

EDWARD B. KRINSKY, ARBITRATOR

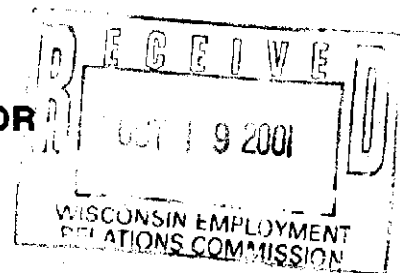
In the matter of the Petition of
Merrill Educational Support Personnel
Association

To Initiate Arbitration
Between Said Petitioner and

Merrill School District

Case 36
No. 58237
INT/ARB-8854

Decision No. 30050-A



Appearances: Mr. Thomas S. Ivey, Jr., UniServ Director Central Wisconsin UniServ
Councils - Unit 2, for the Association
Ruder, Ware & Michler by Mr. Dean R. Dietrich, Esq. for the District

By its Order of March 27, 2001 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Association] or the total final offer of the [District]."

A hearing was held at Merrill, Wisconsin on June 15, 2001. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with receipt by the arbitrator of the parties' reply briefs on October 1, 2001.

The parties' final offers are attached to this Award. The dispute involves three issues:

(1) Wages. The District offers a 25 ¢ per hour increase on July 1, 1999 and an additional 10¢ on July 1, 2000. The District's offer freezes employees at their current steps for the life of the Agreement.

The Association offers a wage schedule (attached) and continues movement of one step for employees in each year of the Agreement. It describes its final offer as representing "...a wage lift in the first year equal to the average percentage increase in wages within the external comparability grouping. The Association's second year wage lift is a 3% across the board increase."

(2) Reclassification. The Association proposes to reclassify eight Aide I employees as Computer Aides. The District makes no offer on this issue.

(3) The District proposes to prorate health and dental benefits for part-time employees for employees hired after May 31, 2001 and eliminate such benefits for those who do not work 600 hours per year. The Association makes no offer on this issue.

The parties agree on the school districts which comprise the relevant external comparables. They are the Wisconsin Valley Conference districts: Antigo, D.C. Everest, Marshfield, Stevens Point, Rhinelander, Wausau, and Wisconsin Rapids.

The arbitrator is required by statute to give weight to the statutory factors set forth at Section 111.70(4)(cm). Several of those factors are not at issue in the present dispute and will not

be considered further: (a) lawful authority of the employer; (b) stipulations of the parties; that portion of (c) pertaining to "the financial ability of the unit of government to meet the costs of any proposed settlement;" (f) comparisons of wages, hours and conditions of employment with "employees in private employment in the same community and in comparable communities."

The statute requires the arbitrator to "... consider and... give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer..." The Association argues that there are no laws or directives which place such limitations on the District's expenditures or revenues. The District argues at length about its poor financial condition [see below]. The arbitrator has considered the District's arguments and find them relevant to an analysis of the reasonableness of the parties' final offers, but the evidence and arguments do not establish either that the District does not have the financial ability to pay the Association's final offer, or that the District is precluded by law or directives from implementing the Association's final offer. Therefore, the arbitrator does not view the "greatest weight" factor as germane to the present dispute.

The statute requires the arbitrator to "...consider and ...give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r." The District argues that its offer is more reasonable when viewed against the "greater weight" factor. The Association disagrees.

The District cites its relatively very small Fund Balance, and argues that the Association's final offer would reduce that balance by \$ 198,677. As of 1999-2000 the District's Fund Balance was \$ 375,000 which was lowest among the comparable districts, where the median Fund Balance was \$ 6,675,000. It notes, too, that while each of the districts had a decline in Fund Balance from the prior year, in percentage terms the District's was the highest (-10%). The median decline of the comparable districts' Fund Balances was 6%. The District cites its relatively high tax rate of \$ 10.59 in 1999-2000 and \$ 10.56 in 2000-2001 (2nd highest among the comparables). The median tax rates of the comparables were \$ 9.60 and \$ 9.71 for those years. The District cites the fact that in 1999-2000 it had the 4th highest per student expenditures among the comparables (\$ 8420). The median per student expenditure among the comparables was \$ 8032. The District cites the fact that it has had to make substantial budget cuts in budgeting for 2000-2001 and 2001-2002, and it projects declines in student enrollments during the next five years which will reduce State Aids and result in the need for significant additional budget cuts. District figures show that enrollment dropped 30 students in September, 1999 compared to September, 1998, and dropped an additional 62 students in September, 2000.

