

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

APR 21 1983

* * * * * WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
* In the Matter of the Petition of *
* THE KIMBERLY EDUCATION ASSOCIATION *
* To Initiate Mediation-Arbitration * Case XVI
* Between Said Petitioner and * No. 29882
* MED/ARB 1731
* THE KIMBERLY AREA SCHOOL DISTRICT * Decision No. 19824-A
* * * * *

I. APPEARANCES

James W. Freeman, Attorney, Mulcahy and Wherry, S.C.,
appearing on the behalf of the Kimberly Area School District.

Dennis W. Muehl, Director, Bayland Teachers United,
appearing on the behalf of the Kimberly Education Association.

II. BACKGROUND

The Kimberly Area School District is a K-12 district maintaining offices at Kimberly, Wisconsin. The Kimberly Education Association is the duly recognized exclusive Bargaining Representative for all Kimberly School District contract and professional personnel excluding principal, assistant principal, psychologist, director of guidance, business manager, and district administrator. On January 27 and on February 23, 1982, the representatives of the District and the Association exchanged proposals on certain wage and benefit reopener provisions pursuant to the 1981-83 Agreement between the Parties. The Parties met on numerous occasions and were unable to reach voluntary settlement on all the issues in dispute.

On June 7, 1982, the Association filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of Mediation/Arbitration pursuant to Section 111.70(4)(CM)6, Wis. Stats. Subsequent thereto, an investigator from the Commission met with the Parties in an attempt to resolve the dispute. It was the conclusion of the investigator that the negotiations were deadlocked and the investigation was closed. Subsequently, the Commission ordered the Parties to select a Mediator/Arbitrator to assist the Parties in resolving the dispute.

The Parties selected the undersigned as Mediator/Arbitrator. On November 10, 1982, pursuant to a request by at least five citizens of the relevant jurisdiction, a public hearing was held for the purpose of the Parties presenting their proposals to the public and for the public to ask questions and offer comments. The Mediator/Arbitrator met again with the Parties on November 11 for the purpose of Mediation. However, the Parties were not able to come to an agreement over the outstanding issues. The Mediator/Arbitrator then served notice of his intent to resolve the dispute by final and binding arbitration. The Parties waived their respective rights to written notice of such intent and their right to withdraw their final offers as extended by Section 111.70(4)(CM)6. The Mediator/Arbitrator then conducted an arbitration hearing and received evidence. The Parties agreed to present argument in written form due December 23, 1982. An opportunity was extended for reply briefs and the Parties were given until January 19, 1983, to submit such replies. Based on a review of the evidence, the arguments, and the criteria set forth in Section 111.70, Wis. Stats., the Mediator/Arbitrator renders the following Award.

III. FINAL OFFERS AND ISSUES

The only outstanding issue at the time of the arbitration hearing was salary schedule. The District's final offer in respect to salary schedule is attached as Appendix A and the Association's final offer in respect to salary schedule is attached as Appendix B. Stipulations of the Parties are attached hereto as Appendix C.

A review of the salary schedules reveals that the Board's offer proposes to increase the BA base from its 1981-82 level of \$13,250 to \$14,125 for the 1982-83 school year. They proposed to increase the MA salary base from \$14,444 to \$15,397. Under the Board's final offer the schedule maximum would be raised from \$26,128 to \$27,848. The Association's offer, on the other hand, proposes to increase the 1981-82 BA base salary to \$14,400, the MA salary base to \$15,696, and the schedule maximum to \$28,383.

There is some dispute in the record over the appropriate costing method. The Board used what is usually referred to as the "last year's staff moved forward" method, whereas the Association used an entirely different method. The method the Association utilized in costing the wage and benefit package was to compare the actual 1982-83 staff costs with the actual 1981-82 staff costs. This results in a very small package increase under either offer because it considers only the actual budget impact of the offers on the Board as opposed to an estimate of the value of the wage and benefits received by each teacher. The Association believes that such a method is appropriate if the Arbitrator is to give weight to the economic arguments and the arguments regarding the welfare of the public presented by the Board. The Association recognizes that the District has not made an ability to pay argument in the traditional sense, but asserts that the Board raises the question of the ability of the taxpayer to pay. Thus, they believe their costing method to be appropriate. The Association also utilizes their method to highlight the fact that the Kimberly teaching staff has also experienced cutbacks and suffered layoffs. The net loss of teaching staff from 1981-82 to 1982-83 was 13 teachers, approximately 10 percent of the total staff.

It is the Arbitrator's conclusion that because ability to pay is not involved, as the concept is normally and traditionally understood and utilized, the Board's method of costing is most appropriate. See Herman Consolidated School District No. 22, WERC Decision No. 18073(Imes), and Turtle Lake School District, WERC Decision No. 16536 (Kerkman). This is not to say that in the context of general economic considerations as opposed to a costing methodology context that some weight should not be given to the fact that some teaching staffs suffer substantial layoffs. It is apparent and cannot be ignored that the teaching staff in Kimberly, at least partially due to economic conditions, has experienced layoffs. However, while it cannot be ignored, it would be more proper to consider this fact as a facet of the general economic and public welfare issues rather than as a matter of costing.

