

AUG 27 1986

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION)	
)	
Between)	
)	Marvin Hill, Jr.,
PALMYRA-EAGLE AREA SCHOOL)	Arbitrator
DISTRICT, PALMYRA, WI)	
)	
-and-)	Case 13, No. 35383
)	Med/Arb-3401
PALMYRA-EAGLE AREA EDUCATION)	Decision No. 23188-B
ASSOCIATION)	

Appearances

For the Association: A. Phillip Borkenhagen, Executive Director, Capital Area UniServ-North, 4800 Ivywood Trail, McFarland, WI., 53558.

For the Administration: James K. Ruhly, Attorney at Law, Melli, Walker, Pease & Ruhly, S.C., 119 Monona Avenue, P.O. Box 1664, Madison, WI, 53701-1664.

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

This dispute involves negotiations for a 1985-86 successor agreement between the Palmyra-Eagle Area Education Association and the Palmyra-Eagle School District. The record indicates that bargaining for a successor agreement began in the fall of 1984. After about ten (10) negotiation sessions only a few items remained unresolved. In July of 1985, the Association petitioned the WERC for mediation-arbitration pursuant to section 111.70(4)(cm)6 of the Act. After lengthy investigation a WERC investigator (Ms. Schiavoni) certified impasse and final offers in January, 1986. On February 24, 1986, the parties selected the undersigned as mediator-arbitrator, some 15 months after negotiations had begun.

A mediation session was held on April 9 and May 29, 1986. Unable to reach an agreement, an arbitration hearing was conducted on June 24, 1986 at the Board Offices in Palmrya. The parties appeared through their representatives

and entered exhibits and testimony. At the conclusion of the hearing, the parties elected to file post-hearing briefs. Briefs were received on August 10, 1986. The record was declared closed as of that date.

II. ISSUES FOR RESOLUTION:

The parties stipulated that the following issues are at impasse: (1) salary, (2) the work year (calendar); and (3) contract reopener. 1/

III. POSITION OF THE ASSOCIATION

A. Salary

The Union's offer is that the 1985-86 base salary be set at \$14,950--some \$50 less than the base proposed by the Administration. With respect to schedule structure, both parties agree that the number and composition of educational advancement or training lanes (11) are sufficient. (The parties have apparently agreed to make the MA lane also available to teachers with a BA degree and 36 additional credits.) The format of the percentage increments that the Association attempts to maintain is a structure of 2.5% increments between each BA lane to the MA lane, with 3.0% increments between each MA lane. The value of the percent increments increase 1/2% per step beginning with an increment value of 2.5% up to 8% for a teacher having taught in the District over 12 years. The dollar value of the increment again is derived from the BA base.

In support of its position, the Association makes the following arguments:

1. The Interests and Welfare of the Public are Determined via their own Financial support of Education in the District. The Teachers point out that its offer best serves the public's interest and welfare, especially in the areas of remaining competitive and not being dubiously harmed in any subsequent bargains. The Association notes that the public interest cannot be best served by having a substandard offer--one that is out of sync with the prevailing salary patterns (Brief at 8). According to the Union, the District's own budget projections and final reports indicate

1/ The Board's final offer is dated January 6, 1986 and is found at Association Ex. 4 and Board Ex. 3 and 4. A summary of the Board's offer is found at Board Ex. 5. The Union's final offer is dated December 20, 1985 and is contained at Association Ex. 3. A summary of the Union's offer is set forth at Ass'n Ex. 2.

not only an ability to pay, but a self-imposed willingness to pay.

In this regard, the Teachers submit that any District claim of "area rural economy impact" on these proceedings is misplaced. The Union maintains that the Administration offered no specificity of documents showing how the "desperate and overtaxed rural scene" affects the Palmyra-Eagle District. Moreover, it reminds the neutral that the Fort Atkinson decision (Case 16, No. 35369) of Arbitrator Krinsky applies only to Fort Atkinson and not to the split district of Palmyra-Eagle. The Association asserts that the actual backbone of the community is best symbolized by its slightly above-average manufacturing employment base (33%) and the knowledge that several industrially-based, small to mid-size business exist in the District (Brief at 13).

