ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

GERMANTOWN SCHOOL DISTRICT

And

LOCAL 2423, AFSCME, AFL-CIO

CASE 28
NO. 52716
INT/ARB 7655
Decision No. 28520-A

Impartial Arbitrator

William W. Petrie
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Post Office Box 320
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Hearing Held

Germantown, Wisconsin
February 28, 1996

Appearances

For the District

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Germantown School District and the Germantown School District Employee's Local 2423, AFSCME, AFL-CIO, with the matter in dispute the wages to be paid during the terms of the parties' renewal labor agreement in a unit consisting of all regular full-time and part-time non-professional employees of the District.

The parties met in negotiations after their initial exchange of proposals on April 26, 1995 and, after they were unable to reach full agreement, the Union on June 5, 1995 filed a petition with the Wisconsin Employment Relations Commission seeking arbitration under Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on September 15, 1995 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on October 9, 1995 it issued an *order appointing arbitrator*, directing the undersigned to hear and decide the matter.

An interest arbitration hearing took place before the undersigned in Germantown, Wisconsin on February 28, 1996, at which time both parties received full opportunities to present evidence and argument in support of their respective positions. Both parties thereafter closed with the submission of post-hearing briefs and reply briefs, the last elements of which were received by the Arbitrator on May 2, 1996.

THE FINAL OFFERS OF THE PARTIES

The parties have agreed to a two year renewal labor agreement covering July 1, 1995 through June 30, 1997, and the only remaining areas of disagreement are the wage increases to be applied during the term of the agreement. The respective final offers, hereby incorporated by reference into this decision, may be summarized as follows:

(1) *The Union proposes* two wage increases of thirty-two cents per hour (.32) or 3.25%, whichever is greater, effective on July 1, 1995 and on July 1, 1996.

(2) Although its final written offer is somewhat ambiguous, there is no dispute that *the Employer proposes* two wages increases of twenty-three cents per hour (.23) or 2.13%, whichever is greater, effective on July 1, 1995 and on July 1, 1996.

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. 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 generally in public employment in the same community and in comparable communities.

f. 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 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. 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 UNION

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

(1) That in applying the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, the following considerations apply.

(a) No evidence was offered regarding *the lawful authority of the municipal employer*, the *interests and welfare of the*

public, or changes in circumstances during the pendency of the proceedings.

(b) That the *stipulations of the parties* do not appear to favor either party's position.

(c) That of the remaining criteria, only comparisons with other employees performing similar services, comparisons with other employees in the same community and in comparable communities, cost of living considerations, and such factors normally or traditionally taken into consideration in voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in public or private employment.

(d) That the Union's primary focus in these proceedings is upon the external comparison criterion.

(2) That the parties have already established a set of primary external comparables.

(a) That in the interest arbitration of the immediately preceding agreement, Arbitrator McAlpin determined that ten school districts constituted the primary external comparables: Brown Deer, Cedarburg, Grafton, Hamilton, Hartford, Menomonee Falls, Mequon-Thiensville, Port Washington, Slinger, and West Bend.

(b) That the same primary comparables referenced above, should be utilized in these proceedings.

(c) That Wisconsin interest arbitrators have consistently held that, once established, comparability pools should not be disturbed in subsequent interest arbitrations.[1]

(d) That since the parties have a set of established primary comparables and there is no compelling reason to change them, the District's attempt to modify the group should be rejected.

(3) That the Union's wage offer more closely parallels the external wage pattern.

(a) That the Union proposed wage increases of 3½% more closely approximate the pattern of wage increases among the primary comparables; that none of the comparability pool has received wage increases as low as the 2.13% increases proposed by the District.

(b) That the lowest average wage increase among comparables is the 2.6% increase for the West Bend Custodial Group, which is nearly a full ½% above the District's offer in these proceedings.

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[1] Citing the following arbitral decisions: Arbitrator Rice's July 1991 decision in Slinger School District, Dec. No. 26757-A; Arbitrator Grenig's April 1986 decision in Janesville School District, Dec. No. 22823-A; Arbitrator Kerkman's March 1987 decision in Walworth County, Dec. No. 23615-A; Arbitrator Rothstein's December 1983 decision in School District of Marathon, Dec. No. 19898-A; Arbitrator Rice's December 1986 decision in Rock County, Dec. No. 23688-A; Arbitrator Miller's April 1986 decision in Port Edwards School District, Dec. No. 23060-A; and Arbitrator Kessler's October 1989 decision in City of Manitowoc (Police), Dec. No. 26003-A.

(c) That the highest wage increase among comparables was 7.6% in the clerical unit of Menomonee Falls.

(d) That the pattern among settled groups has clearly and consistently been at or above 3½%.

(e) That the Union's final wage offer in these proceedings is well within the range of wage increases provided to other public school employees performing similar services, including *Custodian, Secretary/Clerical, Teacher's Aides,* and *Food Service* classifications.[2]

(f) That with the exception of units who restructured, the pattern of wage increase among comparables far exceeds the 2.13% increases proposed by the District.

(g) That while 1996-1997 patterns are not as well established as those for 1995-1996, the available data supports the position of the Union in these proceedings.