The Association argues that the District has the funds to pay for the Association's final offer "... without any reallocation or adjustment of budgetary line items..." It notes further that there is nothing in the record "to suggest that Merrill is experiencing a significantly different economic situation than the districts in the comparability list..." or that "the Merrill budgetary cuts are significantly different or more severe than [those] in any of the other school districts in the comparability grouping." In the Association's view, the future enrollment projections are speculative and should not be relied on in determining the District's present financial position.

It is the arbitrator's opinion that the District has not demonstrated that there are significant economic problems in its immediate geographic area, either viewed by themselves or in

contrast to the other jurisdictions in which the comparable districts are located, which would favor its position more than the Association's on this factor. However, the evidence is clear that the District's own economic condition requires it to continue to find budget savings in the face of declining revenues and a tax rate which is relatively quite high. This is true whether or not the District's situation is as precarious, or more or less, so, than in the comparable districts. For this reason, the arbitrator views the greater weight factor as favoring the District's final offer more than the Association's.

Issue One - Wages

The wage issue is a complicated one because the parties' final offers are completely different from one another. The District proposes across-the-board cents per hour wage increases and a freeze in movement on steps, while the Association proposes a schedule based on percentage increases with movement on steps.

The arbitrator is required to give weight to that part of factor (c) which is "the interests and welfare of the public..." The District argues that its offer is more in the interests and welfare of the public because it is a fair increase which results in wages comparable to those paid in the comparable districts, and which is in excess of the rise in the cost of living index. It emphasizes the District's difficult financial situation and argues that acceptance of the Association's offer would "...most likely warrant additional cutbacks within the District..."

The Association argues that the District has the money to pay for the Association's final offer. It views its proposal as competitive with settlements reached in the comparable districts. It argues that the District's offer is not in the interests and welfare of the public, stating, "there is a strong public interest in providing adequate, affordable health insurance coverage for public employees who work with our children. We should not be regressing in this arena."

The arbitrator's conclusion about the interests and welfare of the public will be made below after analysis of the other factors.

The arbitrator is required to give weight to factors (d) and (e), comparisons of wages, hours and conditions of employment with those of "other employees performing similar services" and with "other employees generally in public employment in the same community and in comparable communities."

With respect to the external comparables, the following table illustrates, for several bargaining unit classifications, Merrill's position in 1998-99 (the year prior to the two year period of the current dispute), and in each of the two years in dispute under the parties' respective final offers, using maximum rates without longevity benefits. Only those classifications are shown for which the data are complete for both 1999-00 and 2000-01 for all of the comparables [D.C. Everest is not included because it is in arbitration].

Title	98-99 Merrill rank and hourly rate without longevity	98-99 compar- ables median Merrill +/-	99-00 Merrill rank and hourly rate without longevity District Assn	99-00 compar- ables median District +/- Assn	00-01 Merrill rank and hourly rate without longevity District Assn	00-01 compar- ables median District +/- Assn	99-00 Merrill gain / loss relative to 98-99 compar- ables median	00-01 Merrill gain loss relative to 99-00 compar- ables median
12-mo Secys	1 13.41	11.30 +2.11	D-1 13.66 A-1 13.87	11.59 D+2.07 A+2.28	D-1 13.76 A-1 14.29	11.78 D+1.98 A+2.51	D-.04 A+.17	D-.09 A+.23
School year Secys	2 12.07	10.47 +1.60	D-2 12.32 A-2 12.47	10.78 D+1.54 A+1.69	D-2 12.42 A-2 12.84	11.10 D+1.32 A+1.74	D-.06 A+.09	D-.22 A+.05
Instruct Asst Spec.Ed	2 10.46	9.62 +.84	D-2 10.71 A-2 10.81	9.93 D+.78 A+.88	D-2 10.81 A-2 11.13	10.21 D+.60 A+.92	D-.06 A+.04	D-.18 A+.04
Instruct Asst	2 9.82	9.39 +.43	D-2 10.07 A-2 10.20	9.69 D+.38 A+.51	D-2 10.17 A-2 10.51	10.00 D+.17 A+.51	D-.05 A+.08	D-.21 A+.00

These comparisons demonstrate that under either offer, Merrill's rank, in terms of hourly rate comparisons to the other districts, does not change. In terms of Merrill's relationship to the median rates paid by the other districts, Merrill's wage rates continue to be above the median, but there is improvement in relation to the median under the Association's proposal and deterioration under the District's proposal.

