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In the Matter of an Arbitration between

REEDSVILLE SCHOOL DISTRICT

and

REEDSVILLE EDUCATION ASSOCIATION

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Case 12
No. 37772 MED/ARB-4111
Decision No. 24219-A

Appearances:

Mr. William G. Bracken, Director Employee Relations, Wisconsin Association of School Boards, Inc., representing the District.

Mr. Dennis W. Muehl, Executive Director, Bayland Teachers United, representing the Association.

Before:

Mr. Neil M. Gundermann, Mediator/Arbitrator.

## ARBITRATION AWARD

The Reedsville School District, hereinafter referred to as the District or Board, and the Reedsville Education Association, hereinafter referred to as the Association, reached an impasse in negotiations. The parties selected the undersigned to serve as the mediator-arbitrator pursuant to Sec. 111.70 (4)(cm)6 of the Municipal Employment Relations Act. A hearing was held on April 23, 1987, at the District High School. The parties were present and given full opportunity to present such evidence as was pertinent to the dispute. The parties filed post-hearing briefs.

## Final Offers

Association's Final Offer:

BA Base Salary $16,690
Increase Vertical Increments by $50

Board's Final Offer:

BA Base Salary $16,375
Retain Current Vertical Increments

ASSOCIATION'S POSITION:

It is the Association's position that its final offer is the more reasonable, and therefore it should be awarded by the arbitrator. Regarding the issue of comparables, the Association notes in the most recent award involving the parties (Reedsville School, Dec. No. 22935-A, 3/25/86), both the Board and the Association relied exclusively on the following districts as the appropriate comparables.

| | | |
|---|---|---|
| Brillion | Gibralter | Sevastopol |
| Chilton | Hilbert | Valders |
| Denmark | Kiel | Wrightstown |
| Freedom | Mishicot | |

The Association introduced settlement data for five other districts which were intended to supplement the established comparisons. Those districts included Elkhart Lake, Howards Grove, New Holstein, Random Lake, and Two Rivers. The Board has also submitted settlement information outside of the established comparables--the Manitowoc County settlements, as well as private sector outcomes, most of which involved industries located in Manitowoc or in Two Rivers.

The Association objected to the introduction of private sector salary data from Manitowoc and Two Rivers unless the Board is willing to concede that the Two Rivers teacher settlement assumes great significance in this dispute. In Two Rivers, there was no reference in the Board's exhibit to the fact that teachers received a 6.5% benchmark increase, or $1,857 per teacher salary increase.

The Association notes that the information provided by the Board relating to private sector settlements refers only to the percentage increase in wage rates. Even if the unionized private sector employes performed services similar to the teachers, the omission of existing wage levels makes comparisons impossible. The Association also points to Kohler Schools, Sec. No. 24038-A, 5/13/87, where Arbitrator Fleishli found the private sector data "far less compelling than the data among the primary comparables."

The Board also introduced evidence relating to nonunionized employes in the Village of Reedsville, and nonunionized private school teachers; the Association contends this data should not be considered. The Association points to the rationale of Arbitrator Malamud in West Allis-West Milwaukee Schools, Dec. No. 21700-A:

> "It is difficult to establish the wages and benefits provided by an employer in a situation where there is no collective bargaining agreement and where the benefits are not published in such an agreement. Secondly, the establishment of wages, hours and conditions of employment through an administrative process by unilateral action of the employer provides little insight as to the pull and tug occurring at the bargaining table. What is happening at the bargaining table is an important consideration in the MED/ARB process . . . The use of groupings of employes who are unorganized provides information which is tangential at best to the statutory MED/ARB analysis mandated by the statutory factors quoted above."

The Association contends that the most relevant comparables consist of employes who perform similar services, have similar educational requirements, and have been historically used for comparison purposes. In this case, these comparables are the teacher units agreed to by the parties in prior negotiations and other arbitrations. Other comparisons are not nearly as relevant. Such conclusion was reached by Arbitrator Christenson in Two Rivers Schools, Dec. No. 23992-A, 3/20/87, in which he concluded:

> "No doubt the overall level of public and private employee compensation in the community has some impact on the market for teachers. That impact, however, is indirect and not as significant as the impact of salaries paid teachers in comparable communities. Moreover, the evidence with respect to non-teaching employees in both the private and public sector pertains solely to increases in compensation and not to the level of compensation. There is no way of knowing from the record whether the percentage of increase is applied to a relatively high base or a low one. That fact too makes this information less persuasive than the much more complete information about teacher salaries in comparable districts."

