In the Matter of the Interest Arbitration Proceeding Between

KIMBERLY AREA SCHOOL DISTRICT

and

KIMBERLY AREA PARAPROFESSIONAL ASSOCIATION

Case 25
No. 65069
INT/ARB - 10511

Decision No. 31785 - A

Appearances:

Mr. William G. Bracken, Labor Relations Coordinator, Davis & Kuelthau, S.C., 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin, appearing on behalf of the District.

Mr. Gregory Spring, Attorney at Law, 33 Nob Hill Drive, Madison, Wisconsin and **Mr. Richard A. Engel, Sr.,** UniServ Director, 1136 North Military Avenue, Green Bay, Wisconsin, appearing on behalf of the Association.

INTEREST ARBITRATION AWARD

This is a matter of final and binding interest arbitration pursuant to Section 111.77(6) of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a collective bargaining impasse between Kimberly Area School District, hereinafter referred to as the District and Kimberly Area Paraprofessional Association, hereinafter referred to as the Association. On August 22, 2005 the Association filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged an impasse existed between it and the District. On September 8, 2006 the Commission certified the parties' final offers. On October 2, 2006 the Commission issued an Order appointing the undersigned, Edmond J. Bielarczyk, Jr., as the Arbitrator in the matter. Hearing on the matter was held in Kimberly, Wisconsin on December 21, 2006. A stenographic transcript of the proceeding was prepared and received by the Arbitrator on January 8, 2007. Post hearing written arguments and reply briefs were received by the Arbitrator by March 17, 2007.

FINAL OFFERS

In their respective final offers, hereby incorporated by reference into this decision the parties disagreed on the following issues:

DISTRICT'S FINAL OFFFER

Increase all cells by $0.20 effective July 1, 2005, and $0.20 effective July 1, 2006.
Employees with more than twelve (12) years of experience increase of 3% effective July 1, 2005 and 3% effective July 1, 2006.
Eliminate step 3 at the beginning of the 2005-2006 school year.
Eliminate step 4 and step 5 at the beginning of the 2006-2007 school year.

ASSOCIATION'S FINAL OFFER

Increase all cells by 3% effective July 1, 2005 and 3% effective July 1 2006.
Eliminate step 3 at the beginning of the 2006-7 school year.

STATUORY CRITERIA

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by the paragraph, the arbitrator or arbitration panel shall consider and shall 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 arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitrator panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any other of the factors specified in 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the employer.
b. Stipulations of the parties.
c. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees

performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
f. Comparison of the 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 in private employment in the same community and in comparable communities.
g. The average consumer prices for goods and services, commonly known as the cost-of-living.
h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
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.

PARTY'S POSITIONS

The following is intended to be a brief general overview of the comprehensive initial and reply briefs filed by the parties. The Arbitrator has reviewed their briefs and the cases cited therein in detail and the Arbitrator has given full consideration to the statute, evidence, testimony and arguments presented in rendering this Award.

DISTRICT'S POSITION

The District contends that the District's final offer best meets the statutory criteria and points out that both parties are making changes and modifications to the salary schedule. The District argues that both parties have acknowledged that the salary schedule is too long. The District avers that this has resulted in a low hiring rate that has limited the ability of the District to attract qualified candidates, has resulted in an overall wage increase (defined by the District as the "across-the-board" wage increase plus step increment) as too high due to a disproportionate amount of money used to provide the yearly step increase, can result in morale problems with other internal bargaining units due to the size of the wage increase received by Association members and compression occurring between the clerical and paraprofessional employees, has resulted in a wage schedule that is out of line with external comparables, and can result in budget problems because of the relatively high wage increase generated with a wage structure that has too may steps. The District avers to address this problem it has deleted three (3) steps over the duration of the collective bargaining and

points out the Association is deleting only one.

The District also argues the parties, when agreeing to the original collective bargaining agreement, compromised and agreed to a wage schedule and compromised and agreed to an overall wage increase. The District asserts the District's goal of having the Association recognize both the across-the-board wage increase and the per-cell increase must be taken into account to equal the agreed-upon overall wage increase. The District contends this is in fact what the parties have bargained in the past. The District argues further modifications must be made to the wage schedule to make it more competitive with the wage schedules found in the external comparables.

The District points out there are 58 employees in the bargaining unit with an average years of service of 5.5 and that in the 2004-05 school year 20 of the employees had three years of service or less. Only five employees had 12 or more years of service. The District argues this relatively young experience reflects the nature of the job with employees moving in and out of the labor market with more frequency than other positions. The District asserts it's $0.20 per hour increase rolls up to a 5.4 percent increase in the first year and 6.2 percent in the second year, with total package increases of 6.3 percent in the first year and 7.6 percent in the second year. The District argues the Association's 3 percent per cell increase amounts to an overall 6.3 percent salary increase in the first year and 6.2 percent in the second year with total package increases of 7 percent and 7.6 percent with the parties being $14, 431 apart on their respective offers. The District offer raises the average hourly amount to $10.13 while the Association raises it to $10.22 with the District's offer raising the average salary 52 cents and the Association offer raising it 61 cents. The District also points out the employees will realize a $1.00 per hour increase in fringe benefit costs over the life of the collective bargaining agreement with fringe benefits amounting to 60 percent of wages.

The District acknowledges that under its offer the Union's wage offer is higher in all but five positions in the first year but stresses it's offer is higher in 25 of the 58 positions in the second year. The District asserts this is evidence a significant number of employees (42%) will receive a better wage increase under it's offer than the Association's offer in the second year. The District points out, however, that in the second year 54 percent of current staff will receive a higher wage than under the Association's offer. The District concludes this evidence demonstrates the District's offer is reasonable.

The District points out the parties are not in dispute over the external comparables of Appleton, Fond du Lac, Kaukauna, Menasha, Neenah and Oshkosh. The parties are not in agreement on internal comparables with the District comparing the paraprofessionals to all of the other employee groups, Administrators, Administrative Assistants, Custodians, Secretaries, Teachers and Teacher Assistants.