The cents per hour wage increases offered by the District are below the settlements reached in the comparable districts in which cents per hour increases were given. In 1999-2000 the Board's offer is a 25 cent increase, while the settlements for that period among the comparables are: Antigo 40 cents; D.C. Everest 34 cents for one group of employees, and 25 cents for another; Marshfield, a range of 33-55 cents; Wausau, 35 cents for one group of employees. The remaining districts settled in percentage terms and the arbitrator has not attempted to calculate the cents per hour equivalent. Similarly, for 2000-2001 the District has offered 10 cents. The settlements among the comparables are: Antigo 30 cents; D.C. Everest 29 cents for one group of employees (the other group is in arbitration and the final offers are 35 cents by the Board and 44 cents by the Union); Wausau 15 cents for one group and 35 cents for another. The other settlements are in percentage terms.

The District argues that the comparisons demonstrate that "...bargaining unit members are paid above the average or closely in line with comparable positions in the comparable pool....[and] nearly all of the positions in the unit will continue to be paid above the average." It argues that the Association has not demonstrated any need to catch up to the competition; and for its part, the District has offered what it feels it can afford."

The Association argues that its proposed wage increases are in line with the comparables. It argues, "Typically, step cost is not calculated in reporting wage rate increases. When an employer reports a 3.5% wage increase, that figure represents a pure lift in the value of the wage rates. It does not include insurance increases or any cost of an internal wage structure. The Association's Final Offer represents a wage lift in the first year equal to the average percentage increase in wages within the external comparability grouping. The Association's second year wage lift is a 3% across the board increase. This is in line with both external and internal wage rate increases."

The Association presented evidence about wage increases given to other local government units in the Merrill area. It cited a 3% increase given to Lincoln County employees; 3.5% lift to City of Merrill employees in the first year, with an additional 3.5% lift and an additional 15 cents an hour in the second year; 2% for Merrill police in January, 2000 and another 2% in July, 2000; 3% in 1999, 29 cents on January 1, 2000 and another 30 cents in July, 2000 for City of Merrill employees; 3% on January 1, 1999, 2% on January 1, 2000 and 2% in July, 2000 for Merrill Firefighters. The Association argues with respect to the comparison with City of Merrill employees, that those employees have "generally higher wage lifts than that proposed by the Association[and] it is clear that the wage rates proposed in the Association's Final Offer are in line with those paid to other public employees in the Merrill Community."

In terms of internal comparability, the District argues that its final offer should be viewed more favorably than the Association's because its total package offer to the teachers and to the custodians averaged 3.8% over two years which is the same offer it has made to the bargaining unit. The custodians were given annual increases of 30 cents per hour for two years, which by agreement were reduced to 20 cents with the remaining money to be used to pay for health insurance. The District's total package cost offered to the bargaining unit in this arbitration is an increase of 3.97% in the first year, and 3.7% in the second year, based on the cast forward method of costing.

The Association views comparisons with the size of the teacher package as inappropriate because teacher bargaining is governed by the Qualified Economic Offer provisions of the statutes which limit the amount that districts may pay to teachers unless there is a

referendum held to enable larger payments to be made. In addition, the Association notes that the District has given increases for 2000-2001 of 42-50 cents per hour to exempt secretaries, "...approximately a 3% wage lift," and "an average wage increase of 6.16% for 2000-2001 to administrators.

The parties have agreed upon the accuracy of the cost figures which the District used in its exhibits. They were produced using the cast forward method of costing. In its exhibits the Association has used an "actual" costing, arguing that it provides a more accurate picture of the actual costs during the life of the proposed Agreement. The District did not agree to that method of costing, or to the Association's cost figures, and the District objects to its use in this proceeding.

The method of costing traditionally used in Wisconsin in interest arbitration is the cast forward method which enables cost increases to be calculated and comparisons to be made based on increases to the staff as it existed in the base year. Where there is no agreement to use an alternative method, the arbitrator agrees with the District that it is the cast forward method which should be used. The Association may be correct that the actual cost method gives a more accurate picture of what has happened from one year to the next, but it makes cost comparisons with other employee groups, both internal and external, extremely difficult.