Further, the Association argues that the District's claims of its offer being supported by several other arbitration decisions ^{2/} are without merit. What these decisions demonstrate, argues the Union, is not a mindset of arbitrators to denounce 8 1/2 to 9 1/2% union final offers and acceptance of 7% district final offers but, rather, a decision based upon the actual fact, data, and economic statistics within these various case records. In the Union's eyes, which each of these districts offered a plethora of exhibits on local economics, the present Administration has failed to make such a record.

2. The Association Offer on Salary is Supported by the Settlement Patterns, is Fair and Equitable, and Satisfies the Statutory Criteria. The Union maintains that based upon the comparables, costs of the packages to the Board, salary benchmark analysis, and the need to be fair, equitable and competitive teacher salaries, the Association's final offer meets the affected arbitral standards and relevant statutory criteria as follows:

a. Comparability. The Association compares Palmyra with nine other districts comprising the Eastern Suburban (Athletic) Conference (ESC), and with 17 area districts which lie within 30 miles of Palmyra-Eagle (AX-16 & 18). The Union points out that the Board offered no evidence at the hearing of any past practice of sole reliance on the ESC bench-mark. According to the Teachers, its grouping is of sound stature in light of long-standing, standardized arbitration bases

^{2/} The Association cites the Board-awarded decisions in New Holstein, Wittenberg-Birnamwood, Evansville, Fort Atkinson, and Delevan-Darien (Brief at 15). It also notes the 1982 decision of Arbitrator George Fleischli and submits that, unlike the situation in 1982, the Association did not seek a change in the status quo (Brief at 17-18).

which consider geographical area, like character and strong similarity with outside districts in matters which affect the social, economic and political decisions of a school administration. In the words of the Union: "No evidence exists, nor did the District proffer any, which correlates two or more districts just because they oppose each other on the gridiron, courts, or at the forensic table or music festival. The buying market for the classroom teacher is not correlative to wins or losses on the basketball or tennis courts." (Brief at 20).

Moreover, the Association points out that contrary to District belief and argument, both ESC and non-conference districts "are very much relative on an operational cost per pupil basis (\$2,600-4,000 range), state aid per pupil basis (\$800-1,700 range), and tax levy rate basis (9 mills to 15 mills range)." (Brief at 22).

Finally with respect to comparability, the Teachers submit that while, generally, the arbitral community has rejected attempts to widen the scope of comparability, the arbitral community has not glued itself to a strict athletic conference basis and exceptions are known to exist. (Brief at 24, citing Rice Lake School District (Dec. No. 19977-A, Yaffe); School District of Fort Atkinson (Dec. No. 17103-A, Krinsky); Hustisford School District (Dec. No. 23138-A, Krinsky)).

b. Statistics. The Association further maintains that during the proceedings it has consistently worked with current and appropriate facts and figures, especially in the numbers of teachers, their placement on the salary schedule (which are to be included for costing purposes), and the cost analysis themselves, as they affect the salary issue. Specifically, the Teachers note that the best costing procedure to follow at this time of year (post-contract) is the actual costing encumbered by the District and not the so-called "cast forward" method urged by the Administration. According to the Union, because the school year is now over (and was less than one week short of being over at the time of the hearing), there is no sound reason to consider costing methods otherwise. (Brief at 29, citing Hustisford School District, Dec. No. 23138-A, Haferbecker).

Applying this reasoning, the Union submits that its offer is 9.27% while the District's offer is 6.93% (Brief at 30). More than 1/2% is saved by the Administration in reality, than in fantasy, when actual costing is used. The Association finds no gain for either party to argue with "phantom employees." As such, it urges the Arbitrator to conclude likewise and subordinate the "cast forward" methodology to obscurity.

c. Bench-mark Salary Rates. The Association alerts the arbitrator to a review of several bench-mark salaries and

rankings whereby discernible data reveals that the Union's offer is more reasonable than the Board's. In this respect the Association, in its Brief at 34, offers the following data:

