In the Matter of Mediation/Arbitration
between

SCHOOL DISTRICT OF CUDAHY

and

CUDAHY EDUCATION ASSOCIATION

MED/ARB 1587
Decision No. 19635-A

Appearances:

Mr. Robert W. Mulcahy, Attorney, Mulcahy & Wherry, S.C.; Mr. Leighton L. Millar, Business Manager, Cudahy Public Schools; for the Board.

Mr. James H. Gibson, UniServ Director, WEAC UniServ Council #10; for the Association.

Mr. Neil M. Gundermann, Mediator/Arbitrator.

ARBITRATION AWARD

The Cudahy Education Association, hereinafter referred to as the Association, and the School District of Cudahy, hereinafter referred to as the Board, reached an impasse in their bargaining for a collective bargaining agreement. The Association filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate Mediation/Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission's staff conducted an investigation and determined that a deadlock existed. The parties selected the undersigned to serve as the mediator/arbitrator. Mediation was conducted on July 16, 1982, and when the parties remained deadlocked the arbitration hearing was conducted on the same date. The parties filed post-hearing briefs and reply briefs.

FINAL OFFERS OF THE PARTIES:

Board's Final Offer:	B.A. Base $13,783 Average Wage Increase of 8%
Association's Final Offer:	B.A. Base $14,065 Increase Top Step of Each Lane by 2.5% Increase Longevity Payments for Each Lane Average Wage Increase of 11.5%

ASSOCIATION'S POSITION:

The Association notes that every arbitration case has its own unique characteristics, and this case derives its uniqueness from the fact that the parties agree on: (1) the choice of comparison districts; (2) the costing of their respective salary offers; (3) that over one-half of the teachers in the comparison districts will work under contracts which are already settled for the 1982-83 school year; and (4) that the Association's final offer compares more favorably to the established settlement pattern than does the Board's final offer. According to the Association, a voluntary settlement could not be reached because the Board has insisted on

ignoring the well-established area settlement pattern for 1982-83. Instead, the Board argues that the "current state of the economy" should be the primary criteria on which the arbitrator bases his decision in this case, even though this is contrary to four years of arbitral authority.

The criteria contained in Section 111.70(4)(cm), Wis. Stats., are the criteria to be considered by the arbitrator in rendering his award. The Association contends that its offer satisfies all the relevant criteria and especially criteria "d" which is commonly referred to as the "comparability" criteria.

The evidence establishes that the salary settlement pattern among the comparable districts for 1982-83 is 11.6%. The Association's offer is 11.5%, while the Board's offer is 8%. It is this irrefutable fact that led the Board spokesperson to concede in his closing arguments at the hearing that the arbitrator should award the Association's final offer if he believes "comparables" should continue to be the primary statutory criteria.

The Association takes the position that there is a compelling, long-range reason why the arbitrator should continue to rely on the "comparables" in making his decision. The most desirable form of settlement is that arrived at by the parties without the assistance of a third party. When the parties are unable to arrive at a voluntary settlement, they look for guidance; and during the last four years a primary source of guidance has been the arbitration awards that have been issued within the State. Arbitrators are providing the "rules" for employers and unions to follow when they are having difficulty reaching voluntary settlements.

There have consistently been arguments as to how to measure the cost of living, with the associations arguing that the CPI is the best measure, and the boards arguing that the PCE index is a better measure. Many arbitrators have determined that the best measure of the cost-of-living criteria is what other comparable employers and associations have settled for. It is this "rule" which the Board is refusing to acknowledge this year.

Arbitrator Mueller was the first arbitrator to determine that the pattern of settlements should be viewed as the best measure of the cost-of-living criteria. In North Central VTEA, WERC Dec. 18070-A, 1/16/81, Arbitrator Mueller stated as follows:

> "In the considered judgment of the undersigned, the more relevant reflection of the impact of inflation upon employees in a given area of the country is more accurately reflected by the level of contract settlements that evolve during the period under consideration. It then follows that one must next examine the level of settlements that have resulted in other VTAE districts involving comparable employees, in other public sector employment groups in the geographic area, in other private employment areas in the geographic area, and such other settlement levels as are normally and historically taken into consideration as expressed by factor h of the statutes."