The Arbitrator is, thus, satisfied that the proposals on the salary schedule and the salary schedule impact on total package cost can be costed as follows:

	<u>Wages Only</u>	<u>Total Package</u>
District	8.28%	8.52%
Association	10.39%	10.43%

IV. ARGUMENTS OF THE PARTIES

In respect to which Districts should comprise an appropriate group of comparable schools, the Parties have no fundamental difference. Each agreed that the Fox Valley Athletic Conference Schools are comparable. The athletic conference is comprised of the following schools (also noted is their enrollment and the size of their teaching staffs):

<u>SCHOOL</u>	<u>FTE*</u>	<u>ENROLLMENT*</u>
Appleton	605.20	10,917
Oshkosh	493.53	8,811
Neenah	342.65	6,173
Menasha	192.65	3,272
Kaukauna	168.02	3,022
Kimberly	123.30	2,087

* taken from Board Exhibit 33

What is at dispute relates to which of these schools, based on their size and the status of the 1982-83 settlements, deserve the most weight within this group. Both Parties recognize, due to previous arbitration decisions in the athletic conference including Kimberly, that distinctions as to degrees of comparability have been made within the athletic conference. Both Parties cite Arbitrator Kerkman's decision in Kimberly Area School District, WERC Decision No. 18246-A(6/81) where he found that Kimberly is most comparable in size to Kaukauna and Menasha but that the primary comparable relationship existed between Kaukauna and Kimberly. Although both Parties recognize that Kaukauna is especially comparable to Kimberly, they draw different inferences and conclusions from this when it is considered that Kaukauna has no settlement for 1982-83 (the final offers are still pending before an Arbitrator) and when it is considered that only two schools in the larger set of comparables have settlements for 1982-83 and they are in the second year of two-year settlements made in 1981-82.

The Association concludes that primary emphasis should be put on the comparison of the Parties' final offers to the settlements in Neenah and Appleton and generally argue that little weight should be given to other criteria. On the other hand, the Board concludes that emphasis in terms of comparables should be put on the final offers of the Parties compared to the Board's final offer in Kaukauna and also argue, generally speaking, that weight should also be given to other criteria such as cost of living, public interest, and general economic conditions.

The Association argues, in light of the fact that Kaukauna and Menasha are unsettled at the present time, the Arbitrator should seek direction and give controlling weight to the schools which are settled within the larger set of comparables. In this respect, they place great weight on the 1982-83 settlements in Appleton and Neenah. The Association makes a historical comparison between settlements in Kimberly, Appleton, and Neenah back to the year of 1975-76 up to and including comparisons of the 1982-83 settlements and the 1982-83 final offers in Kimberly. The data, according to the Association, shows that their final offer at each of the benchmarks follows the historical pattern of "closing the gap" between Appleton, Neenah, and Kimberly. At each benchmark, however, the Board's offer represents the reentrenchment or slippage in terms of Kimberly's relationship to these two Districts. At each of the benchmarks the Board's offer would result in setting back the Association's "catchup" movement at least three years in each case. The Board cannot offer sound justification, in the Association's opinion, for its offer in this case especially in light of its ability to fund the Association's proposal.

The District submits that the Neenah and Appleton settlements cannot be given much weight because they occurred between one and one-half years ago. They believe their persuasive value is diminished particularly in light of their non-contemporary nature and the dramatic decline in the rate of inflation and the dramatic increase in unemployment since the time those agreements were reached. They assert that comparative data can only be given primary weight when the settlements occurred at the same relative time and, therefore, in the same relative economic climate as the current proceedings. In this respect, they direct attention primarily to Arbitrator Gunderman's decision in School District of Cudahy, WERC Decision No. 19635-A, where he stated:

"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 foreknowledge 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 Employer points out that settlements in Neenah and Appleton were the second year of two-year agreements and evidence submitted by them demonstrates that at the time the total package settlement of 10.59 percent in Appleton and 9.3 percent in Neenah were reached, the rate of inflation, measured by the Consumer Price Index for all urban wage earners, was 10.1 percent and 9.5 percent respectively. This is in contrast to the CPI figures of 6.3 percent at the time the Parties certified their final offers in the instant case.

In response the Association argues that the weight to be given to the second year of a two-year settlement should not be discounted. In this respect they direct attention to Arbitrator Grenig's decision in School District of Kohler WERC Decision No. 29533 and Arbitrator Yaffe's decision in the School District of Greendale (Voluntary and Past Procedure dated February 2, 1981). Arbitrator Grenig stated:

"Elkhart Lake and Fredonia had not settled for the 1982-83 school year at the time of the hearing. The 1982-83 salary increases in Cedar Grove (Cedar Grove's increases were approximately 10.8 percent at all benchmarks) and Random Lake (Random Lake's increases were approximately 9.14 at all benchmarks) were agreed to two years ago. Nonetheless, these earlier settlements must be considered in comparing the historical rank of the districts. (pp. 6-7.)"