The District argues that the fact both parties are modifying the wage schedule demonstrates both parties are in agreement the schedule is too long. The District contends when both parties are modifying the salary schedule *quid pro quo* concepts do not come into play. The District points out bargaining history demonstrates the parties agreed to a cents per hour increase in four of the previous six years and presented the following in it's brief to demonstrate this point:

Year	Per Cell	Ave. Increase	$ Increase	% Increase	Act $	Act%

1999-00	$0 to $.09	3.6%	$.12	1.5%	$.36	4.3%
2000-01	$0 to $.09	3.6%	$.13	1.6%	$.36	4.3%
2001-02	2.4%	4.5%	$.20	2.2%	$.43	4.8%
2002-03	$.05	3.5%	$.10	1.1%	$.34	3.7%
2003-04	2.5%	4.8%	$.23	2.5%	$.49	5.2%
2004-05	$.14 to $.50	5.2%	$.31	1.8%	$.55	5.7%
District						
2005-06	$.20	5.4%	$.20	1.9%	$.53	5.3%
2006-07	$.20	6.2%	$.20	1.8%	$.57	5.5%
Association						
2005-06	3.0%	6.3%	$.31	3.0%	$.65	6.6%
2006-07	3.0%	6.2%	$.32	3.0%	$.67	6.6%

The District argues that the District's offer restores the "cents per hour" approach the parties have voluntarily agreed upon to resolve past collective bargaining agreements and is closer to the per cell increases that have been voluntarily agreed to in the past. The District also argues the original intent of the parties was to factor in and realize the cost of the step increment in arriving at an overall wage increase. The District also argues the parties agreed to a $0.34 difference between cells in 2004-05 in an attempt to restore order to the wage structure. The District also argues the Association has resisted a wage schedule with fewer steps because members of the Association thought it was unfair that employees with lesser experience receive the same pay as employees with greater experience. The District asserts the Association's position on this ignores the fact that the job duties of paraprofessionals do not require an inordinate number of years to become qualified and proficient and ignores the labor market evidence that a paraprofessional with four years of experience should receive the same rate of pay as one with ten years of experience. The District argues the heart of the instant matter is the costs associated with movement through the salary schedule. The District concludes the Association's offer is too high and falls out of the bounds of the established settlement pattern. The District argues the Association presented no evidence that would justify a 6.6 percent increase and concludes such an increase is unreasonable.

The District also contends the District's offer best addresses the problems associated with the current wage schedule. The District points out it deletes the first step in 2005-06 and the second and third steps in 2006-07. The District acknowledges it is still more steps than the internal and external comparables, but points out that internally only the Teachers (20 steps) have more steps and point out the external average is 3.17 steps. The District also stresses its hiring rate is $1.31 below the comparable averages while the Association's would be $1.59 below average. The District concludes the District's final offer best positions the District's hiring wage to be more competitive.

The District also contends the overall wage increase is too high due to a fixed cost of step increases. The District points out a flat dollar amount preserves the salary schedule relationship between steps and that a percent increase spreads the difference between steps with a resulting increase in future step costs. The District argues currently the step increase is "eating-up" available dollars leading to fewer and fewer dollars available to apply to the schedule itself. The District asserts the Association offer compounds this matter by leaving too many steps and increasing the step increment costs. The District asserts before the parties even meet to discuss wages the

employees receive a three to four percent increase due solely to the large number of steps. The District points out in the comparable school districts this fixed cost doesn't exist due to the fact they have limited their steps. The District argues it cannot afford to grant the paraprofessionals a six percent wage increase when no other employees in the District are receiving such increases without creating moral problems.

The District contends it's final offer represents the highest wage increase received by all the other internal groups (District Ex. 16). The District points out the Association presented no evidence as to why the paraprofessionals should receive a higher wage increase than other District employees. The District also points out the paraprofessionals would overtake school year secretaries by the year 2010-11 if the current trend were to continue and would run counter to the normal relationship between secretary wages and paraprofessional wages.

The District also stresses that even with the changes it proposes in the salary schedule seven steps is still clearly above the external comparable salary schedules. The District avers it would be more likely to agree to a percentage increase as proposed by the Association provided it had the same number of salary schedule steps. The District concludes that selection of the District's final offer would move the parties closer to the external comparables and create a environment that would encourage voluntary settlements. The District argues it is usually the union that wishes to compress the salary schedule.

The District also contends the extended salary schedule will create budget problems. The District argues that given the finite supply of money on hand it is incumbent on the parties to spend the money wisely. The District argues that given the current economic and political environment there is no justification why this Association should receive increases in the magnitude six to eight percent. The District avers the Association's final offer exacerbates the problem by increasing increment costs, not reducing the number of steps, and creating future problems for the parties.

The District contends the District's final offer exceeds the internal comparable settlement pattern by a wide margin, almost doubling what other employees are receiving. The District argues arbitrators have held it is appropriate for employers to look at consistency within all employees of an employer. The District further points out that custodial employees and the teachers made concessions in the last round of negotiations and the paraprofessional employees are not making any concessions. The District also contends the District's final offer is preferred when measured against the external comparables. First, by removing three steps from the salary schedule. The District argues this movement is reasonable and points out there will still be seven steps, the highest of the comparables. Second, the District argues the overall wage increase exceeds the prevailing settlement pattern by a wide margin, with these school districts settling at approximately 2.5 to 3.5 percent. Third, the District's wages are competitive except at the hiring rate, where it is considerably below average.

The District argues it is in the interest and welfare of the public to have a competitive wage structure that balances the needs of employer and employees. The District argues the District's final offer best balances the needs by providing above-average wage increases on a modified wage structure that best fits the established pattern among comparables. The District also argues the Association's final offer will continue to force the District to spend more and more money to

maintain an outdated and costly increment wage structure. The District asserts this is not a wise use of money. The District also argues the elimination of just one step by the Association fails to properly address the underlying issues in the instant matter. The District also contends it is in the best interest of the public to attract and retain qualified paraprofessionals. The District argues with a higher starting rate and fewer salary schedule steps it will attract and retain employees.

The District argues the District's final offer exceeds the cost of living. The District points out the wage increases received by paraprofessionals since 1999-2000 has exceeded the cost of living by a wide margin. The District argues there can be no dispute the District's final offer is preferred based upon this objective criteria. The District further stresses the District's final offer is 54 percent higher than the Consumer Price Index (CPI) in the first year, and, 94 percent above the CPI in the second year.

The District also concedes that the Greatest Weigh Factor of revenue controls and the Greater Weight Factor of local economic conditions do not favor either party. The District does not contend it has an inability to pay, however, the District does aver that the Association's final offer is higher than can be justified. The District asserts there is not enough evidence to determine the Greatest Weight Factor and points out neither party presented evidence on local economic conditions.