(4) That salary increases for Village of Germantown Municipal Employees, show settlements ranging from 3% to 4% in 1995, and a consistent 3% for 1996.[3]

(5) That applicable CPI increases for Milwaukee area Urban Wage Earners and Clerical Workers were 3.2%, which supports the final wage offer of the Union in these proceedings.[4]

(6) That the costing figures used by the District in these proceedings are exaggerated, principally because they improperly assume that *no employee quits, no employee retires, no employee dies,* that *employees who leave are replaced,* that *replacement employees receive the same salary as their predecessors,* and that *full-time employees always replace full-time employees.*

(a) That Union Exhibit F6 shows, for example, a reduction from 31 to 29 persons in the Maintenance/Custodial Group, including employees with the three greatest lengths of service in their classifications, commanding $15.67 and $14.83 per hour in wages.

(b) In the above connection, that only one of the three employees was replaced with a full-time employee, and two vacancies were filled with newly hired part-time employees, who received no health or dental insurance benefits.[5]

(c) That turnover impacts real costs, and must be considered in projecting future expenses; that quits, retirements or deaths have resulted in part-time employees without benefits replacing more senior employees with benefits, thus impacting upon costs and narrowing the purported $20,880 to $22,821 differential.

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[2] Citing the information contained in Union Exhibits E1 through E5.

[3] Citing Union Exhibit G1.

[4] Citing the contents of Union Exhibit G1.

[5] Citing Union Exhibit A, which shows that part-time employees who work fewer that 35 hours per week are not eligible for either health or dental insurance.

(7) That the Union's wage offer does not exceed the revenue cap.

(a) That Germantown is a relatively wealthy district which is experiencing growth, but those districts in the primary comparison pool are experiencing the same conditions and are covered by the same laws.

(b) That the District has offered no evidence indicating either difficulty or inability to pay, and/or that the Union's offer would exceed the revenue cap.

(c) That Mr. Garty's testimony that the District's increase in the revenue rate is limited to 2.9%, and that any increase which exceeds 2.9% taken from other areas such as textbooks, should be rejected.

(d) Unlike other school districts living under the same laws and experiencing rapid growth, that the District is, in essence, inappropriately proposing that the support staff subsidize the school system.[6]

(e) That when the differences between the two proposals, $20,880 for the first year and $22,821 for the second year, are compared to a revenue limit of $22,772,578,[7] one wonders how two parties can be so close and still so far apart.

(f) That the Union has attempted to bring the parties closer together, while the Employer has responded by hiding behind caps, revenue limits and the sacrifice of textbooks; in this connection, that the least paid in the District are being asked to make disproportionate economic sacrifices.

(8) That the District's total package cost figures contained in District Exhibits 16-19 should be rejected, based upon insufficient back-up data.

(a) That while the exhibits imply that its offer of total package increases of 3.99% are closer to the total package settlement costs of comparables than the final offer of the Union, this conclusion cannot be verified.

(b) That the District has supplied no backup data for its figures, which appear to have been pulled out of the air.

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[6] Citing *the decision of Arbitrator Krinsky* in Hamilton School District, dec. no. 49266, wherein he indicated in part as follows:

"As previously noted, this is not truly an inability to pay issue. Rather, it is an equity argument to the effect that the bargaining unit should not share disproportionally in available, but scarce resources. The arbitrator is not in a position to evaluate this argument. He does not know whether the economic claims of the bargaining unit merit greater, lesser, or the same amount of consideration as competing uses of funds. The District's argument, quoted above, simply asserting that there should be proportionate sharing of funds is not persuasive, and will not be determinative in this case."

[7] Citing figures from Board Exhibit 11, lines 7C and 11.

(c) That even if the Arbitrator were to conclude that total package costs were determinative, he must reject undocumented and unverified statistics.[8]

(d) That the District's failure to support its assertions renders the information unpersuasive and useless.

In summary and conclusion, that the final offer of the Union should be selected for the following major reasons: the most relevant of the statutory criteria are external comparisons; that the makeup of the primary external comparison districts should remain as established in the party's prior interest arbitration; that the District has presented no evidence to justify a change in the primary external comparison group; that the District's costs are inflated when it fails to incorporate the impact of attrition in its costing methodology, and even its inflated figures show the parties only $20,880-$22,821 apart; that the District has alleged neither an inability to pay, nor being forced to exceed imposed limits.

In its reply brief, the Union emphasized or reemphasized the following principal considerations and arguments.

(1) That the primary external comparables should remain as established by Arbitrator McAlpin.

(2) That the District's reference in its brief to post July 29, 1995 arbitral criteria, is irrelevant in these proceedings.

(3) That District references to *qualified economic offers* and to *comparisons with teachers and administrators* are irrelevant in these proceedings; that the QEO requirements apply to *school district professional employees*, rather than to the non-professionals in the bargaining unit.

(4) That the District's internal equity arguments are not applicable to the case at hand.

(a) That there is no history of internal comparability in the District, nor any showing of such a condition in other school districts.[9]

(b) That the pre-QEO decisions cited by the District in support of its equity arguments are 11 to 16 years old, and were written for city and county bargaining units, not school districts.

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[8] Citing *the February 1985 decision of Arbitrator Stern*, in Madison Metropolitan School District, and *the October 1987 decision of Arbitrator Vernon* in Lodi School District.

[9] Citing *the February 1988 decision of Arbitrator Baron* in Benton School District, Dec. No. 24812-A, and her *February 1993 decision* in Peshtigo School District, Dec. No. 27288-A.

