EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Stipulation of SALEM JOINT SCHOOL DISTRICT NO. 7 and KENOSHA COUNTY EDUCATION ASSOCIATION To Initiate Arbitration Between Said Parties	Case 14 No. 47217 INT/ARB-6420 Decision No. 27479-A

Appearances:
Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, for the District.
Mr. Dennis G. Eisenberg, Executive Director, Southern Lakes United Educators, for the Association.

On December 22, 1992, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator, ". . . to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, to resolve said impasse by selecting either the total final offer of the Salem Jt. School District No. 7 or the total final offer of Kenosha County Education Association."

A hearing was held at Trevor, Wisconsin, on February 11, 1993. No transcript of the proceeding was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed on April 19, 1993, with the receipt by the arbitrator of the parties' reply briefs.

The parties are in disagreement about terms of a proposed 1991-93 Agreement. The dispute involves numerous issues including: salary amounts and structure, insurance benefits and the Standards Clause.

The statute requires that the arbitrator give weight to specific factors in making his decision. There is no dispute in this proceeding with respect to several of them: (a) the lawful authority of the employer; (b) stipulations of the parties; that portion of (c) pertaining to "the financial ability of the unit of government to meet the costs of any proposed settlement;" and (i) changes during the pendency of the arbitration proceedings. The remaining factors are discussed below.

Comparables:

The parties are in agreement about which other school districts serve as primary comparables for purpose of applying the statutory factors where comparisons are relevant to the issues. These districts are: Burlington, Lake Geneva Elementary, Badger UHS, Brookwood, Traver, Woods, Central UHS, Salem Elementary, Wheatland, Bristol, Paris, Brighton, Union Grove High School, Union Grove Elementary, Raymond #14, Kansasville, Waterford Elementary, Waterford UHS, Washington-Caldwell, Drought, North Cape, Wilmot UHS, Randall, Twin Lakes and Wilmot Elementary.

In addition, the Association urges the arbitrator to utilize nearby Illinois school districts in Lake County, Illinois, as comparables. The Association argues:

> The school district is in the atypical and unusual position of being an Illinois commuter community in one of the fastest growing metropolitan areas of the United States. In this ever-increasingly global society, one cannot ignore the influence and pay practices of Lake County Illinois schools . . . We offer their salary schedule as evidence of how far out of the mainstream the District's final offer places these employes when compared to their brothers and sisters in school districts as close as 3 miles and not farther than 18 miles away.

As further argument, the Association cites the large number of residents of the District who work in Illinois, the fact that the new District Administrator lives in Illinois, and that a majority of the School Board works, or has worked, in Illinois.

The District urges the arbitrator not to consider Illinois schools. Among other things, the District cites the fact that:

> Illinois schools are subject to a completely different set of rules and regulations than Wisconsin schools. . . . Illinois schools could be subject to substantially different standards, working conditions, state school aid formulas, et cetera.

The District notes also that "there is nothing to indicate that the Illinois schools have the similar size or local economic conditions to make the comparisons useful."

The arbitrator has decided not to consider the Illinois schools in this proceeding. The Association has not presented economic data about these school districts which would indicate

that the schools are of comparable size, or that they have comparable economic characteristics to the District to provide meaningful comparisons. Even with such information, the arbitrator would still have to decide whether differences in such matters as regulations, and school financing between the two states would make the comparisons meaningful and appropriate. Also, the parties have agreed upon a large number of Wisconsin districts as appropriate comparisons, and this will provide a sufficient basis on which the arbitrator can rest his analysis and conclusions. It is also probably the case that to the extent that conditions in Illinois affect conditions of Wisconsin school districts near the border, these effects are already present in the settlements of many of the comparison schools in Wisconsin which the parties have agreed to use.

Items in Dispute:

I. There are several insurance items in dispute, all representing changes to Article XVII of the Agreement:

A) The Association proposes to add the following language, which is not in the most recent Agreement:

> "Effective Date. Coverage will commence on the employee's first day of active duty.
>
> Resignation or Termination. If an employee resigns or is terminated during the school year, the coverage for all insurance benefits shall cease at the end of the month that the resignation or termination became effective."

Neither party has addressed this difference, and therefore the arbitrator regards it as of little consequence for the determination of which final offer should be selected.

B) The parties are in agreement about new language for Section B.2. of the Agreement, which is as follows:

> "For employees who complete the term of his or her individual assignment, the District shall provide fully paid coverage for insurance benefits through the month of August following the date of completion of the individual assignment. Employees who do not complete the term of their assignment shall have insurance benefits terminated at the end of the month following the employee's actual severance of employment with the District."

The District's final offer also contains the following language which is not contained in the Association's final offer:

> (This paragraph shall first apply on the first of the month following the date of settlement or an arbitrator's award. Prior to that time, the provisions of Article XVII, Section B.2. of the 1988-91 collective bargaining agreement shall apply.)

It appears to be the case that the District's parenthetical statement results in Section B.2. not being retroactive, whereas the Association's proposal would be retroactive. In its brief, the Association states, in part:

> . . . the District has maliciously excluded coverage for a pregnant female. What reason can there be to propose our identical language and yet carve out the coverage so as to deny a career employe $456.64?

The Association has a grievance pending over the District's denial of this payment to the affected teacher.

The Association argues also that by contract in a few cases, and by practice in almost all other cases, the comparable districts provide health insurance coverage to employees through August, if the employee completes the contract term and does not resign.

The District doesn't address this issue in its brief.

This is a minor issue, in contrast to the salary and benefit issues. The arbitrator finds the Association's final offer to be preferable, given the absence of any explanation by the District concerning why coverage should not be retroactive.

C) The most recent Agreement contains the following language:

> "The District shall provide complete health care protection (hospital, surgical, major medical insurance) single or family coverage. The District may provide an option plan in coordination with the health care protection."

The District proposes no change in the existing language. The Association's final offer changes the word "may" to "will."

Neither party addressed this difference. Its importance is linked to the next item, which is what the optional plan will be if the Association's final offer is selected.