Table I
1985-86 Settled Conference Districts

District	BA Min.	BA, 7	BA Max.	MA Min.	MA, 10	MA Max.	Sched. Max.
Cambridge	15,425	18,418	24,495	17,530	22,873	28,975	31,892
Deerfield	15,125	18,035	22,400	17,550	21,915	24,825	26,892
Hustisford	15,420	19,463	22,832	17,116	24,094	27,196	29,217
Lake Mills	15,300	19,431	21,267	17,290	24,033	26,799	28,647
Marshall	14,925	18,507	20,895	17,313	22,686	25,671	27,462
Wm. Bay	15,237	19,351	24,074	15,999	23,617	27,427	29,712
Conference Mean	15,239	18,868	22,827	17,133	23,203	26,816	28,949
Ass'n	14,950	18,314	21,004	17,193	23,247	25,415	28,405
Board	15,000	17,616	20,600	16,866	22,338	24,935	27,900

Table II
Mean Bench-mark Salaries
1985-86 Settled Area Districts

	BA Min.	BA Max.	MA Min.	MA Max.	Schedule Max.
Area Mean Salary	16,678	23,729	18,671	29,252	31,917
Ass'n	14,950	21,004	17,193	25,415	28,405
Board	15,000	20,600	16,866	24,935	27,900

The Association notes that its offer would allow for rank stabilization or improvement compared with those settled and unsettled, where under the District offer they would allow for no rank improvement at all, even with the \$50 higher base. Specifically, the Board's offer would deteriorate the rank of a teacher at all bench-mark salary areas except the BA base, where the Association's offer would maintain the rank levels, except at the earlier salary levels

where slight improvement would result. The Association submits that its position is closer to the Conference benchmark salary averages or means, where the Board's benchmark are a few to several hundred dollars from the mean salaries. (Brief at 35).

Reviewing Table II, the Teachers assert that under its offer the bargaining unit would barely hold their own; under the District's offer there would be irreversible decay.

d. Historical Perspective. The Union maintains that benchmark rankings from a historical perspective support its position. The data is as follows:

Table III
Bench-mark Rankings
Eastern Suburban Conference

	1980-81	1981-82	1982-83	1983-84	1984-85
BA Minimum	2	1	4	7	10
BA, Step 7	5	9	6	8	9
BA Maximum	6	9	7	8	8
MA Minimum	1	1	3	4	6
MA, Step 10	3	3	3	5	6
Sch. Max.	2	2	5	5	6

In support of its argument that salary rank will be maintained or slightly raised at six of the benchmarks, where deterioration in rank would exist at the BA Maximum salary under the Administration's offer, the Teachers offer the following exhibit:

Table IV
Salary Dollar Differences from Mean Salary
Palmyra-Eagle to Eastern Suburban Conference Comparison

	BA Min.	BA 7	BA Max.	MA Min.	MA 10	MA Max.	Sched. Max.
1984-85	-353	-637	-1105	-39	-109	-1353	-455
1985-86 (Ass'n)	-289	-554	-1823	6	44	-1401	-544
1985-86							

(Board) -239 -1252 -227 -267 -865 -1881 -1049

[Brief at 36, citing AX-21, 22, 24, 25, Tables 1 & 2].

The Association further points out that under the Board's offer, "grave erosion occurs at six of the seven bench-mark salaries. Only at the BA Base salary has the District improved slightly. . . The worst points of deterioration under the Board's offer occur at the experience-step salaries, where its offer doubles the dollar value already below the mean salary of that which it was in 1984-85." (Brief at 37). Similar trends are noted when Palmyra-Eagle is compared to area bench-marks (see Table V, cited in the Association's Brief at 37).

e. Pattern of Settlements. According to the Union, a review of the settlement pattern for the six conference districts that have already settled reveals the following:

Table VI
Conference Settlement Statistical Comparisons

District	Scheduled Salary Base/Maximum	Salary Percentage	Package Percentage	Average Dollars/ Teacher
Cambridge	15,425/31,892	7.89%	8.10%	1,606
Deerfield	15,125/26,765	8.97	9.47	1,828
Hustisford	15,420/29,217	9.25	9.08	1,801
Lake Mills	15,300/28,647	7.66	8.25	1,749
Marshall	14,925/27,462	8.05	8.50	1,706
Wm. Bay	15,237/29,712	8.17	8.26	1,790

Table VII
Conference Settlement Averages
and Palmyra-Eagle Offers

District	Scheduled Salary Base/Maximum	Salary Percentage	Package Percentage	Average/ Teacher
Settlement average	\$15,239/\$28,949	8.33%	8.61%	\$1,747
Ass'n Offer	14,950/28,405	8.99	9.27	1,876
Board Offer	15,000/27,900	6.48	6.93	1,352

f. External Comparisons. The Teachers, citing numerous arbitration awards and journal articles, submit that all Palmyra-Eagle salaries need to be upgraded to a point of professional comparability and that there is no reason to limit teacher increases to the cost-of-living (CPI) index.