(c) That to hold support staff to legislative standards intended to govern teachers and administrators, would undermine the staff's ability to effectively bargain collectively.

(5) That the District's use of total package costs in applying the cost of living criterion represents an attempt to portray its 2.13% wage increase as 3.99%, and it should be rejected by the Arbitrator.[10]

(6) That the District fails to acknowledge cost savings as a result of turnover, even though it offsets any arguments that staff wage increases come at the expense of quality of education for students.

(7) That the District's brief acknowledges that its wage proposal is substandard.[11]

(8) That based on comparable settlements, cost of living, and the record as a whole, the final offer of the Union should be selected in these proceedings.

POSITION OF THE DISTRICT

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

(1) That the makeup of the primary external comparison pool should be determined by arbitral consideration of the following principal criteria: *geographic proximity; mean income; property value and taxes and mill rate.*[12]

(a) On the basis of consideration of the referenced criteria, that the parties' final offers should be analyzed on the basis of *seven primary comparables* and *seven secondary comparables.*

(b) That the primary comparables should consist of *Cedarburg, Grafton, Hamilton, Menomonee Falls, Mequon-Thiensville, Slinger* and *West Bend*, with secondary comparables consisting of *Brown Deer, Fox Point, Hartford UHS, Port Washington, Shorewood, Whitefish Bay* and *Whitnall.*

(c) That the Union has submitted ten proposed comparables, and all ten have also been proposed by the District; that the

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[10] Citing *the May 1990 decision of Arbitrator Kerkman* in Brown County, Dec. No. 26207-A, and *the September 1990 decision of Arbitrator Friess* in Vernon County, Dec. No. 26360-A.

[11] Citing a statement appearing at page 14 of its brief, which references "...the District's wage offer is somewhat below the average paid employees in comparable school districts..."

[12] Citing the following arbitral decisions: *the August 1976 decision of Arbitrator Raskin* in City of Brookfield (Police), Dec. No. 2439-A; *the October 1978 decision of Arbitrator Mueller* in School District of Mukwonago, Dec. No. 16363-A; and *the September 1980 decision of Arbitrator Haferbecker* in City of Two Rivers (Police), Case No. XXVI, No. 25740, MIA-483.

comparables not included by the Union are *Fox Point, Shorewood, Whitefish Bay* and *Whitnall*.

(d) That the Arbitrator can best evaluate the final offers of the parties by using the comparables proposed by the District.

(2) That the District's wage proposal maintains both internal and external consistency.

(a) That Wisconsin interest arbitrators have generally accorded substantial weight to both internal and external comparables.[13]

(b) That in 1993 Wisconsin Senate Bill 44 became law, and provides for a *qualified economic offer* ("QEO"), which allows employers to limit total increase in salary and benefits which school districts pay their teachers to 3.8% per year, with salary increases limited to 2.1%.[14]

(c) That for 1995-1996 the District's teachers received a 3.88% total package increase, comprised of a 2.16% salary increase and an increase in fringe benefits of 1.72%.[15]

(d) That Senate Bill 150 limits salary increases for administrators to 2.1% of total salary and fringes, and for 1995-1996 the District's administrators received a 2.14% salary increase and a total package increase of 3.68%.[16]

(e) That although the law does not impose the above restrictions on members of the bargaining unit, *internal equity* mandates that the Union's wage settlement be comparable.

(f) That Arbitrators consider strong and established internal settlement patterns and fringe benefit comparisons to be appropriate and often controlling, when the issues between the parties involve either fringe benefits or wage levels.[17]

(g) That the Legislature has enhanced the importance of internal comparability by changing the criteria applicable to post-July 1995 interest arbitration proceedings, to mandate that revenue limits (which impact upon all internal settlement comparisons) be considered the primary factors in any such proceeding.

(h) In accordance with the above, that the Arbitrator should conclude that the Union's final offer, seeking a 4.89% total

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[13] Citing *the June 1990 decision of Arbitrator McAlpin* in City of New Berlin (Highway Department), Dec. No. 926306-A.

[14] Citing District Exhibit 14.

[15] Citing District Exhibit 20.

[16] Citing District Exhibit 20.

[17] Citing the following arbitral decisions: *the August 1985 decision of Arbitrator Grenig* in City of Greenfield, Dec. No. 22411; *the February 1983 decision of Arbitrator Krinsky* in Sheboygan County, Dec. No. 19799; and *the June 1980 decision of Arbitrator Haferbecker* in City of Appleton, Dec. No. 17618.

package increase, is unreasonable in that it far exceeds the level of internal settlements.[18]

(i) That the District's final wage proposal and total package increase is much more in line with and patterned after the agreements with the District's teachers and administrators, and should therefore be accepted by the Arbitrator.

(3) This the District's total package settlement is more consistent with the total package settlements of the external comparables, and more reasonable in light of the District's exceptional health insurance coverage.

(a) That total package costing has been recognized by arbitrators as a means of determining what is or is not a reasonable wage proposal.[19]

(b) That the cost of the District's 1995-1996 total package increase for the bargaining unit is 3.99%, compared to the Union proposed total package increase of 4.89%.[20]

(c) That for each of the employee groups which comprise the bargaining unit, the total package increase of 3.99% is comparable with the total package increases of the external comparables.[21]

(d) That 1995-1996 total package increases for custodial employees among comparables, range from 2.8% and 6.0%, and average 3.99%; that the Districts final offer would place custodians at exactly the average, and would rank them third highest among the comparables.

