other hand, is still a fledgling growth. In many instances its existence is the result of an unspectacular transition of unaffiliated career organizations responding to competition from AFL-CIO affiliates. As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice -- a guideline expressed with exceptional clarity by one arbitrator as follows:
>
> > 'The role of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity -- the reliance on a set of tested and established guidelines.
> >
> > 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion of their traditional remedies.
> >
> > 'The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to <u>either party</u> that which they could not have secured at the bargaining table.'
>
> 'Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting precollective negotiation practice which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt.'

Although Arbitrator Block was principally addressing employer resistance to union requested change or innovation in a context in which the union lacked the ability to strike, the principle has equal application to the situation where an employer is proposing innovation or change, which is being resisted by a union. If public neutrals were

precluded from recognizing change or innovation, the matter could not be rectified by the parties in their next negotiations, at which time they had the power to undertake economic action in support of their demands! A union dedicated to avoidance of change in a context where all impasses moved to binding interest arbitration, rather than being open to strikes and lockouts, could forever preclude an employer from achieving change, even where it was desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere." [2]

Wisconsin public sector statutory interest arbitrators have recognized the occasional need for innovation or for change in the status quo ante, provided that the proponent of such change or innovation has demonstrated that a legitimate problem exists which requires attention and that the disputed proposal reasonably addresses the problem. The Wisconsin interest arbitrator, operating as an extension of the contract negotiations process, normally attempts to place the parties into the same position they would have reached over the bargaining table had they been able to agree, and an appropriate quid pro quo may be required to justify the proposed elimination of or substantial change in an established, existing and defined policy or benefit; the rationale for the so-called quid pro quo requirement is that neither party should gain either the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced a bargaining quid pro quo equivalent to that which normally would have evolved from the give and take of conventional bargaining. It would be very difficult, for example, for either party to justify the elimination or the substantial modification of a recently negotiated policy or benefit, unless a very persuasive case had been made. In an earlier school district interest arbitration, for example, the undersigned addressed as follows an employer proposed elimination of a compacted salary schedule for teachers that had been agreed upon in the immediately preceding negotiations:

> "What then of the arguments of the Employer that its agreement to a compacted salary schedule in negotiations for the 1983-84 agreement does not represent the status quo, that the agreement was reached out of fatigue rather than conviction, and that the negotiations history showed a lack of understanding of the full implications of the compacted salary schedule at the time of the agreement? What of the countervailing arguments of the Association that the compacted schedule does represent the status quo, that it was agreed upon only after full discussion and explanation between the parties, and that the new salary schedule was the product of considerable give and take in the negotiations process?
>
> After a full examination of the record in these proceedings, the Arbitrator has reached the preliminary conclusion that the compacted salary schedule which was voluntarily agreed upon by the parties in the negotiations leading to the 1983-84 renewal agreement, was the product of full discussion between the parties, did not evolve from any apparent misconceptions or mistakes, and apparently represented compromise by the parties in the normal give and take of bargaining. These conclusions are rather clearly indicated by the comprehensive minutes of the parties' eighteen negotiations meetings that preceded the 1983-84 agreement. In reviewing these minutes the Arbitrator particularly noted the fact that the Association's salary schedule proposal was first presented to the Employer on April 20, 1983 and, after many intervening meetings, was adopted on October 3, 1983; the minutes clearly indicate certain changes of position by the parties, predicated upon acceptance or non-acceptance of the proposed salary schedule.

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[2] Mukwonago School District, WERC Case 39, No. 39879, INT/ARB-4705, December 15, 1988, pp. 24-26. (Included quotation from Block, Howard S., Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, University of California, Los Angeles, California, 1972, pp. 164-165; and from Des Moines Transit, 38 LA 666.)

> Having preliminarily concluded that the compacted salary schedule properly represents the previously negotiated status quo, has the Employer presented the requisite persuasive case for arbitral revision of the schedule? The District urged comparisons dealing with percentage relationships at various points in its proposed salary schedule, are simply unpersuasive in the dispute at hand, as are the relative rankings within the suggested comparison group. Had the ranking and the percentage figures been presented at a point in time when the Employer was protesting a suggested movement into a compacted salary schedule, the data would have been material and highly relevant to the outcome. In the situation at hand, however, the Arbitrator is called upon to deal with a situation where the parties comprehensively modified the salary schedule during a series of eighteen negotiations meetings just a single year prior to the effective date of the renewal negotiations leading to the matter in dispute in these proceedings. It simply would take a far more persuasive case than the arguments advanced by the District, to justify arbitral abandonment of the negotiated settlement of the parties from the prior year." [3]

What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70 (4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. While comparisons should not alone justify movement away from the negotiated status quo, if it has been established that the requisite significant and unanticipated problem exists, arbitral examination of comparables can go a long way toward establishing the reasonableness of a proposal for change.

The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situation represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes.

