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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of an Arbitration between

MENOMONIE AREA SCHOOL DISTRICT

and

WEST CENTRAL EDUCATION ASSOCIATION - MENOMONIE

Case 46 No. 35117
MED/ARB-3304 Decision No. 2294

Representing the District: Mr. David R. Ross, Superintendent.

Representing the Association: Mr. R. F. Gilligan, Executive Director.

Arbitrator: Mr. Neil M. Gundermann

ARBITRATION AWARD

The Menomonie Area School District and the West Central Education Association-Menomonie were unable to resolve a dispute regarding the terms and conditions of their 1985-86 agreement. A petition was filed with the Wisconsin Employment Relations Commission and the undersigned was selected by the parties as the mediator/arbitrator.

A public hearing was held on December 5, 1985, at the District's offices in Menomonie, Wisconsin. Following the public hearing an attempt to mediate the dispute was made and when such efforts proved to be unsuccessful, the arbitration hearing was held. During the hearing the parties were afforded the opportunity of presenting evidence. At the time of the hearing it was determined that the hearing would be held open until the filing of briefs during which time additional evidence could be introduced. The parties availed themselves of this opportunity.

Both parties filed briefs and reply briefs.

This Award is Dated March 12, 1986.

FINAL OFFERS OF THE PARTIES

Salary Schedule

Association Offer:

The Association has proposed that all salary schedule rates (each step) be increased by 7.0%.

Board Offer:

Increase the Base $1,345 to $16,980
Horizontal Increment $200
Vertical Increments:

B	300	M	790
B+8	355	M+8	820
B+16	410	M+16	850
B+24	465	M+24	880
		M+32	910
		M+40	940

Retirement

Association Proposal:

The WCEA is proposing that the 6% required payment to the Wisconsin Retirement System be made effective January 1, 1986, of the unit employe's gross salary.

Board Proposal:

That the District pay no more than 5% to the Wisconsin Retirement System of the employe's gross salary.

Dental Insurance

Association Proposal:

The Association is proposing that the existing practice of paying the full single and family dental premium be continued with the District paying up to $30 per month for family premium and up to $10 per month for a single premium.

Board Proposal:

That the amount of the payment for family dental be increased from $27.50 up to $28.50 per month and up to $9.80 per month for the single premium.

Professional Compensation

Association Proposal:

The Association has proposed that the rates in Article XX - E, F, L, P, Q, and T be increased by 7%.

Board Proposal:

The Association contends that the athletic conference represents the comparables most frequently selected by arbitrators. More specifically, the Association contends that the "old" athletic conference, referred to as the Big Rivers Athletic Conference, should be the comparable in the instant dispute. The fact that arbitrators have relied upon athletic conferences as the basis for establishing comparables is well established in arbitral dicta. In fact, this arbitrator concluded that athletic conferences are generally accepted and relied upon by arbitrators in interest arbitration disputes. The appropriate comparable schools include Eau Claire, Chippewa Falls and La Crosse. These represent the same comparables that the same parties relied upon in a prior arbitration case. Therefore, there is no valid reason for adopting other comparables this time. There may be secondary comparables in the form of districts contiguous to Menomonie, which would include Boyceville, Glenwood City, Durand, and Mondovi.

It is the Association's position that its final offer salary position more closely compares to the settlements of other Big River Athletic Conference schools, as well as other settlements in the area and in the State. The statute governing the mediation/arbitration process has clearly established that certain criteria are to be followed by the arbitrator when rendering a decision. It was with these criteria in mind that the Union drafted its final offer.

Arbitral authority clearly establishes it is appropriate for the arbitrator to look at the level of settlements which have resulted in other districts which are comparable to the district where the dispute occurs. The "pattern of settlements" principle has been embraced by numerous arbitrators in determining the outcome of arbitration cases. The Association contends that the "pattern of settlements" establishes that its final offer is more appropriate than the final offer of the District.

A comparative review of the voluntary settlements in the Big River Athletic Conference to the parties' final offers establishes the Association's final offer to be significantly more analogous to the pattern of settlements than the District's final offer. With the exception of the BA minimum, the District's final offer not only is not in keeping with the pattern of settlements for the other Big River Athletic Conference schools, but also erodes the existing relationships at the benchmark positions between the District and the other Athletic Conference schools. The Association notes that in 1984-85 Menomonie ranked a minus $1,244, or 6.4% below the average at the BA Step 7. If the Board's final offer were accepted, the teachers would drop from $1,244 below the average to $2,275 (or 10.5%) below the Athletic Conference average, a drop in its relative position of 4.1%.