The Board rather than relying on comparisons to Neenah and Appleton asserts that the reasonableness of the Parties final offers be determined in part by comparing the final offers to the final offers in the comparable Districts assuming that the Board's offers in Kaukauna, Oshkosh, and Menasha are awarded. They also do a similar analysis of the final offers in comparison to Kaukauna, Oshkosh, and Menasha assuming that the Association offers were awarded. This analysis is done in terms of historical comparison of rank. The Board's analysis concludes that if the Board's offers were awarded for the 1982-83 school year in Kaukauna, Menasha, and Oshkosh, the ranking of Kimberly under the Board's offer would remain the same as it has been for the past three years. In fact, the ranking would improve in two of the benchmarks. If the Association's offers were awarded for 1982-83 in Kaukauna, Menasha, and Oshkosh, the rank of Kimberly under the Board's offer would drop to sixth on three of the eight benchmarks. The Board contends that it is not realistic to assume that the Association's offers will be awarded in other Districts; whereas, it is certain that the amount of the Board's offer will be received by the teachers in these three Districts. Furthermore, sixth ranking is not out of line for Kimberly since they are by far the smallest of these Districts. Under the Association's offer, the ranking of Kimberly would improve from one to three positions if the Board's offers were awarded in Kaukauna, Menasha, and Oshkosh. The Board does not feel that such an improvement is justified by the size of Kimberly in comparison with other conference schools. The Board also focuses attention on similar comparisons of the final offers between Kimberly and Kaukauna. When

the Board compared the Parties' offers in the instant case to the Board's offer from Kaukauna, they believe that the Board's final offer in the instant case improves the position of Kimberly relative to Kaukauna by continuing to narrow the gap which Arbitrator Kerkman indicated existed between the Districts and which was the basis of his catchup award in 1981. The Board indicates that they have not compared Kimberly offers to the Association's offer in Kaukauna since this is purely speculative and therefore provides no legitimate basis for comparison. They do point out though, that if the Association's offer in Kimberly was accepted and the Board's offer from Kaukauna was accepted, the Association's offer would place Kimberly ahead of Kaukauna, thus, not only eliminating the historical difference between the Districts but reversing the position of the Parties.

In response to the Board's reliance on the Parties respective final offers to the Kaukauna Board's offer, the Association makes the following argument. The Association questions the legitimacy of such a comparison suggesting that such a comparison is an "apples to oranges" approach. However, they note when the Board's data is analyzed further in terms of total package percentages, the Board's offer in Menasha actually supports the Association's offer in Kimberly, i.e. 9.66 percent for the Board in Menasha versus 10.43 percent for the Association in Kimberly as compared to the Kimberly Board's offer at 8.52 percent. They also point out that the same conclusion can be drawn from the salary only percentages. They are 9.6 percent for the Menasha Board's wage offer, 10.39 percent for the Kimberly Association's wage offer and 8.2 percent for the Kimberly Board's wage offer.

In addition to comparables, the Board asserts its final offer is more reasonable when compared with the public interest. The Board argues that awarding the Association's double-digit final offer would be in contrast to the public interest inasmuch as the public at large is in the midst of a prolonged recession. In this respect, they submit a variety of newspaper articles and statistics to demonstrate the breadth and depth of the present recession. These exhibits detail plant closings, layoffs, decline in real earnings, wage freezes, and concessionary bargaining. They also submit Board exhibits that reveal private sector employees in the local area experiencing similar economic difficulties. They submit results of a survey of local private sector employers which indicates that many of the industries will not grant a wage increase in 1983 and granted no wage increases in 1982 in addition to suffering layoffs. The Board does not feel that the economic difficulties facing the taxpaying public in Kimberly can be ignored. They believe their offer provides a reasonable wage and benefit level to the teaching employees while still recognizing the economic difficulties.

The Board also argues that its final offer is most reasonable when compared to increases in the Consumer Price Index and the Personal Consumption Expenditure Index. They point out that the Board's offer significantly exceeds the rate of inflation dependent on which index is used by as much as 3.62 percent whereas the Association's offer exceeds the rate of inflation by as much as 5.53 percent or at a minimum 4.53 percent depending on which index is utilized. It is clear, under either offer, that the teachers would receive a raise which would out pace the rate of inflation.

In respect to the District's cost of living arguments, the Association directs attention to a variety of arbitral dicta which has adopted the position that a settlement pattern has more meaning as a cost of living measure than any other indicators including the Consumer Price Index. In this respect, they direct attention to the undersigned's decision in Hilbert School District, WERC Decision No. 19198-A and also Arbitrator Kerkman's decision in Merrill. (Med/Arb-679 Decision No. 17955)

In respect to the Employer's arguments on the public interest, the Association attacks the usefulness of the Employer's wage survey and the Employer's exhibits from newspapers and magazines which describe the nature of the recession. In respect to the survey, the Association points out that the Board's data included only 30 responses out of 100 questionnaires sent to area businesses.