ASSOCIATION'S POSITION

The Association contends that a 3 percent across the board increase is supported by the comparables. The Association points out the District would provide a 3 percent increase to employees who are receiving longevity, but stresses the increase is not reflected in the salary schedule and that there is no comparable evidence to support moving employees off the salary schedule. The Union also argues the twenty cents ($0.20) the District is offering is significantly less than the comparables. The Association also stresses that the District offer would plummet Kimberly from second to fifth place among the comparables. The Association argues Kimberly's maximum hourly rate would fall thirty-one cents below Menasha and avers there is no rational for this rank slippage.

The Association also contends, while acknowledging that it has too many steps, that the elimination of the minimum rates is at the expense of the maximum rate, and, that this merely replaces one problem with another. The Association argues its reduction of one step provides a gradual alignment of schedules with the comparables but not at the expense of those employees moving through the schedule. The Association points out the Association's final offer does not alter the District's contractual right at it's sole discretion to hire above the minimum rate.

The Association argues the Greatest Weight Factor favors the Association's final offer. The Association asserts the District has the ability to pay and points out the District acknowledged it had the ability to pay at the hearing (Tr. p. 26). The Association argues the District's financial health, increasing enrollment, total allowable revenue amounts and Fund 10 reserves results in a conclusion the Greatest Weight Factor favors the Association final offer.

The Association also argues the Greater Weight Factor favors the Association final offer. The Association points out the District acknowledged it was not raising this argument at the hearing (Tr. p. 26). Nor did the District enter any evidence at the hearing that would demonstrate the economic conditions of the Kimberly area or Outagamie County would be hurt by the acceptance of the Association's final offer.

The Association contends the District has the ability to pay and that the Association's final offer best serves the interests and welfare of the public. The Association stresses there is only a $12,025 difference between the two final offers over two years, and asserts this small difference represents a very small percentage of the District's $29,138,614.00 (two one-hundredths of one-percent, 0.0002). The Association asserts that the District's concern about morale ignores the fact paraprofessional are the lowest paid District employees and the fact the District has gone to great lengths to defend its low-ball bargaining position.

The Association also contends it's three percent per cell increases are more reasonable than the District's offer. The Association argues that under standard labor relations practices, as well as arbitral precedent, it is inappropriate to include, as the District has done, step movement in the costing and characterization of wage increases and settlements. The Association points to Arbitrator Stern's decision in *Waunakee Community School District Board of Education*, Dec. No. 30305-A (9/10/02) in support of its argument. Therein Stern noted almost all arbitrators have excluded the cost of step increases when comparing wage levels and wage increases noting arbitrators have concluded that step increases, like the cost of other benefits, where calculated at the time they where enacted. Movement is not considered a new cost, but a constant cost each year. The Arbitrator concluded that the normal and traditional way of calculating wage increases is to exclude costing of the step movement. The Association concludes, due to this established principle, it is inappropriate for the District to cost step increases. The Association points out that the average per cell increase under the District's final offer is 1.93 % in 2005-06 and 1.83% in 2006-07. The Union also points out that because of elimination of steps by the District the minimum step receives an increase in 2005-06 of 6.03% and in 2006-07 receives and increase of 9.6%.

The Association contends the Association's final offer per cell increase is more in line with the per cell increases obtained by the agreed upon external comparables:

District	2005-06 Per Cell	2006-07 Per Cell
Kaukauna	11.74 –11.21%	2.5%
Neenah	3.5 %	3.25&
Menasha	3 %	3 %
Appleton	$0.34	2.8%
Fond du Lac	2.25%	3 %
Oshkosh	0 %	$0.25
Association	3%	3%
District	$0.20	$0.20

The Association, converting all the settlements to cents per cell or converting all of them to percentages argues the Association final offer falls within the range of all the settlements:

District	2005-06	2006-07	2005-06	2006-07

	Cents Per Cell		Cents Per Cell		% Per Cell		% Per Cell	
	Min	Max	Min	Max	Min	Max	Min	Max
Kaukauna	0.98	1.24	0.23	0.31	11.7	11.2	2.5	2.5
Neenah	0.34	0.42	0.33	0.41	3.5	3.5	3.2	3.2
Menasha	0.34	0.35	0.35	0.36	3.0	3.0	3.0	3.0
Appleton	0.34	0.34	0.29	0.32	3.4	3.1	2.8	2.8
Fond du Lac	0.23	0.26	0.31	0.36	2.3	2.2	3.0	3.0
Oshkosh	0.00	0.00	0.25	0.25	0.0	0.0	2.3	2.3
Association	0.26	0.35	0.63	0.36	3.0	3.0	7.1	3.0
District	0.54	0.20	0.88	0.20	6.3	1.7	9.6	1.7

The Association also argues the Association offer has less impact on the status quo ranking of the maximum and minimum wage rates for the comparable group. The Association points out it currently ranks second in maximum wage rate tied with Menasha. Under the Association's final offer Kimberly drops to third. However, the Association points out, under the District's final offer Kimberly drops to fifth place. The Association further points out that the District's attempt to increase the starting pay rate has no dramatic effect on Kimberly's ranking amongst the comparables. The Association again stresses the District has the contractual authority to place new employees above the minimum step on the wage schedule.

The Association contends the Association's final offer is more in line with the wage increases of the custodial bargaining group. The Association argues the custodial group is the only appropriate internal comparable because the secretarial group is not a represented group and therefore the District can unilaterally establish the wages and benefits. The Association argues the teacher settlement is governed by the QEO law and therefore does not provide any guidance in the instant matter. The Association argues the custodial bargaining group received schedule maximum increases of $0.27 to $0.45 (2.3 %) in 2005-06 and $0.30 to $0.49 (2.5% to 2.6%) in 2006-07. The Association argues the Association's final offer increases of $0.35 (3%) in 2005-06 and $0.36 (3%) in 2006-07 fall within the range established by the custodial settlement and points out the District's $0.20 (1.7%) in both years is lower than the ranges established by the custodial settlement. The Association concludes the custodial settlement supports the Association's wage offer.

The Association asserts the cost of living increase supports the Association position. The Association argues the CPI increased 3.3% in 2004-05 and 4.29% in 2004-06. The Association avers the Association's offer of 3% per cell is more in line with the CPI than the District's $0.20 per cell.

The Association also argues the elimination of one salary schedule cell is more reasonable than District's proposal to eliminate three (3) cells. The Association also argues the District's proposal to offer 3% wage increases to employees receiving longevity would move these employees off the salary schedule. The Association argues such a change creates a wage rate that is unattainable by other bargaining unit members and subverts the purpose of having a wage schedule. The Association also points out the District has presented no comparable to support or to justify such a change.

