ARBITRATION OPINION AND AWARD

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Arbitration

Between

SHIOCTON SCHOOL DISTRICT

And

SHIOCTON ASSOCIATION OF SUPPORT STAFF

CASE 10
NO. 47085
INT/ARB-6389
Decision No. 27635-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

September 8, 1993
Shiocton, Wisconsin

Appearances

For the Board

WISCONSIN ASSOCIATION OF SCHOOL BOARDS INC.
By Mr. William Bracken
Director of Employee Relations
Post Office Box 160
Winneconne, WI 54986

For the Association

WISCONSIN EDUCATION ASSOCIATION COUNCIL
By Mr. Charles S. Garnier
WEAC Coordinator
550 East Shady Lane
Neenah, WI 54956

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Shiocton School District and the Shiocton Association of Support Staff, with the matter in dispute the terms of an initial three year labor agreement between the parties covering the time period of July 1, 1991 through June 30, 1994, for a bargaining unit consisting of "all regular full-time and regular part-time non-professional employees, excluding bus drivers and confidential, supervisory, managerial and professional employees."

The parties met in various negotiations sessions following their initial exchanges of proposals on September 11, 1991, they were able to resolve some but not all of their differences,[1] and the Association on February 25, 1992 filed a petition with the Wisconsin Employment Relations Commission seeking arbitration of the matter in accordance with the terms of the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on April 28, 1993 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on June 7, 1993 it issued an *order appointing arbitrator* which directed the undersigned to hear and decide the matter. A hearing took place before the Arbitrator in Shiocton, Wisconsin on September 8, 1993, at which time the parties received full opportunities to present evidence and argument in support of their respective positions, both summarized thereafter with the filing of comprehensive and detailed post-hearing briefs and reply briefs, and the record was closed by the undersigned effective November 1, 1993.

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[1] The parties have agreed that the following provisions shall be contained in their initial labor agreement: the Preamble; Article 1, entitled Recognition; Article 2, entitled Definition of Employees (in part only); Article 3, entitled Management Rights; Article 4, entitled Grievance Procedure; Article 5, entitled Discharge, Suspension, Written Reprimand (in part only); Article 6, entitled Conduct of Union Business; Article 7, entitled Dues Deduction; Article 8, entitled Fair Share Agreement; Article 9, entitled Seniority; Article 10, entitled Layoff/Recall; Article 11, entitled Working Conditions; Article 12, entitled Hours of Work and Overtime (in part only); Article 13, entitled Holidays; Article 14, entitled Vacations; Article 15, entitled Leaves of Absence; Article 16, entitled Fringe Benefits (in part only); Article 17, entitled Vacancies and Transfers; Article 19, entitled Compensation (in part only); Appendix A, entitled Wage Schedule Provisions (in part only); and Appendix B, entitled Letter of Understanding.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, which are hereby incorporated by reference into this decision and award, include differences in the following major areas: the *definitions of employees* under Section 2.0 of the new agreement; the *language governing the discipline or discharge of employees* under Section 5.0 of the new agreement; a variety of provisions, including the *work year*, the *work week*, *emergency school closings*, and *health and safety matters*, to be contained in Section 12.0 of the new agreement, the substance and scope of which are in issue; language addressing *personal leaves of absence*, proposed to be included in Section 15 of the new agreement; language governing *health and dental insurance* contributions and coverage to be contained in Section 16.0 of the new agreement; a *no strike provision* proposed to be contained in Section 20 of the new agreement; and the *wage schedules* to apply during the term of the agreement and the *placement of current employees* upon the schedules.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral criteria:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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

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

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

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

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.

j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITION OF THE ASSOCIATION

In support of its contention that its is the more appropriate of the two final offers before the Arbitrator, the Association emphasized the following principal considerations and arguments:

(1) In applying *the comparison criterion*, that the Arbitrator should utilize the following comparability groups.

(a) That the sole *internal comparable* to be used in these proceedings, should be the District's professional employee group for the following reasons: the teachers are organized and currently have a collective agreement in effect, which agreement closely parallels many of the agreed upon provisions and outstanding proposals involved in these proceedings; and, despite the professional status of the teachers, there is a substantial community of interest between them and the members of the bargaining unit in these proceedings, in that both are employed by the District, both groups are organized, both have a common funding source, and both teachers and support staff work closely with students within the schools.

(b) That the principal *external comparables* should consist of the unionized school districts within the Central Wisconsin Athletic Conference for the following reasons: only the unionized districts have comparable benefits; benefits within non-unionized districts are subject to unilateral modification, and they don't include certain "boiler plate" type benefits typically found in collective agreements; arbitral determination of what the parties could reasonably have agreed upon, should draw upon comparable negotiated agreements; and there are sufficient unionized school districts in the athletic conference to make other comparisons unnecessary.

(2) That the Association's position with respect to the *definitions of full-time and part-time employees* is more appropriate than that of the District. In this connection, that the Association proposes that full-time employees are those working thirty-five or more hours per week, while the District would require working forty hours per week for a full fifty-two weeks.

(a) That the position of the Association is favored by consideration of *the internal comparables*, in that all District teachers are considered to be full-time, and there

is no differentiation of benefits between full-time and part-time.

(b) That the position of the Association is favored by consideration of *the external comparables*. In this connection that arbitral consideration of the Bonduel, Bowler, Iola-Scandinavia, Manawa, Menominee Indian, Rosholt, Tri-County, Weyauwega-Fremont and Wild Rose Districts have full-time determinations based upon either calendar years or school years and/or feature a less than 40 hour per week requirement; conversely, that only the Wittenberg-Birnamwood District utilizes as restrictive a test as that proposed by the District in the case at hand.

(c) That the District's final proposal would *unreasonably penalize employees* who work less than a calendar year; indeed, under the District's definition, only one employee would qualify as a full-time employee.

(3) That the Association's position with respect to *the utilization of a just cause standard* in discipline and discharge contexts, is more appropriate than that of the District. In this connection, that the Association is proposing a just cause basis for all discipline and discharge, while the District would limit its use to discharge contexts, with suspensions and written reprimands tested solely by whether the actions are arbitrary or capricious.

(a) That *external comparisons* support the position of the Association in that only Rosholt, among the ten unionized districts, does not require a just cause test for all discipline.

(b) That it is *inherently unreasonable* to have two different standards of discipline within the same contract, particularly where an employee's prior disciplinary record may provide a portion of the bases for a later discharge.

(4) That the Association's position with respect to the *conditions of employment*, the *employee work year*, and the *work week and work day*, as referenced in Section 12, are more appropriate than those of the District. In this connection, that the Association proposes detailed definitions of such items as the work year, the work week, the work day, the shift hours, and schedule changes for various specific jobs and classifications, while the District proposes to largely limit the application of the article to overtime calculations, and to retain flexibility in connection with changes in work schedules.