3. Preservation of the Salary Structure. The Association's final offer contains a salary schedule that maintains the index structure (in place for five years) while the District's final offer seeks a change in the structure of the schedule. The Association submits that the Administration seeks this diversion via the arbitration process rather than gaining it at the bargaining table. Moreover, the Board offers no form of compensation or other contractual benefit for its demand to take away a long-standing uniform plan of salary earning potential. According to the Association, it is difficult for a union to gain an index salary structure in arbitration and, likewise, absent some trade-off, it should be extremely difficult for a Board to dispose of an index structure in arbitration. (Brief at 49).

B. School Calendar

As stipulated at the hearing, the issue is whether the workyear should remain at 185 days or be increased to 186 days, as requested by the District. The Union points out that the Board, with its meager salary offer, did not contemplate nor adjust compensation for quid pro quo relief and, as such, the District's position should be rejected by the Arbitrator (Brief at 55).

C. Contract Reopener

The Association proposes the following reopener language:

Article IV--Term of Agreement

A. This agreement shall be in effect August 13, 1985, and shall remain in effect through August 12, 1987, with reopener for the second year on salary schedule, calendar and such other items as the parties agree to negotiate or as are permitted by Article I, Section C, Subsection 2, Paragraph a, provided a request therefor is made in writing within 45 days of agreement on or receipt of an award regarding this 1985-87 agreement.

B. If either party desires to modify or amend this Agreement, it shall give written notice to this effect within the thirty (30) day period commencing

October 15, 1986. Absent such notice, or notice under C below, this Agreement shall continue in full force and effect through August 12, 1987.

C. This Agreement can be terminated on August 12, 1987 or on any subsequent August 12 for which this Agreement controls provided notice to do so is given prior to the termination date.

* * *

The Association maintains that the District proceeds to embellish a contract reopener provision by requiring the party desiring to reopen to "jump through voluminous hoops," depending upon the timing of the past-resolved or unresolved contract. The Teachers argue that this is in hope that the District can catch the teachers napping on the complicated reopening provision so as to "stick the teachers an extra year (1987-88) with an outdated contract" (Brief at 1-2). It is argued that the public's interest can best be served when its elected Board members and its teachers sit in an atmosphere at the bargaining table conducive to good collective bargaining. According to the Union, "relationships are further not promoted when one party (the Union) has to jump hurdles and hoops to comply with menial, unproductive and entrapping contract rules.

IV. POSITION OF THE BOARD OF EDUCATION

A. Salary

The Board's proposal calls for a \$15,000 base salary. While the Association's offer seeks percentage increases throughout the schedule, the Board proposes a modification of those indices. In support of its salary offer the District argues as follows:

1. The Board's Offer Better Satisfies the Relevant Statutory Criteria Than Does the Association's Offer. In this regard the Administration points out that its offer is more moderate than the Association's. Specifically, the District says that its final offer increases the District's costs by \$183,177 over the prior year's costs--a full 7.45% as compared to 9.86% requested by the Union. According to the Board, "this is not an easy increase for property-tax burdened residents to swallow, but they can handle it." (Brief at 8). The Administration estimates that the exact dollar increase requested by the Union is \$242,236, or \$59,059 higher than the increase under the Board's offer.

The Board argues that its offer serves the public interest "beyond its fewer dollars for this year." (Brief at 9). The offer allows the Board to continue efforts to restrain the growth in the tax rate. This need to restrain

the tax rate is particularly acute in an area like Palmyra where equalized valuation of the District's real property actually decreased by almost \$7,000,000 over the past four years. No other district in the Conference experienced such a decline.

Similarly, the Board notes that its offer also serves the public interest by not undermining the Wisconsin legislature's attempts to provide a measure of property-tax relief. By pointing to state aid increases, the Association is undermining the legislative purpose of property tax relief. In the eyes of the Administration, "not only is the Board offer the clear winner; in fact, the Association offer is contrary to the public interest." (Brief at 10).