The Association argues the District has taken the position it is necessary to eliminate the bottom steps of the salary schedule to provide it a more competitive ability to recruit qualified employees. The Association again notes the District has the discretion to place new hires at steps above the minimum of the salary schedule. The Association also points out that even with the elimination of the three lowest steps, Kimberly would still be ranked second to last amongst the comparables at the minimum rate. The Association concludes, given the District's ability to hire at any step above the minimum and given the salary schedule changes sought by the District, the District will still leave Kimberly ranked second at the minimum rate and argues selection of the District's offer will not give the District any more relief with regards to recruitment.

DISTRICT'S REPLY BRIEF

The District argues that some employees are currently receiving longevity. The District argues that as such, the five employees (two of whom have retired) are already off schedule. The District argues it has provided these employees with a 3% pay raise to ensure they receive a fair and reasonable wage increase. The District contends this is not a change in the status quo but only a wage increase to those employees who are off the schedule.

The District argues costing of the step movement is appropriate in Kimberly because the parties have mutually agreed to cost the step increment in the original wage and for several years after that. The District also argues that prevailing arbitral thought warrants the costing of the increment. The District asserts the difference amongst the comparables at the maximum pay rate is minimal and therefore the District's offer cannot be judged as unreasonable based upon the rankings. The District contends the Association's efforts to focus on the maximum wage rankings are much to do about nothing. The District also contends because the maximum pay rate receives a $0.20 wage rate the rage rates do not suffer because the District is eliminating the three minimum steps.

The District also argues there is no status quo argument to be made when both parties are eliminating steps. The District contends the elimination of three steps allows Kimberly to be more aligned with the comparables. The District also avers the actual pay raise it is granting employees is greater than the comparables. The District also argues that the fact is has the ability to hire above the starting rate does not alter the fact employees would react if the District began paying new hires more than employees with more experience in the District.

The District also contends that contrary to the Association's assertions, the Greatest Weight Factor favors neither party. The District argues ability to pay is the heart of this factor and the District is not making an argument it has an inability to pay. The fact the District can afford to pay either offer does not mean it should. The District also contends the local economic data presented by the Association is too little to be relevant. However, the District does point out that in the District's final offer the total compensation offer exceeds the increase in per capita income. The District also points out there is no data concerning unemployment rates, other private/public sector wages, income statistics, and other socio-economic statistics. However, while conceding the District has the ability to pay, the District asserts it is not in the interest and welfare of the public to select the Association's final offer. The District points out the Association presented no costing figures and contends the District's must therefore be judged

adequate. The District also argues the "overall compensation" factor requires the Arbitrator to consider all wages and benefits. The District also contends the "cast-forward" method of calculating the value of the proposed settlements is the accurate way to determine the costs of the final offers. The District also points out the only time arbitrators have considered actual costs is when the employer has claimed it did not have the ability to pay. The District concludes to the Association's characterization of the District's final offer as "low ball" is simply untrue.

The District also argues the Association's reliance on a per-cell increase is a distortion of the true wage increase employees will actually receive. The District avers the Association seems confused about employees who are off schedule. The District asserts the District's final offer recognizes that employees who receive longevity are "off" schedule and provides them a reasonable pay raise.

The District argues bargaining history is a critical factor in support of the District's offer because when the parties agreed to the original wage schedule the parties agreed to factor in both the across the board increase and step increase. The District argues this was done in both years of the first contract and the longer schedule came into being because the Association wanted a pay differential between employees with experience. The District contends the Association agreed to include costs of the increment when determining new wages and now the Association wants to ignore that agreement. The District also argues that arbitral thought supports the District's position of costing the increment given a wage schedule with many steps. In support of this contention the District points to two decisions by Arbitrator Richard Tyson, *Sturgeon Bay School* District (Support Staff), Dec. No. 30095-A, 12/20/01 and *Manitowoc School District*, Dec. No. 28901-A, 8/14/97 and Arbitrator Frank Zeidler in *Glenwood City School District (Support Staff*), Dec. No. 26955-A, 1/30/92. The District argues ignoring the costs of the increment and the costs of longevity does not allow the District to receive credit in determining total costs. The District concludes it is therefore appropriate to cost not only the across the board increase but the increment.

The District contends the $0.20 per hour increase in not unreasonable. The District argues this provides a 5.4 percent increase in the first year and a 6.2 percent increase in the second year. The District argues these are huge salary increases when compared to the comparables. The District argues this wage increase is almost two times as high as the wage increases found among the comparable school districts.

The District argues an employer cannot be expected to agree to the per-cell approach unless the employer has the same type of salary schedule. The District acknowledges that the average number of steps among the comparables is three. The District suggests that if it had the same number of steps as the comparables the instant matter would probably have been resolved. The District avers that because it has ten (10) steps it cannot be expected to match the three percent (3%) per cell the Association is proposing nor can it be expected to match the per cell increases found among the comparables.

The District also argues the Association's reliance on the rankings is not significant. The District points out the difference between the two final offers maximums is only about $200 per employee annually the first year and about $400 annually per employee the second year. The

District asserts ranking distorts how close the parties really are. The District also points out that in 2005-06 the District's offer is one cent below the average and in 2006-07 the District's offer is only eleven cents below the average. The District also argues the District's final offer decreases the spread between the maximum and minimum more than the Association's final offer. The District points out the average spread among the comparables was $1.40 in 2005-06 and $1.44 in 2006-07. The District concludes it is clear the District's offer is trying to close the gap between the minimum and maximum by reducing steps and reducing the increment costs.

The District also argues the Association's sole reliance on the custodial group as an internal comparable runs counter to most arbitrators' views on internal comparables. The District argues the statute requires the Arbitrator to consider the wages, hours and working conditions of all employees for comparisons. The District also argues most arbitrators recognize importance of maintaining equivalent wage and benefit increases among all employees as an important public policy goal. The District asserts the District's final offer is above any other settlement with employees in the Kimberly School District. The District also contends that comparison to all other internal labor groups within the District is relevant because it demonstrates how favorably the paraprofessional group is doing vis-à-vis other employees in the District. The District argues that under the District's final offer the paraprofessional employees are receiving wage increases that are two percent higher in the first year and nearly three percent higher in the second year. The District asserts this evidence cannot be ignored because it demonstrates the District's final offer is far superior to those received by other employees in the District. The District also argues this evidence demonstrates the Association's final offer is exceedingly large and cannot be supported by the comparability criterion in the statute. The District also points out the District's final offer is far closer to the custodial settlement than the Association's final offer. The District further points out the custodian group made concessions and that the steps of their wage scheduled received a zero increase.