Board Exhibits #88 through #99 contain certain costing and comparison data relating to the payment of health insurance costs for early retirees. Even though there are various assumptions built into the Employer's early retirement health insurance cost computations, the undersigned has preliminarily concluded that the unanticipated and meteoric rise in health insurance costs since the late 1970s constitutes a significant and a reasonably unanticipated present and future problem for both parties. The Board offered comparisons between the Algoma early retirement program and those of comparable schools rather clearly indicate the reasonableness of its proposal, in that the implementation of the early retirement component of its final offer would still leave it with the best early retiree health insurance premium payment benefit of all of the schools within the principal comparison group.

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[3] Joint School District Number 1, Towns of Wheatland, Brighton, Randall and Salem, Wisconsin, WERC Case 5, No. 33613, MED/ARB-2869, July 8, 1985, pp. 11-12.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the matter of health care cost increases for early retirees is an unanticipated and significant mutual problem, that the escalation of such costs has arisen through external circumstances beyond the control of either party, that a reasonable proposal addressing such a mutual problem is not the type of proposal that should require a significant bargaining quid pro quo, and that the reasonableness of the Employer's proposal in the case at hand is persuasively indicated by an examination of the primary intraindustry comparables.

The Salary Components of the Final Offers of the Parties

In comparing the proposed and the recent salary levels and salary increases for teachers it is apparent to the undersigned that the Algoma School District has not been a salary leader as compared to the primary comparables.

In combining the data contained in Revised Board Exhibits #73 and #74 with that contained in Association Exhibit #8, utilizing the late arriving Southern Door and Luxemburg-Casco settlements, and using only those benchmarks common to both parties' exhibits, for example, the following salary benchmark comparisons and averages are material, relevant and quite meaningful:

Districts (91-92)	BA Base	BA Max	MA Base	MA Max	Schedule Max
Gibraltar	$21,017	$36,073	$22,593	$37,649	$38,910
Kewaunee	20,993	34,429	22,882	37,527	38,560
Lux.-Casco	20,470	33,776	21,670	35,756	36,086
So.Door	21,100	33,760	22,750	37,520	39,125
Sturg.Bay	20,800	35,568	23,504	39,104	39,904
Averages	$20,876	$34,721	$22,680	$37,511	$38,517
Algoma (B)	20,075	33,525	21,275	36,593	37,331
Algoma (A)	20,137	33,629	21,337	36,700	37,340

Districts (92-93)	BA Base	BA Max	MA Base	MA Max	Schedule Max
Gibraltar	$22,123	$37,971	$23,782	$39,630	$40,958
Lux.-Casco	21,380	35,277	22,580	37,257	37,587
So.Door	22,270	35,632	23,920	39,509	41,172
Sturg.Bay	21,900	37,449	24,747	41,172	41,972
Averages	$21,918	$36,582	$23,757	$39,392	$40,422
Algoma (B)	21,085	35,212	22,285	38,330	38,999
Algoma (A)	21,211	35,422	22,411	38,547	39,219

While the Employer urges that the Sturgeon Bay and the Kewaunee settlements should be disregarded by the Arbitrator because they were reached in a different time frame when economic circumstances were significantly different, even if the Arbitrator's attention were directed exclusively toward the most recent Luxemburg-Casco and Southern Door settlements, it must be

noted that they also exceed the final offers of both of the parties at most of the benchmarks.

Board Exhibits #15, #16, #23 and #24 also show that the 1989-90 and 1990-91 average salary settlement dollars per returning teacher and the average total compensation settlement dollars per returning teacher in Algoma, were below the averages of the comparable schools, even though the average percentage increases in Algoma for 1989-90 were competitive. Accordingly, it is clear from the record that the parties have emphasized certain other bargaining considerations and have voluntarily positioned themselves at the approximate middle of the comparison group.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that consideration of the intraindustry comparison criterion favors the selection of the final salary component of the final offer of the Association, despite the fact that both salary offers are quite close to one another, and both are reasonably consistent with the parties' bargaining history.

Although the Employer emphasized various of the other types of salary comparisons which are referenced in Section 111.70(4)(cm)(7) in support of its final salary offer, such comparisons are simply not as important as the intraindustry comparisons discussed above, and the evidentiary record relating to other types of comparisons is not nearly as comprehensive as would be necessary to command significant weight in the final offer selection process.

The Cost of Living Criterion

In this connection the Employer submitted that recent movement in the consumer price indexes has been significantly below the increases proposed by both parties, and it urged that since cost of living increases were closer to the increases proposed by the Employer than those proposed by the Union, the cost of living criterion favored the selection of its final offer.

Cost of living considerations are difficult to apply and to weigh in relative importance because of various considerations:

(1) The weight placed upon the cost of living criterion varies with the state of the national and the Wisconsin economies. During periods of rapid movement in prices, the criterion may well be the most important of the various criteria, but during periods of relative price stability the factor declines significantly in relative importance.

