STATE OF WISCONSIN

BEFORE THE MEDIATOR/ARBITRATOR

In The Matter Of The Petition Of MARSHALL EDUCATION ASSOCIATION To Initiate Mediation/Arbitration Between Said Petitioner and MARSHALL SCHOOL DISTRICT	Daniel Nielsen, Mediator/Arbitrator Decision No. 24072-B Date of Award: 8/7/87 Case 20 No. 37358 MED/ARB-4000 Mediation Held: 4/22/87 Hearing Held: 4/28/87 Briefs Received: 6/8/87 Reply Briefs: 6/18/87

Appearances:

Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Madison WI 53703, by Mr. Kenneth Cole, appearing on behalf of the Marshall School District.

Capitol Area UniServ-North, 4800 Ivywood Trail, McFarland WI 53558, by Mr. A. Phillip Borkenhagen, Executive Director, appearing on behalf of the Marshall Education Association.

ARBITRATION AWARD

The Marshall Education Association, hereinafter referred to as the Association, and the Marshall School District, hereinafter referred to as the District, were parties to a collective bargaining agreement covering wages, hours and working conditions for professional staff employed by the District. That agreement expired on June 30, 1986. After three negotiating sessions, the Association petitioned the WERC to initiate Mediation/Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. The Commission's Investigator determined that the parties were at an impasse and, by March 12, 1987, received the final offers of the parties and closed his investigation.

On March 16, 1987, the WERC issued an Order requiring the parties to engage in Mediation/Arbitration. The parties selected the undersigned to mediate and hear the dispute, and the WERC issued an Order Appointing Mediator/Arbitrator on March 17, 1987. An attempt was made to mediate the dispute on April 22, 1987, without success. An arbitration hearing

was held on April 28, 1987, at Marshall, Wisconsin, at which time the parties were given full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The parties submitted briefs and reply briefs, the last of which was received on June 18, 1987. Having considered the evidence, the arguments of the parties, the relevant provisions of MERA, and the record as a whole, the undersigned makes the following Award.

I. ISSUE

The sole issue in this proceeding is the amount of the BA Base salary for the 1986-87 school year. The 1985-86 BA Base is $14,925. The Association has proposed an increase of $1,025 to $15,950. The District has proposed an increase of $725 to $15,650. Since the parties employ a "4x4" structure on the schedule, the new base will generate all of the new salaries throughout the schedule. The Association's offer will generate a package increase of 8.14% (using the cast forward method), while the District's will yield a package increase of 6.30%. Because of staff turnover, the actual projected cost of the Association's offer would be 3.80%, with the District's offer costing an increase of 2.03%.

II. RELEVANT STATUTORY PROVISIONS

§111.70(4)(cm)7 provides:

> "7. "Factors considered." In making any decision under the arbitration procedures authorized under this subsection, the mediator-arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer;
>
> b. Stipulations of the parties;
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> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement;
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> d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other 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 wages compensation, vacations, holiday 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

III. POSITIONS OF THE PARTIES

The Association's Brief

The Association takes the position that its final offer is the more reasonable when viewed in light of the evidence and the statute. Citing Arbitrator Michelstetter's decisions in Two Rivers, Dec. No. 19837-A (4/83) and Montello School District, Voluntary Impasse Procedure, (4/87), the Association contends that the "interests and welfare of the public" are best served by adequately compensating professional staff, so as to attract and retain qualified teachers. The Association notes the recent state and federal reports stressing the need for adequate teacher pay, and points to the relatively healthy financial condition of the District as evidence of its ability to provide a larger increase than it has offered to this point. The public's approval of a 9.02% increase in the school budget, including a 13.32% increase in administrative salaries, shows that the electorate is willing to pay the price for quality education, and that it is the School Board alone which balks at a reasonable increase for teachers.

Anticipating the District's arguments, the Association denies

that Marshall is, in any sense, a rural area. Rather the District is a bedroom community for Madison, an area with a robust economy. The evidence offered by the District in support of its claim of rural status is seriously flawed. The true statistics demonstrate that the District is less than 50% farmland. Moreover, students in the District have indicated in informal polls over the past 10 years or so that only a handful of their parents are engaged in agriculture. One-third to one-half of the students have said that their parents work in Madison.