(a) That the District's proposal is inherently less reasonable, in that it reserves to it the right to modify an employee's work week or work year without restriction, it reserves to the Employer unreasonable control over employees' total compensation, and it precludes employees from projecting their yearly earnings. By way of example, that the Employer could reduce health and dental insurance benefits, merely by reducing employees' hours worked.

(b) That the Association's proposal in more reasonable, in that it would give the Employer the right to modify the length of an employee's work day, work week and work year with two weeks advance notice, it would continue the practice of using a Monday through Friday work week, it would prevent the District from reducing benefits levels by short term reductions in the length of an employee's work week, and it

would preserve the right of the District to restructure positions and/or to reduce hours of employment in compliance with the layoff provisions in the agreement.

(c) That the proposal of the Association is supported by arbitral consideration of *internal comparisons*, as reflected in the teachers' collective agreement.

(5) That the Association's position with respect to *break periods* is more appropriate than that of the District. In this connection, that the Association proposes two fifteen minute break periods for those working six or more hours per day, while that of the District would provide only one such break for those working less than eight hours per day.

(a) Under the District's proposal, that only Custodians and Secretaries would qualify for two break periods per day, despite the fact that thirteen other employees work six or more hours per day; that it is *unreasonably restrictive* and *discriminatory* to provide only two breaks for employees whose work day extends for a significant period of time, beyond the noon lunch break.

(b) That the proposal of the Association is favored by arbitral consideration of *the external comparables*, in that not a single organized District in the athletic conference has a break period as restrictive as that proposed by the District.

(6) That the Association's position with respect to *emergency school closings* is more appropriate than that of the District. In this connection, that the District proposes to pay employees who report, only for hours actually worked, and not to pay employees who do not report, while the Association would provide optional employee use of paid leave as an alternative to lost wages, and would also allow lost days to be made up.

(a) That the Association's proposal is *more reasonable*, in that it provides workers with adequate salary protection when classes are canceled, and it is supported by *internal comparisons*, as reflected in the teachers' collective agreement.

(b) That the District's proposal is *unduly restrictive, arbitrary*, and it would *unevenly impact* upon various employees; in this connection, that it would provide no salary protection at all in situations involving emergency school closings, that neither partial day closing nor make up days would be provided for, and that Cooks and aides would clearly not be able to recoup lost wages unless days lost by students were made up.

(c) That arbitral consideration of the *external comparisons* favors the position of the Association, in that the Bowler and the Weyauwega-Fremont agreement are silent, and only the Tri-County and the Wittenberg-Birnamwood agreements fail to contractually provide for some measure of salary protection in the event of emergency school closure.

(7) That the Association's proposal relating to income maintenance in connection with *leaves occasioned by work connected illnesses or injuries*, is more appropriate than that of the District. In this connection the Association proposes *providing an employee injured on the job with full income maintenance*, by debiting his or her

sick leave for the amounts paid in excess of that provided under workers compensation, while the District offers no proposal/counter-proposal in this area.

(a) That the Association proposal provides a reasonable way for injured employees to maintain their wage levels when a work connected injury or illness occurs.

(b) That the District's proposal does not require it to follow any particular course of conduct, and it might implement a policy that would debit an employee's sick leave for paid absences, even though the employee was receiving benefits from a workers compensation insurer.

(c) That the position of the Association is favored by arbitral consideration of *the external comparables*, in that four of the districts feature a workers compensation supplement in their agreements, five are silent regarding the matter, and the District did not establish in the record that such silent practices were not consistent with the proposal of the Association.

(8) That the Association's position with respect to *the personal leave impasse item* is more appropriate than that of the District. In this connection, that the Association proposes that employees be allowed to use a maximum of one day per year of accumulated sick leave for matters of a personal nature, while the District offered no proposal in this area.

(a) That the parties have already agreed upon an *emergency leave provision* which would allow the use of sick leave in connection with birth or adoption of a child, catastrophe and/or family illness or injury; that the Association's proposal would merely provide for the further use of one day per year to address other matters that could not be dealt with outside of work days.

(b) That the Association's position on this item is supported by *internal comparisons*, in that the benefit is similar to that provided for in the teachers' collective agreement.

(c) That the Association's proposal is supported by *external comparisons*, in that all comparables except Manawa and Wittenberg-Birnamwood provide for some form of paid personal leave.

(d) That there is nothing in the record to suggest that the adoption of the Union's proposal would result in employee abuse.

(9) That the Association's position with respect to *the health and dental insurance impasse item* is more appropriate than that of the Employer. In this connection the Association proposes health and dental insurance eligibility for those who work twenty or more hours per week, with the District paying 95% of premiums for those working 1650 or more hours per year, and pro-rata premium contributions for eligible employees working fewer hours; the District's proposal differs from that of the Association, in that it provides for a premium contribution level of $23.00 per month for full time employees, it provides for prorating premium contributions for part-time employees on the basis of 2080 hours per year, to be reduced to 1800 hours effective July 1, 1993, and it provides for retention by the Employer of the right to change carriers, conditional upon comparability of coverage. While both

proposals provide for the "grandfathering' of benefits for incumbent employees, they slightly differ in terminology.

(a) That the position of the Association on this impasse item is supported by *the external comparables*, in that only Wittenberg-Birnamwood require 2080 hours worked per year to qualify for the maximum district payment of health and/or dental insurance, while Bonduel, Manawa, Menominee Indian, Rosholt, Weyauwega-Fremont and Wild Rose provide a cut-off of no more than 1650 hours worked per year.

(b) That the Association proposed premium pro-ration schedule does not place an unreasonable cost burden upon the District, in that the FTE difference between the two offers is negligible.

(c) That the Association proposed 95% contribution level for dental insurance is favored by *the internal comparables*, in that this level of employer premium contribution is provided for under the teachers' agreement.

(d) That the Association proposed 95% contribution level for dental insurance is favored by *the external comparables*, in that Menominee Indian and Tri-County pay 100% of all dental premiums, Bowler pays 100% for single and 95% for family, and Rosholt pays 100% for single and $54.04 for family; that other districts also pay higher premium levels than that offered by the District.

(e) That the Association proposed "grandfather" provision is clearer on its face than that of the District, and would be less likely to cause confusion or to generate interpretation problems.

(10) That *the no strike clause* proposed by the Association is the more appropriate of the two final offers. In this connection, that it proposes that violation of the clause will be treated in the same manner as any other violation, while the Employer proposes the right to punish such violation(s) in any manner it deems appropriate.

(a) That the position of the District is not supported by *internal comparisons*, in that the teachers' collective agreement does not contain a no-strike provision.

(b) That the position of the Association is favored by arbitral consideration of *the external comparisons*, in that five comparable districts do not have no strike clauses in their collective agreements, only three have no strike clauses which allow the employer to take whatever actions it deems appropriate in the event of a violation of the clause, and three districts have no strike provisions which do not contain the broad disciplinary authority sought by the District in the case at hand.