(2) Movement in the CPI generally overstates the actual impact of rising or falling costs upon individual groups of employees due to the makeup of the market basket of goods and services utilized to measure price changes. Housing and health care costs, for example, significantly impact upon CPI changes, but individuals who have not been buying or selling homes and/or those shielded by employer paid insurance from the full impact of increases in health care costs, do not feel the full impact of such cost increases.

Due to the significant recent stability in prices, the cost of living criterion is entitled to relatively little weight in the final offer selection process in these proceedings. An examination of the settlement costs within the primary intraindustry comparison group clearly indicates that negotiators and arbitrators have not placed determinative weight upon cost of living considerations in the negotiated settlements or in the arbitral final offer selection processes. Indeed, the historical comparisons of CPI and salary movement within the bargaining unit, indicate that the parties themselves have not placed determinative weight upon cost of living considerations in their past salary negotiations.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that while cost of living considerations may favor the selection of the final salary offer of the Employer, they are entitled to relatively little weight in these proceedings.

The Interest and Welfare of the Public Criterion

Both parties emphasized the interest and welfare of the public criterion in connection with such considerations as taxpayer effort, local economic conditions, ability to pay, and the need for fair teacher salaries within a quality educational system.

As the undersigned has emphasized in prior interest arbitration proceedings, adverse economic circumstances are normally given determinative weight in the final offer selection process only under two sets of circumstances: first, where there is an absolute inability to pay on the part of an employer; and, second, where the selection of a final offer would entail a significantly disproportional or unreasonable effort on the part of an employer. While the current recession demands fiscal restraint on the part of virtually all elements of government, the situation at hand involves no claim of inability to pay, and the record does not clearly and persuasively indicate that the Board must be shielded from entering into an otherwise justified settlement by economic circumstances peculiar to the Algoma School District. Without unnecessary additional elaboration, the Arbitrator will merely indicate that he has preliminarily concluded that the interest and welfare of the public criterion cannot be assigned determinative weight in the final offer selection process in these proceedings.

Summary of Preliminary Conclusions

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

(1) A Wisconsin statutory interest arbitrator operates as an extension of the parties' contract negotiations, and he or she will normally attempt to place the parties into the same position they would have occupied, but for their inability to reach full agreement over the bargaining table; in so operating, the arbitrator may properly examine and consider such factors as the parties' past agreements, their past practices, and their negotiations history.

(2) While the Wisconsin Legislature has not seen fit to prioritize the various statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it has been widely recognized in Wisconsin that the comparison criteria are normally the most important, and that the most persuasive of these are the so-called intraindustry comparisons which have been previously used by the parties in their past negotiations. The parties are in agreement that the primary intraindustry comparison group in the case at hand consists of the Algoma, Denmark, Gibraltar, Kewaunee, Luxemburg-Casco, Mishicott, Sevastopol, Southern Door and Sturgeon Bay School Districts.

(3) The proponent of change in the status quo ante normally is required to demonstrate that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem; an appropriate quid pro quo may also be required to justify the proposed elimination of or substantial change in an established, existing and defined policy or benefit.

(4) Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section

111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties.

(5) The unanticipated and meteoric rise in health insurance costs since the late 1970s, when the retiree health insurance payment provision was negotiated, constitutes a significant and unanticipated present and future problem for both parties, the Board offered comparisons between the Algoma early retirement program and those of comparable schools rather clearly indicate the reasonableness of its proposal, and the Employer's proposal is not the type that must be supported by a specific bargaining quid pro quo.

(6) Arbitral consideration of the intraindustry comparison criterion, even in conjunction with other comparisons and with the parties' bargaining history, favors the selection of the final salary offer of the Association.

(7) Arbitral consideration of the cost of living criterion somewhat favors the selection of the final salary offer of the Employer, but this criterion is entitled to little weight in the final offer selection process in these proceedings.

(8) Arbitral consideration of the interest and welfare of the public criterion indicates that it should not be accorded determinative weight in the final offer selection process in these proceedings.

The Final Offer Selection Process

As is apparent from the above, the Impartial Arbitrator has preliminarily concluded that the record favors the salary offer of the Association rather than that of the District, principally on the basis of comparisons with other school districts comprising the primary intraindustry comparison group. I have also concluded that the Employer has established the requisite persuasive basis for its proposed change in the area of paid health insurance premiums for early retirees and that the record favors this element in the Employer's final offer over the Association proposed continuation of the status quo ante.

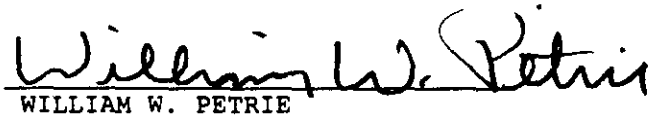
Since the parties are relatively close to one another in their final salary offers and since the Employer's early retirement insurance premium payment proposal is clearly the more important of the two impasse items, the selection of the final offer of the Employer is rather clearly indicated by the record, and it will be ordered adopted and implemented by the parties.

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 District 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

November 10, 1992