In addition to their arguments about wage comparisons, the Association objects to the District's offer insofar as it freezes step increases and offers no quid pro quo for doing so. The effect of this, the Association argues, is to penalize employees who should be moving to the top of the schedule. It argues that the schedule operates in the District's interest by allowing it to "put off paying the 'going wage' for the job for a number of years..." and it is unfair to prolong that period by freezing steps. The Association argues that, "the District's attempt to eliminate step movement accounts for a good part of the dollar difference between the parties and results in disparate treatment for Merrill Support Staff." The Association has demonstrated that step increases are the norm among the comparables, and it notes correctly that several of the comparables also have longevity payments for varying years of service, which the District does not pay to the bargaining unit.

The District argues that because its offer is consistent with the comparables, both internal and external, it does not have to offer a quid pro quo for freezing the step increases during the life of the Agreement. It argues that it has not eliminated the steps, merely frozen them. It argues that it "...cannot afford to pay the cost of step movement during this difficult time. The average increase between steps alone ranges from 3.3% to 4.6%."

In terms of the resulting wage rates in relationship to those paid by the comparables, there is little to choose from. Both final offers retain Merrill's high ranks and result in wage rates above the median of the comparables. However, in terms of wage increases during the years covered by this dispute, the Association's proposed increases are clearly more in line with comparable school districts and the non-school units of government in the Merrill area and with the increases given to the District's custodians. Thus comparability of wage rates and wage increases favors the Association's offer more than the District's. The arbitrator also favors the Association's final offer with respect to the freezing of steps. That is discussed further, below.

The statute requires that the arbitrator give weight to the "average consumer prices for goods and services, commonly known as the cost of living." The District presented the Cost of Living Index for US Cities. For the period July 1998-June 1999, the year which preceded the years which are involved in the present dispute, the cost of living increased

by an average of 1.6% over the twelve month period. For July, 1999-June 2000 it increased by an average of 3.0% over the twelve month period. Thus the District is correct that its final package offer costing 3.97% in the first year, and 3.7% in the second year is in excess of the change in cost of living and is much more in line with those increases than the Association's total package offer which the District calculates as being 7.32% in the first year and 7.02% in the second year.

The statute requires the arbitrator to give weight to factor (g) "overall compensation..." In this connection, as noted in the preceding paragraph, the District cites the size of its total package offer. It views its offer as more reasonable, and as the more fiscally conservative offer which is "...necessary in light of the District's financial state." The Association argues that the District has presented no evidence to show that its total package offer is higher than those paid in the comparable districts.

The District calculates the cost of its final offer for 1999-2000 the first year of the Agreement at \$ 1,989,079, which is an increase over 1998-99 of \$ 75,973 (3.97%). It calculates the Association's final offer cost for 1999-2000 at \$ 2,053,133, an increase of \$ 140,027 (7.32%). For 2000-2001 the District calculates the cost of its final offer to be an increase of \$ 73,640 (3.7%) and the Association's cost to be an increase of \$ 144,209 (7.02%).

The District has offered the same total package percentage increase to the bargaining unit which it gave to teachers and to custodians. The Association argues that the District's argument should be given little weight because the teachers' settlement is limited by the State QEO statutory provisions which do not apply to support staff, and the custodians Agreement has no steps. The Association argues, "Without steps it is possible to achieve a comparable wage rate increase with a much lower "total package" cost."

In terms of total package, the District's final offer is in line with the settlements of the internal comparables, and the Association's final offer far exceeds those figures. It is true that the custodial Agreement has no steps, but steps are a negotiated arrangement, and it is reasonable for the District to include the cost of those steps when costing its package. There are no data presented which enable the arbitrator to make total package comparisons with the external comparables.

The arbitrator is required by statute to give weight to factor (j) "other factors...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment..." The District has proposed to freeze step movement. The wage structure, which includes steps, has been bargained previously, and thus the parties have, or should have, taken those costs into account in developing their proposals. One party should not be able to achieve elimination (or freezing, in this case) of a negotiated wage structure through arbitration unless there are compelling reasons for it. The District has demonstrated its need to control costs, but it has not shown compellingly why it is necessary to freeze steps in order to accomplish that. The District's proposal in this regard penalizes employees who had every reason to anticipate, when they were hired and as they continued to work for the District, that they would progress in accordance with the wage steps of the Agreement. The arbitrator notes the wording of Article 19 of the 1997-99 Agreement which states, "For the duration of this contract employees will advance one column for each year of employment with the district." The arbitrator notes also that of some 102 employees in the unit, some 55 were hired in 1994 or afterwards and would be adversely affected by the District's freezing of steps. Thus, with respect to factor (j) the Association's wage offer is favored over the District's.