The Association anticipates that the Board may argue against consideration of districts which bargained an increment freeze. The Association argues that benchmarks at the beginning and maximum rates are not affected by an increment freeze and remain valid comparisons. Per teacher salary comparisons can be used to check the magnitude of settlements containing an increment freeze. In New Holstein, Sec. No. 23920-A, 3/12/87, Arbitrator Chatman evaluated such an argument and found it wanting.

> "To exclude them because they have elected a form of payment to employes different from this district does not preclude that the payment received by these employes and the costs incurred by that district will not be similar to those settlements derived through so-called conventional methods. To reject these districts would be to reject some of the District's arguments on severance pay and longevity as being 'different.'"

The Association notes that Arbitrator Chatman's rationale is particularly pertinent to the instant case because the New Holstein Board argued that the Districts of Chilton and Kiel should be excluded from consideration.

Arbitrators have frequently utilized a 7-point benchmark analysis to evaluate final offers in teacher salary disputes. A review of the evidence establishes that the 1985-86 Board salary levels are above average at the hiring step but tend to lag at the other benchmarks. It should also be pointed out that the District's relatively low ranking at the schedule maximum is not balanced by the existence of a favorable longevity provision as in Wrightstown.

Four comparable districts have reached settlements for 1986-87. A comparison of the 1986-87 benchmark wage levels with the parties' final offers shows either proposal to result in below average salaries. Additionally, a comparison of benchmark increases in comparable districts to the final offers illustrates that the Board's proposal falls far short of the

pattern. Benchmark comparisons also illustrate the primary weakness of the Board's proposal. Its $760 across-the-board increase grants the teachers with the most seniority an increase significantly lower than the established pattern.

The Association anticipates that the Board will argue against the use of benchmark comparisons and submit as a reason that increment freezes were bargaining in Chilton, Denmark and Kiel. In this regard, Arbitrator Krinsky stated in Fort Atkinson, Dec. No. 23009-A, 6/9/86:

> "While there is some debate that may be relevant concerning the meaning to be attached benchmarks as internal points on the salary schedule where non-traditional settlements have occurred, it would appear to the arbitrator that the minima and maxima are not in controversy. That is, beginning teachers can be compared with one another, and those earning at the top step of the lane can be compared with one another, even if BA-7 is not meaningful because it means different things in different districts because of what has been done to the schedule."

The Association argues that even if a benchmark comparison cannot be made, certainly the amount of salary increase received per teacher can be calculated. Such calculation establishes that the Board's offer represents a $1,110 wage package, whereas the Association's offer represents a $1,855 wage package. The Board's percentage comes to 5.2%, while the Association's percentage is 8.7%. Compared to other settled districts, the Association's final offer is more appropriate than the Board's.

A possible reason for exempting the District from the 1986-87 pattern would be evidence showing that this unit received high wage increases in the past when compared to other comparable districts. The evidence shows that this is not the case. The 1984-85 and 1985-86 per-teacher increases attained by the District's teachers are well within the settlement pattern. Moreover, an evaluation of the mean salary of the District's teachers compared to the comparable average mean salaries establishes that the District is last. The Board's own data indicates that, if anything, the District is in a catch-up situation.

The Association contends that a review of the 1985-86 comparable salary schedule shows that the District's salary schedule has one of the lowest vertical increments in the comparison group. The Association notes that most of the comparables had indexed salary schedules for 1985-86, and even in districts without an indexed schedule, the District's $645 vertical increment does not rank high. Additionally, two of the settled districts, Freedom and Denmark, bargained salary schedules which reflect the prior year's index and the vertical increment increase correspondingly. Both parties' final offers in Mishicot retain the indexed schedule and increase the vertical increment. In Valders, both parties proposed an increase in the vertical increment. Most of the comparable districts will increase the dollar amount of the step increment for 1986-87. The Board's proposal erodes the already unfavorable status vis-a-vis comparable districts.

The vertical increments in the districts where the value of the staff increment was not increased are significantly closer to the Association's 1986-87 offer. The per teacher salary increase in Chilton and Kiel is substantially higher than the Board's proposal in this case. In Chilton, the increase was $1,795 per teacher, and in Kiel it was $1,757 per teacher, as compared to the Board's proposal of $1,110 per teacher.