Other arbitrators, including Arbitrator Kerkman, (Merrill, 17955-A, 11/30/81) found Arbitrator Mueller's rationale compelling. Arbitrator Kerkman stated in his Merrill decision:

> "In evaluating the final offers of the parties, the undersigned has concluded that comparison of comparable wages narrowly favors the Association position in this dispute. The consideration of the cost of living criteria has been determined to be governed by the patterns of settlement among settled comparable districts and unions who have experienced the same inflationary environment as the parties here have experienced."

The Association notes that similar findings have been arrived at by arbitrators in Marshfield, 18111-A, 5/26/81; Sheboygan Falls, 18376-A, 7/10/81; Port Washington, 18726-A, 2/16/82; Lake Mills, 18969-A, 3/26/82. In addition to the above cases, Arbitrator Yaffe, in several of his recent awards including Two Rivers, Gibraltor, Blair, and Westfield, has also relied upon the "rule" established by Arbitrator Mueller.

The arbitration awards set forth a consistent rule that the pattern of settlements within the comparison districts is the best measure of the cost of living. The fact that arbitrators have so ruled in both high and low inflationary times is conclusive proof of their support for this principle.

These "rules" which have been developed by arbitrators should allow associations and school boards to analyze their respective aspiration levels in bargaining in light of the likely outcome if they were to submit their dispute to arbitration, and then determine a fair basis for a voluntary settlement. Consistent decisions by different arbitrators then have the effect of promoting voluntary settlements. Inconsistent decisions will lead to confusion between the parties as to what the outcome of an arbitration of their dispute is likely to be, and further, such confusion will impede the achievement of voluntary settlements. The Association contends that its 11.5% final offer was fair when compared to the existing 11.6% settlement pattern, therefore it should have been agreed to by the Board. If the "state of the economy" is viewed by arbitrators as a more important criterion this year, then confusion will clearly result in future bargaining. What "state" does the Board believe the economy has to be in before the comparables will once again become the primary criteria? Since the Board is proposing that this arbitrator adopt a significant change in the "rules" set by arbitrators to provide guidance for voluntary settlements, the Board then has the burden of responding to the questions and concerns regarding the criteria for a new set of rules. The Board has failed to meet its burden in this regard.

The Association notes that the only difference between the 1981-82 index and the index proposed by the Association is that the Association has increased the last increment in each column by 2.5% for a total of 11%. This modification is the completion of an increase in the final increment which was voluntarily agreed to between the parties for the 1981-82 contract. In the 1980-81 contract the final increment in each column was 6%. The parties voluntarily agreed to increase the final increment to 8.5% in the 1981-82 agreement. This agreement was reached in order to fairly treat the 61% of the teachers who were already at the maximum salaries in the 1981-82 contract term and who were not scheduled to receive an increment. The only other alternative would have been to increase the longevity amounts.

The Association is proposing an average salary increase per teacher of 11.5% or $2,542. The method of costing used by both

the Board and the Association was to move the 1981-82 staff forward as though they were all going to return in 1982-83. This method does not reflect the actual cost to the District for budget purposes. It was not necessary to compute the actual cost, since the Board did not raise an issue of inability to pay.

The evidence establishes that the salary settlement figures for those districts which have already reached agreement on their 1982-83 contracts is 11.6% or $2,660. The Association contends a clearer settlement pattern within the agreed-upon comparison districts has not existed within the past five years. The Association's final offer of 11.5% is consistent with a well-established settlement pattern. In contrast, the Board's final offer is a full 2.5% below the settlement pattern. The Board seems to believe that the "timing" of the settlements has some bearing on their value as "comparables."

Statutory criteria "d" requires the arbitrator to consider a "comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services . . ." The statute does not use the term "currently negotiated wages" or "recently negotiated wages" or "comparison of wages negotiated within the past two months," or any other such phrase which would imply that the Legislature intended the "timing" of the settlements to have any impact on the value of the settlements as comparables.

There is no disputing the fact that the 1982-83 settlements among the comparison districts occurred as part of multi-year contracts which were settled between May 18, 1981 and August 25, 1981. It is inconceivable that somehow these settlements are tainted by the fact that they were all settled earlier than the District's contract. The Board seems to be saying that their teachers should suffer because the Association and the Board could not agree on the terms of a two-year contract.

