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STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Stipulation of

WAUKESHA SCHOOL DISTRICT

Case 80  
No. 46925/INT/ARB-6358  
Decision No. 27263-A

and

EDUCATION ASSOCIATION OF WAUKESHA

To Initiate Arbitration  
Between Said Parties

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**APPEARANCES:**

**On Behalf of the District:** Gary M. Ruesch and Jane M. Knasinski,  
Attorneys - Davis & Kuelthau

**On Behalf of the Association:** David C. Pfisterer, Executive Director -  
TriWauk UniServ Council

**I. BACKGROUND**

On March 18, 1991, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on August 1, 1991. Thereafter the Parties met on nine occasions in efforts to reach an accord on a new collective bargaining agreement. On January 28, 1992, the District and the Association filed a stipulation requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On April 7, 1992, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by May 11, 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 the Investigator advised the Commission that the Parties remain at impasse.

Next the Commission ordered the Parties to select an Arbitrator. The undersigned was selected and subsequently, on June 1, 1992, his appointment was ordered by the Commission. An Arbitration hearing was scheduled for September 1, 1992. Because a timely petition was filed by at least five citizens of the jurisdiction pursuant to Wis. Stats. 111.70(4)(cm)6.b., a public hearing preceded the Arbitration hearing. The purpose of the hearing, according to the applicable statute, was to have the Parties explain their final offers and to allow the opportunity for the public to comment on those offers.

Post-hearing briefs and reply briefs were filed. The last brief was received October 30, 1992.

## **II. ISSUE**

The only issue not resolved by the Parties in bargaining was the matter of the salary schedule for the years 1991-92 and 1992-93.

Both Parties, paradoxically but not surprisingly, claim that their respective salary schedules maintain the status quo structure while their opponent's offer introduces a change in the status quo. The Association maintains that the structure of the salary schedules proposed by them is identical in all respects to the 1990-91 schedule. They also maintain the District disturbed the status quo by eliminating the first experience step (which happens to be called Step 3) and adding a new step (Step 18) at the top or maximum. The District claims it is maintaining the status quo by doing so since there has been a pattern of making such a change in past bargains. Thus, the District contends, that it is the Association which changes the status quo by halting this pattern and by maintaining a Step 3 and by not adding a Step 18.

In any event, the schedules of the Parties maintain the same number of education lanes and the same indexing between the lanes as was in the previous contracts, except that the Board's new maximum step, or Step 18, adds .02 to the previous step's index. The following benchmarks would result under the final offers:

	1991-92		1992-93	
	<u>Board</u>	<u>Association</u>	<u>Board</u>	<u>Association</u>
BA Min.	22,820	22,335	23,278	23,309
BA Max.	35,267	35,735	35,975	37,294
MA Min.	25,931	25,525	26,453	26,639
MA Max.	41,905	42,542	43,170	44,398
Schedule				
Max.	44,187	44,882	45,498	46,840

In terms of average teacher increases, there is a minor dispute on the costing of the Board's offer for 1992-93. This dispute arises from the fact that the index numbers in the Board's final offer at Step 16 for the BA and BA+15 lanes do not mathematically correspond to the dollar amounts listed at those cells. The Association costed the Board's offer utilizing the listed dollar amounts which are lower than the amounts that would be generated if the listed index amounts were used correctly in the Board's calculations. The Board costed its offer utilizing the listed index factor. The amounts listed in the final offer were incorrect calculations.

The Arbitrator accepts the Board's costing of its final offer for 1992-93. Obviously they had no intent on changing the indexing which is exactly what would happen if the amounts were allowed to control. It was obviously an error which, when corrected, potentially benefits individual teachers.

Accordingly, the following reflects the average increases that would result under the respective final offers:

District:

	<u>WAGES ONLY</u>		<u>TOTAL PACKAGE</u>	
	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
1991-92	\$1,512	4.63%	\$2,371	5.43%
1992-93	\$1,614	4.73%	\$2,681	5.82%

Association:

	<u>WAGES ONLY</u>		<u>TOTAL PACKAGE</u>	
	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
1991-92	\$2,251	6.90%	\$3,263	7.47%
1992-93	\$2,350	6.74%	\$3,569	7.60%

**III. ARGUMENTS OF THE PARTIES (SUMMARY)**

**A. The Association**

First, the Association contends that its comparable group constitutes the most appropriate comparability group. They utilize 28 Milwaukee area schools for comparison purposes. They believe this is appropriate because they share offices with four other UniServ Councils who represent these schools. They contend, too, that it is supported by a previous decision by Arbitrator Ziedler in an interest matter between the Parties. In addition, this group largely corresponds to a group of districts used by the Public Policy Forum, a group whose work has been utilized by the District.