D) The Association's final offer contains a new provision entitled "Optional Benefit Plan" (OBP) coverage. The District's final offer does not address this item. The Association's proposed language is as follows:

B. Optional Benefit Plan (OBP) Coverage.

In the event that an employe's spouse has family health coverage, the employee may waive District coverage and elect the Maintenance of Insurability option. If this option is selected, the District will contribute to the Wisconsin Education Association Tax Sheltered Annuity Trust (WEATSA) non-elective 403(b) plan and provide the $2 deductible prescription drug card.

The amount contributed each month to WEATSA shall be the difference between single health rate and the cost of the prescription drug card. If, under the carrier's rules, the employee may waive or is ineligible for prescription drug card coverage, then the amount contributed to WEATSA shall be equal to the single health insurance rate.

A copy of the Maintenance of insurability plan amendment and limitations are attached as an Appendix.

The District agrees that it will make OBP contributions by the 20th of the month in which the employee has waived coverage. The TSA plan now provides a billing statement on the first Friday of each month. The District will make any necessary changes to the billing statement, and submit the monies in accordance with the agreed upon timeline.

Beginning Eligibility Date:

New Employees. The parties agree that payments for OBP shall be based on the employee's eligibility date. For new employees, this constitutes the

employee's first day of active service. However, the parties agree to use the same rule for contributions as for health insurance payments; if the employee's first date of active service is after the 15th of the month, no OBP contribution is required in that month. If the employee's first date of active service is on the 1st through the 15th of the month, the employer will contribute the monthly contribution.

Current Employees. Current employees changing to the OBP are only eligible to wave coverage for the health insurance and begin OBP on the first of any month. Contributions will be made for employees selecting the OBP alternative once the employee becomes eligible beginning with that month.

For both new employees and current employees, if it is impossible to contribute for the month of coverage required, the following month's contribution will be doubled to make up for the lack of the prior month's contribution.

There was a grievance filed by the Association, the result of which was a Consent Award issued by Arbitrator Nielsen on May 5, 1992. That Consent Award states:

AWARD

The parties acknowledge that the current dispute over TSA contribution amounts represents an honest difference of opinion. Both parties have acted in good faith and agree that the following is a reasonable interpretation of the collective bargaining agreement:

A. Effective May 20, 1992, TSA contributions will equal the amount of the premium for single health coverage. If the employee participates in the drug card program, the cost of the drug card will be deducted from the cost of the single policy, with the remainder being the TSA contribution.

B. On May 20, 1992, the District will make an additional TSA contribution of:

$438.00 for Christy Burmeister;
$438.00 for Mary Fenske;
$250.00 for Janice Sielski;
$193.14 for Beth Johnson.

C. The Association will cooperate with the District's efforts to receive credit from WEAIG for the July 1986 health premium for Mary Fenske;

D. The Board recognizes that payments are due for the WEAIG MOI TSA by the 20th of the month. The Board agrees to make all payments to the TSA in a timely fashion.

In its brief in the present proceeding, the Association states:

> Our language asks that the stipulation of the first arbitration be placed into the contract so both new and current employees know its terms.

The arbitrator notes that the Association's language in its final offer does not reference the Nielsen Consent Award, and does not copy its language.

The Association states further, "What the new language also codifies would have resolved most of the issues in the grievance going to arbitration." The Association notes also that because of the District's actions since the Nielsen award it has had to file another grievance on the same subject.

The District does not address this issue in its brief except to mention it as one of the less important issues in dispute. The Association, too, acknowledges that it is a minor issue.

Neither party has given the arbitrator sufficient information to either justify exclusion or inclusion of this item in the new Agreement. Ordinarily, the arbitrator would look to the Association to demonstrate why a new benefit should be included. The Association has stated that its proposal is, in effect, the embodiment of the parties' agreement in the Nielsen Consent Award proceeding. The District has not taken issue with the Association's characterization. Therefore, there would appear to be justification for inclusion of the language.

Since both parties have agreed that this item is a minor issue, and the arbitrator has not been given persuasive reasons either for its exclusion or inclusion in the Agreement, the arbitrator has decided that this issue is of little consequence for the determination of which final offer should be selected.

E) The Association's final offer contains a new provision entitled "Life Insurance." The District's final offer does not address this item. The Association's proposed language is as follows:

E. Life Insurance

> Effective on the first of the month following agreement (or the receipt of an Arbitration award) the District will provide group life insurance coverage as proposed and dated August 26, 1992 from the WEA Insurance Group. The District may choose another carrier provided all of the benefit standards available under the plan's certificate are equal or better than those proposed. The benefit summary is attached as an Appendix.

The arbitrator notes, in the parties' stipulated costing of this item, that in 1991-92 there is no cost, and in 1992-93 the cost is $615, or $51 per teacher (there are 12.1 FTE teachers utilized in the costing).

Association Exhibit #41 demonstrates that all but five of the comparable school districts provide life insurance for teachers, fully paid for by the employer. Three of those five districts have life insurance partially paid for by the employer. In its brief, the Association states:

> The Association's costing . . . anticipated a total cost per employe of $51 for 1992-93. This was based upon the assumption that the benefit was to be implemented mid school year for 5 months. This amounts to approximately $10/month total cost to the district for each employe. Surely they can afford this small amount to provide all staff with an average of $29,000 of significant life insurance protection . . .

The District acknowledges in its brief that most of the comparable districts provide life insurance. It argues, however, that the Association has not offered any quid pro quo for the proposed new benefit, and also has not demonstrated "any evidence of need for the benefit."

In its reply brief the Association argues that there is no need for it to demonstrate the need for life insurance, the need being obvious.

The matter of quid pro quo is discussed below. Based on comparability and low cost, the arbitrator favors the Association's position on this issue.

F) The Association's final offer contains a new provision entitled "Insurance Coverage - Retirement." The District's final offer does not address this item. The Association's proposed language is as follows:

F. Insurance Coverage - Retirement.

Teachers who retire shall be eligible to remain in the group insurance coverage maintained by the District. For all retiring teachers, who have taught in the school for a minimum of ten (10) years and are eligible to receive a WRS retirement annuity, the Board shall make hospital/surgical/medical insurance contributions on behalf of retirees for a period to be determined as follows:

Years Local Experience	Years of District Paid Health Insurance
18	3
21	4
24	5
27	6
30	7

The teacher will pay any increase over the rate in effect after the first full year of District retiree coverage beginning on September 1 of the second year of retirement.