The Board has admitted that it has used multi-year settlements for comparison purposes in the past. Such comparisons were made in the 1979-80 arbitration proceedings. In the 1980-81 arbitration proceedings the Board again used second-year settlements in support of its position. The Board cannot justify the use of multi-year settlements in previous years, and then refuse to accept the value of multi-year settlements in 50% of the agreed-upon comparison districts in this round of negotiations.

The Board is attempting to establish a new arbitration rule regarding the relationship between the timing of settlements and their value for comparison purposes. The Board has the burden, therefore, of answering one crucial question: When must a settlement occur in order to be valid for comparison purposes as required under statutory criteria "d"?

The Association emphasizes that the Board has known the "going rate" in the area for teacher services for 1982-83. The employes of the Board deserve to receive a comparable increase for 1982-83. The value of their services, compared to other teachers in the area, has not diminished from 1981-82 to 1982-83.

Arbitrators have accepted comparisons of salary schedule benchmark positions as a reliable and predictable measure of comparability between one school district's salary schedule and others. A review of the evidence establishes that a fair

generalization can be made that the Cudahy teachers' salaries ranked in the middle of the comparison districts in 1981-82. The BA minimum salary of $12,970 ranked sixth out of the ten districts in 1981-82. The Association's final offer of $14,065 BA minimum salary in 1982-83 would rank seventh as compared to the nine districts that have already settled for 1982-83. The Board's final offer would reduce the Association's relative rank to tenth at this step in 1982-83. A reduction in rank will also occur under the Board's offer at the MA maximum step and the scheduled maximum step. Even at those steps where the effect of the final offers on the relative rank of the teachers will be the same, the dollar difference at those steps between the Board's salary and the salary of those districts that were ahead of the Board will increase considerably more under the Board's offer than under the Association's offer.

Since the salary settlement pattern is 11.6% and the Board's offer is 8%, the Board's final offer will have a very adverse effect on the relative standing of the teachers' salaries at the benchmark steps, while the Association's offer will barely allow the teachers to maintain their relative rank.

The Association emphasizes that 61% of the staff will be at the maximum step of the salary schedule next year. This high concentration of teachers at the maximum warrants a focus of attention on the effects of the parties' final offers on the relative rank of the maximum salaries these teachers could earn in the comparison districts. During 1982-83, thirty teachers (14% of the staff) will be at the maximum salary of the BA lane. The salary of $22,392 ranked the District fourth among the ten districts in 1981-82. The Association's proposal will rank the District third in 1982-83, while the Board's proposal will place the District sixth. The average increase at this step in the comparison districts for 1982-83 will be 9.9%. The increase proposed by the Association will be 10.1%, while the proposal by the Board will be 6%. The same analysis can be made for the sixteen teachers (8% of the staff) who will be at the top step of the MA lane in 1982-83. The Association's offer will maintain the rank of eighth, while the Board's offer will cause the rank to fall to tenth. The average increase at this step in the settled districts is 9.9%. The Association is proposing a 9.9% increase, while the Board is proposing a 6% increase.

The eighteen teachers (9% of the staff) who will be at the top of the MA + 30 lane in 1982-83 would suffer a similar fate under the Board's offer. The Association's offer would maintain the rank of fifth, while the Board's offer would cause the rank to fall to eighth. The average increase at this step in the other nine districts is 9.95%. The Association's offer is 9.8%, which compares more favorably than does the Board's offer of 6%.

The average increase for 1982-83 at the maximum steps in the comparison districts is 9.9% to 9.95%. The Association is proposing a 9.8% to 10.1% increase, while the Board is proposing a 6% increase. It is thus easy to conclude that the Board's final offer will significantly reduce the relative salary rank of 61% of the staff, while the Association's offer will only allow the teachers to maintain their relative rank.

In concluding its arguments the Association contends that the parties were guided by the arbitration community, as well as well-established settlement patterns. Arbitrators have consistently ruled in both high and low inflationary times that the "settlement pattern" is the best measure of the cost of living within the

comparison districts. As noted by Arbitrator Yaffe, it is incumbent upon arbitrators to be as consistent as possible in setting forth the "rules" for arbitration in order to make the arbitration process as predictable as possible. Blair, 19054-A, 5/3/82; Lake Holcombe, 19197-B, 5/17/82. The more predictable the mediation/arbitration process is, the more likely the parties are to reach voluntary settlements. If the "state of the economy" is determined to be a more important criteria than a well-established settlement pattern, then the parties go back to square one in trying to assess the arbitration "rules" in hopes of reaching voluntary settlements in the future.