While acceptance of the Association's final offer would still reduce the relationship at the BA Step 7 from minus 6.4%

There are thirty-five teachers at the MA maximum and schedule maximum. The evidence establishes that in 1984-85, Menomonie was $972 below the average at the MA maximum. Although the Association's final offer would drop this difference to $1,682 below the average, the District's final offer would drop the relationship even further, with its $27,260 salary at $2,086 below the average. At the schedule maximum, the dollar difference of Menomonie was minus $729 in 1984-85. The Association's offer drops to $1,392, or 4.3% below the average, and the District's final offer drops to $1,774, or 5.6% below the average.

The use of benchmarks in determining "measure of comparability" has been well established and is noted by Arbitrator Byron Yaffe in Blair School District:

> "[T]hese benchmarks appear to be the most *frequently utilized by the parties as well as* mediator-arbitrators in similar proceedings, and hopefully, their regular use will someday result in more predictability in the process." (Dec. No. 19054-A, 5/3/82.)

While the Union accepts the benchmark approach as a possible predictor of comparability, the Union argues that percent increases alone may be deceiving when reviewing the parties' final offer positions as outlined above. Consequently, the Union supports the instant arbitrator's position in Waukesha, wherein he pointed out that "[W]hile percent increases are a useful guide to settlements, the ultimate comparison must be made in dollars." (MED/ARB-1182, 1/8/82.) This position has been supported by other arbitrators. Consequently, while the District's final offer at the MA maximum and the schedule maximum may exceed 5%, the dollar increases at those benchmark positions *not only fall short of the settlement pattern but erode Menomonie's* relationship at those as well as other benchmark positions.

According to the Association, a review of the pattern of settlements in contiguous districts to Menomonie supports a similar conclusion. In fact, a review of the evidence shows that the average settlement in the contiguous districts is within a few dollars of the Association's final offer in Menomonie. Consequently, the Association asserts that a review of all the data provided clearly supports its position in this matter.

The Association argues that in the absence of an ability-to-pay claim on the part of the District, once a relationship has been established, it should not be taken away. Therefore, by virtue of the fact that the Association's final offer maintains the relationships established in 1984 and 1985, it feels its final offer more closely parallels the settlement pattern both in the Athletic Conference and within contiguous districts to Menomonie.

The Association also argues that the District's final

increment. A review of the District's final offer demonstrates that the final offer significantly reduces the salary schedule increments for the first four lanes, and with the reduction of the horizontal increment, reflects up to a 10% decrease in the column maximums. In contrast, the Association's final offer not only maintains the existing (1984-85) salary rate structure, but also maintains a final offer increase more consistent with the "pattern of settlements" for both the Athletic Conference and contiguous districts.

In School District of Barron, Arbitrator Krinsky stated that "any substantial restructuring of the salary schedule" should be the result of voluntary collective bargaining and not imposed by the arbitrator.

The Association contends that in view of the pattern of settlements, as well as the fact that no ability-to-pay claim has been made, the District has not shown a need for changing the structure of the salary schedule voluntarily agreed to during negotiations for the 1984-85 Agreement. Therefore, the Union asserts the District's reduction of the horizontal increment, as well as the reduction in the BA, BA+8, BA+16 and BA+24, is wholly unreasonable and a significant change in the status quo of the existing salary schedule.

The Association further emphasized that the District's salary schedule affects the more experienced teacher. The evidence shows that there is a total of 166.127 teachers and 111.66 teachers reside at the very top of the lanes. A review of the Board's final offer salary schedule shows that these teachers would be forced to take less because of the Board's arbitrary change in the salary structure. The impact is particularly felt in the first four lanes. For example, in 1984-85, a teacher in the BA+8 column, Step 10, received a salary of $20,564. In 1985-86, under the District's final offer, this teacher would receive $20,730, or an increase of $166. The same example occurs in the BA+8 column.

In the BA+16 lane, the impact of the District's final offer is even more significant, wherein the increase at the BA+16, Step 11, is $128. (1985-86 salary of $21,890; 1984-85 salary of $21,762.) Additionally, if the Board's final offer were awarded, thereby implementing a no-increase in retirement, that teacher's annual in-pocket salary for 1985-86 would be a negative due to the fact that effective January 1, 1986 all teachers will be required to deposit an additional one percent in the Wisconsin Retirement System. This one percent reflects an amount of money in excess of the salary increase a teacher in that position would receive.