The Association asserts that many arbitrators have addressed the issue of the rural economy, and have determined that a District wishing to rely on the "farm crisis" to justify a low wage offer must prove that: (1) they are in fact a rural area, rather than suburban or exurban; and (2) the District is in some significant way distinguishable from comparable rural areas which have settled with their teachers at a higher rate.[1] The District has completely failed in its efforts to show an agricultural economic base, and has not in any way set itself apart from the comparable areas in Dane and Jefferson Counties which have settled at a rate closer to the Association's final offer.

Because the offer of the Association will maintain quality in education, and because the District has failed to show any adverse impact on the public from acceptance of the Association offer, the Association concludes that the "interests and welfare of the public" would be best served by selection of its final offer.

Turning to the issue of comparability under criterion "d" of MERA, the Association asserts that the appropriate external comparables for Marshall are the nine other schools in the Eastern Suburban Athlethic Conference (hereinafter referred to as "ESC"), and four area schools - Columbus, Monona Grove, Sun Prairie and Fall River. The first three of these area districts are contiguous with Marshall, and Fall River is only a few miles to the north.

The Association defends its choice of the four area schools for

inclusion in the comparables, arguing that their geographic proximity to Marshall, their similarity to conference schools in per pupil costs, state aids and equalized valuation, as well as their status as bedroom communities to Madison, all make them appropriate additions to the comparable group. While admitting that arbitrators are reluctant to expand the set of comparables beyond the conference, the Association cites instances in which it has been found appropriate. So long as the additional districts are comparable in size and geographically proximate, and exclude large urban areas, the Association contends that the Arbitrator may rely upon them.

The Association next addresses the issue of the appropriate means of costing the offers of the parties. While arbitrators generally rely upon a cast forward method, assuming that all staff will return and advance in accordance with the salary schedule, the Association asserts that it would be more appropriate in this case to compare the offers on the basis of actual cost, taking into consideration the savings realized by the District through staff reductions and the replacement of more expensive experienced teachers with lower paid, inexperienced faculty. The cast forward method is an appropriate system of costing when dealing with future events, since it provides an "apples to apples" means of comparing costs between districts for the coming year. In this case, however, the school year is over and actual costs are not a matter of speculation. The Association points to the decisions of Arbitrator Haferbecker in Hustisford School District, Dec. No. 23138-A (5/86) and Arbitrator Hill in Palmyra-Eagle School District, MED/ARB-3401 (8/86) to support the proposition that actual costing is preferred when dealing with a contract which covers an already completed instructional year. Using actual costing, the Association's offer increases the package by only 3.80%, while the District's offer costs just slightly over 2%. These actual costs reveal the reasonableness of the Association position.

While the Association maintains that actual costing is the correct measure of package size in this instance, it also urges that package

costing is not a particularly good measure of the adequacy of the offers. Package costs may be distorted by the composition of the faculty, with an inexperienced faculty generating a smaller total package in terms of dollars, but a larger percentage package increase because of experience increments. The more reliable comparison of wages between districts is the use of benchmarks on the salary schedule. Using identical levels of education and experience, these benchmarks allow a true comparison of compensation.

Reviewing the benchmark comparison between Marshall and the athletic conference for the past three years, the Association asserts that the teachers have been falling ever farther behind their colleagues. Only at the MA Minimum have the teachers in Marshall exceeded the conference average, and that gap has been narrowing. The competitive position of the District's schedule is even worse when compared with area-wide and statewide averages, where even the MA Minimum generally lags behind. Indeed, the Association claims, the average teacher in Marshall is earning $4,000 per year less than their counterparts around the state. Statewide figures are relevant to this dispute because such factors as equalized valuation and equalized state aids make all districts essentially comparable. The Association relies on the decision of Arbitrator Christenson in Two Rivers School District, MED/ARB-3981 (3/87) to support the use of statewide figures: ".... comparability is a matter of degree and all districts in the state are in some measure comparable to one another."

Given the fact that there is only one settlement in the athletic conference, the Association urges the arbitrator to review area settlements, in addition ot statewide averages. In fourteen settled districts within Dane, Jefferson, Columbia and Walworth counties, the average salary dollar increase per teacher has been $1720. The average salary-only increase, in percentage terms, among these districts, has been 7.91%. Both of these figures show the Association's

final offer to be the more reasonable in this dispute.

Given the clear pattern of settlements favoring the Association, the cost of living should be given little weight. The Association cites a number of arbitration awards for the proposition that a pattern of settlements in excess of the cost of living should be accorded controlling weight, since the parties to those settlements were aware of the cost of living when they entered into their agreements. The fact that the cost of living is now relatively low no more justifies a low settlement than the record high cost of living several years ago justified high settlements. Invariably, the settlements are out of sync with the cost of living.