(e) That 1995-1996 total package increases for secretarial/clerical employees among comparables, range from 3.6% to 6.0%, and average 4.16%; that the District's final offer would place them closer to the average than the Union's final offer.

(f) That 1995-1996 total package increases for Aides among comparables, range from 2.8% to 6.0%, and average 3.93%; that the District's final offer is at approximately the average, and would rank them fifth highest among external comparables.

(g) That 1995-1996 total package increases for Food Service employees among comparables, range from .97% to 4.5%, and average 3.44%; that the Districts final offer exceeds the average and would rank them third highest among external comparables.

(h) That the Arbitrator reject the Union proposed total package increase of 4.89% because it is excessive and far exceeds

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[18] Citing the June 1990 decision of Arbitrator McAlpin in City of New Berlin (Highway Department), Dec. No. 26306-A.

[19] Citing *the October 1995 decision of Arbitrator Kessler* in Dane County, Dec. No. 28339-A.

[20] Citing District Exhibits 16 and 17.

[21] Citing District Exhibits 16-19.

the averages among external comparables; further, as shown in Union Exhibits F1 and F2, Germantown is one of only three districts among the Union's comparables in which all the employees groups have 100% of their medical and dental insurance premiums paid by the Employer.

(i) That based upon today's rising health care costs, with many employers requiring employee contributions, the Arbitrator should consider the total package cost increases, rather than considering wage increases alone, and should find the District's final offer to be the more reasonable.[22]

(4) That the District's proposal to increase salaries across the Board by $.23 or 2.13%, whichever is greater, is more reasonable and more economically feasible than the Union's proposal.

(a) That the District's ability to raise revenue to cover additional costs is restricted by the legislatively imposed levy limits.

(b) That school districts are limited by law in their ability to raise revenue by a mandated formula.[23] As a result, any cost increase in one aspect of the District's operation will result in diminished spending for other areas of service.

(c) According to the legislatively mandated formula, Germantown in 1995-1996 is limited to a 2.9% levy increase, and all employees' salaries, building maintenance, special programs, and all other operating costs must come out of the total revenues which are limited by this legislatively mandated levy cap.[24] If the District were forced to pay the wage increase proposed by the Union, the money would have to be taken disproportionately from other equally important school operations.

(d) That because the levy limits impact all employees, internal comparability takes on additional importance, in that it would be unjust if all District employees did not share proportionately in the impact of the limits.

(e) That if the underlying petition had been filed after July 29, 1995, Wisconsin law would have required the Arbitrator to consider levy limits as the *primary factor* in his decision.

(f) Pursuant to the above, that the Arbitrator should accept the District's final offer as it is more reflective of the interests of the public in light of the legislatively imposed levy limits.

(5) That the District's wage proposal is consistent with the tax rates and the tax effort expended by it's residents.

(a) That the homeowners of Germantown should not have to continue to pay such a high percentage of their earnings in

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[22] Citing District Exhibits 16-19.

[23] Citing District Exhibit 15.

[24] Citing District Exhibit 11.

property taxes; that for 1994-1995 their equalized rate was $18.81, the third highest among external comparables.

(b) Even though the rate dropped during the last two years, that it remains quite high in comparison to other districts.[25]

(c) That the Union's total package for 1995-1996 will cost the taxpayers of Germantown $25,270 more than the District's total package, and $52,366 more for 1996-1997, that it would unfairly impact upon other programs in the District, and that it should be rejected.[26]

(6) That *Cost of Living figures* published by the Department of Industry, Labor and Human Relations show a 1995 increase in the CPI of 2.5% for Urban Wage Earners and Clerical Workers, as compared with the District's total package increase of 3.99%.[27]

(a) That the District proposed total package increase, while greater than the increase in CPI, is reasonable without being excessive.

(b) That the Union proposed total package increase of 4.89%, including wage increases of 3.57%, far exceeds the increase in the CPI..

(c) Pursuant to the above, that the District's final offer is more reasonable and that it should be accepted.

(7) That the District's wage proposal generally maintains its rank among the external comparables.

(a) That while the Union will argue that the wage percentage increases proposed by the District are too small, percentages are only one way of judging the merits of offers.

(b) That arbitrators have generally found wage offers which are somewhat below average among comparables, to be reasonable when an employer has maintained its traditional ranking among comparables.[28]

(c) That District Exhibits 16-19 show that both the District's and the Union's wage proposals generally result in maintenance of the historical rankings; thus, even if the District's wage offer is somewhat below the average paid in comparable districts, the Arbitrator should select the District's offer as more reasonable because it is more consistent with internal comparables, legislatively imposed tax limits, tax burdens, the CPI and other economic conditions.

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[25] Citing District Exhibit #10.

[26] Citing District Exhibit 4 and 5.

[27] Citing District Exhibits 4 and 13.

[28] Citing the following arbitral decisions: *the December 1989 decision of Arbitrator Rice* in Shawano County (Highway Department), Dec. No. 26049; *the October 1987 decision of Arbitrator Vernon* in Bloomer School District, Dec. No. 24342-A; and *the October 1990 decision of Arbitrator Zeidler* in Plymouth Educational Association, Dec. No. 26487-A.