In the event the Board argues the Association is altering its status quo staff increment value, the Association responds as follows:

1. The Association's offer of a $695 vertical increment is strongly supported by the comparable provisions.

2. The $50 increase in vertical increment addresses the problem of relatively low salary levels at the maximum benchmarks.

3. The $645 step increment does not represent a longstanding status quo. This amount was first applied to the schedule in 1985-86.

> 4. The Association's offer of a $50 increase in step increments is not a fundamental change in salary structure. Moreover, arbitrators have consistently recognized that proposed changes in increments have not been viewed as structural changes in the salary schedule of such significance that they must be left to bargaining. (See Arbitrator Vernon in Thorpe, Dec. No. 23384-A, 10/20/86.)

Teacher bargaining outcomes have, unlike those of private sector and non-teacher public sector unions, not paralleled increases in the CPI. In the years of double-digit inflation, teacher salary levels eroded significantly in real dollar terms. The "settlement pattern" was originally successfully advanced by boards in years of double-digit inflation. Teacher contracts did not contain COLA clauses, and both settlements and arbitrated outcomes were lower than those of private sector and other public sector employes. In Merrill, Dec. No. 17955-A, 1/81, Arbitrator Kerkman rejected the union's argument that CPI be determinative of the outcome and enunciated the pattern-of-settlements rationale which was subsequently adopted by other arbitrators.

Arbitrators have recognized that the settlement pattern is the most appropriate measure of the impact of the cost of living, both in times of double-digit inflation as well as in times of relatively moderate increases. The settlement pattern may exceed or be below CPI measurements. The pattern of settlements may even vary considerably from occupation to occupation. Thus, strict adherence to the CPI measurement could easily result in awards supported neither by the pattern of settlements or the labor market conditions which affect individual occupations.

Arbitrator Christensen, in Two Rivers Schools, Dec. No. 23992-A, 3/20/87, made the following comments regarding cost of living:

> "Both final offers provide for salary increases in excess of the increase in the cost of living as measured by the Consumer Price Index (CPI). The statute does not adopt the CPI as the measure of

> "cost of living but it is one measure commonly used. The statute requires that cost of living be considered in evaluating final offers. . . . Some increase in excess of the cost of living is called for, largely because of competitive forces of the market. The question is how much the increase might appropriately exceed the increase in the cost of living. The best indication of that is the comparable settlements. This was the case when the settlements tended not to keep pace with the rampant inflation and remains the case when settlements exceed inflation."

The Association notes there is no evidence submitted into the record which would indicate that the District's relatively low salary levels are balanced by an above-average fringe benefit package. According to the Board's evidence, the mean total compensation value for the District teachers, when fringe benefit costs, social security contributions and the value of pension payments are given a dollar value, ranks lowest in the comparison pool. The comparable average mean total compensation is $31,030, whereas the District's mean total compensation is $28,088, or $2,942 below average. The arbitration award for 1985-86 resulted in an increase of $2,666 and exceeded the dollar value of comparable settlements by only $4 per teacher. While the percentage value of the Reedsville award exceeds the comparable average, a larger percent increase was required in order not to fall further behind.

This situation was addressed in the Rosendale-Brandon School case, Dec. No. 23261-A, 8/14/86, by Arbitrator Vernon. The arbitrator relied on a per-teacher salary comparison to determine the outcome, and noted that the wage package percentage statistics favored the Board's proposal, while per-teacher dollar data support the Association. The Association's offer of 9.8% was found more appropriate than the Board's offer of 8.8%. The arbitrator concluded the following:

> "If Rosendale-Brandon wage labels weren't behind the pack already and wouldn't fall further behind under the Board's offer, the $1800 per-returning-teacher increase might otherwise be considered more reasonable. In order to 'keep up,' it is necessary to require a higher percentage salary increase than received by teachers in other districts."

The arbitrator in the instant case applied similar rationale in Waukesha County Technical Institute, Dec. No. 18804-A, 1/8/82:

> "The difference between the cost of the Association's proposal and the Board's proposal is 1.78 percent. The Association's salary proposal may be characterized as somewhat higher than the reported settlements, while the Board's proposal may be characterized as somewhat lower, at least in percentage terms. However, considering the fact that the District's salaries are higher than those paid by comparable districts, its offer will generate, in dollars, increases equal to or greater than the increases enjoyed by the comparable districts.
>
> While percentage increases serve as a useful guide to settlements, the ultimate comparison must be made in dollars."