Next, the Association argues that a comparison of the wages of the teachers in the Waukesha District with those of other teachers in the area demonstrates that the Association's offer is by far the more reasonable. First, in this regard, they note that Waukesha has never ranked higher than 16th at any benchmark among the 28 schools, and it ranks the worst in the important Masters Column.

In terms of average teacher increases, they maintain that their offer of \$2,250 and \$2,350 is more reasonable since it is within the range of other settlements. In 1991-92 the range was from a low of \$1,900 to a high of \$2,617. The average was \$2,263. Moreover, even if one only considers the Board's comparable schools, the offer falls in the middle of the \$2,100 low settlement in Mukwonago and New Berlin and the \$2,375 in Wauwatosa. In fact, the offer is within \$4 of the \$2,254 average of the schools. For 1992-93 the range was \$2,014 to \$2,500. The average was \$2,279. There are four settlements in the Board's group. Two are above the Association offer, one is the same, and one is below. The Board, on the other hand, certified a final

offer which is totally outside the settlement range. At \$1,512, a figure on which both Parties agree, the offer is dead last among either grouping of comparables in year one. It is \$388 per teacher below the next lowest settlement, \$851 below the group average, and \$1,105 below the largest average raise in the area.

In terms of percentage increases, they acknowledge that their final offer is higher than most. However, they discount this since they have a young staff which results in more incremental increases and since they have low benchmarks. Bigger percentages are needed to keep even. They also question the structure of the District offer since it puts the most money where it is needed least and the least money where it is needed most. For instance, they put 6.6% at the bases and only 2.7% at the MA and schedule maximums.

In contrast, the Association maintains that its offer, in terms of benchmark increases, is more consistent with the comparables. To summarize, they note that the bulk of the other districts in the area put between 4% and 5% on all areas of the schedule as does the Association offer. When comparing the dollar increases at these benchmarks, the District offer is at the very bottom except for the MA minimum where the increase is next to the last. The Association increased the base 4.3%, the BA 7th 4.3%, the BA Max 4.3%. In fact, all the wage rates at the benchmarks were increased 4.3% which simply maintained their relative placement. The District increased the rates by 2.01% at all benchmarks but the MA Maximums where they were increased 3.02% and 2.97%. These increases are the smallest (except for the BA-Max) among the comparables. The resulting rankings in Year Two among the settled schools leaves the teachers in Waukesha approximately where they were if the Association offer is considered, and with substantially poor rankings if the Board offer is used. These increases are needed to maintain its historical position which is already substantially behind other districts. Even the Association's offer will leave teachers \$1,920 behind the average at the BA Max, \$3,813 behind at the schedule maximum.

The Association also addresses several of the arguments advanced by the District. Their responses are summarized as follows. (1) The reliance on internal increases is misleading because it doesn't account for experience increments--as does the teacher costing--which could result in individual increases of 9.1%. The Association increase without an increment is 4.36% consistent with internal increases. (2) The Association believes that for reasons detailed in their brief that the District's expert witnesses used flawed and inaccurate data. (3) The cry for reduced taxes by a few citizens should not

penalize the teachers. (4) There are many indications that Waukesha is financially solid including the fact that personal income has risen 26.1% since 1986 (12th among 28), the fact that property values increased (10.6%) last year at a greater rate than 20 other districts, and the fact that since 1986-87 Waukesha has witnessed nearly a 60% increase in property values per student.

As for the loss of state aid, the Association notes that Waukesha still receives more than 24% of its budget in state aids. This is more than 18 of 28 schools in the comparable group. Fourteen schools receive no state aid at all. In terms of tax levies, fifteen (15) of twenty-eight (28) districts had higher rates.

## **B. The District**

The first criteria addressed by the Board is the interest and welfare of the public. It is their position that this criteria demands the Arbitrator select their final offer. There are several reasons that they believe this to be true. First, they have suffered a significant loss in state aids. In 1991-92 they received \$2.7 million or 18.1% less in state aids than they did in 1990-91. It is anticipated that they will receive \$3.2 million less in 1992-93 or 26% less. They note that no other district in its comparable pool has recently suffered such drastic cuts in state aid. This has resulted in the reserve fund being nearly depleted.