Issue Number Two - Reclassification.

In its final offer the Association has reclassified eight employees from Aide I to Computer Aide. Regardless of the merits of this proposal, the District asserts, and the Association does not refute the assertion, that this matter was never raised in bargaining prior to submission of final offers. The new classification was simply inserted into the Association's proposed wage schedule in its final offer. The arbitrator notes that in the parties' tentative agreements, they negotiated a new position (Certified Hearing-Impaired Interpreter) and agreed on the rate of pay and step schedule for the position. As noted earlier, factor (j) requires the arbitrator to give weight to matters "which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining...arbitration or otherwise between the parties..." Reclassifications of employees are normally discussed and bargained by labor and management prior to submission of such issues to arbitration.

With regard to the merits of the issue, the Association presented lengthy and detailed testimony by one Aide I, Blake, whose job responsibilities appear to have increased significantly, and which might justify her placement in a higher wage classification. As noted above, there are seven other employees in the Aide I classification who would be affected by the reclassification. Through Blake's testimony the Association established that the affected employees have been required to take additional training, and they have given instruction about computers to other staff members of the District. Nevertheless, the Association has not persuaded the arbitrator that there is justification at this time for reclassifying the other seven employees. Perhaps there is, but it hasn't been demonstrated that the duties and responsibilities of the affected employees are sufficiently more difficult or responsible than their previous duties to warrant higher pay or to establish what new pay level is appropriate. Those are things which the parties should bargain. The arbitrator agrees with the District's argument that the evidence presented does not demonstrate "...that the duties performed by Aides working with computers are any more difficult than the duties performed by Aides working directly with the children or assisting in the classroom."

With respect to the pay for the new proposed classification, the Association states, "The Association chose steps 4, 5 and 6 of the Aide II category schedule as the appropriate level for...Computer Aides. This was a compromise between the higher 'Computer/AV.. Tech' wage schedule and the Aide II classification, which the individuals involved believed to be fair." The District calculates the cost of the proposed reclassification as being in excess of \$23,000 during the term of the Agreement. According to District calculations, the wages of the reclassified employees would increase by between 10.08% and 23.74% in the first year.

The Association presented an exhibit in which it demonstrated that various duties involving computer assistance and maintenance done by Blake and others of the Aide I employees are performed in the comparable districts by employees who are not classified as Teacher Aides, but rather have higher level titles which reflect their computer responsibilities. This exhibit is not persuasive because, as mentioned above, the Association has not demonstrated sufficiently that the job responsibilities of the Aide I employees other than Blake merit reclassification. If it were clear that such reclassification were warranted, then the Association's comparisons with positions in comparable districts might be more useful.

As mentioned earlier, the arbitrator is required by statute to give weight to factor (j). The Association has proposed a reclassification for employees, apparently without presenting

this argument during bargaining prior to submission of final offers. Reclassifications do not lend themselves particularly well to final offer package arbitration, and especially where there has not been sufficient discussion and bargaining and presentation of the merits of such a proposal. Thus, with respect to factor (j), the District's final offer on reclassification is favored over the Association's.

Issue Number Three - Proration of Insurance Benefits

The Association argues that the meaning of the District's proration proposal is not clear. It argues that although the District asserts that the proposal pertains to health and dental insurance only, the wording does not say that. The Association argues that the District's proposal eliminates all fringe benefits for the affected employees, and "...creates a dichotomy of threshold hours for eligibility between health and dental insurance coverage which are maintained at 600 hours per year and other fringe benefits at 615-647.5 hours per year depending upon how many hours -1230 or 1295- are used to define full-time equivalency." The Association argues further, "The District's final offer is severely flawed in that there is no clearly defined application of "pro-rating all fringe benefits." For example, would a 10 month employee working at 50% of full-time, receive 2 of the 4 holidays provided in Article 10-Holidays or would they receive .5 of a work day's sick leave per month instead of the "1 work day of sick leave" provided for in Article 12-Sick Leave? Would this person receive a pro-rated contribution to the Wisconsin Retirement Plan? Or better yet, would an employee working 49% of full-time receive no contribution to the Wisconsin Retirement Plan...The District's language is not well thought out and should be rejected by the Arbitrator."