(d) Finally, that no basis exists for any "catch up'" based upon the outcome of the parties' previous arbitration.

In summary that the District's wage proposal is more reasonable, it is well supported by internal and external comparables, it is reflective of legislatively imposed levy limits and tax burdens, it retains the Districts rankings among comparable districts, it exceeds CPI increases, and the Union's proposal is both unreasonable and unaffordable.

In its reply brief the District emphasized or reemphasized the following principal considerations and arguments.

(1) In general, that the Union has failed to establish that its final offer is more reasonable than that of the District, its brief does not offer sufficient evidence to establish that the Arbitrator should not consider the additional comparables proposed by the District, the Union's primary focus upon external comparables should be rejected, and the Union's argument that the District's total package information is unsupported by back-up data is both wrong and belated.

(2) That the Arbitrator should consider the ten districts which the parties have in common, as well as the additional comparables proposed by the District.

(a) That the four proposed additional districts (Fox Point, Shorewood, Whitefish Bay and Whitnall) are neighboring districts and satisfy the comparability tests of mean taxable income, property value and mill rates.

(b) That the additional districts will provide a larger pool of voluntary settlements upon which to analyze the parties' offers.

(3) That the Union's primary focus on external wage comparisons is unduly narrow.

(a) That external comparisons are just one factor that an arbitrator must consider, including internal settlements, financial ability of the district to meet the costs of a proposed settlement, the total package settlement or overall compensation of the affected employees, and CPI information. That against these broader comparisons, the District's offer should prevail.

(b) That although the Union argues that the District's wage proposal is too low, its total package increase is much more in line with and is patterned after the internal agreements with the District's teachers and administrators, and it maintains the historical ranking of the support staff employees for 1995-1996.

(c) As explained in the initial brief, that Arbitrators have generally found wage offers somewhat below the average in comparable districts to be reasonable when the district has maintained its ranking among the comparables.

(d) That arbitrators have found total package comparisons to be a valid means of determining what is or is not a reasonable wage proposal.

(e) That Germantown is only one of three comparables in which all employees have 100% of their medical and dental insurance premiums paid by their employer.

(f) Based upon the above, that the Arbitrator should give total package and historical wage rankings as much or more consideration as direct percentage wage increases among external comparables.

(5) That if the Arbitrator is to focus upon one main factor, it should be the impact of levy limits, not external wage comparisons.

(a) That had the petition in this case been filed after July 29, 1995, Wisconsin law would have required the Arbitrator to consider levy limits as the primary factor in his decision.

(b) That if the Arbitrator is inclined to place more focus upon one of the criteria listed in §111.70(4)(cm)(7), he should accept the District's final offer because it is more reflective of the interest of the public in light of the legislatively imposed levy limit.

(6) That the Arbitrator should assume that the District's total package figures are accurate, thus rejecting the Union's belated argument that they are unsupported by back-up data.

(a) That the Union failed to object to the introduction of any of the total package information at the hearing, and/or on a post hearing basis.

(b) That the information is properly in the record and, accordingly, the Arbitrator must assume that it is accurate.

(c) On the basis of the total package data, it is clear that the District's final offer is the more reasonable one and that it should be selected by the Arbitrator.

(7) Based upon arbitral consideration of the briefs, the internal and external comparables, the levy limits, the tax rates and tax effort expended by residents, and the CPI, the final offer of the District should be selected in these proceedings.

FINDINGS AND CONCLUSIONS

Although the parties disagree on only one impasse item, deferred wage increases, they disagreed also as to the application of, and the weight to be placed upon various of the statutory arbitral criteria, in addition to debating the significance, if any, of recent statutory changes. Prior to reaching a decision and rendering an award in these proceedings, the undersigned will offer certain preliminary observations and conclusions relating to the following matters: the *significance of recent modifications in the statutory interest arbitration criteria;* the *normal importance of the*

statutory comparison criteria in Wisconsin, including matters relating to the composition of the primary intraindustry comparison group; the *significance of the overall compensation criterion;* the *significance of the interest and welfare of the public criterion;* the *application of the comparison criteria;* and the *application of the cost of living criterion.*

The Significance of Recent Changes in the Statutory Interest Arbitration Criteria

What first of the District's argument that the Arbitrator should consider certain changes in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, which changes are applicable to interest arbitrations where the underlying petition had been filed on or after July 29, 1995? Since the petition in the case at hand was filed on June 5, 1995, it is quite clear that its' disposition is governed by the statutory criteria in effect on this date; indeed, the Arbitrator is specifically directed in the Wisconsin Statutes to give weight to these statutory criteria in making any decision, and he has no authority to unilaterally ignore or disregard this duty, and/or to apply the modified/revised statutory criteria which became effective thereafter.

The Normal Importance of the Comparison Criteria

Until recently, the Wisconsin Legislature had not attempted to prioritize the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Statutes[29] and, in the absence of such prioritization, it has been widely and generally recognized by interest arbitrators that comparisons are normally the most frequently cited, the most important, and the most persuasive of the various arbitral criteria, and that the most persuasive of these are normally the so-called *intraindustry comparisons,* which factor normally takes precedence when it comes into conflict with other criteria.[30]

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[29] Certain priorities were, however, provided by the Legislature in 1995 Wisconsin Act 27, which is applicable only to Section 111.70(4)(cm)6 interest arbitration petitions filed *on or after July 29, 1995.*

[30] While the *intraindustry comparisons* terminology obviously derives from its long use in the private sector, the same underlying principles of comparison are used in public sector interest impasses; in such applications, the so-called intraindustry comparison groups normally consist of other similar units of employees employed by comparable governmental units.