In further support of its position the District submits that its offer provides recognition to the experienced teacher by providing adequate increases. According to the Board, the average monetary increase for the 50 or so teachers with 10 or more years of experience is \$1,292 under its offer--approximately a 5.5% average (Brief at 11). The Board notes that while it can be accused of offering something less than the Association offers to the experienced teacher, it cannot be accused of offering too little, or of not caring about the faculty.

2. The "Cost-Of-Living" Factor Supports the Board's Offer. The Administration submits that a significant consideration is determining appropriate raises for faculty traditionally has involved increases in the cost-of-living. The cost-of-living rose by 3.7% from July 1984 through June 1985. Moreover, the component of the 3.7% figure with the largest increase for that period was medical care. The Board points out that the unit employees had health insurance paid by the District, thus reducing the impact of the 3.7% figure on them (Brief at 18).

The Administration further maintains that a package offer of 7.4% improves the employees' situation relative to the inflation rate

3. The "Comparability" Factor is Difficult to Apply and not Particularly Helpful. The Employer asserts that in the instant case the comparability criterion is particularly difficult to apply and not a helpful to resolving the conflict. According to the Employer, while both parties urge the athletic conference as "comparable," the available data does not clearly support either parties' final offer. (Brief at 22). Moreover, even if the Association's second comparability group is considered (without regard to the state's traditional indices of comparability), the second group, in the eyes of the Administration, provides a mixed

message at best. 3/

Specifically, the Board offers the following data in support of its argument that the Association's final offer is not supported by the Conference settlements:

Table B
Status of Eastern Suburban Conference Districts to Date,
for the 1985-86 School Year

District	Salary %	Package %	Salary/ Teacher	Package/ Teacher
Cambridge	7.89%	8.10%	1,606	2,204
Deerfield	8.97 or 9.08	9.47	1,828 1,799	2,538
Hustisford	9.25	9.08	1,801	2,297
Lake Mills	7.66	8.25	1,749	2,509
Marshall	8.05 8.24	8.50	1,706	2,395
Wm. Bay	8.15	8.26	1,790	N.A.
Waterloo (submission complete, awaiting decision)				
Board	7.12	7.40	1,480	2,037
Ass'n	8.47	8.70	1,759	2,436
Johnson Creek (submission complete, awaiting decision)				
Board	7.25	7.56	1,475	2,023
Ass'n	9.48	9.62	1,929	2,576
Dodgeland (submission complete, awaiting decision)				
Board	7.50	7.64	1,616	2,235
Ass'n	9.24	9.23	1,990	2,701
Palmyra				
Board	7.12	7.45	1,485	2,028
Union	9.64	9.86	2,011	2,683

The Employer points out that, as Table B shows, the

3/ On this point the Board makes numerous arguments in its Brief at 26-34. Particularly noteworthy is the Board's analysis with respect to the Fort Atkinson and Delavan-Darien arbitrations where the arbitrator in both cases selected the Board offers--both lower than the Palmyra Board's offer (Brief at 34-35).

exact status of Palmyra cannot be finally determined until three currently unresolved matters are concluded. If the boards of education prevail in the unresolved districts, the Palmyra per teacher salary increase will rank eighth in the Conference under the Board's offer. On the other hand, notes the Board, if the Association prevails here, the per teacher salary increase will be the highest in the conference, even if the unions prevail in each of the unresolved districts (Brief at 25). The District goes on to argue that no other district--among the six that are settled and the others that are not--has a salary per returning teacher increase of over \$2,000, and no other district has a per teacher package cost exceeding \$2,600. (Id.)

B. School Calendar

The Administration's position is that the 1985-86 work year should be increased to 186 days. At the same time the Employer seeks to maintain the two parent conference days in the schedule. The Board maintains that the district operated for a number of years with 186 contracted days. In 1981-82, this included three parent conference days. In 1982-83, the 186 days included two parent conference days, with one more teaching day than the prior year. In 1983-84, however, the contracted days were reduced to 185, with the loss of the additional teaching day but still two parent conference days.