Example: For an employe retiring at the end of 1992-93, the District pays the full premium in the first year following retirement, 1993-94. Thereafter, if the premium increases above the rate paid in the first year of retirement (1993-94), the employe will pay the difference to the District beginning with coverage for the month of September. These payments will be made to the District by the 20th of the month preceding the month of coverage.

> After the insurance paid by the district ceases, the teacher will be able to remain in the group insurance at his/her own expense.
>
> Where retiring teacher becomes eligible for Medicare, the Board shall pay the cost of the Medicare policy plus the cost of additional insurance coverage which, when added to Medicare, is equivalent to the coverage provided all unit employees.
>
> Retiring employees who wish to maintain other insurance coverage shall, subject to the rules of the insurance carrier, make the necessary payments to the Board for the desired coverage.
>
> If the retiree dies, the remaining benefit including the right to remain in the group will continue for the surviving spouse and/or dependents.

Joint Exhibit #17 demonstrates that 17 of 25 comparison districts pay family health insurance benefits for those who retire. The Association notes that among the comparables which it (SPEAK) represents, and those districts in Kenosha County, all pay health insurance benefits for retirees except the District. The Association argues:

> Early retirement provisions serve the public interest. These retirement provisions provide the parties with a mechanism to encourage teachers to spend their careers with a school district, reward employees of long service, and provide peace of mind to those who have served the public well . . .

The District cites decisions of other arbitrators in arguing that the Association has the burden to justify the need for this new benefit. It argues that the Association has not met this burden, since it has not shown a need of retirees for continued participation in the District's health and other insurance plans. It argues:

> . . . There is no evidence in the record indicating what difficulty or expense retirees might face if forced to purchase individual plans after retirement . . . There is no evidence in the record

> comparing the cost or difficulty of obtaining comparable coverage through individual insurance plans . . .

The District argues also that there is no immediate need for such a benefit since, "(T)here is one employe who is near retirement age on staff now, but that employe has worked for the district for less than 5 years and would not be eligible for a benefit under the Association's proposal until he or she worked for the district for 10 years . . ."

The District notes, also that among the comparables that provide such a benefit, 11 have "benefits equivalent or better than that in the Association's final offer," and 7 have lesser benefits.

Lastly, the District argues that the Association has not offered a quid pro quo for this benefit. It emphasizes this, in part, because once the District incurs the expenses of this benefit, they will be very costly:

> Board Exhibit Number 1 shows that the entire cost of the Board's 1992-93 final offer is $507,075. One family retirement plan for one year would increase that total cost by over 1 percent. If an (sic) retiree were eligible for 7 years of family insurance, the total cost, using 1992-93 insurance rates, could be $37,206.96.

In its reply brief the Association argues that it is important that these benefits be put into place, notwithstanding that employees will not be immediately eligible for them.

In its reply brief the District takes issue with the Association's contention that early retirement benefits are in the public's interest. It argues:

> . . . There is no evidence in the record to indicate that there is any need to encourage teachers to remain with the school district . . . The Association may be right--retirement benefits may encourage teachers to stay with the district. But there is no need for additional incentives to keep teachers at the . . . District--the District has almost no turnover already.

In the arbitrator's opinion, the Association has not made a persuasive case that this benefit needs to be implemented at this time. While it is the case that most of the districts have employer-paid health benefits for retirees, many have benefits

which are not as generous as those which the Association is seeking. Moreover, as the District has noted, there is no one in the bargaining unit who is close to retirement. Thus, the parties have the opportunity to bargain this item voluntarily before anyone is adversely affected by its non-inclusion in the Agreement.

The arbitrator is also reluctant to select a final offer which contains a new benefit, where there is no evidence that the moving party has made extensive efforts to secure the benefit voluntarily at the bargaining table.

The arbitrator prefers the District's final offer on this issue.

II. Standards Clause

The most recent Agreement contains a Standards Clause. The District's final offer proposes that the language be eliminated. The Association's final offer does not address this item. The language of the Standards Clause is as follows:

> All conditions of employment shall be maintained at not less than the highest minimum standards in effect in the District at the time this Agreement is signed, provided that such conditions shall be improved for the benefit of teachers as required by the express provisions of this Agreement.
>
> This agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed unless expressly stated herein.

This Standards Clause has been in the parties' Agreement since at least 1974-75. Prior to the bargaining which led to the current impasse, the District has never sought to delete the clause from the Agreement.

In terms of comparability, of 26 comparable schools, 24 have no standards clauses. The District notes that in the other two districts, Brighton and Washington-Caldwell, the clauses "are far more limited than that in Salem."

The District's motivation for proposing the deletion of the Standards Clause is that, "(it) has recently caused the Board a great amount of trouble. Since October 11, 1991, the Association has filed 6 grievances . . . that cite the . . . standards clause." District Exhibit #73 is a letter from the District

Clerk which indicates that to his recollection, there was only one prior grievance which went as far as a Board hearing, "and that was prior to 1985."

In its brief, the District details the objections which the Association has made, which objections were based on alleged violations of the Standards Clause. They include objection to:

- no reference in the teacher handbook to early releases on Fridays and days before holidays.
- teachers being required to make contributions to the district newsletter
- District's request that teachers voluntarily inform it of requests for personal leave days as soon as possible
- policy statements regarding absent or tardy pupils in the pupil handbook
- the District's grading policy
- policies relating to teacher use of telephones
- procedures followed by parents in complaining about staff members
- a change in building keys and the failure of a custodian to show up on time on one or more occasions
- a change in the recess schedule, pupil day and detention schedule
- the District's failure to hire a substitute gym teacher when the gym teacher was absent
- the nonrenewal of a temporary teacher and hiring of an intern teacher
- the (amount of) District's contributions toward a tax sheltered annuity
- changes by the District on individual contracts

In addition the District notes the testimony of Association witnesses, citing the Standards Clause, and objecting to:

- District encouraging teachers to help students with a self serve salad bar at lunch
- District encouraging teachers to take training in first aid, CPR and blood borne pathogens
- a District requirement that teachers make their own photocopies
- use by the District Administrator of written suggestions for teacher improvement, as substitution for use of the existing teacher evaluation form

The District sums up its arguments as follows:

> If . . . (the) . . . District is to continue to grow and improve and provide a better and better education for the children of the District, we cannot be constantly assaulted by these teacher objections over even the most minimal of changes in District policy and practice.