They ask that little weight be given to the information in this survey due to the incomplete nature of the results and difficulties in comparisons. In regard to the newspaper reprints, the Association categorized them as "heresy" and does not believe they should have any material weight. If the nature of the economy should have an influence in the case, the Association points out that Kimberly teachers have in fact suffered the impact of such an economic downturn. The Association presents an exhibit which shows that there has been a net loss in teaching staff of 13 teachers from 1981-1982 school year either due to layoffs or retirements. The Association believes that they too have suffered due to the state of the economy.

The Association, also in respect to the Board's general economic arguments, suggests that there has been no showing of an inability to pay on the part of the District. Adoption of the Association's offer in this respect will thus not affect the "economics of the District's taxpayers." There is no evidence in the Association's mind which would indicate that the District could not meet the Association's demand on the salary offer issue. In this respect, they direct attention to a portion of Arbitrator Grenig's decision in Kohler, supra, when he stated:

"There is, however, no evidence that the District has had to or will have to reduce or eliminate educational programs, that it will have to engage in long-term borrowing, or that it will have to raise taxes significantly. There is nothing to show that the District cannot continue to provide its teachers with a salary schedule and increase competitive with comparable school districts." (No. 29533, MED/ARB-1609 pp. 9-11, November 22, 1982, Emphasis ours)

and also Arbitrator Imes in the City of Franklin (Decision No. 19569-A, MED/ARB-1598) when she stated:

"However, the Employer did not present any evidence to substantiate its argument. Absent any showing that these factors, together with implementation of the Union's offer, would result in the City making harmful adjustments in the budget or the services offered by it or a showing that acceptance of the offer would result in deficit spending or placing an onerous tax burden in the public, it cannot be concluded that the City has a difficult ability to pay or that the interest and welfare of the public is adversely served."

The District also argues their salary offer is more reasonable when compared to the raises received by other public sector employees. To this end, they submit the following data:

Chart 2

Comparison of Average Wage/Total Compensation
Increases For Area Public Employees Versus The
Parties' Final Offers

Kimberly District Non-Teaching	8.25% Total Package	vs.	Board Package	8.52%
			Assoc. Package	10.43%
Other Area Municipal Employees (20 Units)	8.41% Wages (1982)	vs.	Board Wages	8.28%
			Union Wages	10.39%

The Board notes that the Association's offer exceeds the increase received by other municipal employees by almost 2 percent.

In respect to comparisons to other municipal and private sector employees, the Association asserts that not as much weight should be given to such comparisons and argues that greater weight should be given to comparisons to other teachers in other Districts. In this respect, they refer again to Arbitrator Grenig's award in Kohler.

The Association also argues in length that their offer is most reasonable because if the Board's offer was adopted, it would place the remaining staff at a disadvantage in terms of salaries paid to their colleagues in Neenah and Appleton and would thrust backwards the teachers' to a salary differential relationship which existed four years ago. In other words, the catchup position obtained by the teachers over the past years would be lost. Such a setback would insure the continuation of labor/arbitration efforts in the future years as the Kimberly teachers would again be in a "catchup" situation. It would be in the interest of labor peace, in light of the District's ability to pay, to award the Association's final offer.

V. DISCUSSION

The Parties' arguments in support of the reasonableness of their offers may be thought to fall into the following categories:

- A. Comparison of Wages of other Employees Performing Similar Service (i.e. Teachers in Comparable Districts)
- B. Cost of Living
- C. Comparisons With Other Employees Generally in Public and Private Employment in Same and Similar Communities
- D. Public Interest and Welfare

The argument in these areas correspond to the statutory factors or subfactors to be considered by Mediators/Arbitrators in making their decisions. The evidence on each factor will be analyzed singularly and then the evidence on each factor will be weighed in comparison to other factors and as a whole.

A. Comparison of Wages of Other Employees Performing Similar Service (i.e. Teachers in Comparable Districts)

In respect to which District should be considered comparable, neither Party disagrees that Kimberly is in a unique position within the Fox Valley Athletic Conference. It is by far the smallest school but yet is an inseparable part of an urban area which shares a great deal in common in respect to industry and employment. It was previously noted that Kaukauna has, primarily because of its size, been found to be the most comparable District to Kimberly. In fact Arbitrator Kerkman in a previous mediation/arbitration award involving the School District of Kimberly, supra, awarded catchup based solely on a benchmark analysis of Kimberly to Kaukauna. However, the record is marked by a lack of settlement in Kaukauna for 1982-83. As previously mentioned, the Parties draw different inferences in respect to the absence of a settlement in Kaukauna. The Association places more weight on comparisons to Neenah and Appleton and the final offers in Menasha and the Board places more weight on a comparison to the Board's offer in Kaukauna.