Looking to the compensation received by other professionals in Wisconsin's labor market, the Association argues that its efforts to raise teacher salaries to a more professional level are plainly justified by criterion "d" of the statute. While the District will surely argue that the increases received by non-educational sector employees are relatively modest compared to the Association's or Board's final offers, the Association claims that any private sector comparables cited by the District are suspect because they have no basis in proof and/or are not relevant to the geographical area of the District. These non-teacher settlements do not reflect the strong trend toward increases in teacher pay urged by state and national commissions, nor do they bear on the labor market for teachers. As Arbitrator Christenson said in Two Rivers, supra, "... [compensation] for services is, in a free market system, determined not by what someone thinks is fair or just but by the market rate for those services. " "..[market rate].. is determined by looking at rates paid comparable employees in comparable employment situations." To the extent that total compensation for other professional employees is relevant, it supports the Association.

The final statutory criterion directs the arbitrator to consider other traditional and normal factors in setting wages. The Association

invites the arbitrator to consider that the Board comes into these proceedings with "unclean hands", having resisted participation in the mediation/arbitration process to the point of a court action to compel their cooperation. To reward such lawlessness with an award favoring the Board's final offer would be inequitable, and very poor public policy.

In sum, the Association claims that the pattern of settlements, the prevailing wages for teachers in the area and the state, and the principles of good public policy all dictate that the Association's offer be selected.

The District's Brief

The District takes the position that its 6.3% package increase is the more reasonable offer and should be awarded by the arbitrator. In response to Association claims that the Board's conduct evinces bad faith, the District points out that all prior agreements in Marshall have been voluntarily arrived at, and that the current impasse is no different that the state of affairs in nine of ten conference schools. As of the hearing, there was but one settlement in the conference, and the fact that Marshall's teachers were without a contract is not, therefore, proof of any desire by the Board to delay.

While the Association claims that the District's teachers deserve "catch-up" pay increases to improve their ranking within the conference, the Board notes that the Association's own Exhibit No. 31 shows the current benchmark rankings of the District's teachers to be identical to their ranking in 1981-82. While the Association may complain that the rankings are too low, the relative position of this faculty is the result of a series of voluntary agreements. Having voluntarily agreed to the salary schedules which created those rankings, the Association cannot now claim that their compensation is somehow inadequate.

In addition to the fact that the current rankings are the result of voluntary agreements, the Board points to another reason for discount-

ing the Association's "catch-up" argument. The evidence plainly shows that Marshall contributes, on average, $325.94 more for family health and dental insurance than other conference schools. The District is also one of only five conference schools offering teachers longevity pay, and has the most lucrative early retirement program in the conference. If the dollar value of those benefits is added to the benchmark salaries, the District's ranking is dramatically improved. Thus total compensation for District teachers is more competitive than the benchmark rankings indicate, and any claim of "catch-up" should be accorded little or no weight.

The District advances the Eastern Suburban Athletic Conference as the only appropriate set of comparables. This is consistent with the decisions of other arbitrators within the conference. Expanding the set of comparables to include such schools as Sun Prairie and Monona Grove, solely because there are settlements in those districts, only encourages the parties to shop for favorable settlements without regard to their true comparability. Since there is no pattern of settlements within the ESC to guide the arbitrator, other factors must be given controlling weight.

Absent any persuasive settlement pattern, the District asserts that the arbitrator must turn his decision on local economic conditions. There can be no dispute that the poor agricultural economy has had an adverse impact on Dane County and the School District. The arbitrator is charged with balancing the interests of the teachers and the interests of the public at large. The critical factor in this balance must be the ability of the already hard-pressed taxpayer to absorb a large increase in instructional costs such as that which would result from acceptance of the teachers' final offer of 8.3%.

The District cites numerous arbitrators, including Arbitrators Rothstein (School District of Kewaskum, Dec. No. 18991-A (8/82)), Yaffe (New Holstein School District, Dec. No. 22898 (3/86)), Krinsky (Fort Atkinson School District, MED/ARB-3397 (6/86)) and Grenig (Evansville Community School District, Dec. No. 22930-A (4/86)) for the proposition

that local economic conditions should control the outcome of an interest arbitration, even where the comparability criterion suggests a different outcome. In this case, local economic conditions suggest moderation in any salary increase. The Board's 6.3% package -- well in excess of the cost of living -- is by any measure a fair increase in light of the local economy. This is true even if one accepts the Association's argument that Marshall is not a rural district, but rather a bedroom community for the government workers of Madison. The District notes that state employees received only a 6% increase for the relevant time period, while at least one group of Dane County employees received an arbitrated increase of 4%. Both of these figures are more consistent with the District's 6.3% package than the Association's 8.3% offer.