The District acknowledges that in interest arbitration the party which seeks to change a longstanding contractual provision is expected to provide a quid pro quo. In that regard, the District points to concessions which it has made in the current bargaining, which are included in the parties' tentative agreements, which the District describes as:

1. Shorter time limits for review of teacher evaluations.
2. New language relating to continuing education credit approval.
3. New article on tax sheltered annuities.
4. New fair share and dues deduction language.
5. Significant modification of the grievance procedure to the benefit of the Association.
6. Addition of 'dismissal' and 'just cause" to Article XXIV.

The Association argues that there is no justification for removal of the Standards Clause. It views the District as objecting to the clause after these many years because the Association has begun to use it for protection of its members, in the face of unilateral changes being made by the District. The Association states in its brief:

> The employer is not asking to remove the standards clause because the teachers have refused to bargain over changes they propose and arrive at a mutually satisfactory answer. They are asking to remove the standards clause because the teachers won't roll over and ignore the changes they foist upon them annually, and of which they are first told about in their employe handbooks. Or worse yet, never being told about the change until the deed has been done, and no choices are available except litigation or capitulation.
>
> . . .

The Association argues that the teachers do not oppose change, but rather unilateral change by the District of existing conditions. According to the Association, "The standards clause

requires no more than what progressive education reformers are trying to achieve--greater involvement of education professionals in the day-to-day decisions of the school."

In its reply brief, the Association explains the basis for each of its grievances and why it objected to District changes which, it alleges, were in violation of the Standards Clause.

For sake of brevity, those grievances and objections are not recounted here. Also, the arbitrator does not view it as his role to decide any of the pending grievances, or to comment about them or those which have been at issue in the recent past.

The Association notes also that its failure to take many of the grievances to arbitration should not be viewed as an indicator that the grievances were frivolous, as the District argues is the case. Rather, it argues, the grievances were not pursued to arbitration because after the grievances were filed, ". . . the District made changes sufficient in each of the . . . items . . . to allow the Association not to pursue any grievance." The Association concludes its arguments on this issue as follows:

> The record shows this District is a revolving door for administrators (3 in the last 5 years). The Standards Clause provides the employes with protection against the ping pong attempts of each pass through administrator who wants to "do it my way."

Also in its reply brief, the Association takes issue with the District's contention that it has offered a quid pro quo for deletion of the Standards Clause. It notes that all of these changes cited by the District were beneficial to the District, and it argues that these items taken singly or together are not a sufficient quid pro quo. The Association states, with regard to the six items (quoted above):

> Points #1 and #2 are relatively minor administrative procedural changes, point #3 codified the right to have tax sheltered annuities, point #4 was necessary because the fair-share language didn't comply with the Brown decisions, point #5 resulted from grievance procedural problems that both parties found acceptable, and point #6 clarified the standards for just cause already in the agreement and noted discipline was covered, just as it is in every other contract. . . .

In its reply brief, the District states that it had no objection to the Standards Clause for years, because "the parties were usually able to work out disputes at the early stages of the

grievance procedure to everyone's satisfaction." The District views the Association as recently having raised objections ". . . to things that (it) did not object to in the past." The District believes that the Association's conduct in this regard necessitates and justifies the elimination of the Standards Clause.

It is the case, as the District argues, that there is no justification for a Standards Clause based on the comparables. However, the arbitrator is not dealing with the proposed inclusion of this item. He is dealing with its proposed deletion after the clause has been in the Agreement since the 1970's. The arbitrator is reluctant to order the deletion of a longstanding, voluntarily bargained contract clause, and especially where, as here, there is no showing that there has been any previous effort by the District at the bargaining table to reach agreement on the deletion of the clause.

The arbitrator is not persuaded by the District's arguments that it is necessary, now, to delete the clause. It is the case that the clause has been cited in many recent grievances. The arbitrator, as previously stated, is not involving himself in the merits of those disputes. Whether the current problems result from changes in District administration, or more assertive Association leadership, or simply because the changes made unilaterally by the District are viewed as unfair by the teachers, or some combination of those things, it is not clear that immediate action is needed by this arbitrator to change the contractual language. It was clear at the hearing and in the language used by the advocates in their briefs and reply briefs, that the relationship between the parties is in need of improvement, but what is required for that is more and better communication at the bargaining table or in less formal meetings, not an immediate change in contract language imposed by the arbitrator. Such efforts by the parties will determine whether they can continue to live with the language or whether subsequent changes in it will be necessary.

The arbitrator is not persuaded by the need for change. The arbitrator is also not persuaded that what the District cites as a quid pro quo was in fact offered at the bargaining table by the District as a quid pro quo for this change. Even if it was, the arbitrator does not view it as adequate incentive to the Association to give up the Standards Clause.

The arbitrator favors the Association's final offer on this issue.

III. Salary Schedules

1991-92

The most recent Agreement has a salary schedule with 13 steps and 13 half-steps. The Association's final offer

eliminates the half-steps and eliminates the "0" step, thus leaving 12 steps. The District's final offer maintains the existing structure.

There is no disagreement over the proposed BA base of $19,600. However, there is a difference in the size of the proposed step increases and increments. The schedule maximum proposed by the Association is $41,767. The schedule maximum proposed by the District is $39,017.

1992-93

The Association proposes to eliminate Step 1, thus reducing the number of steps to 11. The District proposes to retain the schedule with 13 steps and 13 half-steps. The Association proposes a BA base of $21,373 and a schedule maximum of $43,794. The District proposes a BA base of $20,438 and a schedule maximum of $40,686.