The District also argues the Cost of Living Factor favors the District's final offer. The District contends this criterion should receive significant weight as the District's final offer protects employees from losing purchasing power.

The District also argues the Association's final offer falls short in addressing the real problems in the instant matter. The District wonders why the Association is reluctant to delete steps from the wage schedule. The District contends the Association's deletion of only one step falls woefully short of fixing the wage structure problem. The District again points out the average wage schedule has three (3) steps and asserts the District's elimination of three steps is an appropriate move in the proper direction.

The District also contends, contrary to the Association's claims, the Association's final offer subverts the purpose of the wage schedule. The District argues that a proper wage schedule should be competitive at both the minimum and the maximum wage rates, with additional pay granted for experience because additional knowledge and experience on the job creates a more valued employee. The District argues that this knowledge and experience for paraprofessionals can be achieved in a relatively short period of time. The District argues this fact is supported by the shorter wage schedules of the comparables.

The District also contends that despite the fact it can hire at any step on the wage schedule, there is still a need to reduce the number of steps. The District points out that hiring employees and placing them at a higher level on the salary schedule creates ill will amongst employees and is counter productive. The District points out a reduced salary schedule reduces the increment cost making available more dollars for across the board increases.

The District acknowledges that as the Association has pointed out, the minimum rate is still too low under the District's final offer. However, the District points out the District's minimum rate is higher than the Association's. The District also points out that under the District's final offer a significant number of employees will receive a greater wage increase than the Association's, not just the new hires.

For the above reasons the District would have the Arbitrator select the District's final offer.

ASSOCIATION'S REPLY BRIEF

The Association contends that after weighing all the statutory criteria it is clear the Association's final offer best meets the criteria and is the most reasonable offer. The Association points out the District does not dispute that the District has the financial resources to meet the Association's final offer. The Association concludes this means the greatest and greater weight criteria support selection of the Association's final offer. The Association argues this means the only true dispute in the instant matter is in analyzing what the comparable groups have received in wages. The Association argues the Association's final offer of 3 % per cell is more in line with the external comparables and that the District's final offer of $0.20 per cell is significantly less than the increases received in comparable districts.

The Association also argues that the District contention that the more highly paid custodial group will be demoralized by selection of the Association's final offer is ludicrous. The Association also argues the District is attempting to avert attention from the fact the District's final offer is far too low by shortening the salary schedule for new hires. Yet the District is placing other employees off schedule at a wage rate that would never be attainable for new hires and drops the rank of the schedule maximum significantly. The Association avers that the Association's final offer balances the interests of all paraprofessionals by shortening the schedule, maintaining the integrity of the schedule and providing a fair wage increase.

The Association contends the appropriate comparison for comparison of wage settlements for internal and external comparables should be a per-cell (across the board) basis. The Association argues that the District, by including step increments in determining wage increases, is requesting the Arbitrator do what the majority of arbitrators do not in deciding education support staff cases. The Association also contends the fact the parties in the first agreement took into account the cost of the increment in determining the wage increase does not alter the fact that most arbitrators have concluded that after the initial contract the cost of movement along the steps is not considered a new cost but one the parties calculated and agreed upon in the first agreement. This cost of movement is similar each year and not a new costs but one that was agreed upon when the agreement of the schedule was fist reached. The Association

argues this cost does not carry onward into the future because it is not a new cost. The Association also points out that after the first agreement the parties sometimes agreed upon a cents per hour increase and sometimes agreed upon a percent per cell increase.

The Association also rejects the District's contention that the central issue in the instant matter is the wage schedule. The Association points out the District's arguments on this matter are fundamentally flawed. The Association argues that, contrary to the District's claim, a longer schedule reduces the total costs of the District. The Association points out that if all employees received the highest rate after three years the total costs of the District would be significantly greater. The Association again points out that the District is not confined to hiring employees at the minimum rate and under the District's final offer Kimberly still has the lowest hiring rate. The Association also points out the District claim that morale problems would be created with the secretarial group if the Association's final offer is selected is also flawed. The Association asserts that as the Secretarial group is unrepresented the District can unilaterally raise the secretaries wages. The Association argues this ability, coupled with the fact the District's secretaries are paid significantly less than their comparables, if a morale problem is created it is because the District is underpaying the secretaries. The Association further argues this is the reason why unrepresented employee groups are inappropriate for comparison. The Association also argues providing the lowest paid District employees, who have the lowest District contribution to health insurance and the lowest post-retirement health insurance benefit with a reasonable wage increase would result in morale problems amongst the other employee groups. The Association does contend accepting the District's final offer would create a morale problem among the paraprofessionals given the actual cost differences between the two offers and the fact the paraprofessionals are the lowest paid District employees.

The Association contends the external wage comparables and settlements support selection of the Association's final offer. While the Association acknowledges the District by reducing the number of steps by three brings it more in line with the comparables, the Association asserts the creation of off-schedule pay increases creates other problems by creating wages that are unattainable by other bargaining unit members. The Association points out the five (5) employees in question receive the current maximum pay plus $0.25 longevity. The Association also contends the District's final offer moves the paraprofessionals backwards relative to the comparable group by providing a low wage increase and plummets Kimberly from second to fifth place among the seven comparables. The Association avers there is no rationale to justify this rank slippage. The Association points out that even under Association's final offer the paraprofessional fall to a tie for third highest but maintains Kimberly's relationship to Menasha (currently tied at second). The Association also rejects the District claim that some paraprofessional employees would fare better under the District's final offer as short-sighted because of losing ground at the maximum pay rate.

The Association argues there is no historical bargaining pattern that would lead to a conclusion that the parties generally settle at cents per hour settlement. The Association points out that, except for the initial bargain settlement, thereafter settlements contained both percents per cell and cents per cell increases. The Association also argues that the use of percentages also maintains the ratios between steps. The Association points out that except for one, all of the comparables negotiated percentage wage increases.

The Association also argues that internal comparables should be limited to represented groups and excludes the teacher group because they fall under the QEO law. The Association points out the custodial group settlement supports selection of the Association's final offer even though this group created a lowered wage schedule for new employees while providing for a large increase for existing employees.

For the above and foregoing reasons the Association would have the Arbitrator select the Association's final offer.