These considerations are rather well addressed as follows in the respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
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> "a. *Intraindustry Comparisons*. The intraindustry comparison is more commonly cited than any other form of comparisons, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[31]

Merely recognizing and articulating the normal persuasive value of intraindustry comparisons does not, however, determine *the specific composition of a primary intraindustry comparison group*, which is a matter of disagreement in the case at hand. In this connection, the Union urges arbitral use of the same ten external intraindustry comparisons utilized by Arbitrator McAlpin in his 1994 interest arbitration decision for the parties, at which time he determined that this group was composed of the Cedarburg, the Grafton, the Hamilton, the Menomonee Falls, the Mequon-Thiensville, the Slinger, the West Bend, the Brown Deer, the Hartford, and the Port Washington school districts. By way of contrast, the District now urges arbitral use of a seven district *primary* group of comparables, with another seven districts comprising a *secondary* group of comparables; it urges the use of the Cedarburg, the Grafton, the Hamilton, the Menomonee, the Mequon-Thiensville, the Slinger and the West Bend school districts as *primary comparables*, with

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[31] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pg. 54, 56, and 57. (footnotes omitted)

the Brown Deer, the Fox Point, the Hartford UHS, the Port Washington, the Shorewood, the Whitefish Bay, and the Whitnall school districts as *secondary comparables*.

The degree to which interest arbitrators are reluctant to modify intraindustry comparison groups previously established and used by the parties, is described in the following additional excerpts from Bernstein's book:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When the Newark Milk Company engineers asked for a higher rate than in New York City, the arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice."

* * * * *

> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[32]

In applying the above described principles to the case at hand, the Arbitrator notes that neither party to a dispute can normally expect to convince an interest neutral that the historical intraindustry comparison(s) previously used by the parties, should be abandoned or minimized merely on the basis of one party's subjective preference for an alternative set of comparisons, which it simply feels might more persuasively support its final offer! While it may be appropriate, in unusual cases, for an arbitrator to adopt different intraindustry comparisons than those historically used by the parties, *the proponent of change must normally produce extremely persuasive evidence and argument to justify such a change!* The undersigned notes that the Employer apparently recommended the ten districts which were determined by Arbitrator McAlpin in 1994 to comprise the primary intraindustry comparison group, and there is no *extremely persuasive evidence* in the record to convince

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[32] The Arbitration of Wages, pages 63, 66. (footnotes omitted)

the undersigned that the makeup of the group should now be expanded to fourteen districts in 1996. The evidence and arguments advanced by the District, while frequently utilized in determining the initial composition of comparison groups, fall far short of justifying a change in the composition of the existing group.

Accordingly, the Impartial Arbitrator has preliminarily concluded that the primary intraindustry comparison group in these proceedings should consist of the same ten school districts utilized by Arbitrator McAlpin in 1994.

The Significance of the Overall Compensation Criterion

The *overall compensation, stability of employment* and *other benefits* references are grouped together in sub-section (h) of Section 111.77(4)(cm)(7) of the Statutes and, as the undersigned has emphasized in previous interest proceedings, it must be understood that they are *relative standards*, and that while they may be *initially used to justify the establishment of differential wages*, they generally have *little to do with the application of general wage increases thereafter*, which principles are addressed as follows by Bernstein:

> "A further hurdle to administering the intraindustry comparisons is regularity of employment. Wage differentials are common, for example, between craftsmen employed by utilities or manufacturing trades. Their justification lies in differences in the steadiness of employment offered by these industries. The problem is discussed below.
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> Much the same can be said of nonrate monetary benefits. Such 'fringes' as vacations, holidays, and welfare plans may vary among firms in the same industry and thereby complicate the wage comparison. This question, too, is treated below.
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> A widely observed principle of wage administration is that regularity of employment shall affect the hourly rate. Perhaps the most notable example occurs in the building trades scales. Craftsmen employed in construction, who suffer sharp fluctuations in employment, customarily receive higher rate than men with the same skills employed by utilities who work steadily...
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> * * * * *
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> ...In the *Reading Street Railway* case, for example, the company argued strenuously that its fringes were superior to those on comparable properties and should be credited against wage rates.
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> Arbitrators have had little difficulty in establishing a rule to cover this point. They hold that features of the work, though appropriate for fixing differential between jobs, should not influence a general wage movement. As a consequence, in across-the-board wage cases, they have ignored claims that tractor-trailer drivers were entitled to a premium for physical strain; that fringe benefits should

> be charged off against wage rates; that offensive odors in a fish-reduction plant merited a differential; that weight should be given the fact that employees of a utility, generally speaking, were more skilled than workers in the community at large; that merit and experience deserved special recognition; and that regularity of employment should bar an otherwise justified increase...
>
> The theory behind this rule is that the parties accounted for these factors in their past collective bargaining over rates.[33]

The overall level of compensation criterion might be utilized to justify a lower than average wage increase where there is an unusual or extraordinary benefit package which the parties have opted for in lieu of higher wages, but a long standing and very good medical and dental insurance package cannot alone justify lower than otherwise appropriate wage increases on an after the fact basis. Accordingly, this arbitral criteria cannot be assigned determinate or significant weight in the final offer selection process in these proceedings.