The District's proposal states that it is a change in "Article 13-Insurance." Although some of the language in the District's offer refers to "fringe benefits," the arbitrator notes that the introductory language of the proposal states, "The payment by the Board on behalf of employees for health and dental insurance will be based on the following:..." In succeeding sentences of the same paragraph, the District's reference is to "fringe benefits," but the arbitrator interprets those benefits to be the health and dental insurance benefits specified in the opening sentence. The arbitrator does not interpret the language to be a reference to other kinds of benefits found in Article 13, or a reference to other articles of the Agreement cited by the Association.

The District argues that its proposal to prorate health and dental insurance benefits for future part-time employees is warranted by the District's weak financial position and its desire to reduce insurance costs in the future. It cites significant increases in its health insurance premiums: 15.59% in 2000-2001 and 15.1% in 2001-2002. It argues that "the need to reduce costs in the district outweigh providing future part-time employees with the immoderate and costly health and dental insurance benefits." It emphasizes that no current employees will be affected by the proposal. In addition to cost-saving, the District argues that its offer is justified in relation to internal and external comparisons.

With respect to internal comparisons the District cites its payments to custodians. There is one part-time custodian who, according to the District, receives prorated benefits based on a 2080 hour year. There is no proration of benefits for teachers, but the District notes that the teacher with the lowest FTE appointment works 760 hours per year. The Association argues that there is no language in the custodial Agreement providing for proration of insurance benefits for part-time employees. With respect to teachers, the Association argues that there is no proration of insurance for part-time employees and the District pays 90% of health insurance and 75% of dental insurance. The Association argues also that, "the

District has not introduced language to show that administrators and/or other non-represented employees have prorated health insurance benefits."

With respect to external comparisons, the District argues that none of the comparables pay a 90% insurance contribution for employees who work a minimum of 600 hours per year, which is what the District has been paying. It argues that its proposal to prorate based on 1295 hours per year is in line with other districts. For example, with respect to health insurance, D.C. Everest, Marshfield, Stevens Point (for Secretaries) and Wausau (for Food Service) use 2,080 hours, Antigo uses 1,820, and Wausau (for Secretaries & Aides) uses 1,430. Stevens Point uses 1,260. Wisconsin Rapids uses 7 hours per day for some employees (which is what the District is proposing in the present dispute) and 6 hours per day for other employees. Each of the districts has a proration formula for part-time employees.

The Association views the District's proposal as "a major change in the status quo that will have a significant impact on the bargaining unit," one which would give the District an incentive to keep hours down in order to save benefits money. It argues that for the majority of bargaining unit members the health insurance benefit is a major reason they are working. Implementation of the District's Final Offer would lead to a situation that most Cook Assistants find themselves in. Even though some are eligible for health insurance they can't afford to pay even the 10% portion of the health insurance."

The Association acknowledges that there is some support, looking at the comparables, for proration of health and dental insurance benefits, but it argues that "...the elimination of all health and dental insurance eligibility for employees working less than 50% is not supported by contract language within the established comparability group." The Association argues, too, that the District has not demonstrated that its insurance premium increases were substantially greater than those experienced by comparable districts.

Given the difficult financial situation in which the District finds itself, it is reasonable for the District to look at ways to reduce costs, and particularly ways that do not have an impact on present employees. Nonetheless, the District is attempting to do so by changing a negotiated benefit through arbitration. The formula which it offers is not in effect in its other bargaining units, and thus is not supported by the internal comparables. While there is clearly support among the external comparables for proration, there is a wide variety of arrangements in those districts, and it is not the norm to give no prorated benefits to employees who work less than 600 hours. The Association is also correct in its assertion that the health insurance premium increases faced by the District are not significantly higher than those being paid in comparable districts. In the arbitrator's view, even though the District's desire to cut costs and reduce benefits to part-time employees is a reasonable one, its final offer is not preferred to the Association's which leaves the existing benefits in place.

Another issue which must be addressed is the disposition of two exhibits which the Association requested the arbitrator to consider. At the conclusion of the arbitration hearing, the parties, at the arbitrator's urging, agreed to close the record, except for some specifically designated additional information which they submitted subsequently. In August, 2001, after the deadline established for submission of the agreed upon information, the Association sought to enter two additional exhibits into the record, and the District objected. In keeping with the mutually agreed arrangements at the hearing, the arbitrator agrees with the District that these exhibits should not be considered.