On the basis of all the evidence and arguments presented, the Association believes that its final offer should be awarded by the arbitrator.

BOARD'S POSITION:

It is the Board's position that the criteria to be followed by the arbitrator are established and set forth in Section 111.70(4)(cm)7 of the Wisconsin Statutes. The specific criteria the Board reviewed and considers germane to this dispute are the following:

> "1. The interest and welfare of the public.
>
> 2. The average consumer prices for goods and services.
>
> 3. Comparisons with the wages of private sector employees, other municipal employees, and other teaching employees performing similar services in public and private employment both within and without the community.
>
> 4. Comparisons with the total compensation received by other public sector employees both within and without the community.
>
> 5. Changes in any circumstances during the course of the proceeding.
>
> 6. Other factors that need to be considered when determining wages for public sector employees."

The Board's final offer strikes a balance between the interest and welfare of the public and the economic well-being of the District's teachers, according to the Board. Section 111.70 (4)(cm) directs the arbitrator to weigh the interests and welfare of the public in determining the reasonableness of the final offers. Arbitrator Rothstein in School District of Kewaskum, No. 18991-A, 8/82, outlined the importance of this criteria:

> "There is, however, an additional public interest which must be addressed in any situation where the public is required to fund the service being offered. This is clearly true in the matter of salary schedules for teachers in any given community. Since the taxpaying public in any community is responsible for underwriting a portion of the educational programs (including teachers' salaries) of a school district, obviously the public

> "interest must include considerations of the impact of a collective bargaining agreement between the school board and its teachers upon the members of the community. Where the economic environment of a community is changing rapidly, long-term agreements tend to preclude the taxpaying community from participating in budgetary considerations which affect the school district. Since the educational industry is highly labor intensive, salaries for professional staff are of considerable concern to the public; when the public is precluded from participating in budgetary considerations which impact on this cost item, the public interest is clearly not being served.
>
> The problem is further exacerbated during periods of rapid economic change. The District is appropriately concerned about the significant drop in the CPI and the rate of inflation.
>
> Given the nature of the economy and the statutory obligation of the Mediator/Arbitrator to take into account the welfare and interests of the public, the undersigned Arbitrator concludes that the District's Final Offer on the issue of duration is more reasonable than that of the Association."

The Board submits that in the instant dispute its final offer is the only final offer that is concerned with the interest and welfare of the public.

The Board notes the nation is in the midst of a prolonged, severe recession. The unemployment rate, business difficulties, and private sector employment factors all have a direct impact on public sector employes and unions. This District and its teachers cannot be isolated from the impact of these factors. Wisconsin businesses have been particularly hard hit by the current recession. According to recent reports, sixty-four businesses have been adversely affected, and there is little improvement foreseen for 1982. In 1981, ten major Wisconsin businesses posted deficits ranging from $217,000 to $28.8 million.

The unemployment rate nationally is the highest since the Great Depression. In May and June the national unemployment rate equalled 9.5%. Figures released during the week of August 2, 1982, report the national unemployment rate at 9.8%. Local unemployment figures paint a picture that is even worse, as the Milwaukee area indicated an unemployment rate of 9% in April of 1982. In May of 1982 the Milwaukee area unemployment rate equalled 9.6%, and in June it equalled 10.3%. The actual number of unemployed is even greater because the State figures do not include those employes who have exhausted their unemployment benefits and who still do not have jobs.

Local City of Cudahy business has also been affected. Business reversals have forced the three major private sector companies to cut back and retrench. Each has effected cutbacks in a number of ways, including layoffs, over the past nineteen months. The largest single employer in the City has received concessions from its employes in the form of work rule changes, changes in the cost of living, and concessions in the area of job classifications.

While the Board realizes the production workers in Cudahy have different responsibilities than do the teaching employes of the Cudahy School District, the Board maintains that a review of the wages paid these employes helps to establish the settlement trends in the locality. In this regard the Board notes that it presented testimony regarding Thomas More High School, the closest parochial school in the area, and that evidence established they received wage increases of 8% to 9%. Under the current economic conditions the Board asserts that the Association's demand of 13% is unrealistic and insensitive. None of the private sector wage increases come close to the 8% increase provided under the Board's final offer.