Based upon the lack of any settlement pattern, and the obviously strained condition of the local economy, the Dsitrict urges the arbitrator to award its final salary offer.

Association Reply Brief

In reply to the District's brief, the Association renews its claim of bad faith conduct against the Board, and cites Appendix A of the Dsitrict's brief as further evidence of improper conduct. The document, a stipulated Order of Dismissal in the lawsuit brought by the WERC against the District to compel participation in MED/ARB, is dated June 3, 1987. The agreed upon date for closing the evidentiary record was May 22nd. The Association challenges the District's attempt to bring this Order to the attention of the arbitrator in such an untimely fashion. In any event, the fact that a deal was cut to resolve a lawsuit does not mitigate the District's culpability for the six months of unnecessary delay which resulted from its refusal to participate in the statutory procedure.

In response to the District's assertion that the Association has voluntarily agreed to the wage settlements that created their low ranking among the comparables, the Association notes that two of the settlements, including the 1985-86 contract, were the result of consent awards by

Arbitrator Weisberger. Moreover, the fact that the teachers may have made sacrifices in the past does not logically preclude them from attempting to recoup those losses now that the District has forced them to resort to arbitration.

The District's claim that their staff's low ranking in the benchmark salaries is due to a better overall compensation plan is not supported by the evidence. The District argues only family health and dental plans, along with longevity and early retirement. The early retirement, which the District characterizes as being the most lucrative among the comparables, is in fact roughly equivalent to two other plans. Even if this plan were the best in the conference, it cannot be said to be a monetary benefit to the staff. Early retirement benefits the District, by allowing it to replace experienced teachers with new staff at the bottom of the salary schedule. The remaining faculty does not gain from such a plan. The assertion that longevity payments improve the District's rankings is made by the District without any supporting calculations to show what the improvement in rankings might be.

The District's argument about total compensation, using only family premiums for health and dental insurance, is completely misleading. The sum of health insurance, dental insurance, long term disability insurance and life insurance premiums, together with salary payments, for the entire ESC shows that the Marshall teachers consistently occupy 8th place in the conference, except at the BA base, where their 4th place ranking is mitigated by the fact that only $121 per year separate 4th and 8th place in the rankings for those taking family insurance coverage. Thus a review of total compensation only reinforces the Association's claim for catch-up pay increases.

The District's claim that only ESC schools are comparable ignores the fact that arbitrators have looked beyond the athletic conference in numerous cases, including two recent decisions within the ESC.[/2/] The districts cited by the Association are the only ones in the area which have achieved contracts for the 1986-87 school year. The fact that they

are inconvient for the District's position does not render them irrelevant. If there were a clear settlement pattern within the conference, the District might be justified in arguing against an expanded set of comaprables. Given that only Lake Mills had, at the time of hearing, secured such a settlement, there is no basis for the District's objection to the use of area schools.

The record is totally void of evidence supporting the District's claim of an inability to pay increases to its teachers. On the contrary, the District's budget for the school year includes sufficient funds for either final offer. The District has failed to prove that its economic base is primarily rural, and the impact of the agricultural economy on the District is purely a matter of speculation. The cases cited by the District in support of its claim that local economic conditions must predominate are all distinguishable from the instant case, either because the employers in those cases had proven the nature of the local economy, or because the final offers under consideration in those cases were materially different than the offers in this case. As for the assertion that government workers in the general Madison area have received pay increases more consistent with the District's offer than the Association's, the evidence of the Board's own exhibits rebuts this claim.

The Board has failed to prove anything with respect to local economic conditions which would justify a claim of hardship. Whether measured by salary, or by total compensation, the District's teachers are substantially behind their counterparts in comparable districts and are entitled to the catchup pay increase proposed by the Association. The criteria of the equity, comparability and public interest all dictate selection of the Association offer.

District Reply Brief

The District refutes the Association's claim that it seeks to break the settlement pattern with a low offer, denying that any

pattern exists among the traditional comparables in the ESC. The additional four districts cited by the Association are carefully calculated to support the Association's position, rather than being representative of the area schools. Use of these districts will serve only to distort the existing bargaining relationship in the District.