The Association argues that the comparisons clearly favor the Association's offer, whether salary or total compensation is given more significance, especially when dollar amounts are compared.

It is the Association's position that this case involves not an issue of ability to pay, but rather a willingness to pay. The District's per pupil cost is second lowest in the comparison pool under the Association's statistics and third lowest among the District's statistics. The per pupil instructional salary and fringe benefit cost is the lowest in the comparison pool. The District's equalized valuation per member ranks fifth of the twelve among the comparables. The levy ranks seventh among the twelve comparables. The District also received an additional $122,029 in State aid and credits for 1986-87.

It is emphasized by the Association that at no time did the District raise the issue of ability to pay.

Both parties referenced the average unemployment rate of 8% for 1986, a figure slightly higher than the State average. The Board submitted evidence relating to the seasonally adjusted unemployment rate for Manitowoc County to be 11.5% in February, 1987. Seasonally adjusted data for 1985 and 1986 indicate that unemployment rates in Manitowoc County peak from January-March, and improve significantly from April-November

Of the residents, 82.64% are categorized as "rural" (not residing in a city or village); however, 75% of the District's population are classified as "non-farm." Contemporaneous 1986 information shows that the wage rates in the metropolitan statistical area, consisting of Door, Kewaunee, Manitowoc and Sheboygan counties, rank very favorably in comparison with other State-wide MSA's. Additionally, levy rate information establishes that the rates in the Village of Reedsville rank three or four of nine. The Village of Reedsville provides 14.57% of the District's property tax base. The Board's primary exhibit relating to the "local economy" consists primarily of wage adjustments of manufacturing concerns in the cities of Manitowoc and Two Rivers. The only information concerning Reedsville is the increase accorded unrepresented Village of Reedsville employes.

The Association concludes that none of the Board's exhibits justify an increase of $1,110 per teacher, which is substantially below the settlements voluntarily bargained in comparable districts.

In its more general information, the Board fails to reference teacher settlements in its numerous exhibits concerning State and national wage trends. State-wide average teacher settlements range between 6.3% and 7% at the benchmark increases, and districts of similar size average 6% to 6.8%. In dollar terms, these convert to increases of $2,003 and $1,889.

Any reliance upon the agricultural economy is inappropriat under the circumstances that currently exist in that economy. None of the information suggests that the farmers in this District are more negatively impacted by problems of the farm economy than their counterparts in comparable districts. Absent a showing that this District has uniquely disadvantageous economic circumstances, the settlement pattern in comparable districts should determine the salary of the District's teachers.

In regard to the public interest, the Association argues the public has an interest in attracting and retaining competent teachers to educate the community's children. Much is ignored

if the public interest is reduced to a dichotomy of "teacher salaries" versus "property taxes."

For the above reasons, the Association respectfully requests that the arbitrator award its final offer.

BOARD'S POSITION:

It is the Board's position that its final offer is the more appropriate of the final offers before the arbitrator. It is noted by the Board that although previous arbitrators have included Gibralter and Sevastopol as being comparable districts, the Board contends that such comparison is a mistake. Originally Gibralter and Sevastopol were included as comparables because the District shared athletic contests, and that is no longer true. Additionally, Gibralter and Sevastopol are two of the highest among the twelve comparable school districts in cost per student, and neither Gibralter nor Sevastopol receives State aid. (Both districts have extremely high valuations due to resorts and property along the shores of Green Bay and Lake Michigan.) The District further notes that neither Gibralter nor Sevastopol are geographically approximate to the District, thus the District does not compete in the same labor market for teachers.

It is also argued by the Board that it is not comparable to Chilton or Kiel because of the size of those districts. This District is the second smallest among the twelve schools listed with 37.5 teachers. Kiel has 81.5 teachers, while Chilton has 64.3 teachers. For these reasons, neither Kiel nor Chilton should be considered as comparables.

The Board also notes that in arbitration cases involving Gibralter and Chilton, this District has never been included as a comparable. Gibralter is more properly compared to the Packerland Athletic Conference schools as decided by Arbitrator Yaffe, while Chilton is more properly compared with the Eastern Wisconsin Athletic Conference as found by Arbitrator Krinsky.