(11) That *the final wage proposal* of the Association is the more appropriate of the two proposals before the Arbitrator.

(a) In the above connection, the *parties are in agreement* with respect to the following wage matters: four wage categories or classifications (ie. secretarial, cook, aide and custodial); a probationary period and five steps thereafter; the methods of employee progression through the wage schedule; the initial placement of all employees on

the wage schedule, with the exception of D. Johnson, M. Hintz, D. Remmel and A. Conradt; both feature a 3% wage increase for the 1992-93 fiscal year; the wage component of the Association's final offer would cost $49,995.45 over three years, an increase of 24.4%, while that of the District would cost $37,998.45 over the same period, an increase of 18.5%. The two *final offers differ* as follows: in the applicable wage rates for all three years; relative to the initial placement of the above referenced employees; in the size of the 1993-94 wage increase, with the Association seeking 4% and the District offering 3%.

(b) That the District's wage offer for 1991-92 is less reasonable than that of the Association, because it provides substandard wage increases for most employees. In this connection that fourteen of the twenty-three bargaining unit employees would receive no more than 2% increases for 1991-92 and average increases would total 2.98%, versus average increases of 5.56% among the organized, athletic conference districts.

(c) When step movement is factored into the wages for the comparable schools, the wage cost of the Association's 1991-92 proposal at 7.81% is in line with the external comparables.

(12) That when *the wage and the retirement packages* contained in the District's final offer are considered in conjunction with one another, the result is comparatively substandard.

(a) In 1990-91 that those in the bargaining unit had no retirement benefits, they were not enrolled in the WRS, and they did not have a tax sheltered annuity system.

(b) That the parties have agreed to establish a TSA starting in 1991-92 with the District contributing 4% of the employees gross wages for the year; at long last, therefore, a pension system will be started for unit employees.

(c) All comparable school districts, however, contribute at least 2% more of the employees' pension share, than agreed to in Shiocton; additionally, those districts which are part of the WRS, contribute the additional 6% employers' share of employees' gross wages.

(d) Despite the recent increase in the effort of the District in 1991-92, its total effort pales in comparison with those of comparable districts.

(13) That the Association's proposed 4% wage increase for 1993-94 is more reasonable than the 3% increase proposed by the District. In addressing the 1993-94 percentage wage increases at the top and the bottom of the wage structures within the Bonduel, Iola-Scandinavia, Manawa, Tri-City, Wild Rose and Wittenberg-Birnamwood districts, only Bonduel and Wild Rose favor arbitral selection of the final offer of the District in these proceedings, and the remainder support the offer of the Association.

(14) That Employees M. Hinz, D. Johnson and A. Conradt were appropriately placed at step 4.5 of the Aides schedule of the Association proposal.

(a) That the employees were hired in 1981 or 1983 and, accordingly should be placed at Step 5 of the wage schedule.

(b) That the Association proposes step 4.5 to reduce costs and still provide them with a reasonable raise, but there is no justification for their placement at steps 3 or 4 as proposed by the Employer.

(15) That the Association has correctly placed employee D. Remmel at step 1 of the custodial wage scale, rather than at the probationary step; that the District's proposal would afford him only a $.13 per hour increase for 1991-92.

(16) That the Association established at the arbitration hearing that custodians routinely do maintenance work and that cooks routinely perform head cook duties; accordingly, that District Exhibits #32, #33, #34 and #35 are not persuasive, because they do not include the salaries of maintenance workers or of head cooks from the external comparables. That the Arbitrator should rely upon the contents of Association Exhibits #47-#72, which include the minimums and maximums for all job categories found in the comparable school districts.

(17) Because the health and dental insurance eligibility improvements will not become effective until late into the term of the agreement, the Association's wage rate proposal is more reasonable than that of the Employer. That employees in comparable districts will enjoy better insurance benefits for the first thirty months of the three year agreement.

(18) That the costs of the proposals are contained in Association Exhibits #74 through #78.

(19) That when the statutory arbitral criteria are applied to the record in these proceedings, the following results are apparent.

(a) There is no dispute relative to the lawful authority of the District.

(b) That no issues exist relative to the stipulations of the parties.

(c) In connection with the interests and welfare of the public and ability to pay considerations, the District has not claimed inability to pay and the final offer of the Association is reasonable and well serves the interest and welfare of the public.

(d) That the primary external comparison group should consist of the unionized school districts in the Central Wisconsin Athletic Conference, and comparisons with this group favor the selection of the final offer of the Association.

(e) That the Association will respond to any District arguments relating to general public employee comparisons, and community private sector comparisons in its reply brief.

(f) That both final offers exceed cost of living increases, although the District's wage offer for 1991-92 is below the level of CPI movement.

(g) On the basis of overall compensation, that neither final offer provides parity with either the District's teachers nor with the primary external comparables.

(h) That there have been no changes in circumstances during the pendency of the hearing.

(i) That any other factors addressed by the Employer will be answered in the Association's reply brief.

In its reply brief the Association responded to various of the specific arguments advanced by the Board in its initial brief and it took particular issue with such arguments relating to economic and political matters, with the charge that the Association had failed to meet its obligation to provide quid pro quos in support of various improvements sought in its final offer, and with the allegation that the Association was simply being too greedy; most of these arguments had been addressed directly or indirectly in its initial brief and they will not be further treated at this point.

POSITION OF THE BOARD

In support of its contention that its final offer is the more appropriate of the two before the Arbitrator, the District emphasized the following principal considerations and arguments.

(1) That the positions of the Employer in this proceeding may be synopsized as follows:

(a) That the Union is making many significant demands for inclusion in the initial master agreement without giving the Board anything in return, which accounts in large part for the parties inability to achieve a complete negotiated agreement; in effect, it is attempting to use the arbitration process to achieve things it could not gain at the bargaining table which justifies rejection of his position by the Arbitrator.

(b) That the key question is how much should the Union gain in an initial agreement, and it is reasonable to leave some issues for bargaining successor agreements after the parties have had a chance to live under their new relationship.

(c) That the Arbitrator is aware of the sanctity of the status quo and the quid pro quo normally required of any party requesting so many fundamental changes in both economic items and those running to the efficient operation of the District.

(d) When viewed in total, that the Union's offer represents such a radical change in the status quo, that it will significantly affect the parties' bargaining relationship, and that such radical changes should normally be left to the voluntary bargaining of the parties.

(e) That the large number of issues that have been resolved between the parties favors the selection of the final offer of the Employer.

(f) That it would be conceivable that the Union might seek changes in all the language areas if it had moderated its wage demands; to the contrary, however, the Union seeks a relatively high wage offer, exorbitant total package increases, and changes in many language areas.