The claim that "catch-up" increases are justified by the low relative rankings of the benchmark salaries ignores the voluntary agreements that created those rankings. The decision here must turn on the interests of the local taxpayers, who are the relevant "public" in this dispute. While the District is certainly able to pay either offer, the local economic conditions, including the objective measure of the consumer price index, dictate moderation.

The Association's claim that the arbitrator should punish the Board for delaying arbitration is based on a faulty assumption. In fact, Marshall is one of the first conference schools to reach the arbitration stage, and a large number of schools throughout the state still have not resolved their 1986-87 contracts. There has been no proof of lawlessness or delay on the part of the Board.

IV. DISCUSSION

A. The District's Conduct

The Association objects to the District's late submission of a document showing that the lawsuit brought against the District by the Wisconsin Employment Relations Commission was dismissed by stipulation of the parties. The Association asks that the District's refusal to submit to mediation-arbitration be considered as a factor weighing against the District's offer under the "other factors" criterion of §111.70(4)(cm)7(h).

The stipulation and order submitted as Appendix "A" of the District's post-hearing brief is plainly untimely for the purposes of the record in this case. May 22, 1987 was stipulated as the last date for submissions to the record. Appendix "A" is therefore not made a part of the record, and has not been considered by the arbitrator in making his Award.

The Association's contention that the delay caused by the District's refusal to participate in an investigation is an appropriate consideration in selecting between the two offers is supportable only to the extent that general notions of equity are often considered in making awards. In this case, however, the equitable concerns of the Association are mitigated by two factors. The first, and less significant, is that the delay occasioned by the Board's conduct does not appear to have materially prejudiced the Association. MED/ARB is an unfortunately slow process and all but one of the ten conference schools were, at the time of the hearing, in some phase of the procedure. The fact that this is a relatively minor mitigating factor results from the reason for this case not having been further behind the pack. It is plain from the exhibits that the expeditious actions of the WERC and the courts were the primary force behind the relatively fast processing of this dispute once the District abandoned its recalcitrant position.

The more important factor mitigating against consideration of the District's conduct is the availability of remedies in other forums. As of the hearing, the Association had both court action (as an intervenor) and a prohibited practice claim pending against the District. Part of the remedy requested in the prohibited practice was interest on any sums awarded in this proceeding. If the Association's complaint is delay, the award of interest by an examiner (assuming the Association prevails) is an adequate remedy, and one which is beyond this arbitrator's statutory authority.

In response to the Association's claim that an Award in favor of the District would reward its misconduct, the simple answer is that there is no rational relationship between the two. The District has gained no advantage before this arbitrator by virtue of the delay. A decision in the District's favor would flow from consideration of the statutory criteria and would stand for no proposition other than that the contents of the offer, rather than the character of the parties, dictates the outcome of a statutory interest arbitration.

B. Appropriate Means of Costing

The Association suggests that actual costs, rather than projected costs, should be used in comparing these two offers. This would reduce the Association's package from 8.14% to 3.80%, and the District's from 6.30% to 2.03%. The Association justifies this method by pointing out that the school year is over, and actual costs can be calculated.

The cast forward method of costing is a standard tool in public sector negotiations. While it misrepresents the real costs of a settlement to the District, it does accurately portray the degree to which continuing staff will benefit from the new package. It also allows for accurate comparisons of settlements across districts with different staffing patterns. While it is true, as the Association alleges, that the cast forward method counts "ghost" faculty against the package in times of staff reduction, it also insulates the faculty from having any increases in staff charged against its package in times of expansion.

Actual costs are relevant to claims of inability to pay. There may also be other circumstances where an examination of actual costs would be beneficial. For the purposes of this arbitration, however, the arbitrator finds no basis for use of actual, rather than projected, costs.

C. Appropriate Set Of Comparables

The District proposes the ESC schools as the only appropriate set of comparables. The Association, for its part, would expand the set of comparables to include ESC, contiguous districts, "area" schools and statewide averages. The determination of the appropriate set of comparables is significant in this case, since there's but one settlement within the athletic conference.

While parties generally rely upon the athletic conference as the primary comparables, on the theory that such a grouping is likely to be similar in average daily membership and full-time equivalencies, geographically proximate and included within roughly the same labor market, there are appropriate exceptions to that practice. Some districts may be excluded from the primary comparables because they are significantly larger or smaller than other conference schools. Similarly, some

non-conference schools may be truly comparable based upon geographic proximity and similarity in size and economy to the District. This assumes, of course, that the parties have not agreed upon the use of certain comparables, either expressly or through consistent reliance on a given set of schools in negotiations over a period of time.