Cost of the Salary Offers

1991-92

The District's offer results in an increase in salary per returning teacher of $1,975, or 7.27%. The Association's final offer results in an increase of $2,061 per returning teacher, or 7.59%. The dollar cost difference totals $1,041, which is $86 per returning teacher.

1992-93

The District's offer results in an increase in salary per returning teacher of $1,978, or 6.79%. The Association's final offer results in an increase of $2,150 per returning teacher, or 7.36%. The dollar cost difference totals $2,088, which is $172 per returning teacher.

The arbitrator must weigh factor (d), "comparison . . . with . . . other employes performing similar services."

Both parties presented evidence of comparisons for various benchmark salaries. The arbitrator has made these comparisons between 1990-92 (the last year of the parties' most recent Agreement), and 1992-93 (year two of the proposed two year Agreement). This analysis has been made for the 19 districts which were settled for 1992-93 and for which benchmark data were available, using Association Exhibit #29, but deleting Salem UHS which was not settled. The number of districts shown at each benchmark differs because not all schedules have each benchmark, or the data were not available. The BA-max entry is derived from District Exhibits 12 and 13, since the Association did not present any data for BA-max comparisons. Bristol is not included

(it is included in the other benchmarks), since the District did not provide data for Bristol. Also, the District exhibits did not include data for BA-max for Lake Geneva-Genoa UHS.

Benchmark	1990-91 District's Rank	1990-91 Comparables Median	District Above or (below) Median	1992-93 District's Rank	1992-93 Comparables Median	Final Offer Above or (below) Median
BA-min	19 or 20	$20935	($2245)	Dist 20	$22800	(2362)
				Assn 19		(1427)
BA-7	16 of 18	$24852	($1203)	Dist 18	$27338	(1477)
				Assn 13		(294)
BA-max	4 of 18	$28569	+$1354	Dist 4	$31148	+1574
				Assn 18		+ 490
MA-min	20 of 20	$23335	($2287)	Dist 20	$25815	(2798)
				Assn 13		(294)
MA-10	10 of 18	$29908	+$ 50	Dist 11	$34939	(2179)
				Assn 10		+1385
MA-max	13 of 18	$34215	($ 517)	Dist 14	$38444	(1594)
				Assn 12		(667)
Sched-max	10 of 20	$37281	($ 75)	Dist 14	$42380	(1694)
				Assn 8		+1414

What conclusions are to be drawn from this table? In terms of ranking, the District's offer maintains rankings closer to 1990-91 than does the Association's at benchmarks: BA-7, BA-max and MA-min. For BA-7 and MA-min the District's ranking is last, however. The Association maintains rankings more closely at: BA-min, MA-10 and Sched-max. At BA-min, the District's ranking is also last. At MA-max, the Association improves one rank, and the District drops one rank.

In terms of dollar differences from the median in 1992-93, compared to 1990-91, the District is closer at BA-min, BA-7, BA-max and MA-min. The Association is closer at MA-10, MA-max and Sched-max. Where the District is closer, it is also the case that, at all but one of these benchmarks (BA-max), the District's final offer results in dollars which are further below the median in 1992-93 than was the case in 1990-91. The Association's offer results in gains in relationship to the median, but is still below the median except at BA-max and Schedule-max.

The parties differ with respect to the weight which they think should be given to the benchmark data. In its brief, the District argues:

> If one values maintenance of historic benchmark rankings, the Board's final offer is more reasonable. The Association's apparent goal is to change District benchmark rankings among comparable school districts and to move above the average of those average benchmarks, particularly for more experienced teachers.

The District argues that there is no justification for the significant increases that result at some of the benchmarks from the Association's restructuring of the salary schedule. Moreover, the District argues, "the benchmark salaries in comparable school districts overestimate the salaries that those comparable teachers are paid." As support for that argument, the District points to some 14 alterations that have been made in the salary structures of comparable districts which result in teachers not being actually placed on the schedule in relationship to their years of experience.

The arbitrator notes, as does the Association, that only three of the changes in structure in other districts have occurred in 1990-91 or thereafter. Thus, for the purpose of comparing a benchmark in 1992-93 to the same benchmark in 1990-91, the comparisons are relatively free of distortion.

The Association urges the arbitrator to disregard the BA-max benchmark entirely. It notes that no teacher in the District is placed there. In addition, it argues:

> The BA+0 maximum is no longer a relevant comparison too. WEAC moved to eliminate from its general comparisons this benchmark approximately 2 1/2 years ago. The state statute now requires all teachers without licenses to gain an additional six (6) credits every 5 years. Many schools require minimum credit requirements to move vertically on the schedule. Therefore, even the BA 7 benchmark data is becoming increasingly less relevant unless a school district (unlike Trevor) has a lane change after 15 credits rather than 6. Finally, it is not in the public's interest to provide an incentive to permit teachers to never upgrade their skills and ability through additional training.

The parties have presented data about average salaries in the comparable districts. District Exhibit #23 presents data for 19 of the comparables for which figures are available for each of the years in dispute in this proceeding.

In 1990-91, the median figure for average salary in these districts was $29,462. In the District, the average salary was $27,156. Thus, the District was $2,306 below the median.

For 1992-93, the median figure for average salary in the comparable districts was $33,442. The Association's final offer results in an average salary of $31,367, which is $2,075 below the median. The District's final offer results in an average salary of $31,109, which is $2,333 below the median. Thus, the District's final offer maintains the relationship to the average salary in the comparable districts more closely than does the Association's, albeit at a figure far below the median, and slightly further below the median than was the case in 1990-91.

For these comparable districts, the percentage increase in average salary from 1990-91 to 1991-92, at the median, was 6.72%. Both final offers in the present proceeding exceed that figure. The District's final offer is to increase the average salary 7.27%, while the Association's final offer increases average salary 7.59%.

From 1991-92 to 1992-93 the median figure for the average salary increase among the comparables is 6.31%. The District's final offer increases average salary by 6.79%, while the Association's final offer increases average salary by 7.36%.

The Association justifies its larger than average salary increase proposals, arguing that there is a need for the salaries in the District to catch up to the competition. It cites other awards of arbitrators in arguing that "catch-up is both acceptable and in the public interest." The Association cites the fact that ". . . steps on the salary schedule (are) thousands of dollars behind the relative comparison group." It asks:

> How long should (these) teachers wait before they are given adequate catch-up? . . . the record shows that these employes have been waiting nearly ten years for some breath of fresh air from the . . . Board.