This position, argues the Board, has the better of the public interest and welfare criteria. The Employer asserts that it simply wants to restore something that it had up until the prior year--at least two parent conference days. Moreover, the Board's offer encourages communication between the schools and the parents by establishing two days for such conferences.

In further support of this position, the Administration points out that the 1985-86 school year is completed. Teachers worked the 186-day year in accordance with the Board's offer and no teacher testified to any particular hardship resulting. Anything less than 186 contracted days reduces the District's ability to provide two conference days for parents and teachers to get together--unless teaching days are further cut.

C. Duration and Contract Reopener

As to duration and reopener, the Board notes that while both parties seek a two-year agreement covering the 1985-86 and 1986-87 contract year, the Board proposes that a request to reopen for the 1986-87 year be given within 30 days of the arbitrator's award (in contrast to the Association's 45-day proposal). In its Brief at 3-4 the Administration goes on to assert:

The difference is more substantial, however, as to negotiations for the 1987-88 school year. Here, the Association provides for notice of desire to reopen within 30 days of October 15, 1986. There is no contingency for reopening at a latter date if the bargaining for the 1986-87 school year is on-going at the time, or is pending before an arbitrator. Further, failure to give notice of desire to negotiate is without consequence; the agreement would expire anyhow, on August 12, 1987. The Board proposes, on the other hand, that if notice to bargain for 1987-88 is not given within 30 days of January 15, 1987 or within 30 days of receipt of an arbitrator's award for the 1986-87 school year, whichever is later, then the two-year Agreement would continue for a third year (1987-88) unless a notice of termination of contract was given by either party prior to August 12, 1987.

The Administration concludes by saying that the Association's offer invites misunderstanding and confusion ^{4/} while the Board's offer should prevent both.

V. DISCUSSION AND AWARD

A. The Statutory Criteria

Section 111.70(4)(cm)7, Wus. Stats., directs the interest neutral to "give weight" to eight factors, enumerated as follows:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the

^{4/} The Administration, in its Brief at 16, argues as follows:

The Association's offer would perpetuate an ambiguity from the prior contract. That ambiguity is, so what if timely notice of desire to reopen isn't given; the contract still expires on the date stated earlier, August 12, 1987. So, if no timely notice is given, the obligation to bargain about modification or amendment for the next year appears to be expired, BUT so is the contract. So what happens? The Board's offer answers this question with a logical extension to a third year (unless notice to terminate is given prior to August 12, 1987 under a different section). The Association's offer does not answer what happens, and provides no encouragement for giving timely notice.

costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost-of-living.

f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

For the record, the undersigned has formulated an award based upon the above-cited criteria. In the instant case, however, certain criteria are deserving of special note.

B. The Comparability Criterion

As noted, the parties are at impasse with respect to the relevant bench-mark jurisdictions. In addition to the Eastern Athletic Conference, the Association has asked the arbitrator to examine salary trends of some 17 area districts within a 30-mile radius of Palmyra-Eagle (AX-18). While in this case I believe that the best bench-mark is the Conference (especially in light of the parties' past practice), in view of the statutory mandate it is not unreasonable to consider the Association's proposed area bench-mark. ^{5/} Neither bench-mark, however, is dispositive

^{5/} Numerous arbitrators have apparently agreed with this position. Arbitrator Byron Yaffe expanded the set of comparables beyond an athletic conference, and stated:

The Union's proposed comparables generally meet the foregoing [statutory] criteria in that they approximate in size and comparables utilized by the parties in the past, most are as geographically proximate to the

in this case. In this respect I have to agree with the District that the comparability factor is difficult to apply and not particularly helpful since both groups provide a "mixed message" to the arbitrator.

Specifically, the Administration's salary offer of 7.12% (6.48% in the eyes of the Teachers) is less than every single settlement to date in the Eastern Conference (see Table B, supra). Moreover, with one exception (Waterloo) it is less than every single "submission" for that same bench-mark. The same result is obtained when "package percentages" are noted.

At the same time, however, the Union's salary demand of 9.64% (8.99% as seen by the Association) is higher than all ESC settlements to date. The same is true with respect to total package figures where the Employer asserts that the Union is requesting 9.86% (the Union says it is only 9.27%).