The Association emphasized that its final offer attempts to maintain the existing salary schedule relationship, whereas the District's final offer erodes that same salary schedule with its most adverse impact being felt by those who are at

have no direct bearing on this dispute. A fourth factor--changes during pendency of arbitration--is part of other factors, and a fifth factor--overall compensation--is part of the comparability factor. According to the District, three major factors are relevant in this case:

> 1. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> 2. 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.
>
> 3. The average consumer price for goods and services, commonly known as the cost-of-living.

Although the law gives the arbitrator much flexibility to "give weight to the . . . factors," the language and organization of the law requires a level of equality in considering the factors. There is no language indicating any priority of major factors; there is merely a listing of factors. The repeated use of "and" without modification within the language of the factors requires sameness of consideration.

The comparability, one of three major factors, has six subfactors:

> 2a. With employes performing similar services in the same community.
> 2b. With employes performing similar services in comparable communities.
> 2c. With employes generally in public employment in the same community.
> 2d. With employes generally in public employment in comparable communities.
> 2e. With employes in private employment in the same community.
> 2f. With employes in private employment in comparable communities.

Under the language of the statute it is unreasonable to assume that any one subfactor be the dominant factor in an arbitration award if more than one subfactor is substantially addressed by the parties. The District contends that both legislative intent and a reasonable interpretation of the language of the law require a balanced consideration of major factors and subfactors.

The interest of the public was demonstrated by the members of the public who appeared at the hearing or supplied written statements at the time of the hearing. Those appearances and letters speak for the public interest in the absence of evidence to the contrary. The message of the public is very clear: It favors the District's position over the Association's position.

While the paying ability of each citizen cannot be determined, there are facts and trends which cast doubts concerning the ability of significant numbers of the public to pay teachers a 9.9% raise this year. The District points to the following facts: (1) Social Security recipients received a 3% increase this year. (2) The County's ranking in per capita income declined from 52 of 71 counties in 1973 to 62 of 71 counties in 1983. (3) Deliquent taxes in the school district have increased dramatically in the last few years. (4) For the first time since 1966, equalized valuation in Dunn County declined; the decline in 1985 values was $10,456,290.

There is little need to document the sad state of the agricultural economy. Farm commodity prices have been steadily declining with the result that the agricultural economy is in difficulty. It is undeniably clear that the welfare of the public which has a stake in agriculture demands a rejection of the Association's final offer. The agricultural economy is crucial to the District, as 26.4% of the District's property taxes are paid by farmers. Additionally, many businesses are totally or largely dependent upon farmers.

It is difficult for the District to argue ability to pay as it could tax its financially troubled taxpayers into bankruptcy and foreclosure. The District budgeted sufficient funds to cover its final offer; however, if an award were made in favor of the Association, the District's fiscal position would be set back by about $150,000.

It is further argued by the District that the State's ability to pay the amounts it previously committed to the District is in question, due to the State's revenue shortfall. It is also unreasonable to expect the State to provide additional funding for school districts at this time.

The comparable relating to employes performing similar service in the same community is best met by comparing the salaries paid to teachers in three of four private schools located within the District. St. Joseph's School, 1985-86 low salary is $10,658 and the high salary is $15,737; St. Paul's low salary is $10,720 and the high salary is $12,864; Christian Alliance's low salary is $10,700 and the high salary is $12,550. These figures compare with the District's proposal of a low salary of $16,980 and a high salary of $30,060. The seventeen private school teachers compare rather favorably with the sixteen teachers in the Arkansaw School District, a comparable the Association proposed. Generally, these private school teachers follow curricula fairly comparable to the District's and produce comparable results.

The District asserts the legislature must have intended that comparisons be made between private school teachers and public school teachers when it listed as their first comparable those "performing similar services in the same community." The great disparity between private school and District salaries gives great weight in support of the District's final offer.

Another subcomparable is with employes performing similar services in comparable communities. Although the Association considers the Athletic Conference as the appropriate comparable, the District argues that Eau Claire and La Crosse are not comparable

based on population or student enrollment. The fact that La Crosse is not a comparable is established by the fact that the Union sought to exclude Menomonie as a comparable in the La Crosse arbitration case.

The District accepts without question the following six communities proposed as comparables by the Union: Chippewa Falls, Ellsworth, Hudson, New Richmond, Rice Lake and River Falls. All were considered as comparables in the last arbitration. The District's athletic teams compete with teams from all these communities on a fairly regular basis. All are within fifty miles and considered part of the West Central Wisconsin. All six are fairly close in size to Menomonie in both district size and size of central city population.