(g) In accordance with the above, that the fundamental issue in the case is which total package is more reasonable? That while the parties may argue the issues individually, the totality of the items requested in the Union's proposal render it unreasonable.

(h) For 1991-92, the Employer offers an overall salary increase of 3.0% increase while the Union seeks a 7.8% increase; and the total package increases would total 6.9% under the Board's offer and 11.8% under the Union's offer. For 1992-93, the Employer offers a salary increase of 8.2 percent while the Union asks for 7.8%; and the total package increases would be 9.3% under the Board's offer and 8.5% under the Union's offer. For 1993-94, that the Board offers a salary increase of 6.4% while the Union seeks 7.5%; and the total package increase offer of the Board is 10.7% and the Union seeks 12.6%.

(i) In evaluating the above figures, that the Arbitrator should consider the current weak economy, the certainties surrounding revenue controls and compensation limits on school teachers and administrators, the current economic and political environment of current collective bargaining, and the need for moderation in both wages and benefits increases for school district employees. In these connections, that the interests and welfare of the public must be balanced against the need to provide a reasonable total compensation increase for support staff members.

(j) In the above connections, that the Board's total package offers of 6.9%, 9.3% and 10.7% for the three year agreement, strike an appropriate balance; conversely, that the Union's demands for 11.8%, 8.5% and 12.6%, when coupled with many additional language demands, is simply unreasonable.

(k) That the Union simply cannot justify almost a 33% increase in total compensation, given the present precarious economic environment facing the schools; that no group of support staff is receiving increases of this magnitude over the three year contract term.

(2) That the parties have presented the same data showing the complete cost of the Board's and the Union's final offers; that they were compiled using generally accepted principles of case-forward costing, with the costs built from the base year, 1990-91 staff.

(3) That the Board proposed comparables are more relevant that those proposed by the Union.

(a) That the Board believes that internal comparability is a key factor in the case, and that the entire Central Wisconsin Athletic Conference, with the exclusion of Shawano-Gresham, should comprise the principal external comparison group.

(b) That a previous interest arbitrator handling a teacher impasse in the District, determined that the athletic conference comprised the primary external comparison group,

and the same conclusion should be applied to the support staff employees.

(c) That the Board has also submitted a state wage survey, and has proposed the Northern Lake Winnebago/Service Delivery Area #4 and the Northeastern Wisconsin Service Delivery Area #14 as regional comparisons.

(d) That the Union proposed use of only organized school districts is flawed; that the Board, on the other hand, has based its selection of comparable school districts on a facially neutral basis.

(e) That the majority of arbitrators have concluded that non-unionized district should be taken into account in making final offer comparisons.

(4) That the various fundamental changes in the bargaining relationship proposed by the Union, should not be imposed by the Arbitrator but rather should be negotiated between the parties. In this connection, that the Union has failed to prove the requisite need for the requested changes.

(a) That the Union's final offer represents a far-reaching and substantial change in the status quo that amounts to a complete restructuring of the parties' relationship. That the real issue is the speed by which the Union should receive job security provisions and other benefits that have taken other districts years to bargain.

(b) In the above connection that the Union is seeking to introduce a just cause test for discipline short of discharge, to modify the present definition of full-time employees, to impose inflexible work year, week and hour requirements, to prorate health and dental insurance on a relatively small number of hours worked, and to add personal leave to the collective agreement.

(c) That it is well established in interest arbitration that an arbitrator ought not to impose on the parties a proposed settlement that radically changes the status quo, unless an *extremely persuasive case* has been made for the proposed change(s).

(d) In the above connection, that the Union proposed just cause change, restrictive work hours, and personnel leave provisions, could never have been secured at the bargaining table in conjunction with a 33% total package increase, the absence of any quid pro quo, and the lack of evidence of any true need for the proposed changes.

(e) That the above referenced principles have been recognized in the decisions and awards of many Wisconsin interest arbitrators.

(f) With arbitral adoption of the final offer of the Union, that the Board would be realistically prevented from bargaining over the cited issues in the future; once such provisions are written into an agreement, it is virtually impossible to remove or to reduce them. In this connection that the initial contract will expire June 30, 1994, the parties will soon be returning to the bargaining table, and the referenced issues should be left to future bargaining by the parties.

(5) That the total package approach to comparison of the final offers is the most meaningful way to measure the reasonableness of any settlement.

(a) That many Wisconsin interest arbitrators have stressed the importance of adopting a total package approach to viewing any settlement.

(b) That the Board submits that a total package approach is essential given the tremendous changes in language and fringe benefits that the Board has agreed to over the life of the agreement; that with the use of this approach, the Board's final offer emerges as the more reasonable.

(6) In connection with the wage increases component of the final offers, that the following considerations should be determinative.

(a) That adoption of the Board's final offer is supported by arbitral consideration of *the prevailing settlement trend*, as reflected in the average percentage salary increases each year within the Athletic Conference, or by such consideration of the average total package percentage increases each year.

(b) That the wage rates of Shiocton employees are competitive, as reflected in survey data for comparable *custodians*, for *secretaries*, excluding the bookkeepers and the district administrators' secretaries, and for *food service employees*, including cooks but not head cooks.

(c) That the above conclusion is true when the minimum and maximum wages paid to support staff are ranked, are compared on the basis of average salaries, or are compared to the medians.

(d) That the Board's offer exceeds cost of living increases, on either a salary only or on a total package basis.

(7) That the position of the Board is favored with respect to the language impasse items.

(a) As referenced earlier, the Board has received nothing in exchange for the various Union proposed changes in the status quo.

(b) That the Union's many language demands would unreasonably restrict management, and would be better left to the bargaining table.

(c) That the Union proposed *change in the definition of a full time employee* as one who works thirty-five or more hours per week without regard to the number of months worked is not supported by the record: that the status quo favors the Board, in that currently only those employees scheduled to work forty hours per week for a full calendar year are considered full-time employees; that the importance of the definitions of full time and part time is diminished by the fact that the parties have agreed to allocate fringe benefits on the basis of hours worked; and that the Union's proposal fails to mention the number of days, weeks or months that are needed to meet the definition of a full-time employee, as have eleven of the comparable districts.

(d) That the Union proposed application of *the just cause standard* to written reprimands and suspensions is not supported by the record: it is simply not provided under the Shiocton teacher's contract, even though the Board attempted to resolve the dispute by offering an *arbitrary and capricious standard;* that external comparables do not outweigh the internal comparable; and that the Union has not shown the need for the proposal in Shiocton.

(e) That the record favors the position of the Employer relative to the remaining *hours of work* impasse items, covering such items as guaranteed hours of work, notice of changes in schedules, break periods, and pay in the event of school closings, working hours and starting and ending times of work days, Monday through Friday work weeks, consecutive hours and days for part-time employees, and pay in connection with workers compensation related absences.