Whatever figures are used, 6/ the end result is the

District as are the districts in its Athletic Conference, and they exclude urban districts and districts contiguous to them. Thus, in the undersign's opinion, it is legitimate to utilize the Union's proposed comparables, to the limited extent that they may reflect the general value of teacher settlements in the region, which in effect constitute in most instances the voluntary response of school districts and teacher's associations in the region to an economic environment which presumably has affected them all somewhat similarly.

Rice Lake School Dist., Dec, No. 19977-A (1983), cited in the Union's Brief at 24-25 n. 4.

Moreover, according to the Union, the same law firm engaged by the District successfully argued comparability within a 50-mile radius due to the general hiring of teachers by districts within a geographic area. (Brief for the Association at 21 n. 4, citing School Dist. of Janesville (Kerkman, 1980)).

Still, I am duty bound to note that many of the districts included in the disputed bench-mark (Oconomowoc, Mukwonago, and Janesville, for example) are not comparable to Palmyra-Eagle's enrollment and, as such, the Union's bench-mark is suspect.

6/ For the record, on July 11, 1986 the Board submitted revised exhibits 7 & 9. It estimates that the cost of its salary offer is 7.12%, the total "package" increase is 7.45% (Board Ex. 7). The Employer says that the Union's salary increase is 9.64%, with the total package at 9.8% (Board Ex.

same when comparability numbers are studied--the Board is low (on a relative basis) while the Association is on the high side. Neither salary offer is unreasonable, and this is what makes this case difficult. The 1985-86 average teacher salary increase will be \$1,876 (using the Association's numbers; \$2,011 if the Employer's figures are used) which will vault Palmyra-Eagle at or near the top for 1985-86. "On the other hand"--to borrow a phrase from Tevye in Fiddler on the Roof--the Administration's offer results in an allocation of only \$1,352 (again, using the Union's number; \$1,485 under the Board's figures). Similar trends are ascertained when the pattern of settlements in the 30-mile geographic region are examined.

When the Association's Table IV is examined (supra; see Brief for the Union at 36), the "balance" tips to the Teachers since, under the Board's offer, erosion occurs at six of the seven conference bench-marks. Only at the BA base salary does the district improve which, of course, is a "plus" for the Board at the base level.

Arbitrator Robert Reynolds, in Edgerton Education Ass'n (Dec. No. 23114-A, 1986) had this to say on final offers and the interest and welfare of the public:

It cannot be said that a lower offer is always more responsive to the welfare of the public than a higher [offer]. However, when two offers are reasonable close, as they are here, and within the boundaries established in comparable districts, as they are here, it is possible to conclude that the lower offer of the Edgerton School District is more responsive to the welfare of the public.

In the instant case the two offers are not "reasonable close." Moreover, it is unclear whether the offers can be considered "within the boundaries established in comparable districts," since both salary offers are at the tail ends of the distribution. In summary, examining the comparables leaves one with a mixed message. Accordingly, the resolution of this case turns on an examination of the other aspects of the parties' offers. And in this respect there is a clear "winner" on the salary item.

9). These figures have been used in rendering the award.

Also for the record, at this late date I think that the "correct" method of treating costing of proposals is to focus on "actual" costs as opposed to the "cast forward" method where "phantom employees" are utilized. As such, the true cost of the Association's offer may be closer to its estimates than that of the Administration.

C. Salary Structure

The Association's final offer maintains a "strict" salary index that has apparently been in place for five years. The Administration has formulated an offer that takes the teachers "off the index." Concerning this change, the Association makes a number of points in its Brief at 50-51 as follows:

The District's own construction of a "salary schedule", supposedly granting teachers a 7.4% increase, fairly uniformly, displays and distributes many salary increases to the contrary. Exhibit BX-15 shows a teacher at about step 8 receiving only a 3.27% total raise; the most receiving only 4% to 5.2% increases. It was with belief some time ago that each teacher was to gain [a] 7.4% increase in salary as that was the scheme upon which the schedule was construed, as reported by Fanshaw. The District's own exhibits substantiate otherwise. Also, virtually all of the raises for teachers under the Board offer are less than the average raise in the Conference. . .