In this case, the District and Association disagree on whether the ESC schools have been the sole set of comparables in negotiations over the years. The evidence in this regard consists basically of conflicting assertions by counsel and is inconclusive. Thus I find that there has been no agreement between the parties to restrict the set of comparables solely to the ESC schools.

The parties both agree on the use of the ESC schools. The Association urges the inclusion of Sun Prairie, Monona Grove, Columbus and Fall River in the set of primary comparables. The first three of these are contiguous to Marshall and Fall River is a few miles north. The arbitrator does not believe that Sun Prairie can be termed a comparable for Marshall. Although it has some similarities to Marshall in such areas as state aid per pupil and equalized valuation per pupil, it is more than three times larger than the largest conference school in both membership and staff. More importantly, the economic base of Sun Prairie is quite completely different from Marshall and other ESC schools. Sun Prairie is more urban in character than rural or exurban. While it has some significance from its position in the same labor market as Marshall, Sun Prairie is more appropriately a secondary comparable to the District, and is excluded from the set of primary comparables. The same is true of Monona Grove, which is primarily suburban and quite appreciably larger than the ESC schools.

The primary set of comparables for Marshall, from the evidence presented at this hearing, are the ESC schools, along with Columbus and Fall River. From the set of additional comparables proposed by the Association, the arbitrator would exclude Whitewater, Fort Atkinson and Jefferson. These communities have local economies and sufficient distance from Madison to persuade the undersigned that they fall outside

the relevant labor market. The secondary comparables for the District, having some significance but no controlling weight, are Monona Grove, Oregon, Lodi, McFarland, Mt. Horeb, Sun Prairie, Verona, Waunakee, Stoughton, and Wisconsin Heights.

The statewide averages proposed by the Association are not particularly persuasive in this dispute. While it is true that all school districts in the state have some similarities, the market conditions that lead to a settlement in Shorewood or Butternut cannot be reliably compared to the conditions in Marshall -- at least not without considerably more data than was presented in this case. Adding in the problems of multi-year agreements, the disproportionate impact of large urban districts and wide variance in economic and political conditions around the state, it becomes clear that statewide averages are not reliable indicators of what a voluntary settlement in Marshall would have been had the parties been able to resolve their differences.

D. Relevant Points of Comparison

The Association urges that a somewhat larger increase is due the teachers in Marshall than might otherwise be appropriate, because of their consistent low ranking among comparable schools at the benchmarks. The District discounts this argument, pointing out that the benefits available to the teachers add to the benchmark values, that the ranking over the years is the result of voluntary agreements, and that package costs are a more relevant consideration.

Where the issue of "catch-up" increases is raised, the undersigned agrees with the District that total compensation, including the cost of fringe benefits, must be considered rather than only annual salary. Salary is only one component of the compensation package, and a low salary may reflect the decision of the parties in past negotiations to spend their compensation dollars in other areas. Accepting the District's argument that total compensation at the benchmarks is the appropriate measure, however, does not appreciably change the relatively low rank of Marshall's teachers, as shown by Tables 1-3 in the Association's reply brief. Even considering longevity pay[3] at the

maximums, the District's teachers fall into the bottom third of the comparable districts in compensation. Thus, to the extent that the Association can make a case for catch-up increases, consideration of total compensation at the benchmarks does not weaken that case.

The District claims, however, that no catch-up is appropriate here because the ranking of the teachers is due to a series of voluntary agreements. The undersigned agrees. Catch-up is essentially an argument over fairness, and the best measure of a fair compensation package is that which the parties have themselves agreed upon over the years. The Association has not pointed to any occurrence beyond its control[4] which led to its relatively low ranking, nor is the level of compensation in the District so far from the conference and comparable norm as to be, on its face, unfair. The offers of the Association and the District must therefroe be judged on their own merits in light of the statutory criteria for what a reasonable settlement would approximate this year, rather than reopening past settlements.

E. Application Of The Comparables

To the extent that a settlement pattern exists among the comparables, it overwhelmingly favors the Association's offer. Only two of the eleven primary comparables, Lake Mills and Columbus, have achieved agreements for 1986-87. Those settlements, together with the average of the secondary comparables, compare with the final offers as follow:

	Increase in Salary Dollars	Percentage Increase in Salary	Percentage Increase in Total Package
Association Offer	$ 1,820	7.98%	8.14%
District Offer	$ 1,355	5.95%	6.30%
Lake Mills	$ 1,759	7.14%	7.90%
Columbus	$ 1,757	7.65%	7.22%
Average - secondary comparables:	$ 1,952[5]	8.25%[6]	8.33%[7]

While the Association exceeds the Columbus and Lake Mills settlements by an average of $61 per teacher and .58% on both salary and package cost increases, the District offer falls $403 per teacher, 1.46% on salary and 1.26% on package below the average of thsoe two settlements. Consideration

of the secondary comparables provides even stronger support for the Association's offer, as they exceed that offer at each measure.