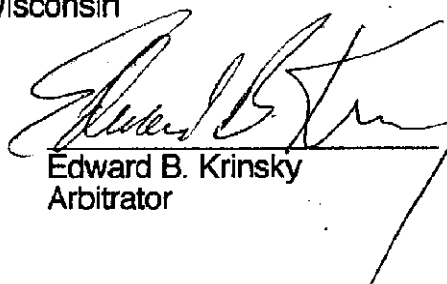
The arbitrator deferred further discussion of the factor dealing with the interests and welfare of the public. The evidence does not lead to a clear conclusion favoring one proposal over the other. However, because the cost of the District's final offer is more moderate than the Association's at a time when its financial situation is difficult, and gives the bargaining unit the same size economic offer as given to the District's other employee groups, and offers wage rates which are competitive with those paid in comparable districts, the arbitrator prefers the District's offer with respect to the interests and welfare factor.

The arbitrator is required by statute to select one final offer in its entirety. He does not have the discretion to rule for the District on the reclassification issue, for example, while ruling for the Association on the wage freeze issue or on the proration issue. Thus, the decision in this case results in implementation of one or more issues which would not be implemented by the arbitrator if he were free to consider the issue on their own merits, rather than as part of a final offer package.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The District's final offer is selected.

Dated this 18th day of October, 2001 at Madison, Wisconsin



Edward B. Krinsky
Arbitrator

Merrill Educational Support Personnel Association
Revised Final Offer
January 19, 2001

This revised final offer of the Association incorporates all tentative agreements attached as well as all existing provisions of the previous contract unless modified herein.

The Association reserves the right to modify this revised final offer.

Wages: The Association proposes the attached wage schedules.

**Merrill ESP
1999-2000**

	OFF	6	5	4	3	2	1
AIDES							
Aide I	10.20	9.99	9.54	9.19	8.89	8.58	8.29
Special Ed. Aide II	10.81	10.58	10.11	9.74	9.42	9.11	8.79
Computer Aide	10.81				10.58	10.11	9.74
Certified Hearing Impaired Interpreter Aide					10.90	10.45	9.95
FOOD SERVICE							
Cook Assistant I	9.57	9.34	8.92	8.59	8.31	8.03	7.75
Cook II	10.44	10.21	9.75	9.39	9.09	8.78	8.48
Head Cook III	11.26	11.04	10.54	10.16	9.82	9.49	9.16
CLERICAL							
School Year I	12.47	12.24	11.69	11.26	10.90	10.53	10.17
12 Month II	13.87	13.64	13.03	12.54	12.14	11.73	11.32
C3	14.20						
	15+	3	2	1			
Computer/A.V. Tech.	15.34	15.01	14.46	13.99			

**Merrill ESP
2000-01**

	OFF	6	5	4	Rate Adjustment--		1.0300	3.00%
					3	2	1	
AIDES								
Aide I	10.51	10.29	9.83	9.47	9.16	8.84	8.54	
Special Ed. Aide II	11.13	10.90	10.41	10.03	9.70	9.38	9.05	
Computer Aide	11.13				10.90	10.41	10.03	
Certified Hearing Impaired Interpreter Aide					11.23	10.76	10.25	
FOOD SERVICE								
Cook Assistant I	9.86	9.62	9.19	8.85	8.56	8.27	7.98	
Cook II	10.75	10.52	10.04	9.67	9.36	9.04	8.73	
Head Cook III	11.60	11.37	10.86	10.46	10.11	9.77	9.43	
CLERICAL								
School Year I	12.84	12.61	12.04	11.60	11.23	10.85	10.48	
12 Month II	14.29	14.05	13.42	12.92	12.50	12.08	11.66	
C3	14.63							
	15+	3	2	1				
Computer/A.V. Tech.	15.80	15.46	14.89	14.41				

FINAL OFFER
OF
MERRILL AREA PUBLIC SCHOOL DISTRICT
TO
MERRILL EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION
CASE 36 NO. 58237 INT/ARB-8854

1. Revise the opening paragraph of Article 13 - Insurance to read as follows:

The payment by the Board on behalf of employees for health and dental insurance will be based on the following: Any employee who is employed for six hundred (600) hours or more per school year will be eligible for insurance. Regular part-time employees employed after May 31, 2001 and who are less than half-time shall not be entitled to any fringe benefits contained in the agreement. Fringe benefits contained in this agreement will be prorated for part-time employees who work at least 50% but less than 100% and are employed after May 31, 2001.