Before completing this comparison, it is essential to convert the teaching employes' salaries into an hourly rate. The average hourly rate for 1982 will be $17.92 or $18.50 under the Board's and Association's offers respectively. The hourly rates under the Board's offer will far exceed all of the average hourly rates received by employes in Cudahy's three major private sector corporations. The Cudahy teachers were paid over $5 more in 1981. They would be paid $5.90 more in 1982 under the Board's position, and $6.48 more in 1982 under the Association's position.

The financial difficulties from the private sector will affect public sector employers and employes generally, and the District in particular. The impact of high unemployment, concessions and layoffs mean severe cutbacks in many citizens' income levels. In these severe economic times, the Board cannot saddle an already hard-pressed taxpayer with significant tax increases to cover a 13% rise. Additionally, since 1970 the population for the City has decreased by 11.5%. This decrease means that the support of the District must be borne by fewer individuals.

The Legislature recently mandated that all city school districts must become either union or common school districts. As a city school district, the Board's finances were intricately interwoven with the City itself. The mandated change now requires that the District and the City separate those finances, and as a result the District has gained $500,000 in interest which had previously been under the fiscal control of the City. In actuality, this is not a benefit for the District taxpayer. The identical tax-paying public must support the services provided by both the School District and the City. The District's business manager, Leighton Millar, testified that the City was in the process of borrowing $1.9 million to cover short-term operating expenditures. In part, this borrowing reflects the reduction of $500,000 in interest. The City's tax levy will need to be increased to support both the principal and the interest on the loans.

The District's tax burden will also be increased due to an unforeseen increase in the health and dental insurance premiums. Millar testified the insurance premiums increased by $70,000 more than had been budgeted. In the event the arbitrator selects the Association's final offer of 13%, the District will need to find additional money to pay for the Association's offer.

Generally, the arbitrators involved in such procedures as these utilize such factors as geographic proximity, full-time equivalent staff, enrollment, equalized value, and full-value tax rates as indicators of comparability. A district's position vis-a-vis these factors should be mirrored in the wage and benefit levels provided to its teaching employes. Most of the funds sustaining the District's operation come from the District's tax

base. Consequently, a district that has the highest equalized value has a greater amount of resources available to support high wage levels for its employes.

In the last few years property values have increased by an average of 80%. In contrast, the property values in Cudahy have only increased by 49%, a full 31% below the average. Of all the communities in the Milwaukee area, Cudahy ranks seventeen out of eighteen in terms of per-pupil equalized value. Despite these diminishing resources, the District has levied a tax rate per thousand dollars of equalized value that ranks twelfth out of the Milwaukee area communities. The effort by the community is greater than the property values would indicate.

The Board contends that it has offered a fair and equitable increase to its teaching employes consistent with other city and school district employes. In 1983 the custodians will receive a wage increase equalling 9%. The Association's final offer exceeds the custodial increase by 2½%. The clerical employes will receive 9.3% for 1983. Most importantly, the Board's final offer exceeds the 1982-83 increase of 7.2% which was provided the District's administrative staff.

According to the Board, it is significant to note that the same tax-paying public supports both the municipal employes and the District's employes. The Board contends that its offer to the teachers more closely approximates the settlements arrived at for other City employes than does the Association's position. The Board emphasizes that no one in the City bargaining unit has received an 11.5% increase for 1982. Moreover, the Association cannot argue catch-up because the teachers received 11.8% for 1981-82, which far exceeded any City settlement.

The Board claims its final offer guarantees that the teachers will receive pay and benefits that meet the increases in the cost of living. The Consumer Price Index and the Personal Consumption Expenditure Index represent two measures the government employs in determining the rate of inflation. These two indexes have been used in numerous Wisconsin arbitration awards to determine the increases in the cost of living. City of Oak Creek, No. 17587, 7/80; Clark County Law Enforcement, No. 17585, 9/80; and Buffalo County Social Services, No. 17744, 8/80.