There remains the question of what weight the comparability criterion should be accorded. Since comparable settlements reflect what parties in similar economic and political environments have found reasonable, presumably after considering cost of living and market conditions, they have been stressed by arbitrators in public sector cases. Comparables provide a reliable guide for advocates in negotiations as to what the "going rate" is for services, and act to constrain the discretion of arbitrators, making the process more predictable. Unless there is some distinguishing feature in a given case suggesting that some other criterion should be accorded unusual weight, a clear pattern of settlements among comparable districts will be the primary factor in determining the outcome of an interest arbitration.[8] In this case, the Dsitrict alleges that the evidence of comparable settlements should be discounted because they are too few in number to constitute any reliable pattern.

As noted, only two of the eleven schools found to be primary comparables had achieved settlements for the 1986-87 school year when the record was closed. The undersigned agrees that this cannot be characterized as a pattern of settlements, but does not agree that these settlements can be disregarded. These settlements are persuasive evidence of what the local market for teacher services is in the current year, particularly when viewed in light of other area settlements. Since they are so few in number, however, they may be overshadowed by compelling evidence that the remaining factors favor the District's position.

F. Cost Of Living

The District points out that the consumer price index for the relevant time period is less than 4%, and that its offer would provide teachers an increase of 6.3%, or a real gain in excess of 2.3%. While the District's offer does more closely approximate the cost of living increase for the year, the significance of this is mitigated by two

factors. First, settlements in the educational sector have not traditionally mirrored the cost of living. In times of high inflation, teachers and other employees received increases below the inflation rate. In recent years, settlements have been well above the cost of living. The CPI has not been determinative in negotiations or arbitration, although it is a consideration. This leads to the second mitigating factor, which is that other districts and unions have taken the inflation rate into consideration when arriving at their agreements. Thus, to the extent that the CPI exceeds the level of settlements it is not necessarily inconsistent with those settlements.

Neither offer is unreasonable when measured against the cost of living, although the District's is the more reasonable when viewed solely in terms of CPI.

G. Interests And Welfare Of The Public

The District and the Association both argue that the interests of the public dictate selection of their respective offers. The District makes no serious argument concerning inability to pay the requested increases, but alleges that the poor state of the farm economy has a powerful impact on its residents, who would be better served by a more modest increase in school costs and taxes. The Association claims that the public interest is maintained by a competitive salary schedule which encourages quality education.

It is a truism that the public interest is served by a quality educational system. There is no evidence, however, that the District has experienced difficulty in attracting and retaining qualified staff. Indeed the exhibits and arguments of the Association stress the fact that the teaching staff in Marshall is an experienced faculty. Thus the public policy arguments of the Association, including the national concern over increasing the pay of teachers, while certainly valid, are not shown by the record to have more than general applicability to this case, as they would in any case.

Much the same can be said of the District's arguments in favor of a more modest increase than that proposed by the Association. It will always be true that taxpayers have an interest in relatively lower costs

for public services, and thus lower tax rates. Like the generalized concern for higher teacher pay, the broad desire for holding the line on taxes will be present in every case, and will have at least some validity as an "interest of the public" in ever case. Because they are ubiquitous, these general policy arguments suffer much the same fate at the cost of living when faced with unfavorable comparables. The parties to those settlements must be presumed to have reflected on, and resolved these competing policy interests in arriving at their settlements.

In this case, the District alleges that the need to control costs is amplified in importance by the problems of the farm economy. The District, through its exhibits and arguments, portrays Marshall as a primarily rural community and claims that special weight should be given to its desires for a lower increase in light of the well-known difficulties of the farmers among the District taxpayers. The Association disputes this characterization of the District, claiming it is more an exurb of Madison than a farm community.