DISCUSSION

The Municipal Employment Relations Act states arbitrators shall consider and give the greatest weight to any enactment that places limitations on expenditures that may be made or revenues that may be collected by the municipal employer. The Municipal Employment Relations Act also states the Arbitrator shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the other factors. These two factors are the primary factors an arbitrator is to consider when determining the selection of a final offer. During the course of the hearing in the instant matter and in its briefs, the District has stated that it does not have an inability to pay either final offer nor has it presented any evidence on the greater weight and greatest weight factors. Conversely, the Association has argued that because the District has the ability to pay the greatest weight that the greatest weight factors favor selection of the Association's final offer. The Arbitrator disagrees with the Associations assertion. In determining the greatest weight factor, an arbitrator is to determine whether limitations have been made by the State and give those limitations greatest weight. Herein, there is no evidence any limitations imposed by the State have an impact on either final offer. If the limitations imposed by the State do not have an impact on the selection of either final offer, than greatest weight factor favors selection of neither offer. Similarly, if economic conditions do not have an impact on either final offer then the greater weight factor favors selection of neither offer.

The Arbitrator finds that there is no dispute that the District has the lawful authority to implement either offer (Factor a). The Arbitrator also finds there were no stipulations with respect to any of the issues (Factor b).

The District has acknowledged it has the ability to meet the costs of either final offer (factor c). However, both parties have claimed the interests and welfare of the public are best served by selection of their final offer. The Arbitrator does find that the record herein supports a finding that this portion of this factor favors selection of the Association's final offer. The District has gone to great effort to demonstrate the unreasonableness of the parties' ten (10) step salary schedule. The District has argued it needs to spend its limited resources wisely. However, the District spends less on total wages for paraprofessionals than do the comparables because it takes longer, seven (7) years, to reach the schedule maximum than the average three (3) years of the comparable districts. The result is the District's total dollars spent on paraprofessionals is less than the comparable districts. The District receives a cost savings by having a longer schedule, particularly, when the District has acknowledged as it has herein, that

it only takes a new employee a few years to become proficient at their assigned tasks and has stated the nature of this job is one where employees move in and out of it frequently. Thus the public in Kimberly pays less in total costs for paraprofessional services than the comparable school districts. The Arbitrator finds that because there is a cost savings on total budget dollars by having a longer salary schedule and requiring a longer period of time before employees reach the maximum pay rate it would be in the interest and welfare of Kimberly to maintain such a system, not do away with it. In the eyes of the public, it would be wiser to have a longer schedule than a shorter one. If employees move in and out of the job more frequently it is wiser to reward those employees who remain in the position than to use resources on employees who will leave. While this does raise increment costs, the bottom line is, total dollars are lower for paraprofessional employees. Had the District presented evidence that it was unable to attract qualified applicants another result would be warranted. While the District claimed the low starting rate impacted the ability to recruit qualified employees, the District presented no evidence to demonstrate this was actually occurring. Therefore, other than the District's assertion, there is no evidence the District has difficulty recruiting new employees. Nor did the District present any evidence it had a higher than normal turnover of employees. Further, the fact the District has a low starting rate is offset by the fact the District can place a new employee at any step of the salary schedule. Thus, if the District wants to hire a more capable, qualified new employee the District has the ability to provide the employee with a higher rate of pay. This would also be in the best interest and welfare of the public. This, coupled with the fact the District currently has the second highest maximum rate, leads to a conclusion that the District has not had difficulty in filling vacant positions. Therefore the Arbitrator finds this factor favors selection of the Association's final offer.

Factors d, e and f deal with comparison of wages, hours and working conditions of employees performing similar services (external comparables and internal comparables) in both the public and private sector. No evidence was presented to the Arbitrator concerning private sector comparables. The parties have agreed to the external comparables of Appleton, Fond du Lac, Kaukauna, Menasha, Neenah and Oshkosh. They have not agreed upon the internal comparables.

Both parties have acknowledged Kimberly has a longer salary schedule than any of the comparables, with the average being three (3) and Kimberly having ten (10). Both parties have acknowledged Kimberly has the second lowest starting pay. Under the District's offer, with the elimination of the three (3) lowest steps, Kimberly would still have the second lowest starting pay. Under the Association's offer with the elimination of the lowest step, Kimberly would have the lowest starting pay. The Arbitrator finds that the District's proposal to eliminate three steps is more reasonable when compared to the comparables than the Association's elimination of one step given the average number of steps in comparable salary schedules is three. However, there is a cost impact imposed upon the salary package by eliminating steps. The District, the party seeking the change, charges this costs to the Association, and the Association, while agreeable to a lesser change of eliminating one step, does not believe it should be impacted by the District's proposal. The Arbitrator agrees, particularly herein, where the change sought by the District, although supported by the comparables, is not one where the District has demonstrated a need to change and where District has the ability to deal with the problem it has identified. The Arbitrator would note here that the number of employees cited by the District who would fare

better under the District's proposal than the Association's proposal, are the employees most impacted by the elimination of the salary schedule steps the District is seeking. Thus, as the Association has argued, the District is seeking a change and then charging the costs of that change against the rest of the bargaining unit. Therefore, while the Arbitrator agrees with the District that the comparables justify the elimination of steps, the Arbitrator does not agree all the cost of the salary schedule change should be borne by the rest of the bargaining unit. Had the District only eliminated one step each year there would have been no cost impact on current employees. Thus there would have been no cost impact on the wage package resulting in the District having additional dollars, even under the District's theory of costing, to apply to the overall wage increase, particularly in the second year of the agreement. Eliminating the two steps in the second year results in twenty (20) employees receiving a second $0.34 step increment, and in effect, placing employees with three years experience in the District at the same rate of pay as new hires. This change could create additional problems for the parties in the future as the twenty (20) employees with more experience move through the salary schedule with employees with lesser experience in the bargaining unit. Therefore, while the Arbitrator has agreed the comparables favor the District's proposal, the Arbitrator does not agree the cost of that change should be costed against the Association and the weight of this factor is tempered by the costs of the change.