(f) That many specific objections are appropriate in connection with Union proposed language relating to *the work day, work week and work year:* that its proposed Section 12.1 is ambiguous in many important respects, including its impact upon fringe benefits in the event of work reductions and layoffs; and that the Section 12.2 requirements relative to work day and work week are too restrictive and are unnecessary.

(g) That the practice in most of the comparable school districts support the Board's position relative to not specifying the exact work year, work day and work week parameters in the contract; indeed, that only two contracts in comparable districts support the proposal of the Union in these areas.

(h) In connection with *the work break impasse item,* the practice in comparable school districts is split but the majority provide one break for each four hours worked.

(i) In connection with *the pay for school closings impasse item,* the Union's proposal is ambiguous in certain important respects and the position of the Board is supported by consideration of the majority of the comparable school districts.

(j) The Union proposed maintenance of full income in connection with *workers compensation related absences,* is clearly not supported by arbitral consideration of the practice in comparable school districts.

(8) That the position of the Board is also favored on <u>the language impasse items relating to fringe benefits</u>.

(a) In connection with the health insurance impasse items, the parties principally disagree relative to the relevant annual hours required to receive full benefits. That the Board proposed movement to prorating health insurance benefits on the basis of 1,800 hours is a reasonable one, as is its proposed phasing in of dental insurance benefits.

(b) In connection with the Board proposed right to change carriers conditioned upon comparable coverage, versus the Union demand for coverage identical to that of the teachers, the proposal of the union is not supported by the comparables.

(c) That the position of the Board on health and dental insurance is supported by private sector comparisons for small employers.

(9) That the position of the Board is favored on the *no strike clause* impasse item.

(a) That the parties disagree only with respect to the degree to discretion of the Employer in the event of a violation of the no strike commitment.

(b) That the item is not a major one, that the application of discretion would be subject to the grievance and arbitration provisions.

(c) That the slight majority of comparables favoring the position of the Union should not be accorded determinative weight.

(10) That the Union proposal for one day of sick leave per year to be used for personal matters is not justified.

(a) That while a majority of comparable districts provide some sort of personal leave, there is a great deal of variation in terms of purpose, restrictions on use, notice requirements, advance approval and whether the leave is paid or unpaid.

(b) That the Union proposal does not contain enough safeguards, and it basically amounts to a day off with full pay and no employee accountability.

(c) That the demand is inconsistent with the fact that the Employer has already agreed to double the amount of sick leave available and to set up emergency leave for all employees.

(11) That the interests and welfare of the public are best reflected in the final offer of the Board.

(a) That consideration of the economic conditions facing the farmer including his ability to pay property taxes in the face of declining incomes, favor the final offer of the Board.

(b) That arbitral consideration of the legislature's attempt to get a handle on compensation increases for teachers and administrators, as well as revenue limits on school districts, favors keeping wages and fringe benefits to a reasonable level.

(c) That the conditions of the national and state economies favor the position of the Board in these proceedings.

(d) That the need for property tax relief is reflected in the fact that Taxpayers in Shiocton already pay about 5.5% above the average tax rate of 19 comparable cities and villages.

(12) That arbitral consideration of the tentative agreements already reached by the parties, supports the final offer of the Board.

(a) That prior to organization of the employees, they enjoyed relatively few benefits.

(b) In the tentative agreements reached between the parties, the following new benefits apply: a grievance procedure and binding arbitration; right to union representation in discipline contexts; ability of the Union to post notices, conduct meetings and use the facilities; dues deduction and a fair share provision; seniority layoff protection; a working conditions section providing for mileage, training and licenses; call in pay; six and one-half holidays; improved vacation benefits; improved sick leave; funeral leave; two days of emergency leave; jury duty leave; a new retirement plan which requires the Board to pay 6% toward a tax sheltered annuity; disability insurance for employees; a Section 125 plan which allows employees to shelter fringe benefits dollars; vacancy and transfer sections in the agreement; a wage schedule; and an open enrollment period for insurance.

(c) That the above list is remarkable for a first contract, it provides for an outstanding array of job security, union security, and fringe benefits, and it reflects the Board's good faith in attempting to resolve the parties' differences.

In its reply brief the Employer took specific issue with various of the specific conclusions and arguments advanced by the Union in its initial brief, many of which arguments had also been covered in its initial brief, and it is unnecessary for the undersigned to further address them at this point.

FINDINGS AND CONCLUSIONS

The Arbitrator will preliminarily note that the dispute at hand is atypical in at least two important respects: first, there are a larger number of impasse items, both economic and non-economic, than is typical in Wisconsin public sector interest arbitrations; and, second, this is the *initial* collective agreement between the parties. The State of Wisconsin has been a pioneer in public sector collective bargaining legislation in general, and in the interest arbitration of bargaining impasses in particular. As a result, Wisconsin interest neutrals more typically deal with *long standing* bargaining relationships and with *renewal* labor agreements, wherein the parties' *bargaining maturity* coupled with the use of *final offer* arbitration, usually results in relatively small numbers of impasse items. It is also noted that the interest arbitration process and the final offer approach governing the dispute at hand, are not particularly well suited to determining the terms of initial agreements where there are a large number of so called language items in dispute. Rather than both parties leaving the bargaining table or the arbitration process with a "win-win" result, or at least with the feeling that

each did about as well as could be expected under the circumstances, there is likely to be a *winner* and a *loser* in such proceedings, with arbitral selection from among two final offers, neither of which probably would have resulted from the give and take of conventional bargaining.

Three general areas of consideration addressed by the parties are deserving of preliminary arbitral consideration, before addressing the specific components of the final offers of the parties: *the significance of the status quo ante* in the final offer selection process in an initial agreement; *the significance of union representation* in determining the makeup of the primary intraindustry comparison group; and the method of *application of the comparison criteria* in the dispute at hand.

The Significance of the Status Quo Ante in a First Contract

In their post hearing briefs, both parties addressed the *significance of the status quo ante* in the final offer selection process, and the importance of this factor is a matter that has been addressed by many interest arbitrators in the past, including various public sector neutrals in the State of Wisconsin. In a decision rendered more than a decade ago, for example, the undersigned indicated in part as follows:

> "When an interest arbitrator is faced with the demand to significantly modify past practices, or to add new language or new or innovative benefits, he will normally tread carefully. This factor is very well described in the following, frequently referenced excerpt from an interest arbitration decision by Professor John Flagler: 6./
>
> > 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
> >
> > The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.'
>
> Over sixty years ago, John R. Commons and John B. Andrews urged the application of the same principle, in a mediation context. 7./
>
> > 'He acts purely as a go-between, seeking to ascertain, in confidence, the most that one party will take without entering on

either a lockout or a strike. If he succeeds in this, he is really discovering the bargaining power of both sides and bringing them to the point where they would be if they made an agreement without him.'