Furthermore, a structural paradox emanates from BX-18 in the MA lanes from steps 10-13, where \$1,300, \$1,400 and \$1,500 increments are intertwined by a woeful and ruthless \$359 to \$507 increment, at a position in time for a well-trained, experienced teacher to be granted in compensation, or at least holding his/her own, rather than have a "construction thief in the night" rob a teacher of better potential earnings. Such structural deficiencies are hideous, uncalled for, and unwarranted.

At the hearing Dr. Fanshaw was candid in admitting that it has simply attempted to place the money where the teachers are and, accordingly, it is in fact difficult to ascertain some rational pattern from the overall structure proposed by the Employer.

On this issue the Association advances the better argument. Most arbitrators hold that an interest neutral should not modify the parties salary structure absent evidence of a compelling need to do so. Arbitrator Imes, in School District of Wausau (Dec. No. 18189-A, 1982) expressed this principle as follows:

It is not uncommon for arbitrators to require a "compelling need" to be shown and/or that a quid pro quo exists in order to justify the removal of benefits secured by a party through negotiations. * * *

Absent a showing of need for change or a showing of financial difficulties if the status quo were to be maintained, the undersigned finds no reason why she

should implement a change in the working conditions which is more appropriately accomplished voluntarily by the parties.

And Arbitrator Kerkman, in School District of Fort Atkinson (Dec. No. 17103-A, 1979) set forth a three-fold criteria for change in the status quo, accordingly:

- 1) a demonstration that the existing language is unworkable or inequitable;
- 2) that there is an equivalent "buy-out" or quid pro quo; and
- 3) there is a compelling need.

Kerkman went on to declare:

The Employer has cited School District of Alma, Med/Arb-115, Dec. 16672-A (Hutchison, May 1979), and School District of Baron, Med/Arb-14, (Krinsky, Nov. 1978), supra, asserting that the decision of both Arbitrators stand for the proposition that completely restructuring the parties' collective bargaining relationship, absent exceptional circumstances, should be left for the voluntary negotiations of the parties and not imposed by an arbitrator. The undersigned accepts the foregoing principle. 7/

Consistent with the thoughts expressed by the above-cited arbitrators, the Administration's salary offer is rejected. The Association would appear to carry the day on this issue because of the way its offer is structured.

D. Calendar and Reopener Language

The two remaining issues for consideration are school calendar and reopener language.

With respect to the calendar, the issue is really moot since the 1985-86 school year is at an end. The only effect, of course, of a ruling in favor of the Administration is that the status-quo will be 186 days heading into negotiations for 1986-87.

Likewise, the Administration's contract reopener is a change in the status quo. The Board points out that the Association provides for notice of desire to reopen within 30 days of October 15, 1986, and there is no contingency for reopening at a later date if the bargaining for the 1986-87 school year is on-going at that time, or is pending before an arbitrator. While the Board is correct, I don't view this

7/ Both cases are cited from the Union's Brief at 60.

contingency as a major drawback to the Association's position which is, essentially maintenance of the status quo (except for the resultant effect in failing to file notice properly by about November 15, 1986).

Similar to the salary structure position, the record is absent of a compelling need to change these provisions and, as such, the Association would again appear to advance the better argument on these issues.

VI. CONCLUSION

This case presents a real Draconian choice for the arbitrator. Neither final offer is unreasonable and an award could be drafted that either offer is more reasonable than the other party's. The Association has advanced the better argument with respect to reopener language. ^{8/} The school calendar issue, although moot at this late date, somewhat favors the Teachers since it, too, is a change in the status quo and it would be better for the parties themselves to hammer out an agreement on this issue in negotiations for a 1987-87 agreement. Both parties' final salary offers in terms of absolute dollars are at the tail ends of the Conference comparables. Again making reference to the Athletic Conference, the District's offer of approximately 7.0% is low in contrast to the high salary offer of the Union (approximately 9.3%). The Board has not entered a plea of inability to pay and, accordingly, what this case boils down to is salary structure. I am required by statute to choose the offer of one party in its entirety. There is no compelling reason for taking the parties "off the index" and, for this reason, the Association's final offer is awarded.

VII. AWARD

The Association's final offer is awarded.

Dated this 26th day of August,
1986, DeKalb, Illinois.

Marvin Hill
Marvin Hill, Jr.
Arbitrator

^{8/} The Association, in its Brief, points out that at the arbitration hearing the Board never advanced arguments in favor of its reopener language.