The Interests and Welfare of the Public Criterion

This factor has normally been urged by Wisconsin Employers in connection with claims of *financial adversity* or *disparate demands* upon tax payers, and they have normally been entitled to determinative weight in the final offer selection process under only two sets of circumstances: *first*, where the record indicates an absolute inability to pay; and/or, *second*, where the selection of one of the final offers would necessitate a disproportional or unreasonable effort on the part of the employer. In the case at hand the Employer is urging that its ability to pay is made more difficult by various considerations, but it is not claiming an absolute inability to pay, and there is nothing unique to the Germantown District which would justify its paying lower than market rates to those in the bargaining unit. Accordingly, this arbitral criteria cannot be assigned determinate or significant weight in the final offer selection process in these proceedings.

The Application of the Comparison Criteria in the Dispute at Hand

When parties only disagree on the deferred wage increases to be applied during the term of a two year renewal agreement, it would normally be inferred

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[33] The Arbitration of Wages, pages 65-66, 101, 90. (Included citation at 6 LA 860)

by an interest arbitrator that somewhere in the exhibits would be a clear and fully agreed upon recapitulation of the wage rates paid before and after the implementation of the wage proposals of the parties, with the wage increases expressed in terms of average cents per hour and average percentage increases, but the exhibits of the parties have not presented such agreed upon figures in such a *user friendly format*.

(1) The Employer comparisons shown in District Exhibits 16-19 show the minimums and the maximums of the bargaining unit rate ranges and apparently include the maximum longevity payments for unit jobs; they do not, however, contain specific proposed bargaining unit wage rates for both the 1995-1996 and the 1996-1997 periods, and the Arbitrator has been unable to determine the origins of some of the wage percentage increases depicted therein.

(2) The Union comparisons shown in Exhibits E1-E5 utilize the minimums and the maximums of the bargaining unit rate ranges, exclusive of longevity payments, and they include the specific proposed bargaining unit rate ranges for both the 1995-1996 and the 1996-1997 periods, including the percentage increases in each category.

For use in these proceedings the undersigned has extracted and averaged the maximum proposed percentage increases for each category of unit employees, and has compared these percentage increases against similar figures for those primary intraindustry comparables for which the information is provided in the exhibits.[34]

The 1995-1996 wage comparison data consists of the following:

(1) The average 1995-1996 custodial wage increases for the various districts are as follows: *Hamilton* (3.76%); *Menomonee Falls* (3.10%); *Mequon-Thiensville* (4.01%); *Slinger* (2.61%); *West Bend* (2.62%); *Brown Deer* (3.01%); *Hartford* (3.48%); *Port Washington* (1.5%).

These figures show *average intraindustry comparable custodial wage increases of 3.01% for 1995-1996*, as compared to the average proposed wage increases of *2.11% by the District* and *3.25% by the Union*.

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[34] The District has correctly argued that Arbitrators will occasionally approve below average wage increases where the increases maintain the historic relationships of the parties, including the traditional ranking. This is a far cry, however, from suggesting that such a theory would justify a significantly lower than normal wage increase, merely on the basis of an argument that the ranking of the affected employees were unchanged. Perhaps the most absurd example would involve a hypothetical group of employees who traditionally ranked last in pay among intraindustry comparables; while the fact that they ranked last and received a somewhat below average wage increase might be acceptable if they had maintained their historic negotiated rate of pay relationship among comparables, a refusal to grant any wage increase or the approval of only a token increase could not be justified merely on the basis of their unchanged rankings.

(2) The average 1995-1996 secretarial/clerical wage increases for the various districts are as follows: *Menomonee Falls* (6.9%); *Mequon-Thiensville* (4.5%); *Slinger* (3.44%); *West Bend* (2.60%); *Brown Deer* (2.80%); *Hartford* (3.52%); *Port Washington* (2.77%).

These figures show *average intraindustry comparable secretarial/clerical wage increases of 3.79% for 1995-1996*, as compared to the average proposed wage increases of *2.14% by the District* and *3.24% by the Union*.

(3) The average 1995-1996 teacher aides wage increases for the various districts are as follows: *Menomonee Falls* (3.77%); *Mequon-Thiensville* (3.99%); *Slinger* (3.67%); *West Bend* (2.67%); *Brown Deer* (3.6%); *Hartford* (3.55%); *Port Washington* (2.76%).

These figures show *average intraindustry comparable teacher aides wage increases of 3.43% for 1995-1996*, as compared to the average proposed wage increases of *2.29% by the District* and *3.26% by the Union*.

(4) The average 1995-1996 food service wage increases for the various districts are as follows: *Menomonee Falls* (3.8%); *Mequon-Thiensville* (4.01%); *Slinger* (3.70%); *West Bend* (2.67%); *Hartford* (3.46%); *Port Washington* (2.76%).

These figures show *average intraindustry comparable food service wage increases of 3.40% for 1995-1996*, as compared to the average proposed wage increases of *2.16% by the District* and *3.24% by the Union*.

Without unnecessary elaboration, the undersigned notes that it is quite apparent that the average 1995-1996 wage increases granted to comparable employees by the primary intraindustry comparables, *clearly and strongly favor selection of the final offer of the Union in these proceedings*.