In view of the decisions of Arbitrators Yaffe and Krinsky, the Board contends Chilton and Gibralter should not be considered comparable districts.

The Board argues that Denmark, Chilton and Kiel have unique 1986-87 settlements rendering comparisons to this District inappropriate. They agreed not to move teachers the one, normal, yearly increment step on the salary schedule, but rather elected to freeze teachers at their current 1985-86 placement. This permitted the board and the union to offer a flat dollar or percentage increase to each salary on the salary schedule at a disproportionately higher rate than would have been allowed with traditional salary schedule movement. These settlements create distortion when viewing and analyzing benchmarks in the traditional fashion. The Board believes, therefore, the arbitrato should shift his attention and focus on other statutory criteria since these settlements are unique.

The Board notes that Arbitrator Yaffe, a noted proponent of the benchmark analysis approach to resolving disputes, recently changed his mind because of the drawbacks associated with "apples to oranges" comparisons that occur when benchmark salary data compare teachers with different years of experience. Arbitrator John Flagler also stated in Ellsworth Community School District, Dec. No. 23296-A, 9/86:

> "I have usually favored a benchmark comparison as the more valid measure of actual compensation paid to like-situated teachers. The recent trend of truncating salary schedules by a variety of restructuring devices, however, undermines this approach. Benchmark comparisons work only as long as the salary schedules within the comparisons group remain fairly symmetrical. The 'learning theory of bargaining' apparently has led certain districts into various expediencies including dropping steps, adding longevity features, freezing increments, rolling indices, differential increments and other contrivances which often make one district's schedule unlike no other's.
> . . .
> In sum, benchmark comparisons are valid only to the extent that the parties themselves standardize the

> "terms of compensation within their traditional reference groups. To the degree that they choose to devise variations on the theme, they both trade off comparability."

According to the Board, more and more arbitrators have rejected benchmark comparisons when districts have altered their salary schedules in non-traditional fashions. This, the District asserts, is precisely what has occurred in the proposed comparables of Chilton, Kiel and Denmark. Because of the drawbacks noted by other arbitrators, the Board requests the arbitrator to reject *benchmark comparisons in reaching a decision.*

The Board would also have the arbitrator reject a comparable group of five school districts that the Union asserted are geographically approximate to the District. Besides geographic location, such factors as size, economic statistics, labor market, etc. are important determinants of comparability. Neither party nor any other previous arbitrator in this District has utilized the same districts the Union is advancing to be adopted in this case.

The Board argues that the districts the Union has selected as comparables have all been found to be comparable to other school districts, none of which have included this District. While the Union made a passing attempt to compare this District to the State-wide average, there is little support among arbitrators that State averages should be adopted for purposes of determining salary issues.

The Board notes that of the eleven schools that have been deemed comparable, only four schools are settled for 1986-87. Of those four schools, three have adopted unique and non-traditional salary schedules rendering comparisons to this District impossible. The Board does not believe the arbitrator in the instant case can use the four settlements to establish a prevailing settlement pattern because of the relatively small number and because of the non-traditional nature of the salary schedules adopted in three of the schools. The Board argues the arbitrator must weigh the other statutory criteria more heavily under these circumstances.

The Board argues that the arbitrator would do a disservice to the parties' long-term relationship if he were to artifically create comparables "out of thin air."

In School District of Valders, Dec. No. 19804-A, 3/83, Arbitrator Petrie, when faced with a lack of settlements among comparable districts, looked to the private sector comparability criterion and found that: "In consideration of the dearth of 1982-83 intra-industry comparison data, general private sector settlement comparisons must be accorded greater weight in these proceedings." Similarly, Arbitrator Yaffe, in New Holstein School District, Dec. No. 22898-A, 3/86, stated the following:

> The fact that a pattern of relevant teacher settlements does not exist in this case does not nullify the comparability factor as a criterion which should be utilized in this case. In this regard the record indicates that settlements with other employees in the District clearly support the reasonableness of the District's position herein. Similarly, the record indicates that settlements elsewhere in the public sector, both at the local and State level, as well as settlements in the private sector also support the reasonableness of the District's position. Thus, based upon the comparability criterion, at least at this point in time, when a pattern of teacher settlements for 1985-86 is just beginning to emerge, and when other settlement patterns clearly support the District's position herein, no strong support can be found for either party's position based upon this criterion alone."