The District argues that the Association has not provided justification for a higher than average salary settlement based upon catch-up.

The District notes that the Association has proposed an additional structural change. It has proposed ". . . to change the horizontal increment on the salary schedule from 2 percent of the prior lane to 3 percent of the prior lane." With respect to the change in horizontal increments, the District states:

> The Association's increase in the horizontal lane increment results in an inequitable distribution of pay increases among the teaching staff and weights present and future pay increases toward the schedule maximum salary. The Association attempts to offset the impact

of the change in lane increments on the BA Base by deleting a step from the schedule in each year. But the Association cannot delete steps forever.

The Association argues that there is a need to change the salary structure to bring it more into line with other districts. As indicated above, the District proposes to maintain the existing number of steps, and to maintain the percentages of increments. The Association argues, by contrast, "One only need look to adjacent school districts to conclude that an 11 step salary schedule with the ratios found in the Association's final offer is the appropriate standard . . ."

Part of the Association's justification for seeking a change in the salary structure is the fact that it has been trying to accomplish such changes through voluntary bargaining for many years. It presented evidence and testimony to show that at least since 1981 the Association has been trying to make such changes at the bargaining table. Association witness Voltz testified that the Association made attempts in 1983-84, 1987-88 and 1988-89 to achieve a 10-step schedule, without success.

The Association is particularly concerned about the low level of minimum salaries. It notes that the District's salary levels at these benchmarks are far below the comparable districts, and also rank very low state-wide. By eliminating the bottom two steps, the Association's proposal reduces that discrepancy, although still leaving the District far behind, particularly at the BA-minimum.

The Association views its proposed salary structure change as necessary in order to make salaries competitive. It states:

> Salary schedule compression and change is the norm and not some minor exception . . . it is clearly indicative that other employers found a restructuring approach to be the most equitable way to pay teachers in the future.

The Association goes on to state:

> The District had a number of options when it puts together its final offer, including restructuring similar to what other schools have done. It has repeatedly refused to modify either the salary schedule structure or the placement of employes on the schedule.

In response to the District's assertion that the Association must demonstrate a need for salary structure change, the Association argues that the low benchmarks are sufficient justification. It states, "they are not just low, they continue to fall . . .,"

The District, citing numerous arbitration decisions, argues that arbitrators are "reluctan(t) to modify the structure of an existing, voluntarily accepted, salary schedule." The District notes that the present structure has been voluntarily agreed to by the parties, and has been in effect since at least 1981-82. It argues that in order to justify its change, the Association ". . . must show, by clear and convincing evidence, the need for the change along with proof that the proposed change will meet that need."

The District presented comparability data showing the ratio of the various MA benchmarks to the BA base under the existing and proposed schedules, in contrast to the comparable districts. The arbitrator has derived the following figures using District Exhibit #16 plus Bristol, and using the data for those same schools found in District Exhibit #14. The data show that the ratios in the salary structures of both parties are higher than the median figures in the comparable schools. The District's ratios are closer to the comparables medians than are the Association's ratios.

	1990-91		1992-93		
Ratio of	Comparables Median	District	Comparables Median	District	Assn.
MA-9/BA-min	1.44	1.60	1.44	1.60	1.70
MA-max/BA-base	1.7	1.80	1.72	1.80	1.77
Sched-max/ BA-base	1.86	1.99	1.87	1.99	2.05

The District did a similar analysis showing the dollar and percentage differences between the MA-min and BA-min for the parties' final offers compared to the median of the comparable districts. The arbitrator has derived the following figures from District Exhibits #17 and #19, using the same districts as in the prior table:

MA-min minus BA-min

	1990-91	1992-93	
Dollar Median of Comparable	$2,242		$3,000
District	2,358	District Assn.	2,579 4,148
Percentage Median of Comparables	11.24%		12.82%
District	12.62%	District Assn.	12.62% 19.41%

The District concludes: "The dollar and percentage differential between the BA and MA Base under the Board's final offer is closer to the average in the comparison group in each year in both dollar and percentage terms . . . there is no need to increase the educational lane increments."

The District also makes comparisons of the number of years to maximum in each of the lanes. The arbitrator has used District #12, plus Bristol, to derive the following figures:

1992-93 # of Years to Maximum

	BA-lane	MA-lane	MA-max
Median of Comparables	10	13	13
District	12	12	12
Association	10	10	10

The District concludes: Evidence of the number of steps in comparable school district salary schedules does not support a claim that there is a need to reduce the number of steps in the . . . salary schedule." That conclusion is true in the MA-lanes. In the BA-lanes the comparables suggest that the Association's proposed schedule is more typical of what is in place elsewhere.

The District acknowledges that the BA-min and MA-min salaries are low when viewed against the comparables. It argues, however, that raising the minimum salaries is not a necessity where the teachers "catch up to the salary levels of other school districts quickly, whether or not they continue their education," and where, as is the case, the District has no difficulty recruiting qualified, competent teachers at the salaries which it offers.

The District argues further that low rankings at benchmarks do not justify modification of the salary structure. It states:

> In any comparison group, someone must be in first place, middle and last place. Unless the Association offers something more to indicate a need for the change in salary schedule structure, it has failed to meet its burden to justify this change.

The District argues that the Association has not shown any need for the change, other than low benchmarks. In addition, the District argues, the Association has not offered a quid pro quo to the District in return for its final offer to change the long-established, bargained salary structure.

In its reply brief, the District summarizes its view of the Association's salary structure proposal by stating:

> The Association has demanded a higher than average salary increase and changes in salary schedule structure and benefit levels. It could not justify any of these changes in terms of proving need for the change, overwhelming support of comparable school districts or a quid-pro-quo.

What does the arbitrator conclude about salaries? He is not persuaded that there is a need to change the salary structure. He is also not persuaded that there is a need for "catch-up" raises. That is, while it is true that the teachers in this bargaining unit have had relatively very low salaries for a long time in comparison with teachers in other districts, this does not represent a recent change which requires that the arbitrator remedy it. The relatively low salaries have been the result of voluntary bargaining for many years.