In respect to the Association's reliance on Appleton and Neenah, it is the conclusion of the Mediator/Arbitrator that little weight can be given to these settlements. The weight to be given these settlements should be discounted for two reasons. First, these settlements represent the second year of two-year settlements which were not negotiated in the same economic climate as the final offers in this case. The cost of living, for instance, dramatically declined and other major economic indicators are significantly down from the point in time in which the 1982-83 settlements were reached in these Districts. There is a growing body of arbitral thought among

Mediators/Arbitrators which also gives little weight to such settlements. For instance see Arbitrator Gunderman's decision in Cudahy, supra. The second reason that the weight to be given the Appleton and Neenah settlements should be discounted is their size. Though they are in the generally comparable group, they are much bigger than Kimberly. For instance in Arbitrator Kerkman's Award there was a noteworthy absence of a one-on-one benchmarked comparison between Kimberly and the larger schools of the athletic conference. The Association's argument that the Appleton and Neenah settlements deserve greater weight in absence of a Kaukauna settlement would be sound if they were contemporary settlements. However when the disproportionate size of these Districts is considered in combination with the fact that there are no contemporary settlements in Neenah and Appleton, their usefulness as a basis for comparisons under this factor becomes extremely limited.

The Mediator/Arbitrator has also considered the District's comparisons between the final offers and the Board's offer in Kaukauna. The Employer indicates that the offers in Kimberly have not been compared to the Association's offer in Kaukauna because, in their opinion, such an exercise would be purely speculative and therefore would provide no legitimate basis for comparison. The Mediator/Arbitrator agrees with the Association that no meaningful inferences under the circumstances can be drawn from the comparison to the Kaukauna Board's offer only. On the other hand, due to the nature of the offers, little can be learned from the Association's offer in Kaukauna either.

The Arbitrator's decision to significantly discount the weight to be given to the Neenah and Appleton settlements thus greatly undermines much of the basis of the Association's argument for catchup. The catchup agreement was largely based on comparisons to the non-contemporary settlements in Neenah and Appleton. The Arbitrator is not insensitive to the unique and difficult position the Association has found itself in over the years. As a small District amongst many larger Districts, there is little question that they have been in a catchup position in the past. However, the Arbitrator is unable at this time to determine, because of the absence of a settlement in Kaukauna (the primary comparable) and because of the absence of any contemporary settlements in Appleton and Neenah among others, if any catchup is or will be necessary this year. It is observed that Kimberly and Kaukauna schedules at the five generally recognized benchmarks are quite comparable in 1981-82 and where some disparity existed at the BA Base and Schedule Max., Kimberly exceeded Kaukauna at the BA Base, MA Base, and MA Max. It may turn out that if this Mediator/Arbitrator adopts the Board's offer and other Arbitrators in Kaukauna and Menasha (most and next most comparable Districts) award in favor of the Associations, then catchup will be needed or it may turn out, depending on what occurs in the other Districts in the athletic conference, that Kimberly and Kaukauna will both be deserving of catchup. However, all these considerations are of a most speculative nature. The Mediator/Arbitrator is unprepared to award a catchup offer in an economy where the cost of living has dramatically declined in the past twelve months and where employment is at near devastating levels particularly when there are simply no contemporary benchmark settlements especially in Kaukauna, the most comparable District, which would enable a determination that there was a basic need for catchup or to gauge the appropriate amount of catchup. This is not to hold that catchup is impossible or totally inappropriate in this economic climate. It simply notes that there is a difficulty in showing, even if a need for catchup is established, how much catchup is appropriate when comparable Districts have not yet settled. Certainly this may cause schools who are or may be in a catchup position a hardship in that there will be a tendency for them to delay their settlements until a clear pattern is established. However due to the volatile and rapidly changing economic conditions, perhaps such delay for schools in a catchup position would be justified or unavoidable.

Even though there are no settlements, it may be possible to draw strong inferences about the appropriate amount of catchup from the final offers in comparable Districts. For instance, it is quite possible that it could be established that regardless of which offers were chosen in the remaining Districts that significant erosion would occur, therefore, catchup could be justified. However, such strong inferences, under the circumstances, cannot be drawn from the final offers in other comparable Districts, although it can be said that the Association's offer is preferred because it compares most favorably to the Employer's offer in Menasha on a total package basis. It is also noted that on the other hand that when the offers are compared on a benchmark basis, a slightly different story is told.

If the Association's offer was awarded in Kimberly, it would not only catch up to the Board's offer in Menasha at the BA Minimum and MA Base where Kimberly was behind Menasha in 1981-82, but it would substantially exceed them. In 1981-82 Kimberly was behind the year-end schedule rate for BA Base by \$250 and behind at the MA Base by \$616. If the Association's offer in Kimberly was awarded and the Board's offer in Menasha was awarded, the Kimberly teachers' salary at the BA Base would exceed Menasha by \$200 and \$145 at the MA Base. Moreover, the positive differential in favor of Kimberly teachers in 1981-82 at the BA Max. would increase from \$2,510 to \$3,399. At the MA Max. and Schedule Max., there would be some erosion of the positive differential enjoyed by Kimberly teachers over Menasha teachers in 1981-82 if the Association's offer was awarded in Kimberly and the Board's offer was awarded in Menasha. On the other hand, if the Board's offer in Kimberly was awarded and the Board's offer in Menasha was awarded, the negative differential at the BA Min. would be reduced to \$75 and reduced by \$172 at the MA Max. although it still would be substantial. At the BA Max. the 1981-82 positive differential would increase, be reduced slightly at the MA Max. and at the Schedule Max., and the Kimberly teachers would go from a positive differential to a significant negative differential. Thus from a comparative benchmark analysis of the instant offers to the offers in Menasha, a clear preference for either offer when compared to the Board's offer cannot be found.