2. Revise Article 19 - Salary Schedule, Section 1 by adding the following paragraph:

For the 1999-2001 contract, employees will not advance one column for each year of employment with the School District.

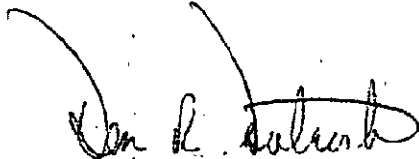
3. Revise Article 21 - Duration by modifying the second paragraph to read as follows:

This Agreement shall be binding and in full force and effect from July 1, 1999 until June 30, 2001. If neither party sends notice to the other prior to May 1, this Agreement shall automatically be renewed and become binding and in full force and effect for another year.

4. Revise Appendix B - Salary Schedule to provide for a 25¢ per hour increase to all wage rates for calendar year 1999-2000 and a 10¢ per hour increase for all steps for the 2000-2001 school year with the understanding that employees will not move from one step to another step on the Salary Schedule during the term of this Agreement.

Dated this 19th day of January, 2001.

MERRILL AREA PUBLIC SCHOOL DISTRICT



Dean R. Dietrich, Esq.
Ruder, Ware & Michler, A Limited Liability S.C.
500 Third Street
P.O. Box 8050
Wausau, WI 54402-8050

MESPA SALARY SCHEDULE **1998-99**

1998-99 Steps

Food Service

	Off	6	5	4	3	2	1
Cook Assistant I	9.20	8.98	8.58	8.26	7.99	7.72	7.45
Cook II	10.06	9.84	9.40	9.05	8.76	8.46	8.17
Head Cook III	10.88	10.66	10.18	9.81	9.49	9.17	8.85

Aides

Aides I	9.82	9.61	9.18	8.84	8.55	8.26	7.98
Special Ed. Aides II	10.46	10.24	9.78	9.42	9.11	8.81	8.50

Clerical

School Year I	12.07	11.85	11.32	10.90	10.55	10.20	9.85
12 Month II	13.41	13.19	12.60	12.13	11.74	11.34	10.95
C3	13.73						

Computer A.V. / Tech.

15+	3	2	1
14.80	14.48	13.95	13.50

1/17/2001

MESPA SALARY SCHEDULE **1999-2000**

1999-2000 Steps

Food Service

	Off	6	5	4	3	2	1
Cook Assistant I	9.45	9.23	8.83	8.51	8.24	7.97	7.70
Cook II	10.31	10.09	9.65	9.30	9.01	8.71	8.42
Head Cook III	11.13	10.91	10.43	10.06	9.74	9.42	9.10

Aides

Aides I	10.07	9.86	9.43	9.09	8.80	8.51	8.23
Special Ed. Aides II	10.71	10.49	10.03	9.67	9.36	9.06	8.75

Clerical

School Year I	12.32	12.10	11.57	11.15	10.80	10.45	10.10
12 Month II	13.66	13.44	12.85	12.38	11.99	11.59	11.20
C3	13.98						

Computer A.V. / Tech.

15+	3	2	1
15.05	14.73	14.20	13.75

7/19/2001

**MESPA SALARY SCHEDULE
2000-2001**

<u>2000-2001 Steps</u>	<u>Off</u>	<u>6</u>	<u>5</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>
<u>Food Service</u>							
Cook Assistant I	9.55	9.33	8.93	8.61	8.34	8.07	7.80
Cook II	10.41	10.19	9.75	9.40	9.11	8.81	8.52
Head Cook III	11.23	11.01	10.53	10.16	9.84	9.52	9.20
<u>Aides</u>							
Aides I	10.17	9.96	9.53	9.19	8.90	8.61	8.33
Special Ed. Aides II	10.81	10.59	10.13	9.77	9.46	9.16	8.85
<u>Clerical</u>							
School Year I	12.42	12.20	11.67	11.25	10.90	10.55	10.20
12 Month II	13.76	13.54	12.95	12.48	12.09	11.69	11.30
C3	14.08						
<u>Computer A.V. / Tech.</u>							
		<u>15+</u>	<u>3</u>	<u>2</u>	<u>1</u>		
		15.15	14.83	14.30	13.85		

7/19/2001