The reluctance of interest neutrals to innovate or to plow new ground is much less pronounced in public sector disputes than in the private sector. In his treatise on public sector interest arbitration, Arbitrator Howard S. Block distinguishes between the above referenced view in the private sector, and the perceived need for greater innovation in public sector disputes. 8./

'...As we know, a principle guideline for resolving interest disputes in the private sector is prevailing industry practice -- .....

* * * * * *

...the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiation practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt.' "[2]

In the following excerpt from the widely cited book by Elkouri and Elkouri, the authors reference the application of some of the above principles in parties' *initial* contract negotiations:

"**Past Practice and Bargaining History**

The past practice of the parties has sometimes, although infrequently, been considered to be a standard for interest arbitration. This standard is of special significance when parties are engaged in their initial negotiations. It was stated in one instance by Arbitrator Clark Kerr:

'The arbitrator considers past practice a primary factor. It is standard form to incorporate past conditions into collective bargaining contracts, whether these contract are developed by negotiation or arbitration. The fact of unionization creates no basis for the withdrawal of conditions previously in effect. If they were justified before, they remain justified after the event of union affiliation. It is almost axiomatic that the existing conditions be perpetuated. Some contracts even blanket them in through a general 'catch-all' clause.'

Arbitrators may require 'persuasive reason' for the elimination of a clause which has been in past written agreements. Moreover, they

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[2] Elkhorn Area School District -and- Walworth County Public Employees, Local 1925, Case XI, No. 28262, MED/ARB 1266, June 6, 1982. (Included citations: Des Moines Transit Co., 38 LA 666; Principles of Labor Legislation, New York, Harper & Bros., 1916, page 125; Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, UCLA, 1972, pp. 164-165.

sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement."[3]

In accordance with the above, therefore, it is clear that Wisconsin interest arbitrators attempt to operate as *extensions* of the bargaining processes, they normally attempt to put parties into the same position they would have occupied but for their inability to reach agreement at the table, they normally closely consider the status quo ante, either past practice or negotiated,[4] and they normally attempt to avoid *substituting* themselves for the bargaining process by giving either party what they would not have been able to achieve at the bargaining table. In public sector interest disputes, however, where the parties lack the ability to strike or to lock-out in support of the bargaining objectives, neither party should be able to frustrate the bargaining process by intransigence, and interest neutrals must be somewhat more flexible in considering demands for change from *either* party; to completely reject innovation or change, would be to doom the frustrated proponent of change from ever gaining such goal(s) in either the negotiations or the statutory interest arbitration processes, even though such change was fully justified by other considerations. Even in dealing with such public sector disputes, however, interest neutrals normally require a *very persuasive basis* to be established in support of any demand to add new language and/or new or innovative benefits, and some form of *quid pro quo* may also be required in support of the selection of an offer containing significant changes or innovations; in addressing the *quid pro quo element*, interest neutrals should consider the type of give and take bargaining which might have enabled the parties to have voluntarily reached agreement on the disputed item(s).

In applying the above principles to the dispute at hand, the undersigned notes the large number of language, benefits and wage items which

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[3] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, p. 843. (footnotes omitted)

[4] While the Association is quite correct that differences exist between previously negotiated provisions and those in existence at the time that a union organizes a work force, this is a far cry from concluding that there is no status quo ante in such a situation; indeed, employers also do not have the right to unilaterally withdraw or rescind previous policies, wages, and/or benefits, and to engage in "start from scratch bargaining" in such cases.

were voluntarily agreed upon by the parties in their recent negotiations, and also notes the absence of any persuasive evidence that the residual package of demands advanced by the Union could not be effectively addressed by the parties in future conventional give-and-take bargaining. Stated simply, no persuasive basis has generally been established for the undersigned to operate as a *substitute* for the negotiations of the parties in this proceeding; to the contrary, therefore, the Arbitrator will conventionally operate as an *extension* of the parties' negotiations, will evaluate the final offers of the parties on the normal arbitral bases, and will avoid giving either party that which they would not have been able to achieve at the bargaining table.

The Significance of Union Representation in Determining the Makeup of the Primary Intraindustry Comparison Group

Without unnecessary elaboration, the undersigned will note that *the comparison criteria* are normally regarded as the most important and the most persuasive of the various statutory arbitral criteria, and that the so called *intraindustry comparisons* are normally regarded by interest arbitrators as the most important and persuasive of the various possible comparisons. Accordingly, the composition of the primary intraindustry comparison group is frequently a critical element in the arbitral final offer selection process.

While both parties are in agreement that the primary intraindustry comparison group should consist of the members of the *Central Wisconsin Athletic Conference* (with the single exception of Shawano-Gresham), the Union urges that the group should be confined to those Districts which are organized, and the Employer argues that the organized or non-organized status of the various districts should not be a determining factor in the makeup of the primary comparison group.

In Section 111.70(4)(cm)(7)(d) of the Wisconsin Statutes the Legislature has clearly and unambiguously directed the undersigned to give weight to comparisons between the employees involved in this arbitration and other employees performing similar services, and it has made no reference to either the organized or to the unorganized status of such employees. While Wisconsin interest arbitrators have considerable discretion in the weight to be placed upon the various statutory arbitral criteria applicable to a dispute, they

have no authority to unilaterally modify the specific criteria described in the statutes and mandated by the Legislature for their use. Since the parties have agreed that the Central Wisconsin Athletic Conference comprises the primary intraindustry comparison group for use in these proceedings, it seems clear to the undersigned *as a matter of law*, that all of the employees within the conference who are "performing similar services" are part of the primary intraindustry comparison group, regardless of union representation; stated simply, there is no appropriate basis under the statutory criteria to, *on a blanket basis*, include or exclude Districts on the basis of union representation, despite the fact that union representation or lack of same may control the weight to be placed upon certain types of comparisons.[5] In these connections the undersigned particularly identifies with several of the excerpted arbitral decisions cited by the Employer in its post hearing brief.[6]

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that all of the members of the *Central Wisconsin Athletic Conference*, with the exception of Shawano-Gresham, should comprise the primary intraindustry comparison group in these proceedings.

The Application of the Comparison Criteria

Prior to specifically addressing the individual components of the final offers of the parties it is appropriate to preliminarily examine the principal bases upon which the comparison criteria will be applied. In this connection the Employer urged that so called *total package cost* comparisons should be the primary arbitral tool, although it also argued the significance of *average salary increases* versus comparables and the *relative rankings* of the wages paid for various unit classifications within the athletic conference. The

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[5] The later observations of the undersigned in this decision and award should be noted, in connection with the *just cause* and the *no strike clause* impasse items.

[6] In this connection note the referenced excerpts from the decisions of Arbitrator Kerkman in Kenosha Unified School District (Substitute Teachers), Decision No. 19916-A, June 1983, Arbitrator Briggs in Montello School District, Decision No. 19955-A, June 1983, Arbitrator Weisberger in Green Bay School District (Substitute Teachers), Decision No. 21321-A, August 1984, and Arbitrator Johnson in Kewaskum School District (Auxiliary Personnel), Decision No. 26484-A, December 1990.