The above analysis certainly tempers whatever preference there may be on a total package basis when comparing the offers to Menasha Board's offer. However, it cannot be ignored that on a total package basis the Association's offer compares most favorably with the Menasha offer. If it can be said that the evidence on this criteria favors either side, it favors the Association because the benchmark analysis is somewhat of a toss-up. Thus some weight will be given to this fact.

The lack of meaningful data on comparable Districts is also significant for other reasons. Normally, in the opinion of the Arbitrator, when there is a significant number of settled schools in a primary comparable group, all things considered equal, a settlement pattern is one of the best indicators of the reasonableness of the Parties' offers. For instance in line with the Kerkman rationale in Merrill on cost of living, such settlements are a reasonable barometer of cost of living. This Arbitrator would add in the same vein that settlements when they establish a clear pattern are a reasonable barometer of the other criterial influences on the reasonableness of final offers. For instance absent special proof, the economic downturn can be thought to affect comparable communities in comparable ways, thus the consideration to be given general economic conditions can be judged by seeing what is an acceptable voluntary or arbitrated settlement in other communities. However, in this case there are no contemporary settlements for 1982-83 which would allow an assessment of how other Parties or Arbitrators have judged and considered the appropriate influence of the other criteria such as the interest and welfare of the public, other public and private sector settlements and cost of living. Therefore, in absence of a clear pattern of contemporary settlements in comparable Districts, weight must be and will be given to the data on cost of living, wages of other public and private sector employees, and the

general economic conditions. Although this weight will not be given without recognition of the problems inherent with cost of living measurements, the problems inherent in applying general economic data to a specific community and the dissimilarities in pay structures of other public and private sector employees.

B. Cost of Living

The data on cost of living clearly favors the Board's offer. At the time the final offers were certified, the CPI data for urban wage earners estimated a 6.3 percent annual increase in the cost of living. It is also noted that there had been a steady decline in that figure to 4.9 percent in September, 1982. The Board's final offer of 8.28 percent wages and 8.52 percent total package is quite reasonable in comparison with this data as it exceeds the rate of increase in the cost of living at the time by 2.22 percent on a total package basis. The Association's offer was clearly less reasonable when viewed in terms of this criteria as it exceeds the annual increase in the cost of living by over 4 percent.

The Association argued that the settlement data should be given more weight than the cost of living data based on the Kerkman rationale in Merrill which has been adopted and endorsed by this Arbitrator. However the rationale, as far as this Arbitrator is concerned, presupposes that the settlement data is contemporary and negotiated or arbitrated in relatively the same economic climate. Settlements are, as previously mentioned, a good estimate of the proper weight to be attached to general economic influences such as cost of living. However a settlement's value as a barometer of these economic influences is meaningful only if it occurs in the same economic climate.

C. Comparisons With Other Employees Generally in Public and Private Employment in Same and Similar Communities

While the data presented by the Board on other public and private settlements appears to support the Board, the Association argues that it should have little weight. They point out that private sector settlements were based on a limited sampling and that the public settlements are difficult to compare because of their across the board increases excluding rollups, increases within classifications and changes in increments.

There are undeniably many problems inherent in comparing other public and private sector settlements to teacher settlements. Teacher salary settlements are unique in many respects such as increments and other rollups as well as duties, schedules, and continuing education requirements. However, even discounting for these problems in comparisons, they are nonetheless a general guideline to the reasonableness of final offers especially when there is a significant disparity between a final offer and the pattern of wage-level changes in other public sector and private sector employment. In this case, it is the judgment of the Arbitrator that the Employer's offer more closely follows the general trend which is detailed in the Board's data particularly for public and private sector settlements whereas the Association exceeds the general wage-level increase pattern substantially.

D. Interest and Welfare of the Public

The arguments in this regard are put forth primarily by the Employer. The Association points out in some detail the problems associated with this approach in terms of reliable evidence. However Arbitrators in absence of settlement patterns have been giving weight to this type of economic data. Comments of Arbitrator Yaffe in the School District of Mishicot MED/ARB-1851 Decision No. 19849-A are pertinent in this regard:

"The difficulty the undersigned must confront under these circumstances is determining what constitutes a reasonable catch up adjustment when comparable districts have not yet settled their 1982-83 agreements.

Absent such comparability evidence, the undersigned believes it is appropriate to examine and consider other evidence in the record pertaining to the rather severe economic recession in the economy in the Manitowoc area, including extremely high unemployment, and significant increases in delinquent taxes. It is significant also that these economic factors are accompanied by a substantial reduction in the rate of inflation.