Despite its shortcomings, the CPI still maintains a significant degree of support and must be considered in the instant proceedings, though given less weight than other measures. The Consumer Price Index CPI-UXI Rental Equivalent Index has been developed to offset the shortcomings of the housing component in Consumer Price Index. This new index will actually replace the two existing CPI's in the near future. A third governmental index used to measure inflation rate is the Personal Consumption Expenditure Index. This index measures not only the changes in prices but also the changes in consumer expenditure patterns on a quarterly basis. Because this index accurately measures a number of critical components that the CPI fails to measure, it, too, must be utilized as an indicator of the cost of living. The Board asserts that regardless of which of the indexes is used to measure the cost of living, the Board's total compensation package of 9.7% far exceeds any of the indexes. None of the economic indicators cited support the Association's proposed wage increase of 11.5% or total package increase of 13%.

Recently, Wisconsin arbitrators have voiced serious concerns over the double-digit wage and benefit demands of employe

unions as they relate to concurrent increases in the cost of living. Arbitrator Fleischli, in School District of Middleton, No. 19133-A, 6/82, stated:

> "Viewed in isolation, the Association's 1982-1983 cost of 11% would appear to be excessive. Even with the paucity of settlement data currently available, such a double digit figure would appear to be out of line given the current slowdown in the rate of inflation and the political/economic climate referred to by the District in its argument."

The Board submits that its final offer more accurately reflects the downward trend in the rate of inflation and the purchasing power in today's economic climate.

The Board further argues that the cost of living unequivocally demonstrates that the teachers have kept pace with inflation. The Board contends that the teachers have exceeded increases in the CPI at all steps in the salary schedule during the period 1979 to 1982. Currently, economists are forecasting a low rate of inflation, 5% to 6%, for the remainder of 1982. It appears likely, then, that the Board's current offer will continue to exceed the rate of inflation as measured by the CPI.

According to the Board, the pattern of local teachers' settlements does not reflect the Milwaukee area cost of living. The inaccuracies and uncertainties of the statistical inflationary measures, such as CPI, have led arbitrators to also view the local pattern of settlements as yet another measure of the cost of living. The majority of these arbitrators, however, have tempered their comments on the local settlement pattern on the basis of the state of the economy at the time the settlements were arrived at. Arbitrator Kerkman, in School District of Merrill, No. 17955-A, 1/81, stated:

> "Consequently, the undersigned concludes that the proper amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and associations have settled for who experienced the same inflationary ravages as those experienced by the employees of the instant employer."

More recently, Arbitrator Vernon in School District of Marion, No. 19418-A, 7/82, stated:

> "Third, of the settlements which might be voluntary, there is no indication of how many settlements involving 1982-83 were bargaining in the same economic climate as the instant negotiations. Fourth, there is no indication that of the settlements which might be arbitrated how many were under similar factual circumstances as observed here. In this case, only one party has a second year offer on salary and the other has a reopener. The Mediator/Arbitrator would have to give less weight to awards involving a second year contract where both parties had a second year offer as distinguished from the instant case."

In light of these arbitral awards, the District submits that the local settlement pattern be given primary weight only when those settlements occur at the same relative time and therefore in the same relative economic climate. Of those contracts which were multi-year in nature, several important facts can be noted: (1) All of the 1982-83 settlements are for the second year of a multi-year agreement. (2) Most of these settlements were reached prior to the start of the 1981-82 school year. (3) At the time of these settlements, both the national and the Milwaukee area Consumer Price Indexes registered double digit rates of inflation.

Most of these districts settled within five months of one another in roughly the same economic climate. Over a full year has passed since the majority of these districts arrived at their settlements. During that intervening period of time the rate of inflation has dropped significantly and the business climate has worsened considerably. Further, the districts settling so high so early are realizing their miscalculations; consequently, the existing multi-year agreements for 1982-83 in the Milwaukee Metro area cannot be viewed as controlling in the instant proceedings.

Recent statistical data released by the WEAC, the Association's parent group, indicates that the average increase in teachers' salaries for 1982-83 on a State-wide basis equals 8.5%. Clearly the Board's wage offer of 8% is more in line with the WEAC's average than is the Association's 11.5% wage demand.