The next reason the District argues that its offer is more consistent with the public interest is the fact that the community's resources are strained by the current recession. This is reflected by the fact that the District's net taxable income is well below the average of its comparables. The same is true for the Association's comparables. Given these facts, the District maintains that the Association's offer would produce unacceptably steep tax rate increases. Just under the District's offer, the budget increase of 11.13% and 9.25% would, in turn, mean a 15.13% increase in the levy in 1991-92 and 19.71% in 1992-93. The tax rate would be \$17.21 for 1991-92 and \$18.73 for 1992-93, increases of 4.62% and 8.83%, respectively. Under the Association's final offer, the District's budget would increase 11.98% in 1992-93, 2.73% more than under the District's offer. The levy would increase 23.40% in 1992-93, 3.69% more than the District's offer would increase the levy. The 1992-93 tax rate under the EAW's offer would be \$19.31, an increase of 12.20% from the prior year. That is 3.37% higher than the District offer's increase and 7.58% higher than the previous year's increase. The average budget increase in the comparables

from 1991-92 to 1992-93 is 6.98%. The average increase in the levy for such years is 9.04%.

The next reason the District contends that its offer is in the best interest of the public is based on their belief that (1) the District's offer will allow it to continue to attract large numbers of quality teachers and to retain its current teachers and (2) that economic waste will result from the selection of the Associations' final offer. Both these beliefs are based largely on the testimony of an economist.

The Board considers the comparability factor next. However, it is their position that comparisons to other school districts do not favor either final offer since both are within reasonable ranges. In any event, they argue that the Arbitrator should give less weight to the value of the external comparables based on the specific economic circumstances of this case. In turn, he should give controlling weight to other criteria, particularly since, in their opinion, both Parties proposed external comparables do not strongly favor either offer. In terms of comparables they believe it is appropriate to use the group of schools established by two other Arbitrators in cases involving the District. It is not warranted, particularly for the reasons advanced by the Association, to expand the comparables beyond this group.

When looking at the benchmarks in comparable districts, they conclude that the District's final offer is within an acceptable range. In fact, in a majority of benchmarks, it ranks higher than the Association's offer compared to the comparables. Again, they submit that since the District's offer is respectfully within the ballpark of the benchmark comparisons of both Parties' proposed comparables, settlement data simply should not be persuasive, much less controlling. The other criteria should be controlling.

The District also makes other wage comparisons to other public employees inside and outside the District. For instance, they note that increases in the City of Waukesha were 4.07% and 4.00% in the two years covered by the contract, notably less than the District's offer. The result is the same in Waukesha County where the increases were 4.0% and 4.25% respectively. There is no justification, in their opinion, for the degree to which the Association's offer exceeds these settlements. The internal settlements for the District's custodial employees, clerical employees, teacher aides, and the food service employees all were 4.3% in each year. This, too, should favor their offer, especially when total packages are assessed.

The District also considers local private sector settlements. Based on a survey of local employers, employee wage increases range from 2% to 5.5% among union and nonunion employees in 1991, with 3.90% being the average. However, in order to obtain these increases in four of seven cases, employees also gave health insurance concessions like employee contributions or increased deductibles. In 1992 wage increases range from 0% to 7%, with 3.45% being the average. Two groups, including the only group who receive a 5% to 7% wage increase, gave health insurance concessions for these wage increases. They also look to their economist's story of wages in other professions to support their offer.

The cost of living is also addressed by the District. Their economist concluded that the earnings of teachers in the District have increased more quickly than the cost of living, general earnings in the economy or any of the occupations he examined within the State of Wisconsin. Moreover, the pattern of District teacher earnings shows dramatic increases beyond those of inflation, general earnings, or private sector earnings in Wisconsin. Their offer will continue this pattern.

#### **IV. DISCUSSION AND OPINION**

The Association relies primarily on the settlement pattern in what they contend are the comparable school districts, believing that these comparisons should be controlling. Indeed, it is well established that absent special and usual circumstances, that comparisons to similar employees in similar communities is the single most important criteria and ordinarily controls.

This principal has been so well established and entrenched over the years that it barely requires citation or explanation. In short, Arbitrators presume correctly that when other school boards and their teacher unions bargain a wage settlement, they take into consideration all the statutory factors. When parties determine a salary schedule, they give appropriate weight to the influence of the cost of living, private sector settlements, other public sector settlements, internal comparables, the economy and welfare of the public, etc. They throw all these factors into the mixing bowl of collective bargaining, and the end product takes into account, to the extent relevant, all the statutory criteria. In fact, the statute was written to mimic the factors parties ordinarily apply in bargaining and did not direct the Arbitrator to give equal weight to each factor or to give particular weight to one factor or any subset of factors.