The benchmark analysis in terms of rankings and dollar relationship to the median does not clearly favor one party's final offer over the other's, since at some benchmarks the District's final offer maintains the prior relationship with the comparables better than does the Association's offer and at others the opposite is true. However, the arbitrator has a preference for the Association's final offer because the District's offer results in continuing deterioration of salaries in relationship to the comparables at the benchmarks, and especially at the Masters levels, and there is no justification for this continuing deterioration.

The average salary, too, is far below the average salary in the comparison districts, although the District's offer maintains the relationship that existed in 1990-91 more than does the

Association's. However, the District's offer results in further deterioration, while the Association's does not. Both final offers produce an average salary which is more than $2,000 below the median figure for the comparison districts.

Other Factors

Factor (c) of the statute requires, in part, consideration by the arbitrator of ". . . the interests and welfare of the public."

The District acknowledges that "there is little money separating the parties' offers in the current dispute." It argues, however, that "the long-term costs of the Association's proposal to restructure the salary schedule and to give retirees health insurance and other insurance benefits is clearly very significant in the long run."

The District argues further that the interests and welfare of the public favor its offer, which provides salary and package increases close to the average given by other districts, and where there is no difficulty recruiting teachers.

The District urges that its offer be implemented so that the cost difference between the parties' final offers can be retained by the taxpayers. The District argues that its financial position is not as sound as that of other districts, as is borne out by economic data for the comparison districts. One measure that the District emphasizes in its brief is "mean taxable income." Of 25 districts for which such data are presented, the median figure for "mean taxable income" is $25,480. In 1991, the figure for the District is $22,788, which is $2,692 below the median. Only one district's figure is lower than the District's. The figures also indicate that from 1990 to 1991 the "mean taxable income" in the District rose 1.2%, and the District contrasts this with the much larger percentage increases in the parties' final offers.

The Association introduced economic data about Kenosha County, in which the District is located. It presented 1988 figures showing that Kenosha County ranked first in per capita income, and second in median household income, when compared to the following counties: Walworth, Dodge, Jefferson, Green, Rock, Racine, Milwaukee, Dane and Waukesha. The Association presented other data also to demonstrate the economic health and growth of Kenosha County. The Association also presented data showing that in 1992, the District reduced its levy rate by $1.11 per $1,000. The Association concludes: "(A) factor ignored by the District is the impact of equalized aids and the levy rate . . . Even with the Association's final offer, this District can lower its levy rate because of the increase in property values and the

tremendous building going on in the county and in Trevor." (The District is located in Trevor, Wisconsin.) The same Association exhibit shows that of 26 school districts in Kenosha County, the District has the eighth highest levy rate.

The arbitrator is not persuaded that the offer of either party is more in the public's interest and welfare than the other. The cost difference in the proposals is .28% in the first year, and .64% in the second year. It is not clear that the taxpayers will be significantly better off economically or otherwise under one proposal as opposed to the other, although clearly they will spend slightly less under the District's proposal. There is no showing either that the tax rate of the residents of the District is so high, or that their ability to pay is so low, in relationship to other districts, as to require that the balance be tipped in the District's favor in this proceeding.

The statute requires the arbitrator to consider factor (e), "comparison . . . with . . . other employes generally in public employment in the same community and in comparable communities." The only comparisons which the parties have made with other public employes are comparisons with other teachers. Those comparisons were discussed by the arbitrator in the section dealing with factor (d). In the absence of data presented under factor (e), the arbitrator does not favor either party's final offer with respect to that factor.

Factor (f) requires the arbitrator to consider comparisons with ". . . other employes in private employment in the same community and in comparable communities."

The District presented evidence about major collective bargaining settlements in private industry. The arbitrator has not described those data, nor given them weight here because they are not evidence of what is occurring in "the same community and in comparable communities."

The District also presented data with respect to private sector wages in Kenosha County. The figures, shown in State of Wisconsin publications, indicate that in November, 1990, the average hourly wage rate in Kenosha County was $11.17. In November, 1991, it was $12.13 (an increase of 8.6%). In November, 1992, it was $12.50 (an increase of 3%). The two year increase was 11.9%.

If one compares the average teacher salary in 1992-93 under the respective final offers, to what the average salary was in the District in 1990-91, the percentage increases for the two year period were: District: 14.6%; Association: 15.5%.

The Association did not present private sector data.

The arbitrator recognizes that one cannot place great weight on comparisons between teacher salary increases, and private sector hourly wage increases for employees generally. Still, given the statutory requirement that private sector comparisons be considered, it would appear that the District's proposed increases are more in line with the size of private sector increases than are the Association's proposed increases.

Factor (g) directs the arbitrator to consider "the average consumer price for goods and services commonly known as the cost of living." The arbitrator agrees with the District that of the various published indices, the one which most closely fits Trevor, Wisconsin, is the "Non-metropolitan Urban Areas" index.

The parties' dispute in this proceeding is over the terms and conditions of an Agreement for 1991-92 and 1992-93. Therefore, the most relevant changes in the cost of living are those which occurred during the period immediately preceding the term of the Agreement. The District figures shows that the annual rate of inflation during 1989-90 was 4.0%, and during 1990-91 it was 5.3%. (Since then, the rate has dropped, increasing by 2.6% during 1991-92 and, through December, 1992, the increase for 1992-93 was at a rate of 2.8%.)

The District notes that the proposed salary increases and total package increases of both parties exceed the increases in the cost of living. Since the District's offer is above the rate of inflation, but closer to that rate than what the Association proposes, the District views its offer as preferable with respect to the cost-of-living factor.

The Association argues that the cost of living is best measured by what settlements have been reached in comparable districts, since those districts, too, have considered the cost of living in their deliberations. The Association has stated (erroneously), "Arbitrators have uniformly determined that the best way to measure cost of living in interest arbitration is to use the settlement standard as the best proxy for what is reasonable under the circumstances." The statement is erroneous because there are arbitrators, including the undersigned, who do not share that viewpoint. In his view the changes in cost of living should be measured by the percentage changes in the cost-of-living index, because the arbitration statute distinguishes the comparisons factors from the cost-of-living factor. This is perhaps a small distinction because arbitrators, including the undersigned, ordinarily give greater weight to comparisons than they do to the cost-of-living factor in determining which final offer should be selected.