The somewhat more limited 1996-1997 wage comparison data consists of the following:

(1) The average 1996-1997 custodial wage increases for the various districts are as follows: *Hamilton* (3.5%); *Menomonee Falls* (3.12%); *West Bend* (3.32%); *Port Washington* (2.35%).

These figures show *average intraindustry comparable custodial wage increases of 3.07%* for 1996-1997, as compared to the average proposed wage increases of *2.13% by the District* and *3.28% by the Union*.

(2) The average 1996-1997 secretarial/clerical wage increases for the various districts are as follows: *Menomonee Falls* (3.49%); *West Bend* (2.06%).

These figures show *average intraindustry comparable secretarial/clerical wage increases of 2.57% for 1996-1997*, as compared to the average proposed wage increases of *2.16% by the District* and *3.26% by the Union*.

(3) The figures show only *one reported average intraindustry comparable teacher aides wage increase 1996-1997, West Bend* (2.90%), as compared to the average proposed wage increases of *2.29% by the District* and *3.25% by the Union*.

(4) There are *no reported average intraindustry comparable food service wages increase for 1996-1997;* the average proposed wage increases of the parties are *2.12% by the District* and *3.23% by the Union.*

On the basis of the above, it is apparent that arbitral consideration of the average 1996-1997 wage increases granted to comparable employees by the primary intraindustry comparables, *somewhat favors the final offer of the Union in these proceedings,* in that the Union's final offer is closer to the reported averages in the custodial and the teacher aide categories, while the District's final offer is closer in the secretarial/clerical area.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the intraindustry comparison criterion clearly and strongly favors arbitral selection of the final offer of the Union in these proceedings.[35]

At this point, the Arbitrator will note that he fully credits the arguments of the District that its final offer is favored by the internal comparables. Despite its arguments relating to the greater weight which might prospectively attach to such comparisons under recent changes in Wisconsin law, the importance of the internal comparisons in the case at hand is clearly overshadowed by the intraindustry comparisons discussed above. Accordingly, the undersigned has preliminarily concluded that the internal comparison criterion cannot be assigned significant weight in the final offer selection process in these proceedings.

The Cost of Living Criterion

The relative importance in interest arbitration of the cost of living criterion varies with the state of the national and the Wisconsin economies. During periods of rapid movement in prices, cost of living may be one of the

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[35] In connection with the Employer suggested comparisons on the basis of total package costs, the undersigned will merely note that if a party is constrained to compare with external comparables on this basis, they have the choice to do so, but reliable and persuasive data is difficult, if not impossible, to acquire and to effectively use. The argument that the Arbitrator *must assume* that the Employer has the underlying data to back up arguments advanced in its brief is one that the undersigned has not previously encountered, and one that he finds less than persuasive. The fact that the Union did not object to or question the weight and/or the persuasiveness of exhibits at the hearing, does not preclude it from arguing that such exhibits are entitled to little or no weight in its post hearing briefs!

most important criteria in wage determination, but during periods of relative price stability, it declines significantly in relative importance. The relative stability in cost of living over the past several years has significantly reduced the weight placed upon this factor at the bargaining table, and in connection with interest arbitration proceedings.

The base for considering the cost of living criterion begins with the last time that the parties went to the bargaining table, which would normally be expressed as the July 1, 1993 effective date of the expired agreement. Union Exhibits G1 and G2 record the changes in the CPI for Milwaukee Urban Wage Earners and Clerical Workers since this date, indicating a 3.7% COL increase between July 1, 1993 and July 1, 1994, and a further 2.8% COL increase between July 1, 1994 and July 1, 1995. While the parties did not emphasize the size of the deferred increases under the 1993-1995 agreement, the two exhibits reflect a present trend toward cost of living increases approximating 3.0% per year, which figure is significantly closer to the final wage offer of the Union than to that of the Employer in these proceedings. Accordingly, arbitral consideration of the cost of living criterion favors the selection of the final offer of the Union in these proceedings, but this consideration is not entitled to significant weight in the final offer selection process in these proceedings.

Summary of Preliminary Conclusions

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

(1) The disposition of this matter must be determined in accordance with the arbitral criteria contained Section 111.70(4)(cm)(7) of the Wisconsin Statutes as of June 5, 1995.

(2) Since the Wisconsin Legislature had not prioritized the statutory arbitral criteria by the filing of this case, the *comparison criterion* remains the most important and persuasive of the various criteria, and the so-called *intraindustry comparison* remains the most important of the various comparisons.

(3) The *primary intraindustry comparison group* for use in these proceedings, consists of the ten school districts utilized by Arbitrator McAlpin in 1994.

(4) The *overall compensation criterion* cannot be assigned determinative or significant weight in the final offer selection process in these proceedings.

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

(6) The *intraindustry comparison criterion* clearly and strongly favors arbitral selection of the final offer of the Union in these proceedings.

(7) The *internal comparison criterion* favors selection of the final offer of the District, but it cannot be assigned significant weight in the final offer selection process in these proceedings.

(8) The *cost of living criterion* favors selection of the final offer of the Union, but it cannot be assigned significant weight in the final offer selection process in these proceedings.

Selection of Final Offer

Based upon a careful review of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in effect on June 5, 1995, the Impartial Arbitrator has preliminarily concluded that the final offer of the Union is the more appropriate of the two final offers.

AWARD

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

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

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

July 3, 1996