The District accepts the seven neighboring school districts as comparables: Boyceville, Colfax, Durand, Elk Mound, Elmwood, Glenwood City and Spring Valley. The District accepts these on the basis of their closeness and their inclusion as comparables in the last arbitration. The District also is willing, for purposes of this arbitration, to accept three additional comparables proposed by the Union as "neighbors of neighbors"--namely, Arkansaw, Baldwin-Woodville, and Modovi. A review of the evidence establishes that within these comparables during 1984-85 the District ranked as follows:

2nd of 17 at BA Minimum
2nd of 17 at BA 10th step
4th of 17 at MA Minimum
6th of 17 at Schedule Maximum
7th of 17 at MA Maximum

Only at the two least important benchmarks of BA Step 7 and BA maximum does the District rank eleventh and last respectively. In this regard, the District contends that only a few teachers who have been grandfathered out of the requirement to go back to school have ended up at maximum level.

According to the District, the primary comparables include Ellsworth, Hudson, New Richmond, Rice Lake, River Falls and Chippewa Falls. Secondary comparables include Boyceville, Durand, Glenwood City, Mondovi, Arkansaw, Baldwin-Woodville, Colfax, Elk Mound, Elmwood and Spring Valley.

A comparison of the District's final offer with six other districts including Boyceville, Chippewa Falls, Durand, Glenwood City, Mondovi and New Richmond clearly establishes the reasonableness of its final offer. Of the seven benchmarks, the District is highly competitive in all but two. For 1985-86, the District's ranking among the comparables is as follows:

BA Minimum	1
BA+7	5
BA Maximum	7
MA Minimum	2
MA+10	1
MA Maximum	5
Schedule Maximum	3

Only at BA maximum does the District rank last, just as the District ranked last at this benchmark at the time of the last arbitration award granted in the District's favor for the 1981-82 and 1982-83 school years. The arbitrator stated at that time:

> "The school district has maintained a position close to the top (of comparables) at the BA and MA degree bases and maintained a position close to the bottom . . . at the BA degree maximum and maintained a position close to the middle . . . at the MA degree and salary schedule maximum . . . The fact that the school district has the least number of steps to get to the maximum salary in a salary lane has been a trade-off position in lieu of the highest maximum salaries in the area for the past eight years. (Mueller, No. 28637, MED/ ARB-1391, 3/22/82.)

The Union presented data on two kinds of career teachers: one with his Bachelor's degree and one with his Master's degree, both of whom never got any credits beyond their respective degrees. The assumption behind this theoretical career teacher is an anathema to what actually happens and to the concept behind every salary schedule which provides for and encourages professional growth.

An additional subcomparable involves employes generally in public employment in the same community. An analysis of the salaries received by the Stout academic staff and the Stout faculty establishes that the teachers, under either proposal, would receive larger increases. The District's offer would also exceed the raises which have been received by City and County employes. More recently, the Dunn County Health Care Center employes approved a 4% decrease ($850 less per employe) for 1986. Compensation data for employes in public employment in the same community clearly supports the District's position in this, the third subcomparable.

Another subcomparable is a comparison with employes generally in public employment in comparable communities. Although there is little data available concerning this factor, it is emphasized by the District that Chippewa County approved a 2.8% package (salary and fringes) increase in each of three years (1986-88), with a salary freeze in the first year.

Another subcomparable is with employes in private employment in the same community. The percentage of compensation increases over the past three years for the community's two largest private employers and two other large private employers in the community compared to compensation increases for the District teachers establishes that the private sector increases were significantly lower.

The District's position is shown as more favorable in five comparables for which data has been presented, thus the District's position must be favored in this, the second major factor which must be considered in arbitration: comparables.

It is clear that the legislature, by listing cost of living as a major factor to be considered by the arbitrator, intended to give importance to the cost-of-living factor in determining compensation for public employes. While the District believes the law gives flexibility to arbitrators in considering factors, nonetheless the District believes it would be an unreasonable interpretation of law to give greater weight to a subfactor, such as teachers' salaries in comparable communities, than to a major factor such as cost of living.

The language of the law is clear in listing this major factor as "the average consumer price for goods and services, commonly known as the cost-of-living." The Bureau of Labor Statistics of the U. S. Department of Labor defines its Consumer Price Index almost identically as "a measure of the average change in prices over time in a fixed market basket of goods and services." It is certain that the Legislature intended

the arbitrator carefully compare the percentage increases of the total cost of each party's proposal with the percentage increase in the CPI. Since the parties proposals each cover one year, it is logical to compare the percentage increase in the CPI over one year. A comparison of the CPI establishes an index of 3.2% from one year ago for all urban consumers in the United States, even though the index of 2.4% for nonmetro urban would fit the local situation more accurately. The cost of the Union's proposal is 9.9%; the cost of the District's proposal if 6.3%; CPI, United States increased 3.2%; and CPI, nonmetro urban increased 2.4%. Clearly, the District's proposal more closely aligns itself with the actual cost of living than does that of the Association in this major factor.