The foregoing economic factors, to some extent, have affected current negotiations and med/arb proceedings across the State. Although by far the majority of 1982-83 school district agreements which are currently being negotiated have not been concluded, based upon the first several med/arb awards which have been issued, it would appear, at least preliminarily, that the total value of awarded settlements has seldom exceeded 10%. 2/ The undersigned believes that these settlements reflect a growing consensus among arbitrators that current economic conditions such as those cited above must be given considerable weight in determining what constitutes a reasonable settlement in these times." Emphasis added.

The footnote "2" mentioned above is quoted below.

" 2/ Westby Area School District, Med/Arb Dec. No. 19513-A, 11/82 - total package of 8%; Madison Area Vocational Technical and Adult Education District, Med/Arb Dec. No. 19793-a - total package of 8.32%; School District of Cudahy, Med/Arb Dec. No. 19635-A, 10/82 - total package of 8%; School District of South Milwaukee, Med/Arb Dec. No. 19688-A, 12/82 - total package of 9.6%; Waunakee Community School District, Med/Arb Dec. No. 1677, 12/82 - total package of approximately 11%; Cochrane-Fountain City School District, Dec. No. 19771-A 2/83 - 9.5%; School District of New Glarus, Dec. No. 19778-A, 2/83 - 7.3%; DePere School District, Dec. No. 19728-A, 12/82 - 8.2%; Rhinelander School District, Dec. No. 19838-A, 1/83 - 8%."

This Mediator/Arbitrator would add as he has previously stated that economic data is diminished in value to some degree unless the Employer can show some specific adverse impact on the community. There is also good reason to be cautious of "economic data" when summarized in newspaper or magazine reports. Such "data" is often a broad and oversimplified assessment of larger macro-economic tendencies. In this respect general economic data should be considered in context and in unison with other economic data such as cost of living data and other public sector settlements. Cost of living and other public sector settlements perhaps more reasonably reflect these general economic tendencies. The general economic trends affect the cost of living in a measureable way and other public sector settlements can be thought to measure, in the eyes of other Parties or Arbitrators, the proper influence of the economy on the interest and welfare of the public of the same or similar communities. Thus when this general data is considered in context of these other criteria, a clearer picture results. However, it is not insignificant in considering the general economic data that the Kimberly teachers have experienced layoffs and this does mitigate to some extent the weight to be given this factor.

While there is reason to be cautious of the general economic data contained in newspapers and magazines because of its sometimes over-characterized "gloom and doom nature" in bad times, it would be inappropriate and unrealistic not to recognize that the present economy has a downward influence on the wages of most if not all employees. This fact in the final analysis cannot be dismissed. Even though the Employer's arguments give more weight to the economic conditions than the Arbitrator thinks is appropriate, the general economic data must be taken into consideration. When the

general economic data is considered, it is the judgment of the Arbitrator that the Employer's final offer takes into account the general economic realities to a more reasonable degree than does the Association's. In light of the economic realities, an 8.52 percent total package increase is more reasonable than a 10.43 total package increase. Some consideration was given to the fact that Kimberly teachers have also suffered layoffs. This, however, does not totally negate the influence of the general economic trend, although it may influence the weight to be given to this criteria in comparison to others.

VI. EVALUATION OF THE OFFERS AS A WHOLE

The Arbitrator has explored the evidence as it relates to the interest and welfare of the public, cost of living, comparison to similar employees in comparable Districts, and comparisons to other public and private sector wage settlements.

It was concluded in terms of comparisons to teachers in other Districts that little could be learned except that the Association's offer in terms of total package was closer to the Employer's offer in Menasha. Thus it is observed that of all the criteria considered, the Association's offer is preferred on this basis only and notably only to a slight degree. All the other criteria favors the Board's offer. Cost of living data, which in absence of any contemporary settlement is a relatively strong indicator of the reasonableness of the Parties' offer under these particular circumstances, clearly favored the Board. Although there are problems with the measurement of cost of living increases, it is more precise than other general economic data and more precise than comparisons to quite dissimilar public and private sector employees. There is little doubt under the cost of living criteria that the Board's offer is favored.

The general economic data and settlement data on other public and private sector employees does have problems and because of those problems would not per se or necessarily be given controlling weight standing alone. But they will be given additive weight when they are considered supportive of conclusions on other criteria such as cost of living especially in the absence of settlements in comparable Districts of a contemporary nature. In this case, the Board's offer compares most favorably to these factors.

In summary the cost of living data is clearly in favor of the Board and when this is combined with the general influences of the economic data and other data on public and private sector settlements and is weighed against the very thin data and slight preference for the Association's offer on comparable Districts, the Employer's offer must be deemed as more reasonable.

AWARD: The 1982-83 agreement between the Kimberly School District and the Kimberly Education Association shall include the final offer of the School District and the stipulations of agreement between the parties as submitted to the Wisconsin Employment Relations Commission.

Dated this 20th day of April, 1983, at Eau Claire, Wisconsin.