In the arbitrator's opinion, the cost-of-living factor favors the District's final offer more than the Association's final offer.

Factor (h) requires the arbitrator to give weight to "the overall compensation presently received by the municipal employes . . ."

The final offer presented by the District results in an increase in total package cost of 6.85% in 1991-92 and 6.95% for 1992-93. The Association's total package cost increase figures are 7.13% and 7.59% under its final offer.

District Exhibit #24A shows total compensation paid to the average teacher in 19 comparison districts. These data show:

	1990-1991	1991-1992	1992-1993
Comparables Median:	40006	42776	45529
District below the median by:	(3334)	Dist: (3592) Assn: (3488)	(3622) (3260)
District Rank	15 of 20	Dist: 18 of 20 Assn: 18 of 20	Dist: 17 of 20 Assn: 16 of 20

These data show that in terms of maintaining rank, and in terms of maintaining the dollar relationship with the comparables, the Association's final offer is preferred with respect to total compensation. Both final offers result in lower ranking. The Association's final offer represents slight improvement with respect to dollars relative to the comparables, while the District's final offer results in continuing deterioration.

The statute requires the arbitrator to give weight to factor (j), "such other factors . . . which are normally or traditionally taken into consideration in . . . arbitration . . ."

Both parties argue that the arbitrator should take into account that the other party has not shown adequate justification for changes being sought through arbitration, and that the other party has not offered a quid pro quo as consideration for its proposed changes.

In this regard, the District argues that the Association has not offered a quid pro quo for its proposed change of the salary structure, which was voluntarily bargained years ago. The District asks, rhetorically:

> Where is the Association's quid pro quo? Is it in their above average salary demands or in their demand for new retiree health benefits or life insurance for all employes. The Association is clearly asking for too much at once.

It asks similar questions with respect to the Association's proposals to add retiree health insurance benefits and life insurance benefits.

The Association argues that it has demonstrated a need for change in the salary structure, and argues that its attempts to achieve voluntary change have been thwarted for more than ten years. It argues that the District is ". . . the last kid on the block to adjust their salary schedule to provide competitive salaries," and therefore the Association does not need to give a quid pro quo. The Association cites awards of arbitrators in which a quid pro quo has not been required where the comparables demonstrate a clear pattern in favor of the change, and where there is a clear need for catch-up, and where the changes sought are not exceptional or unusual.

The Association argues also that the District has not offered a quid pro quo for deletion of the Standards Clause which has been in the parties' Agreement since at least 1974-75, and there has been no demand by the District prior to the current bargaining that it be deleted. The District argues that it has demonstrated justification for deletion of the Standards Clause and has offered a quid pro quo. (See discussion of Standards Clause, above.)

As a general rule the arbitrator believes that a party which offers to make a substantial change in benefits, or in contract language, must offer a quid pro quo. Without the presence of a meaningful quid pro quo, it is the arbitrator's view that the change should not be made through arbitration, but rather should be the result of bargaining between the parties.

In the present proceeding, the District has proposed a significant change in the Agreement without offering a quid pro quo. (See discussion of Standards Clause, above.) On the other hand, it is clear that the Association has not offered a quid pro quo to the District for its new demands, particularly retiree health insurance which has a potentially significant cost impact.

The arbitrator is less concerned about the lack of a quid pro quo for changing the salary structure, even though the existing structure has been in place for many years. Changes in steps, lanes and increments are commonplace in bargaining and parties frequently change them in order to fine tune their salary agreements and keep them within a mutually acceptable cost framework. There is evidence of repeated attempts by the Association to bargain changes in the salary structure, and these efforts make the arbitrator less reluctant to order a change than would be the case if those efforts had not been made. The arbitrator is reluctant nonetheless because he does not know what

gains the Association made in those voluntary agreements which resulted in the Association's willingness to continue to keep the existing salary structure.

Given the fact that neither party has offered a meaningful quid pro quo for its proposed change(s), and given the fact that both parties are asking the arbitrator for changes which they have apparently not made adequate efforts to bargain voluntarily in past rounds of bargaining, the arbitrator is not persuaded that he should view either party's offer as preferable to the other based upon the "other factors" criterion.

Conclusions

The arbitrator is required by the statute to select one final offer in its entirety. There are sound reasons for rejecting parts of both offers, but he does not have that option. With respect to non-salary items the arbitrator has concluded that there is greater injustice in ordering the removal of the Standards Clause at this time than there is in ordering the implementation of new retiree health benefits and other less significant insurance changes. If there is a need to do so, the parties can bargain further about retiree health benefits prior to their receipt by anyone in the bargaining unit.

With respect to salary, the arbitrator understands the District's view that someone has to be ranked last (or lower than the others). Despite the District's unrebutted arguments that its salaries are sufficient for recruitment and retention of teachers, the arbitrator does not see the justification for allowing already very low relative salaries to move even lower. Even though teachers take jobs in the district and continue their employment there, they should be compensated fairly in relationship to teachers elsewhere.

Thus, even though the increases which the District proposes are above the cost-of-living increase, and above the percentage increases given in comparison districts on average, and in the private sector, they are not sufficient to prevent further relative deterioration of salaries in terms of dollars in relation to the comparison districts. The Association's final offer results in modest improvements in the relative salary position. It does not alter the District's relatively very low standing, but there is no further salary deterioration. The arbitrator views this result as of more importance than the fact that the Association makes changes in the salary structure to accomplish it. The salary structure changes are not far out of line with other schedules, and further changes can be bargained.

This decision was an extremely close one, and very difficult for the arbitrator to make. The arbitrator has decided that the Association's final offer should be implemented.

Based upon the above facts and discussion, the arbitrator makes the following

AWARD

The Association's final offer is selected.

Dated at Madison, Wisconsin, this 17th day of May, 1993.

Edward B. Krinsky
Arbitrator