Because of the paucity of reliable data in the school sector, the Board concludes that the arbitrator must place greater weight on private sector settlements and other municipal settlements. These settlements more accurately reflect the economic conditions in which bargaining is now occurring as opposed to the dated information relied upon by the Association. Changes in circumstances during the pendency of proceedings must be given weight by the arbitrator pursuant to Section 111.70(4)(cm)(g).

During the 1982 bargaining period Milwaukee area municipal settlements of forty-seven employe units reviewed established that 83% of the employe units received increases that were less than 10%. Seven received wage increases equalling 10%, and only one received a wage increase equalling 11%.

The Board argues that over a three-year period the teachers received higher wage increases than any other teacher group in the immediate area. An average teacher in the system in 1981-82 received an annual salary of $22,066.43, which was $2,679 or 13.8% more than the State average.

The Board's final offer provides teachers with a level of compensation in excess of the equalized value and tax rate of the District compared with other comparable districts. The evidence demonstrates that in contrast with the Board's rank vis-a-vis the per pupil equalized value and full value tax rates, the 1982-83 salary ranking of the Board's final offer is fair and competitive.

According to the Board, a comparison of full compensation and benefits received by the teachers with teachers in comparable districts further supports the equitableness of the Board's final offer. The District continues to provide payment for the entire health insurance premium, and currently pays 90% of the dental

insurance premium. Additionally, the District provides its teachers with a superior long-term disability plan which will pay 90% of a teacher's salary for the first six months and 75% of the salary thereafter. This is compared to the norm in the comparable districts where a disabled employe receives 60% of his/her salary. The District's contribution with respect to life insurance is greater than the boards' contributions in several of the comparable districts. Finally, the Board pays for the employe's share of WRS to the same degree as all the comparable districts.

The Board emphasizes that the percentage increase in health insurance for 1982-83 is substantially higher than the increases experienced by other employers, and it increases the average teacher wage and benefit increase by $541 per annum. Thus, the wages and health insurance average teacher increase equals $2,305 per teacher. The average teacher total compensation increase equals $2,648 per annum or a total of 9.7%.

All of the above factors demonstrate that the teachers do receive wages and benefits that allow them to rank very favorably with wages and benefits received by teachers in comparable districts.

In concluding its arguments the Board notes that this arbitration is the first in Milwaukee County in 1982, and could set a precedent for the Greater Milwaukee Area. Someone has to put an end to the outrageously high teacher awards that took place for 1981-82. The Board submits no one can justify 13% in this economy.

For all the foregoing reasons the Board respectfully requests that the position of the Board be adopted in this case.

DISCUSSION:

This case is somewhat unusual in that the issues which customarily lead to arbitration are not present. The parties are in agreement regarding the comparables, there is no dispute regarding the settlements arrived at in those comparable districts that have settled, and the parties agree on the costs of their respective final offers. The dispute in this case involves essentially the weight to be accorded the statutory criteria set forth in Section 111.70(4)(cm) Wis. Statutes.

There are eighteen districts which fall into the categories "most comparable," "regionally comparable," and "generally comparable." Nine of the eighteen districts entered into two-year agreements with the second year covering the 1982-83 school year. The salary increase for the 1982-83 school year for those districts with two-year agreements is 11.6%. There have been no settlements for the 1982-83 school year other than those represented by two-year agreements.

It is the Association's position that the most significant, if not the controlling, criterion is "d" which states:

> "d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes

> "generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities."

The Association notes that criterion "d" provides for the "[c]omparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services" without regard to the timing of settlements. According to the Association, had the Legislature intended the comparison to be limited to a time frame, the criterion would have so stated. Criterion "d," however, is one of eight criteria contained in Section 111.70(4)(cm)7, and no where in that section does it state that criterion "d" has statutory primacy. Moreover, the arbitrator is directed to "give weight to the following factors," and those factors include all of the criteria.

There is considerable arbitral authority standing for the proposition that voluntary settlements arrived at between comparable employers and associations is an appropriate standard to be applied in interest arbitration. A review of arbitration decisions indicates that arbitrators have frequently drawn two distinct comparisons--one dealing with the actual salaries and benefits paid by comparable employers, and the other dealing with the increase in salaries and benefits granted by comparable employers. In the instant dispute the Association is seeking a salary increase of 11.5%, or .1% less than the salary increases received by those employes in comparable districts where the parties entered into multi-year agreements.