The undersigned does not dispute the general proposition that there has been significant pressure on farmers across the country, and in the Midwest in particular. Absent other factors, a truly rural community faced with falling commodity prices and high debt levels is perfectly justified in arguing for restraint in public employee wage increases. "Restraint" is a relative term, and must be measured in the context of the market for teachers. If other parties in much the same position as the parties here have reached agreement at a particular level, a party wishing to achieve a higher or lower award must in some fashion distinguish their circumstances from those other communities. Here, where the argument is that the rural nature of the District calls for a lower award, the onus is on the District to show that it is primarily a rural district and that it faces greater financial problems than surrounding districts. The District has not focused any efforts on the second count, since it does not acknowledge the existence of any persuasive settlement pattern. On the first point, the undersigned does

not believe the record evidence will support the District's claim to be a financially strapped rural community. Under half of the equalized value of District lands is agricultural. The poverty rate for the District is low relative to surrounding communities. The tax levy per pupil is the lowest in the conference, while the state aids per pupil rank Marshall second highest in the conference. While there was a good deal of information generated by the District to support the proposition that agriculture in Dane County is distressed, none of the evidence lends particular support to its claim that this translates into a serious problem for this specific district. The evidence concerning the interests of the public is inconclusive.

H. Other Professional Employees

Even if the District is not primarily rural, but is a "bedroom community" for Madison as the Association claims, the District claims that professional employees in Madison have received increases in recent years more consistent with the District's offer than the Association offer. This relates both to the "interests of the public" criterion under §c and the comparison criterion of §d. As to the former, little argument was presented in support of the claim, and the undersigned assigns no weight to it. With respect to the claim that 4% wage increase for Dane County social service professionals and 6% increases for state employes favor the wage increase offered by the District, the undersigned agrees. The weight accorded this comparison, however, is less than that given to comparisons with other teachers. It is difficult to draw valid comparisons between teachers and other professionals, because the methods of compensation, work year and job duties are so significantly different. There is also the practical consideration that negotiations over the years have usually resulted in higher pay increases for teachers than other, non-educational sector public employees. The lack of mandatory impasse resolution procedures for state employees compounds the difficulty of comparing in this case. As noted, however, these difficulties bear on the weight accorded these comparisons. To the extent that these are valid comparisons, they favor adoption of the District's offer.

V. CONCLUSION

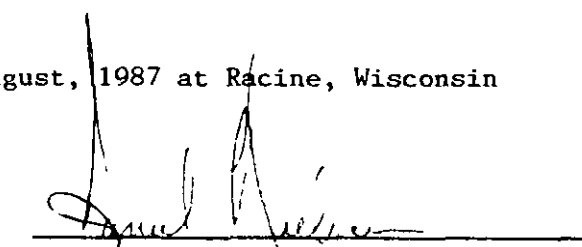
As the foregoing discussion indicates, the Association's offer is somewhat higher than settlements in comparable districts would indicate is appropriate, but the District's offer is significantly lower than the comparables. Neither offer is unreasonable when the interests and welfare of the public is considered. The District offer more closely approximates the cost of living, as well as the rate of increase for non-educational sector professional employees. In the end, the settlements in comparable districts, while few in number, are entitled to greater weight than cost of living or increases for different professions. This is because they are a more reliable indicator of the market for teachers, and were presumably entered into after a consideration of these other factors.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The final offer of the Association is supported by a consideration of the statutory criteria under Section 111.70(4)(cm)(7), and the arbitrator accordingly directs that the final offer of the Association, together with the stipulations entered into by the parties, be incorporated into the 1986-87 collective bargaining agreement.

Signed this 8th day of August, 1987 at Racine, Wisconsin



Daniel Nielsen, Mediator-Arbitrator

1 - See cases cited at pages 14-17, Association brief.

2 - Hustisford School District, Dec. No. 23138-A (Haferbecker 5.86)

3 - District teachers at the top step receive $300 per year.

4 - The claim that the two consent awards by Weisberger are distinguishable from voluntary settlements is unpersuasive. A consent award merely memorializes a voluntary agreement reached at the MED/ARB stage.

5 - Computed from Association Exhibit #33, excluding Fort Atkinson, Jefferson, Monona Grove, Columbus, Wisconsin Heights and Lake Mills.

6 - Computed form Association Exhibit #33, excluding Fort Atkinson, Jefferson, Monona Grove, Columbus, and Lake Mills.

7 - Computed from Association Exhibit #33, exlcuding Fort Atkinson, Jefferson, Monona Grove, Columbus, Wisconsin Heights, Lake Mills and Stoughton.

8 - See Arbitrator Fleischli's discussion, pages 12-14 in Luxemburg-Casco School District, Dec. No. 24049-A (4/87).