Thus, given the fact that Parties take into consideration all the factors when arriving at voluntary settlements, by considering those settlements the Arbitrator also has given weight to those factors. It is worthwhile as well to keep in mind that in bargaining contracts, multitudes of individuals are involved in the negotiations and subsequent ratification. So a settlement is reflective of many opinions as to what an appropriate wage increase is, given all the criteria. The old saying "Two heads are better than one" has some applicability here. When many settlements are in evidence, the consensus--assuming there is a pattern--becomes even more convincing and deserving of deference. It is difficult for any single arbitrator, no matter what her or his personal opinion is, to disagree with the broad public consensus reflected by a settlement pattern in comparable districts.

On the other hand, the District argues the principle of comparability, as explained above, should not apply in this case. This is because, in their opinion, neither offer is clearly preferable or clearly more reasonable on the basis of the settlement pattern. This is so because they contend their offer is "in the ball park" or within a reasonable range of other districts based on benchmark increases.

The first problem with the District's argument is that one of its factual underpinnings, to wit, the contention that its offer is within the "ball park," just plainly and simply isn't true. The District's offer isn't within the "ball park" and there is, in fact, a clear preference for the Association's offer on the basis of comparisons.<sup>1</sup> For example, the following dollars per returning teacher illustrates the inescapability of this conclusion:

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<sup>1</sup>For the purposes of comparables, the following groupings were derived through application of the rationale in the Ziedler and Fleschli awards (Case XIX, No. 26675, Med./Arb. 837, Decision No. 18391-A and Case XXVII, No. 31825 Med./Arb. 2325, Decision No. 21225-B, respectively). The primary comparables are: West Allis, Wauwatosa, New Berlin, Elmbrook, Hamilton, Kettle Moraine, Mukwonago, and Pewaukee. The secondary comparables are: Franklin, Muskego, Greenfield, Whitnall, Greendale, Germantown, Menomonee Falls. If a third tier of comparability is needed, the districts, although their value would be less than the primary and secondary group, will be Hartford, Kewaskum, Mequon, Oak Creek, Shorewood, Slinger, South Milwaukee, West Bend, and Whitefish Bay.

Teacher Salary Increases In  
Comparable School Districts

<u>Primary Comparables</u>	<u>1991-92</u>	<u>1992-93</u>
Elmbrook	\$2,350	\$2,350
Hamilton	2,350	2,375
Kettle Moraine	2,200	N/A
Mukwonago	2,100	2,150
New Berlin	2,100	N/A
Pewaukee	N/A	N/A
Wauwatosa	2,375	2,450
West Allis	<u>2,303</u>	<u>N/A</u>
<b>Average</b>	<b>2,254</b>	<b>2,331</b>
Board (Diff. to Av.)	1,512 (-742)	1,614 (-717)
Association (Diff. to Av.)	2,250 (-4)	2,350 (+19)

Secondary Comparables

Franklin	N/A	N/A
Germantown	N/A	N/A
Greendale	2,500	N/A
Greenfield	2,250	2,250
Menomonee Falls	2,400	2,400
Muskego	2,100	2,200
Whitnall	<u>N/A</u>	<u>N/A</u>
<b>Average</b>	<b>2,312</b>	<b>2,283</b>
Board (Diff. to Av.)	1,614 (-698)	1,614 (-669)
Association (Diff. to Av.)	2,350 (+30)	2,350 (+67)

\*N/A = Not available in record

It can be easily seen from the data that the District offer, when looked at in terms of how much money teachers get in their pockets as opposed to the benchmark changes on the schedule, the District's offer is woefully inadequate. There isn't one settlement under a \$2,100 increase per year. The District offer is well below the lowest settlement and even further below the average of the settlements. In fact, such a large disparity is rarely seen in Arbitration. On the other hand, the Association's offer is extremely close to the pattern. Given the

pattern, the question is what can't or why shouldn't Waukesha treat its teachers any different than other comparable communities?

The District also argues that its financial and economic situation is another reason that the settlement pattern shouldn't prevail and be the determining factor. This requires a close examination. Indeed if Waukesha is truly distinguishable in some relevant and material way from its comparables, then this would and does militate against the weight ordinarily given to the settlement pattern.

In terms of the general economy, there can be no question that there has been a prolonged and insidious recession. However, there is no evidence in this record that convinces this Arbitrator that the impact of the recession in Waukesha is materially any greater or different than it is say in Wauwatosa or West Allis or any other of the comparable communities. The District did argue that the net taxable income statistics in Waukesha were dramatically below the average and that this demonstrated the recession was particularly hard on Waukesha.