See also Fort Atkinson School District, MED/ARB-3397, 6/86.

The Board contends that according to its calculations its total package proposal would amount to a 5.7% increase or $1,619 per teacher. In contrast, the Union's final offer total package increase amounts to 8.9% or $2,507 per teacher. On the salary schedule only, the Board's final offer amounts to a 5.2% increase or $1,110 per teacher. The Union's offer amounts to 8.7% salary only, or an increase of $1,855 per returning teacher. The parties are apart $35,238, or $888.28 per teacher.

The Board emphasizes the fact that the Union is proposing a fundamental change in the salary schedule structure. The

Board argues that a change of such magnitude should not be imposed by an arbitrator, but rather should be left to negotiations between the parties.

The District contends that the Union has failed to establish a need for the proposed change. Under the Union's proposal, $50 is added to the existing vertical increment. The Board rejects this proposal on the grounds it is unreasonable, unnecessary and unfounded. It is a well known and accepted principle of interest arbitration that an arbitrator should not impose on the parties a proposal that radically changes the status quo without an extremely persuasive and compelling reason. In this case the Union has provided no such reason for the change in increment.

If the Union's proposal were accepted, it would mean that the vertical increment would have increased 50% since 1981-82. The Board argues there is no reason to keep expanding the vertical increment at the rate proposed by the Union. Additionally, the evidence establishes the parties have not always increased the increment.

The Board further notes that three of the four comparable school districts that have settled have not changed their increment. In this case the Association is seeking to push money to the lower, right-hand side of the salary schedule in direct opposition to the trends found in the settlements among comparable school districts. A vertical increment increase of $50 represents 7.8%, and the Association has failed to prove a need for the change or present solid rationale to justify an increase on the vertical increment of this magnitude.

The Board argues that the interest and welfare of the public are best reflected in the Board's final offer. The District is essentially a rural district, and given the current disinflationary environment and economic turmoil faced by farmers and other taxpayers, an arbitrator should not award the 8.9% package increase proposed by the Association. Additionally, taxpayers in the District have made it known that they do not wish to have taxes increased; they wish to contain spending.

The problem of high taxes on citizens with below average income is further exacerbated by the fact that school spending has outpaced inflation and growth in personal income by a larger margin than ever before. Also, modest salary increases in the public and private sector have lessened other people's ability to pay an 8.9% pay increase to teachers. Therefore, the Board believes that this criterion must receive more weight than the comparability criterion.

In New Holstein School District, Dec. No. 22898, 3/86, Arbitrator Yaffe concluded the dismal farm economy and the district's goal to restrain taxes were worthy factors in the interest and welfare of the public. See also Evansville Community School District, Dec. No. 22930-B, 4/86.

In Omro School District, Dec. No. 23181, 6/86, even though Arbitrator Yaffe turned to four nonconference schools and found that the comparable settlement pattern favored the union's final offer, he applied other statutory criteria to find for the board. The other factors he considered were internal settlements of other district employes, private and public sector settlements, cost of living, and the need for public employers to constrain spending in light of the struggling agricultural economy.

In Green Bay Area Public School District, voluntary impasse procedure, 2/87, Arbitrator Malamud found for the school district where the district's final package was 4.7% and the union's final package was 6.8%. The Board notes that Arbitrator Malamud relied upon the interest-and-welfare-of-the-public criterion instead of comparability criterion in awarding the district's final offer.

While the Board disputes the comparability criterion as being a major criterion under the circumstances of this case, the Board argues that nevertheless comparability clearly supports the Board's final offer. When reviewing the salaries for 1985-86 and 1986-87, the Board makes the following points.

The Gibralter, Sevastopol, Chilton and Kiel districts should be excluded from all comparisons to this District, as the salaries in those districts reflect different economic conditions. The Board also contends it is obvious in reviewing the benchmark comparisons that by including Freedom in the averages, distortions undoubtedly occur since Freedom is so high at the schedule-maximums. A more appropriate comparison would be the median. Additionally, Freedom competes with the Fox Valley more than with the rural areas in Manitowoc County.

Even if the arbitrator used all eleven schools as the appropriate comparability pool, the District still compares favorably. The District ranks above the median salary at four benchmarks, and below the median salary at three benchmarks. The evidence also establishes that teachers in this District have only eleven years in which to reach the BA maximum, which is the third lowest number among all schools. The shorter number of steps at the BA lane brings down the average or median BA maximum. The Board contends it should not be penalized where both sides have, in effect, opted for a lower BA maximum by allowing only eleven steps to reach the top.