The District notes that it takes fewer years for teachers to reach the maximum of the BA, MA and Schedule Maximum in the District than in other districts.

The District further asserts that both the dollar increases and the percentage increases given by the Association for Boyceville and Glenwood City are incorrect. According to the District, in Boyceville and Glenwood the schedule rates are shown, not the actual salaries which will be received by the teachers. In both districts teachers will receive the 1985-86 rate for twenty of the twenty-four payroll periods, as there was no retroactive payment.

It is further argued by the District that Chippewa Falls was in the last year of a multi-year in 1984-85 which provided an increase of 3.9% total package. The increase for 1985-86 was essentially catch-up.

The District contends its final offer does not disturb the structure of the salary schedule. While the District concedes that there are different dollar amounts at the various steps, the District contends that the same result would occur under the Association's final offer of 7% increase at each step. The Association's final offer would result in dollar increases ranging from $1,094 to $1,922, however this would not represent a structural change in the schedule either.

According to the District, its final offer rewards those teachers who have availed themselves of additional educational opportunities. In contrast, the Association's final offer rewards all teachers with a 7% increase. The District's emphasis on those lanes which reflect educational advancement has been a consistent position of the District.

ASSOCIATION'S POSITION - Retirement Contribution:

Because of the change in State law effective January 1, 1986, employes are required to deposit an additional one percent to the Wisconsin Retirement System.

urges that the past practice of full payment by the District to the System has become, with time, the "status quo." The Union argues that in refusing to continue that past practice for 1985-86, the District is attempting to change the "status quo."

In this regard, the Union contends that there is a presumption that favors continuance of an existing practice unless the party proposing the change has demonstrated that: the practice is unworkable or inequitable; there is an equivalent "buy-out" or quid pro quo; or there is some other compelling need for the change. The Union argues that in regard to retirement and other items contained in this final offer, none of the presumptions listed above have been shown by the District to have existed. Therefore, the Union submits the District was derelict when it failed to consider retirement in its final offer.

DISTRICT'S POSITION - Retirement Contribution:

This issue is only important to the extent that it affects total compensation. Proof of this is established by the fact that the District, in an attempt to resolve the dispute, would have paid the full 6% to the employe contribution effective January 1, 1986 if a voluntary settlement could have been obtained.

ASSOCIATION'S POSITION - Dental Insurance:

The Union's proposal calls for payment of up to $30 per month for family coverage for dental insurance. The existing practice shows that the District has paid the full family and single monthly premiums for dental insurance. Therefore, the Union fashioned its final offer proposal to incorporate what it understood the new premium rate to be.

Although the comparables regarding dental insurance have not been compiled into a single exhibit, the data provided the arbitrator at the hearing shows the following: The 1985-86 monthly family premium for dental insurance in Eau Claire has been stipulated at a rate of $36.42; for La Crosse the employer agreed to pay 100% of family premiums; and, in Chippewa Falls the contract shows that in 1983, the monthly rate for family dental was already $29.50. In view of the above, the Union submits that its final offer position regarding dental insurance is not unreasonable.

The Union feels that its final offer in asking for a continuation of the "status quo" regarding family dental premiums is not unreasonable.

Furthermore, even if Menomonie's entire fringe package were increased by the 13.3% increases in health insurance given to the Union for the first time on December 5, 1985, and the entire fringe costs of La Crosse, Chippewa Falls and Eau Claire remained at the 1984-85 level, the total cost of fringes for

ASSOCIATION'S POSITION - Professional Compensation:

Regarding the proposed 7% increase in professional compensation to the rates contained in Article XX, the Union contends its final offer position is reasonable, based on past practice. The parties negotiated a settlement in 1984-85, and when the parties reached that agreement they raised the rates in Article XX the same percentage amounts as the rates were raised in the salary schedule. Therefore, the Union proposed in its final offer to raise those rates by 7%, the same rate increase as its proposal to the salary schedule.

DISTRICT'S POSITION - Professional Compensation:

This issue is relatively unimportant fiscally. The difference between the parties is negligible when considered with the total difference between the parties' proposals. The District's proposal to increase the pay 3.8% amounts to an increase in line with cost of living, while the Union's proposal to increase the pay 7.7% is an amount in line with the rest of the Union's proposal.