Union principally emphasized *average individual wage increases for those in the unit versus the average increases within the organized portion of the athletic conference*, and it also submitted that *when the Board's wage offer was combined with the agreed upon retirement package*, the resulting increase was comparatively substandard.

The most persuasive method of wage and/or benefits comparison to use in applying the statutory comparison criteria depends, *in each case*, upon such varied considerations as the scope of the parties' preliminary negotiations, the nature of the items already agreed upon by them, and the makeup of the certified final offers. If, by way of hypothetical example, the only significant negotiations item in contention is the size of the wage increase(s) during the term of a renewal agreement (such as in a wage reopener), the most persuasive comparisons would be on the basis of the monetary and/or the percentage size(s) of the wage increases among the comparables. Where, alternatively, the parties have already agreed to various benefits increases, and/or where they have already agreed upon, for example, wage structure improvements, wage reslots or improved wage progression during the life of the agreement, it would be both appropriate and persuasive to utilize total package costing in applying the statutory comparison criteria.

In applying the above principles to the dispute at hand the undersigned has reached the following principal preliminary conclusions:

(1) The parties have already agreed to significant improvements in such economic areas as wage progression, pensions, and health insurance, and it would be inappropriate to isolate any remaining single item for comparison purposes, rather than taking into consideration the *total package costs* of the two final offers.

(2) It would also be inappropriate to extend significant weight to the Association proposed, isolated combination of wages and pensions for comparison purposes, without regard to the *total package* costs and/or to the *elements of overall compensation* referenced in Sub-Section h of Section 111.70(4)(cm)(7) of the Wisconsin Statutes.

On the above bases, the Arbitrator has preliminarily concluded that principal weight in the application of *the statutory comparison criteria* should be placed upon *total package cost* comparisons. Without unnecessary elaboration, it will also be noted, for the same reasons, that *total package*

costs should also be principally utilized in considering and applying *the statutory cost of living criterion*.[7]

The Interest and Welfare of the Public Criterion

As the undersigned has indicated in many prior interest arbitrations, adverse economic circumstances are normally given determinative weight in the final offer selection process under the *interest and welfare of the public criterion* under two potential sets of circumstances: first, where there is an absolute inability to pay on the part of the employer; and, second, where the selection of one final offer would entail a significantly disproportional or unreasonable effort on the part of an employer. While the current economic situation demands fiscal restraint on the part of virtually all elements of government, the situation at hand involves no claim of inability to pay, and the record simply does not persuasively indicate that the Board must be shielded from entering into an otherwise justified labor agreement by economic circumstances peculiar to the Shiocton School District.

On the above bases, the Impartial Arbitrator has preliminarily concluded that the interest and welfare of the public criterion cannot be assigned determinative weight in the final offer selection process in these proceedings.

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[7] On the basis of the above, it is unnecessary for the Arbitrator to address in detail the arguments advanced by the Union in its briefs that the Employer's wage comparisons were tainted by its failure to include wages for the maintenance person, the head cook and the full year secretary. By way of dicta, it is noted that multiple levels of *classifications* within *occupations* are quite common in both the private and the public sectors. For example, a milling machine occupation may hypothetically include an entry level or trainee classification, an operator classification, a senior operator classification, and a machinist classification; virtually all such multi-level occupations contain a measure of overlap between the various classifications contained therein and, in the absence of evidence to the contrary, there is no basis for inferring that no such incidental overlap exists between the referenced classification and others among the comparables.

The Wage Increase Impasse Item

In connection with this impasse item, the parties disagree relative to the wage increases to be applicable during the term of the agreement in question.[8]

Intraindustry comparisons are normally the most important of the statutory criteria in wage determination and, as indicated earlier, such comparisons on the basis of *total package costs* are appropriate in the case at hand. The Employer proposed total package increases represent approximately 6.9%, 9.3% and 10.7% increases over the three years of the agreement, for a total of 26.9%; the Union proposed increases represent approximately 11.8%, 8.4% and 12.6% increases over the three years of the agreement, for a total of 32.8%. The average total package costs increases within the Athletic Conference for the three years in question represent approximately 5.9%, 6.5% and 5.8%, for a total of 18.2%, and it is quite clear that arbitral consideration of the intraindustry comparison criterion significantly favors the wage increase component of the final offer of the Employer. By way of dicta, it is noted that the same result is reached if the intraindustry comparisons were made on the basis of salary increases alone.

In comparing the same total package increases referenced above against CPI increases totaling approximately 10.7% over three years of the agreement in question, it is also quite apparent that both wage offers significantly exceed contemporary increases in the cost of living, which clearly favors the wage increase component of the final offer of the Board rather than that of the Association. By way of dicta, it is also noted here that the position of the Board would also have been favored even if only the yearly percentage increases in salary had been utilized.

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[8] The data referenced at page 46 of the Union's brief and at page 33 of the Employer's brief show Employer proposed approximate salary increases of 3.0%, 8.1% and 6.4%, and Union proposed approximate salary increases of 7.7%, 7.3% and 7.5%, for the first, second and third years of the agreement.

The Health and Dental Insurance Impasse Items

In connection with these impasse items the parties principally disagree with respect to the health and dental insurance to be provided by the Employer during the life of the agreement, and in connection with the levels of hours worked at which benefits should be prorated. [9]

On the same bases referenced above in connection with the wage increase impasse, the Impartial Arbitrator has preliminarily concluded the *total package cost comparisons* between Shiocton and the principal intraindustry comparison group clearly favor the health and dental insurance component of the final offer of the Board.

When the levels of hours worked at which the various districts in the Athletic Conference pro-rate benefits are examined in detail, it does not definitively favor the position of the either party in the dispute at hand, and a similar conclusion is reached in examining the conditional right of an employer to change insurance carriers during the life of the labor agreement.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the record favors the position of the Employer with respect to the health and dental insurance impasse items.

The Just Cause and the No Strike Impasse Items

Without unnecessary elaboration, the Arbitrator will note that these items are of less immediate importance than are the economic impasse items discussed earlier.

There is a significant difference between the job security and discipline of teachers versus educational support personnel, and the Employer's reliance upon internal comparison with the teachers' contract relative to the just cause impasse item is simply misplaced. There is no dispute that the intraindustry comparisons favor the position of the Association with respect to the application of a just cause standard to both

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[9] The Employer proposes to pay 95% of the dollar cost of health insurance and to prorate benefits based on 1800 hours of work, while the Union proposes proration at 1650 hours worked; the Employer proposes to pay a flat $23 monthly premium toward the cost of single or family dental insurance, the Union proposes that the Employer pay 95% of the single or family premiums, and the parties similarly disagree on the level of hours worked at which the benefit is to be prorated.

discharge and to discipline situations, and this consideration clearly favors the position of the Association on this impasse item and has provided the requisite persuasive case for its adoption.