Gil Vernon, Mediator/Arbitrator

APPENDIX A

FINAL OFFER

OF THE

KIMBERLY BOARD OF EDUCATION

TO THE

KIMBERLY EDUCATION ASSOCIATION

July 30, 1982

APPENDIX A

Board Final Proposal 7/30/82

1982-83
SALARY SCHEDULE

<u>STEPS</u>	<u>BA</u>	<u>BA + 12</u>	<u>BA + 24</u>	<u>MA</u>	<u>MA + 12</u>
0	14,125	14,549	14,973	15,397	15,821
1	14,690	15,131	15,572	16,013	16,454
2	15,255	15,713	16,171	16,629	17,087
3	15,820	16,295	16,770	17,245	17,720
4	16,385	16,877	17,369	17,861	18,353
5	16,950	17,459	17,968	18,477	18,986
6	17,515	18,041	18,567	19,093	19,619
7	18,080	18,623	19,166	19,709	20,252
8	18,645	19,205	19,765	20,325	20,885
9	19,210	19,787	20,364	20,941	21,518
10	19,775	20,369	20,963	21,557	22,151
11	20,340	20,951	21,562	22,173	22,784
12	20,905	21,533	22,161	22,789	23,417
13	21,470	22,115	22,760	23,405	24,050
14	22,035	22,697	23,359	24,021	24,683
15		23,279	23,958	24,637	25,316
16				25,253	25,949
17				25,869	26,582
18	22,600	23,861	24,557	26,485	27,215
22	23,165	24,443	25,156	27,101	27,848

4% increments at all steps

~~CG CURRICULAR SALARY SCHEDULE (APPENDIX B) - 8% INCREASES ACROSS THE BOARD~~

Jan 7
ow

APPENDIX B

FINAL OFFER
KIMBERLY EDUCATION ASSOCIATION

All items in the 1981-83 Agreement between the Kimberly Area School District and the Kimberly Education Association will continue in effect for the 1982-83 school year, except as modified by stipulation of the parties and according to the following final offer of the Kimberly Education Association:

1. Appendix A. Revised. (See attached)

~~2. Appendix B. Revised. (See attached)~~

The final offer shall carry an effective date of the first day of the 1982-83 school year.

Signed

Don W. Muel

Date

7/30/82

APPENDIX A
1982-83

SALARY SCHEDULE

<u>STEPS</u>	<u>BA</u>	<u>BA + 12</u>	<u>BA + 24</u>	<u>MA</u>	<u>MA + 12</u>
0	14,400	14,832	15,264	15,696	16,128
1	14,976	15,425	15,875	16,324	16,773
2	15,552	16,018	16,486	16,952	17,418
3	16,128	16,611	17,097	17,580	18,063
4	16,704	17,204	17,708	18,208	18,708
5	17,280	17,797	18,319	18,836	19,353
6	17,856	18,390	18,930	19,464	19,998
7	18,432	18,983	19,541	20,092	20,643
8	19,008	19,576	20,152	20,720	21,288
9	19,584	20,169	20,763	21,348	21,933
10	20,160	20,762	21,374	21,976	22,578
11	20,736	21,355	21,985	22,604	23,223
12	21,312	21,948	22,596	23,232	23,868
13	21,888	22,541	23,207	23,860	24,513
14	22,464	23,134	23,818	24,488	25,158
15		23,727	24,429	25,116	25,803
16				25,744	26,448
17				26,372	27,093
18	23,040	24,320	25,040	27,000	27,738
22	23,616	24,913	25,651	27,628	28,383

4% increments at all steps

STIPULATION

The Kimberly Board of Education (Board) and the Kimberly Education Association (Association) stipulate to the following:

- A) That except as otherwise stated herein and as set forth in the respective final offers of the Board and Association, all other provisions of the Teacher Collective Bargaining Agreement shall remain as is for the 1982-83 contract year.
- B) For the 1982-83 contract year the parties agree to implement the following in the Teacher Collective Bargaining Agreement:
 - 1) Driver Education Pay - No change from 1981-82 contract.
 - 2) Summer School Pay - No change from 1981-82 contract.
 - 3) Noon Hour Pay - No change from 1981-82 contract.
 - 4) Contest Supervisor - 8% increase.
 - 5) Curriculum Work/Study - No change from 1981-82 contract.
 - 6) Health Insurance Premium - Full amount expressed as dollars:
 - Family - \$147.33 per month
 - Single - \$53.25 per month
 - 7) Dental Insurance - Full amount expressed as dollars:
 - Family - \$34.62 per month
 - Single - \$11.88 per month
 - 8) Life Insurance - Coverage as provided in 1981-82 contract.
 - 9) LTD Insurance - Coverage as provided in 1981-82 contract.

10) All Co-annulars @ 8% unless shown stipulated.

FOR THE KIMBERLY
BOARD OF EDUCATION

Mulvey & Wherry, PC.

James W. Freeman
Attorney for the District

FOR THE KIMBERLY
EDUCATION ASSOCIATION

RU Muehl