DISCUSSION:

The parties are in substantial agreement regarding the costs of their respective final offers. The Association's final offer provides for an average increase of 8.05% or $1,847.72 per teacher. The total package cost of the Association's final offer is costed by the District as being 9.9% or $3,001 per teacher. The District's final offer provides for an average increase of 5.04% or $1,156.20 per teacher. The total package cost of the District's final offer is costed as being 6.3% or $1,906 per teacher.

Although the parties are in general agreement as to the cost of their final offers, there is an issue as to the appropriateness of including in the costing horizontal movement on the salary schedule as a result of obtaining additional credits. The District has not previously costed this item. The Association objects to the costing of horizontal movement on the salary schedule contending there is no way to properly estimate such costs. Generally, horizontal movement can only be estimated, as negotiations would be completed prior to summer school when the majority of the credits would be earned. In this case, the cost is known and it amounts to approximately one percent. This is a direct cost to the District and benefit to the teachers, and as such is an appropriate cost to be included in the costs of the total packages.

The District raises a threshold issue regarding the statutory criteria to be considered by the arbitrator. While the District concedes the statute does not specify the weight to be accorded any single criterion, the District argues that the arbitrator must consider all applicable statutory criteria

It is argued by the District that the interests and welfare of the public and financial ability of the District to meet the costs of the proposed settlement clearly support the District's final offer. The interests and welfare of the public were expressed by the public at the public hearing and clearly supported the District's final offer.

The majority of the citizens who spoke at the public hearing spoke in favor of the District's final offer. Many of the citizens were farmers who alluded to what has become known as "the farm crisis." Reference was made to the impact of property taxes on the agricultural community at a time of declining farm income. The District derives 26.4% of its property tax from agricultural land and an undeterminable amount of property tax from businesses dependent in part or in whole on the agricultural economy. Clearly, the plight of these citizens must be considered in reaching a decision. However, it must be noted that other districts have citizens confronted with similar economic difficulties and they have arrived at voluntary settlements. The evidence does not establish that this District is unique in the problems it is confronting due to the state of the agricultural economy.

The District notes that under the listing of comparability the first comparable is with employes performing similar services in the same community. In this regard, the District notes that the salaries received by teachers in parochial schools are significantly lower than those paid by the District. Unquestionably, the parochial school teachers receive substantially lower salaries than do the teachers employed by the District. Undoubtedly there are a number of factors which contribute to this disparity, the most significant of which is ability to pay. Parochial schools are generally dependent upon tuition, contributions by church members, and financial assistance from the church supporting the school. They do not receive the funding public schools receive from the various levels of government and simply do not have, as a general rule, the ability to pay teachers the same salaries paid by public schools. Considering the different sources of funding and the resultant ability to pay, it is difficult to give significant weight to this criterion.

There is some evidence relating to public employes generally in public employment in the same community. This evidence includes the City and Stout. The evidence indicates that the highest increase granted by the City for the last two years was 5% each year. The Stout academic staff received increases of 3.8% and 7.8% for the last two years, and the classified employes received 3.8% and 6%. For the year preceding these increases, neither the faculty nor the classified employes received any salary increase.

As to the criterion relating to comparability with employes generally in public employment in comparable communi-

In a prior arbitration the parties agreed that the Big River Athletic Conference schools were comparable, including Eau Claire, La Crosse and Chippewa Falls. The District, in these proceedings, argues that neither Eau Claire nor La Crosse are comparable districts. The Association argues that arbitrators, including this arbitrator, have consistently accepted athletic conferences as constituting comparables, and there is no valid reason for changing the primary comparables at this time.

It is true that arbitrators, including the undersigned, frequently accept as comparables schools in the same athletic conference. Indeed, the parties themselves frequently use an athletic conference as the basis for establishing comparable districts. The use of an athletic conference for determining comparables is based on the presumption that the athletic conference is composed of comparable schools. If this presumption is proven to be erroneous when comparability is measured by other factors, there is no valid reason to perpetuate such erroneous assumption.

When the District is compared to Eau Claire and La Crosse on the basis of population or student enrollment, or on any basis other than membership in the athletic conference, it is readily apparent that the District is not comparable to Eau Claire and La Crosse despite being in the same athletic conference. Both Eau Claire and La Crosse have substantially larger populations and student enrollments than does the District. The population of Eau Claire is 51,509 and the population of La Crosse is 48,347 compared to Menomonie's population of 12,769. School enrollment for Eau Claire is 9,466, for La Crosse 6,606, and for Menomonie 2,665. Both parties agree that Chippewa Falls is a comparable, at least for purposes of this proceeding.