Where arbitrators have looked to comparables in determining the appropriate increase to be awarded, they have also considered the timing of those settlements. Thus, in North Central VTAE, Arbitrator Mueller concluded:

> "In the considered judgment of the undersigned, the more relevant reflection of the impact of inflation upon employees in a given area of the country is more accurately reflected by that level of contract settlements that evolve during the period under consideration."
> (Emphasis added)

Significantly, Arbitrator Mueller specifically referred to "that level of contract settlements that evolve during the period under consideration." Arbitrator Mueller, as well as Arbitrator Kerkman in Merrill, have recognized that the timing of settlements is a factor to be considered when making comparisons. This is consistent with criterion "e" which states: "The average consumer prices for goods and services, commonly known as the cost-of-living."

Those settlements relied upon by the Association as having established the pattern for the 1982-83 school year are settlements which represent the second year of multi-year agreements negotiated during the middle of 1981, more than a year ago. During the period when those settlements were being negotiated the CPI for "All Urban Consumers" for Milwaukee increased 11.3% on an annualized basis for May 1981, 13.5% for July 1981, and 11% for September 1981. The August, 1982 CPI prepared by the U. S. Department of Labor establishes the the CPI for "All Urban Consumers" for Milwaukee increased 3.8% from a year ago. Under the circumstances it cannot be persuasively argued that the employes have been ravaged by inflation during the last year. It is also

difficult to conclude that those settlements relied upon by the Association are a "barometer as to the weight that cost of living increases should be given in determining the outcome of an interest arbitration," (Kerkman, Merrill), or are a "relevant reflection of the impact of inflation upon employes." (Mueller, North Central VTAE.)

Criterion "f" provides as follows:

> "The overall compensation presently received by the municipal employes, 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."

There is no evidence in the record that the fringe benefits received by the employes of the District are materially different, qualitatively or quantitatively, than the fringe benefits received by employes in the comparable districts. Consequently, there is no basis for awarding an inordinate wage increase as an offset for fringe benefits.

Criterion "h" provides the following:

> "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."

Criterion "h" recognizes the fact that collective bargaining does not occur in a vacuum totally isolated from those factors which comprise the economic environment in which bargaining occurs. The general state of the economy has been variously characterized as in a state of severe recession, even depression. At least 10% of the workforce is unemployed nationally, the highest unemployment in the last forty years. The District has not been immune from unemployment, as the largest employer in the District has initiated layoffs.

There is no dispute concerning the fact that nine comparable districts arrived at settlements equalling 11.6% for the 1982-83 year. However, those settlements reflected the second year of multi-year agreements and were negotiated in a different economic climate than presently exists. Moreover, those settlements reflect the inherent risk in entering into multi-year agreements. As noted by Arbitrator Fleischli in West Bend School District No. 1, No. 28263 MED/ARB 1267, 9/82:

> "When parties enter into two-year agreements they do so with the fore knowledge that they are each risking the possibility that subsequent events may establish that they settled too high or too low."

Many parties are willing to accept the inherent risks associated with multi-year agreements to avoid protracted annual negotiations.

The undersigned recognizes that an argument can be made that a pattern of settlements has emerged for the 1982-83 school

year in comparable districts and pursuant to criterion "d" that pattern should be imposed in this case. Significantly, the pattern involves one-half of the comparable districts, and only those districts which entered into two-year agreements. There have been no voluntary settlements of one-year agreements for 1982-83 which would serve to affirm the validity of the pattern. If criterion "d" is given the primacy urged by the Association, the arbitrator would have to ignore the other statutory criteria. Where the pattern of settlements did not evolve during the period under consideration, as in this case, the undersigned is persuaded that those criteria which more closely reflect the current economic environment must prevail.

It is the opinion of the undersigned that the Board's final offer of 8% more closely meets the majority of the statutory criteria contained in Section 111.70(4)(cm)7 than does the Association's final offer of 11.5%.

Based on the above facts and discussion thereon, the undersigned renders the following

AWARD

That the Board's final offer should be incorporated into the 1982-83 collective bargaining agreement along with the stipulations of the parties and those provisions of the prior agreement which have not been changed.

Neil M. Gundermann, Mediator/Arbitrator

Dated this 28th day
of October, 1982 at
Madison, Wisconsin.