However, the use of averages in the case of net taxable income is deceiving. The per capita income in Elmbrook is so much higher than any comparable district, it skews the average. For example, in 1989 it was \$57,706, more than \$17,000 per year higher than the next highest. The same is true in 1990. When Elmbrook is not included, the average income in 1989 was \$34,235 compared to \$33,350 in Waukesha. In 1990 the average was \$35,980 compared to \$35,002 in Waukesha. Moreover, the average net taxable income in Waukesha rose at about the same rate (5%) on average in the comparables as it did in Waukesha. This shows that the taxpayer ability to fund teachers' increases has risen at the same rate as the taxpayers' ability elsewhere. Waukesha income, while lower than average, isn't very far off the mark, and it rose at the same rate as everyone else's. Thus, the recession did not impact any worse on the Waukesha taxpayers than anyone else.

Much the same thing can be said about the testimony of the Board's economic expert. If there is any particular validity to his analysis and conclusions, it cannot be said that Waukesha is any different than any other district. If Waukesha doesn't have trouble attracting teachers, if "economic waste" exists by paying more than is required to attract teachers, and if teachers' salaries have increased faster than the cost of living, there is no evidence to suggest this isn't just as true in other comparable districts. Yet the

1991-92 and 1992-93 salary increases in the comparable districts far exceed the Board's offer.

The District also highlighted the fact that the Association's offer would result in unacceptably high budget and tax increases. They also highlight dramatic decreases in state aid. With regard to the loss of state aid, it is noted that under the aid system state aid goes down as equalized value goes up. Thus, as a general rule, the loss of aid is offset by the increase in property values, which have risen in Waukesha at a faster rate than other area districts.

One of the problems for taxpayers is that they have a higher tax bill, even if there is no increase in the tax rate because of the increase in their property value. The problem becomes critical when income grows slower than the increase in the levy. This phenomena isn't, however, necessarily the result of teacher salaries but the result of increasing property values due to urban sprawl and a state funding system based on those property values and not a taxpayer's ability to pay. The taxpayer's wrath should focus not necessarily on teacher salaries but in promoting a system of school funding that takes into account ability to pay. The teachers should not be blamed for rising property values and decreases in state aid. Indeed, this accounts for a substantial portion of the increased tax bill.

One measure of how a teacher salary demand impacts on the taxpayer--as opposed to increases in property values--is to look at the tax rate with the teachers' demand and the tax rate with the Board's demand. This is better than comparing budgets and budget increases which include more than just existing staff salaries.

The tax rate averaged over the two years of the contract, if the Board's offer is accepted, is \$17.97 per thousand. The tax rate average over the two years of the contract if the Association's offer is accepted will be \$18.26 (see Board Exhibit 28). What this means is that the impact of the Association's offer over and above the impact of the Board's offer is 29 cents per thousand or \$29 per year on a house worth \$100,000. There are, no doubt, homes worth more or less, but an increase in this neighborhood over the District's offer doesn't seem to be an unreasonable burden to shoulder in order to grant the District's teachers a comparable increase to that enjoyed by other teachers in comparable districts.

As for the District's argument that no other District had as high of a tax rate increase from 1991-92 to 1992-93, the Arbitrator does not find this

persuasive. It is true that there were several districts with little or no increases from 1991-92. However, this could be for a variety of reasons. Some of these districts could have settled their contract period of 1991-92 and 1992-93 and set their rates high enough in 1991-92 to cover the 1992-93 salaries. A more telling statistic, one not provided by the Board, is the amount of the tax rate increase in the two-year contract period over 1990-91. The 1990-91 tax rate is not in this record so it is impossible to tell how much the schools who made two-year settlements--and there are several--had to increase their 1991-92 tax rate over 1990-91 to fund the next two years of increases. As such, the record fails to distinguish Waukesha in any material respect from comparable districts in terms of the impact of teacher salaries on the interest and welfare of the public.

Waukesha is somewhat different than many schools in that it is making the transition, based largely on extraordinary property value increases, from an aided district to a non- or minimally aided district. When this happens, the taxpayer feels the double bump in taxes, from the increase in property values and from increases in the tax rate. There is, no doubt, strain on the taxpayer and the school budget. This might have suggested somewhat of a less-than-average increase to ease the transition. However, the District's proposal is just too far out of balance with the increases comparable communities have given their teachers. With regard to the burden on taxpayers, it can be said that the Association's offer is higher than it should be. However, the Arbitrator isn't able to fashion a salary increase he believes to be reasonable but, instead, must pick one of the two offers, both of which are unreasonable. The Association's is the least unreasonable of the two.

#### AWARD

The final offer of the Association is accepted.



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Gil Vernon, Arbitrator

Dated this 20<sup>th</sup> day of December 1992.