The District has argued that the costs of moving through the salary schedule should be taken into consideration when determining the appropriate pay rate. The Arbitrator would agree to such an argument if the District also took into consideration the cost savings it achieves by having a longer salary schedule. The data presented by the parties demonstrates that the average among the comparables is a slightly more than a three-step salary schedule. Thus, by four years, most of the comparables employees have achieved the highest step in their respective salary schedule. Herein the record demonstrates that in 2004-05 there were ten (10) employees at the fourth step (actual step 6) of the parties' salary schedule earning $9.60 per hour. The schedule maximum was $11.64. Thus for each hour these ten (10) employees worked, the District in effect was saving $12.24 per hour (10 times $2.04). If these ten employees are full-time and work a full school year, the savings to the District is over $16,500.00 (180 days times 7.5 hours times $12.24), an amount greater than the difference between the two offers over the two-year contract. This savings occurs because the parties have voluntarily agreed to a longer salary schedule. Thus, while it is true the step increment raises the total package costs of both offers, the District, by having a longer salary schedule pays total less dollars for employees with the same experience as comparable districts. This is a fundamental reason why, as the Association has argued, most arbitrators do not include costing of the step increase in determining selection of final offers. The total dollars spent on wages for paraprofessionals in Kimberly is significantly less because it has a longer salary schedule. In effect, the District is arguing this fact should be ignored because it results in a higher package costs. Thus, the District wants a credit because the package costs is greater than the comparables but does not want consideration to be given to the debit side of having lower total wage package costs because employees take longer to reach the maximum wage rate. Further, the District argument that the overall, or package wage increase, in comparable school districts is less than Kimberly's, is offset by the fact that the total dollars spent on wages is greater in the comparable school districts than in Kimberly. The other districts are paying more total dollars because the majority of their employees receive the highest rate of pay after three years of service. Particularly herein where

twenty-two (22) of the fifty-six (56) paraprofessionals, almost one-half, have more than three years of experience but are not receiving the maximum rate.

The Arbitrator does find that the increase in the actual increment ($0.34) can be costed. Under the District's proposal the increment would remain at $0.34. Under the Association's final offer this amount increases about $0.01 or a penny per year per employee per total hours worked by the paraprofessionals. Thus the Association's offer is slightly more than three percent per cell because of the roll-up effect a percentage has on each cell. Further, as Arbitrator Stern noted in *Waunakee Community School District Board of Education*, Dec. No. 30305-A, (9/10/02), the costs of step increments are calculated at the time such steps are agreed upon. In general, such costs are evenly distributed over the schedule such that there is a constant cost each year. Stern concluded the cost of movement along the schedule is not a new additional cost but a cost that occurs every year because of the initial agreement on the salary schedule.

The Arbitrator also finds there is no evidence to support the District's final offer of providing a three percent pay raise to the employees receiving longevity and not placing that rate on the salary schedule. As the Association has pointed out these employees currently receive the maximum rate plus longevity. Contrary to the District's assertions, these employees are not off schedule but are on schedule and receive a longevity benefit. The District could have achieved the same result if it had increased longevity. In such a manner other employees could, in the future, achieve the same result. However, by placing these employees off the schedule the District is creating a system that dismantles the salary schedule. In effect, there is no salary schedule for employees with more than ten (10) years experience (under the District's proposal employees with more than seven years of experience). This also creates different budgeting problems in future years because as more employees reach this plateau the easiest answer is to place more employees off the schedule. Therefore, on this issue, the Arbitrator finds the Association's proposal more favorable.

The Arbitrator notes here that if Kimberly had the highest maximum wage rate and it was attempting to reduce its costs a different conclusion would be reached. However, under the District's final offer Kimberly falls from second to fifth in ranking on maximum wage rates. Other than the arguments the District has raised on total costs, there is no rationale as to why Kimberly should be falling in ranking.

The District has also argued that because the maximum pay rates among the comparables are tightly grouped, little weight should be given to the rankings. These rates are as follows:

District	2004-05	2005-06	2006-07
Neenah	$12.13	$12.55	$12.96
Menasha	$11.64	$11.99	$12.35
Fond du Lac	$11.62	$11.88	$12.24
Kaukauna	$11.06	$12.30	$12.61

Appleton	$11.01	$11.35	$11.67
Oshkosh	$10.93	$10.93	$11.18
Kimberly	$11.64		
District final offer		$11.84	$12.04
Association final offer		$11.99	$12.35

The District's final offer results in Kimberly falling $0.92 behind Neenah, $0.31 behind Menasha, $0.20 behind Fond du Lac and $0.57 behind Kaukauna. The Arbitrator finds that at these rates of pay this is not a tightly grouped ranking and thus the rankings deserve weight. Given the District's arguments concerning recruitment, the District's final offer demonstrates it is not committed to retention or it is leaving to another day when it has to deal with the fact it is falling behind the comparables at the maximum pay rate. The Association's final offer attempts to maintain Kimberly's standing in the comparables with Menasha; even though there are only two (2) steps in Menasha's salary schedule. Therefore the Arbitrator concludes the rankings should be given weight and that these rankings favor the Association's final offer.

The District has also argued that the total package increase for the paraprofessionals is greater in the District's final offer than the total package increase received by the external or internal comparables and therefore the comparables favor selection of the District's final offer. This is the result of costing of the step increase received by paraprofessional employees. The Arbitrator agrees with the Association that the teacher group is not a fair comparable because of the impact of the QEO law. Under that law, at a minimum, a school district employer must provide a 3.8% package plus pay for lane movement or go to interest arbitration. Thus all packages for teachers are 3.8% plus lane movement unless the parties agree otherwise. The QEO law does not apply to other school district employees. Therefore the Arbitrator gives little weight to the teacher settlement but does note that of the three organized internal groups the teachers have a twenty step salary schedule, the paraprofessionals have a ten step salary schedule and the custodians have a two step salary schedule. However, as pointed out by the District, an arbitrator must compare the paraprofessionals to other employees in public employment in the same community and in comparable communities. Of the other internal groups, only the custodial group is organized. Thus the District does not have to bargain an increase with the unorganized employees and the District can unilaterally establish the wages, hours and conditions of employment. Further, the non-represented employees have a one step salary schedule so there is no increment to costs. In fact, the District does not have to establish a salary schedule for the non-represented employees. These employees all received a wage increase averaging greater than three percent in both years of the collective bargaining agreement (District Ex. 16). Excluding the step increase from the paraprofessionals, they receive less than a two percent increase (except employees impacted by elimination of steps two and three in the District's final offer in year 2006-07 who receive an additional $0.34 per hour). Again, because there is a total budget cost savings to the District by having a lengthy salary schedule, and, because the District can unilaterally establish their pay rates, the Arbitrator finds these internal settlements have little weight and favor selection of neither final offer.