There is also agreement that the contiguous Districts of Boyceville, Glenwood City, Durand and Mondovi are comparables, at least as secondary comparables if not primary comparables.

The District urges the adoption of the following districts as the primary comparables: Chippewa Falls, Ellsworth, Hudson, New Richmond, Rice Lake and River Falls. These districts have enrollments generally similar to that of the District and appear to be reasonable comparables. The secondary comparables suggested by the District include districts that, while in close proximity, are simply too small to be considered comparables.

Those contiguous districts agreed upon by the parties--specifically, Boyceville, Glenwood City, Durand and Mondovi--constitute what may be considered to be secondary comparables.

A major difficulty in this case is the lack of data regarding the settlements of several of the primary comparables. This is undoubtedly due to the fact that those districts had not settled at the time of the hearing or prior to the close of the hearing. Among those districts that have settled, there is a lack of data regarding the total package costs of those settlements. Consequently, it is difficult to assess the parties' final offers in comparison to other settlements.

Both parties have provided data concerning what have become known as benchmarks, although they have not used the same benchmarks. Additionally, the District challenges the figures used by the Union contending that in two of the settlements the increases didn't become effective until after four pay periods had passed and the settlements weren't retroactive; thus, the benchmarks do not accurately reflect salary increases, only schedule increases.

In the opinion of the undersigned, benchmarks are of limited value in determining the appropriate final offer.

They do reflect the compensation paid by a district at certain predetermined points on its salary schedule compared to the compensation paid by other districts at those same predetermined points. To this extent, it permits a comparison to be made at certain benchmarks and is of some assistance in indicating a district's relative position compared to other comparable districts. Benchmarks are also easily determined.

Benchmarks do not reflect differences in salary schedule structures, as they do not reflect the number of steps in each lane nor, indeed, the number of lanes in a particular schedule. Both the number of steps as well as the number of lanes have a significant impact on salaries. Additionally, benchmarks have limited value in reflecting the conscious decision of the parties to an agreement to emphasize a particular aspect of their salary schedule based on their particular needs.

The following table shows the position of the District compared to the comparables for which data are available.

BENCHMARK COMPARISONS - 1985-86

	BA Min.	BA 7th Step	BA Max.	MA Min.	MA 10th Step	MA Max.	Sch. Max.
Chippewa Falls	15,672	20,610	23,431	16,946	24,688	27,623	31,963
New Richmond	14,918	18,587	20,422	16,628	23,511	25,806	28,509
Boyceville	15,400	18,818	21,098	18,326	24,428	27,818	29,221
Glenwood City	14,870	18,546	23,130	16,414	23,362	27,330	28,013
Mondovi	15,358	19,495	22,952	16,484	23,167	26,878	27,337
Rice Lake[1]	16,010	19,995	23,319	17,173	23,589	27,153	28,811
Durand	15,500	19,331	23,238	16,778	23,369	29,145	29,728
Menomonie (Board)	16,980	18,780	19,380	17,780	24,890	27,260	30,060
Menomonie (Assoc.)	16,730	19,452	20,360	17,864	25,214	27,664	30,442

[1]District's final offer

A comparison of the benchmarks established that under either final offer the District retains its relative position compared to the comparables. The District is among the leaders at the BA Base, MA Minimum, MA 10th Step, and Schedule Maximum. The District is competitive at MA Maximum, but is less so at BA 7th Step. The District is not competitive at BA Maximum. The District's emphasis has been, and continues to be, in that portion of the salary schedule which reflects additional credits, a trend noted by the arbitrator in the prior arbitration case.

A review of the benchmark comparisons clearly establishes that the District is not in a position, when viewed in the total context of the benchmarks, of having to catch up with the comparables. The District has been, and continues to be, competitive.

The salary schedule increase contained in the District's final offer is 5.039%. The salary schedule increase contained in the Union's final offer is 8.05%. The following is a comparison of increases in dollars and percentages at the benchmarks for the contiguous districts on their salary schedules. These figures do not reflect salaries received for the 1985-86 school year, as some districts delayed implementation of the schedule for a number of pay periods.