In next addressing the no-strike clause impasse item, the differences of the parties appear to be more theoretical than real. As is the case with the just cause impasse item, arbitral examination of the language contained in the agreements within the Athletic Conference favors the position of the Association on this impasse item and has provided the requisite persuasive case for its adoption.

The Personal Leave, the Paid Breaks, the Enhanced Workers Compensation Benefits, the Emergency Closings, the Definition of Employees, the Work Year, the Work Week and the Emergency Closings Impasse Items

In these areas the Arbitrator is faced with the Association's demands for one day of paid leave to be allowed each year from accumulated sick leave, to be used to "deal with matters of a personal nature," for two paid breaks for each six hours worked, for enhancement workers compensation benefits from sick leave to bring the claimant to 100% of wages, for payment for emergency school closings from paid leave days, and for miscellaneous other changes in the status quo ante.

The Union is correct that a majority of the intraindustry comparables have some form of personal leave and the Employer is correct that there are significant variations among the comparable districts in the specifics of the plans. The practice among comparables with respect to the paid breaks impasse item is mixed.

In addressing the Association's request for optional pay for emergency school closings and for income enhancement of workers while on workers compensation leave, it is noted that the contents of Association Exhibits #41 and #42 are not fully detailed and, in any event, they fall short of justifying the proposals on the basis of external comparables. Similarly, arbitral consideration of the Shiocton teachers' contract does not provide a persuasive internal comparison related rationale for the adoption of the proposed workers compensation benefit change, due to significant differences between the teachers and the support personnel.

As was referenced earlier, when either party proposes new language or innovative new benefits or other significant departures from the status quo ante, it has the obligation to establish a *persuasive basis* for the change(s) and some form of *quid pro quo* may also be required. It is clear to the undersigned that the Association has not met these obligations with respect to either its sick leave proposal, its paid break proposal,[10] or relative to its other proposed definition related changes and, when this is considered in conjunction with the undersigned's earlier preliminary conclusions on the major economic impasse items, it is clear that the record favors the position of the Board on these various impasse items.

By way of dicta, the undersigned will note that many of the above proposals are quite reasonable, and some will undoubtedly find their way into the parties' collective agreement. The question currently before the undersigned is not, however, whether the proposals are either desirable or undesirable or reasonable or unreasonable in general, or whether the parties should or should not agree to them in the future; rather the Arbitrator is faced with the matter of whether a persuasive case has been made for their adoption in these proceedings under the various statutory arbitral criteria.

Summary of Preliminary Conclusions

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

(1) The dispute at hand is atypical in at least two important respects: first, there are a larger number of impasses items, both economic and non-economic, than is typical in Wisconsin public sector interest arbitrations; and, second, this is the initial collective agreement between the parties.

(2) Wisconsin interest arbitrators attempt to operate as *extensions* of the bargaining processes, they normally attempt to put parties into the same positions they would have occupied but for their inability to reach agreement at the table, they normally closely consider the status quo ante (either past practice or negotiated), and they normally avoid *substituting* for the bargaining process by giving either party what they would not have been able to achieve at the bargaining table.

In public sector disputes where the parties lack the ability to strike or to lock out in support of their positions, however,

[10] Despite the Union's specific arguments to the contrary in its reply brief, the reported paid break period practices among the comparables are decidedly mixed, even as reflected in Association Exhibit #40.

neither party should be able to frustrate the process by intransigence, and interest neutrals must be somewhat more flexible in considering demands for change from either party; even in dealing with public sector disputes, however, interest neutrals normally require a *very persuasive basis* to be establish in support of any demand to add new language and/or innovative benefits, and some form of *quid pro quo* may also be required in support of the selection of an offer containing such significant changes or innovations.

(3) In applying the principles discussed immediately above to the dispute at hand the undersigned notes the large number of language, benefits and wage items which were voluntarily agreed upon by the parties in their negotiations, and the absence of any persuasive evidence that the residual package of demands advanced by the Union could not be effectively addressed by the parties in their future negotiations. Stated simply, no persuasive basis has been established for the Arbitrator to operate as a *substitute* for the negotiations of the parties and, accordingly, the undersigned will conventionally operate as an *extension* of the parties' negotiations, will evaluate the final offers of the parties on normal bases, and will avoid giving either party that which they would not have been able to achieve at the bargaining table.

(4) There is no appropriate basis under the statutory criteria to, *on a blanket basis*, include or exclude Districts from comparison on the basis of *union representation*; accordingly, all of the members of the Central Wisconsin Athletic Conference, with the exception of Shawano-Gresham, should comprise *the primary intraindustry comparison group* in these proceedings.

(5) The most persuasive method of wage and/or benefits comparison to use in applying the statutory comparison criteria depends, in each case, upon such varied considerations as the scope of the parties' preliminary negotiations, the nature of the items already agreed upon by the parties, and the makeup of the certified final offers; principal weight in the application of the *statutory comparison criteria* in the case at hand, should be placed upon *total package cost* comparisons.

Total package costs should also be principally utilized in considering and applying the statutory *cost of living* criterion.

(6) The *interest and welfare of the public criterion* cannot be assigned determinative weight in the final offer selection process in these proceedings.

(7) Principally upon the basis of arbitral considerations of the *intraindustry comparison criterion* and the *cost of living criterion*, the record clearly favors selection of the wage increase component of the final offer of the Employer.

(8) Principally upon the basis of *intraindustry total package cost comparisons,* the record favors the health and dental insurance components of the final offer of the Employer.

(9) The record favors the position of the Association on various grounds, on the no strike clause and on the just cause impasse items.

(10) The record favors the position of the Board with respect to the paid personal leave, the paid breaks, the pay for emergency school closings, the workers compensation supplemental pay, and the definitions of employees, the work year and the work week items.

The Final Offer Selection Process

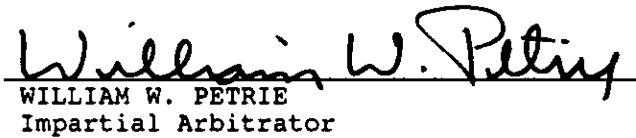
As is apparent from the above the Impartial Arbitrator has preliminarily concluded that the position of the Employer is significantly favored on the major cost items before the Arbitrator, including the salary and the medical and dental insurance impasse items. While the position of the Union is favored on such items as the no strike and the just cause impasse items, it has failed to establish the requisite persuasive case and/or appropriate quid pro quos for the majority of its new proposals and/or its proposed changes in the status quo ante. Since the Arbitrator is limited to the selection of one of the two final offers in its entirety, it is clear that the offer of the Board is clearly favored by the record and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments advanced by the parties, and a review of all of the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Shiocton School Board is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Board, hereby incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Arbitrator

December 31, 1993