The District has claimed that selection of the Association's final offer would result in

compression of the traditional difference between the paraprofessional rate of pay and the secretary rate of pay. The Association has countered that the secretary rate of pay is below the comparable average and pointed out the District can unilaterally remedy such a problem. Given the District's unilateral ability to remedy such a problem the Arbitrator finds the District's argument has no merit.

The custodians voluntarily settled for a 2.3% increase in 2005-06 and 2.5 to 2.6% in 2006-07. These increases are halfway between the wage proposals of the District (1.7% on the maximum rate) and Association (3%). Therefore the Arbitrator finds this internal settlement has little weight and favors selection of neither final offer.

The District has also argued the total wage increase received by the internal groups should be used as a comparison. However, because the paraprofessionals step increase raises the package costs of their wage increase, and, except for the teachers, none of the internal groups have wage schedules that exceed more than two steps, the Arbitrator finds such a comparison is inappropriate unless it has also taken into consideration that the other groups of employees reach their wage maximums in a quicker time frame. The non-represented groups do not have a wage schedule. Other than the teachers, a comparison that is controlled by the QEO law, all other employees receive the maximum of their pay range after one year of employment in the District. Again, given the District's acknowledgement that paraprofessionals are fully qualified after a few years, the District receives a cost savings because the paraprofessionals do not receive the maximum of their pay range for many years (at least six under the District's final offer and eight under the Association's final offer). Therefore the Arbitrator concludes the internal wage increases bear little if any weight in the instant matter and do not favor selection of either final offer.

The record demonstrates the external comparables received the following wage increases:

District	2005-06 Per Cell	2006-07 Per Cell
Kaukauna	11.74 –11.21%	2.5%
Neenah	3.5 %	3.25&
Menasha	3 %	3 %
Appleton	$0.34	2.8%
Fond du Lac	2.25%	3 %
Oshkosh	0 %	$0.25

The District's final offer of $0.20 cents per cell (1.7% on the highest step) each year is significantly lower than any of the comparable settlements except Oshkosh's first year settlement. The Association's final offer of 3% per cell each year while being slightly higher than the average settlement per cell falls within the range of settlements and maintains Kimberly's relationship with Menasha.

Given the above, the Arbitrator finds the comparables favor selection of the Association's final offer on wages and treatment of the employees receiving longevity. Given the above, the Arbitrator finds the comparables favor selection of the District's final offer on reducing the salary schedule by three steps but that the weight of this favor is reduced because the District costs the change against the total wage increase. The District has the ability to place new hires anywhere on

the salary schedule. The District has not demonstrated it has been unable to attract qualified new employees. Therefore, the Arbitrator concludes factors d, e and f favor selection of the Association's final offer.

Factor g, the cost of living factor, is generally tied to the consumer price index (CPI) and both parties claim it supports selection of their final offer. The District has pointed out the CPI for 2004-05 was 3.08% (District Ex. 13), 3.5% for 2005-06 (District Revised Ex. 5) and 3.2% and 2006-07. Both parties' final offers exceed the CPI. If the cost of the increment is included, the CPI clearly favors selection of the District's final offer. If the cost of the increment is excluded, the CPI clearly favors selection of the Association's final offer. Therefore the Arbitrator concludes this factor favors selection of neither final offer.

The parties presented limited evidence on overall compensation, factor h. The parties did not present any evidence concerning any changes except that the District pointed out several employees currently receiving longevity have retired, factor i. Therefore the Arbitrator concludes there is insufficient evidence to conclude these factors favor selection of either final offer.

The District has argued that bargaining history supports selection of the District's final offer. Under factor j arbitrators are to take into consideration other factors traditionally taken into consideration in determining wages, hours and conditions of employment. When the parties reached agreement on their initial collective bargaining agreement, 1998-2001, they agreed on a thirteen-step (Step 0 through Step 12) wage schedule. In doing so they took into consideration the total cost of the increment step in agreeing on a salary settlement. In the 2001-03 agreement, the parties agreed to a percentage cell increase in the first year and a cents per cell increase in the second year. In the third agreement, 2003-05 the parties agreed to percentage cell increase the first year and a cents per cell in the second year. They also voluntarily eliminated steps in the salary structure. The District asserts the bargaining history demonstrates two things, the Association's acknowledgement to cost the step increases when determining total wages and the parties agreement to use cents per hour to maintain the step increment at a set rate, currently $0.34. The Association did not dispute that when reaching agreement on the first salary schedule the parties' took into consideration the step increments cost impact on total wages. The Arbitrator notes here this is not unusual when the parties agree upon their first salary schedule. However, the Association disputes there was agreement on total wage compensation costing in the second and third collective bargaining agreements. While there is no dispute the parties agreed to consider the cost of the step increment when determining total wages in the 1198-2001 collective bargaining agreement, there is nothing in the record that would support a conclusion that the Association agreed to this methodology of costing in the subsequent collective bargaining agreements. The use of percentage cell increases in the first year of the second and third collective bargaining agreements support this conclusion. The use of percentage cell increases in these two years also discredits the District claim that the increment was meant to be fixed in future collective bargaining agreements and that the Association's final offer of percent per cell increase destroys the integrity of the salary schedule by altering the $0.34 increment. Clearly, the parties have voluntarily altered the step increment in both of the preceding collective bargaining agreements. Therefore, since the inception of the salary scheduling in the first collective bargaining agreement the parties have used both cents per cell and percentage per cell in the succeeding collective bargaining agreements and they have voluntarily altered the step increment in each of the successor agreements. Therefore the Arbitrator concludes that factor j favors neither

final offer.

Therefore, based upon the above and foregoing, the Arbitrator concludes only the comparability factor favors the District's shortening of the salary schedule proposal and the weight of this finding is lessened by the fact the District is costing the change against the package. This finding is also offset by the finding it is not in the best interest of the public to shorten the salary schedule, factor c. The comparability factor favors the Association's across the board increase proposal and does not support the District's placement of five (5) employees off-schedule proposal. Based upon the above and foregoing the Arbitrator concludes, after full consideration of the testimony, exhibits and arguments of the parties and their relevance to the statutory criteria of 111.70(4)(cm)7, that the Association's final offer shall be incorporated into the 2005-2007 collective bargaining agreement.

AWARD

Having considered all the statutory factors, and all the evidence, testimony and arguments presented by the parties, the Association's final offer is more reasonable than the District's final offer. The parties are directed to incorporate the Association's final offer into their 2005-2007 collective bargaining agreement.

Dated at Sun Prairie, Wisconsin, this 30th day of April, 2007.

Edmond J. Bielarczyk, Jr., Arbitrator

EJB/mmb