DOLLAR AND PERCENTAGE INCREASES AT THE BENCHMARKS FOR 1985-86

	BA Minimum		BA 7th Step		MA Maximum	
	$	%	$	%	$	%
Durand	949	6.5	1,183	6.5	1,422	6.5
Boyceville	1,333	9.5	1,375	7.9	1,405	7.1
Mondovi	1,004	7.0	1,275	7.0	1,502	7.0
Glenwood City	973	7.0	1,213	7.0	1,513	7.0
District	1,345	8.6	601	3.3	353	1.9
Association	1,095	7.0	1,273	7.0	1,333	7.0

	MA Minimum		MA 10th Step		MA Maximum		Schedule Maximum	
	$	%	$	%	$	%	$	%
Durand	1,029	6.5	1,432	6.5	1,785	6.5	1,822	6.5
Boyceville	1,587	9.5	1,663	7.3	1,706	6.5	1,792	6.5
Mondovi	1,078	7.0	1,516	7.0	1,758	7.0	1,788	7.0
Glenwood City	1,075	7.0	1,530	7.0	1,789	7.0	2,472	9.7
District	1,085	6.5	1,326	5.6	1,407	5.4	1,610	5.7
Association	1,169	7.0	1,650	7.0	1,811	7.0	1,992	7.0

A review of the schedule increases for the contiguous districts, including not only percentage increases but dollar increases as well, clearly establishes that the District's final offer measured in dollars is well below the increases in the contiguous districts. The dollar increases contained in the District's final offer are not only below what the contiguous districts have settled for at BA lanes, but at MA lanes as well. In contrast to the District's final offer, the Association's final offer is slightly above, in dollar terms, the salary schedule increases at the benchmarks granted by the contiguous districts.

Chippewa Falls granted a 7½% increase per cell, however that increase may be attributable in part to the size of the increase granted in the preceding year.

Whether measured in terms of dollars or percentages, the Association's final offer regarding the salary schedule is more comparable to the settlements reached in comparable districts than is the District's final offer.

Although the District argues that its final offer does not involve a structural change in the salary schedule as it retains the same number of steps and lanes, it is undeniable that the District's final offer changes the relationship between the steps and lanes in a rather significant manner. Under the

No claim is advanced that because these teachers have not secured additional credits they are performing unsatisfactorily. If they are not performing satisfactorily, the salary schedule is not the appropriate means for addressing the issue.

Based on the evidence, it must be concluded that the majority of comparable districts have agreed to pay the additional one percent retirement contribution. While the District asserts the one percent was not a major factor as the District offered to pay it if a voluntary settlement could have been reached, the fact remains that the District's final offer does not include the one percent retirement contribution. Neither does the District's final offer include the increased contribution to dental insurance. The increase in dental insurance premium cannot be characterized as a major cost to the District or to the teachers. Similarly, the increase in compensation for extra-curricular activities cannot be viewed as a determinative issue in this dispute.

Both final offers far exceed the cost of living as measured by the CPI. The Association's total package is approximately three times the increase in the CPI, and the District's total package is approximately twice the increase in the CPI. Certainly, no rational argument can be made on behalf of either final offer based on the increase in the CPI. However, it must be noted that those districts that reached voluntary settlements are subject to the same CPI as is this District.

The District argues that undue weight is given to comparing employes of one employer to employes performing similar services in comparable communities to the exclusion of other statutory criteria. Whether this comparison is given undue weight is open to conjecture; however, it is readily apparent in reviewing arbitration decisions that the parties themselves, as well as the arbitrators, give this factor substantial weight. There are many reasons why this factor is given substantial weight, especially in education.

When comparisons are made between comparable districts, a comparison is being made between employers performing identical functions, i.e., educating children. The employers have identical sources of income; they are represented by elected boards of education; they function in a similar economic environment; they have the same cost of living; they are confronted with the same problems in agriculture; and they hire teachers with the same educational background. Thus, the conditions under which comparable districts reach voluntary settlements are the same conditions which exist in the district where no settlement is achieved. As a result, the terms of those voluntary settlements are considered valid guidelines in comparing final offers.

If voluntary settlements are rejected as a guideline, it must be done so on the basis of a lack of comparability due to unique circumstances involving the employer and/or employes

satisfies the statutory guidelines, the arbitrator must select the offer which most closely meets the criteria. This can, and does, sometimes result in the awarding of final offers which may be either in excess of or lower than the pattern of settlements. This is determined by the nature of the final offers submitted.

In the instant case it is the opinion of the undersigned that the Association's final offer more closely meets the statutory guidelines.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

The Association's final offer is awarded and shall be incorporated into the 1985-86 collective bargaining agreement along with all previously agreed upon stipulations.

Neil M. Gundermann

Neil M. Gundermann, Arbitrator

Dated this 12th day
of March, 1986 at
Madison, Wisconsin.