The District notes that last year's arbitration award resulted in a disproportionate amount of money at the top of the salary schedule because the Association's final offer included a proposal to raise the vertical increment by $90. Thus, while the BA base rose 6.6%, the BA maximum increased 9.4%.

According to the Board, both party's total package increases are equally distant from the settled average. Compared to the average of the settled schools, the Board's offer is 1.6% below the settled average while the Union is 1.6% above the settled average. The Board submits the arbitrator will have to rely upon other figures than simply the average settlement of the settled districts.

In this regard the Board urges the arbitrator to look to both the private and public sector settlements. The Board

argues that workers in Wisconsin and the nation have experienced increases ranging from 1% to 5%. Recently Arbitrator Fleischli noted that "the magnitude of the wage increases being granted other public sector employees and private sector employees according to the District's data, are comparable to the magnitude of increases that will be generated under the District's offer." He found for the board. Mayville School District, Dec. No. 24039-A, 5/87.

According to the Board, Manitowoc County employes received a 3.2% increase and employes of the Village of Reedsville received a 1.93% increase. Private sector settlements ranged from 0% to 5%, with the vast majority being around 2% to 3%. The evidence is also overwhelmingly clear that on a local, state or national basis, other employes are not being granted 8.7% salary increases.

The Board urges the arbitrator to look to last year's arbitration award as a guide to an appropriate settlement for the current dispute. In percentage terms, it was the second highest settlement reached among the eleven comparable schools in 1985, and the fourth highest in terms of dollars per returning teacher on the salary only. On a total-package basis, the settlement was a full 1% higher than the average reached among eleven comparable schools. In his decision, Arbitrator Malamud concluded that there was no basis for catch-up. The Board lost last year because its offer did not match the prevailing settlement pattern among nine out of eleven settled schools. The Board argues that in the instant case it is impossible for the arbitrator to state that a reliable and predictable settlement pattern exists among the comparable schools. Arbitrator Malamud's conclusion that no catch-up was warranted is very important because it sets the stage for a reasonable increase given the inordinately high increase from the previous year.

The Board argues that the cost of living must also be taken into consideration. The cost of living for the relevant

contract period for which the Board and Association are bargaining shows that from July 1985 to July 1986, the CPI increased by 1.2%. The Board's final offer, on a total-package basis, exceeds the CPI increase by 4.5%. The Union's total package increase exceeds the CPI by 7.7%. The Association's final offer which is about seven times the CPI rate is unreasonable and excessive.

There is no basis upon which the Union can justify an 8.7% salary offer when inflation is running at 1.2%. Contrary to what several arbitrators have held in this State, the cost of living is not what other employer and employe groups voluntarily agree to. Those agreements are not a measure of inflation; they are a measure of what the parties have settled for. The real measure of inflation is a completely separate and independent measure as defined by the Consumer Price Index. Inflation rate must stand alone as a criterion in the statute. The arbitrator must weigh the cost of living criterion just as importantly as the comparability criterion.

Arbitrator Fleischli noted the Consumer Price Index is an important factor that needs to be studied in its historical context. He stated in Luxemburg/Casco School District, Dec. No. 24049-A, 4/87:

> "When the two offers are reviewed in historical context, particularly in view of the wide margin by which the 1985/86 settlement exceeded the increase in the cost of living in the year prior to that year, the Association's proposal would appear to be overly generous. . . . The real value and real cost of the Association's final offer would be greater than that generated in any recent year, at a time when the District is under considerable pressure to hold down costs."

The Board argues that regardless of what criterion is to be applied in evaluating the final offer of the two parties, the Board's final offer more closely parallels the statutory criterion.

For all of the above reasons, the Board respectfully requests that the arbitrator award the Board's final offer.

DISCUSSION:

The parties are in dispute as to the appropriate comparables. The Association urges the adoption of the same comparables that have been used in prior arbitrations, while the Board urges the exclusion of Gibralter, Sevastopol, Kiel and Chilton. The Board argues that Gibralter and Sevastopol are not in geographic proximity to the District, have a different economic base, are no longer involved in athletic competition, and, the District was not considered to be a comparable in an arbitration proceeding involving Gibralter.

There is logic to the Board's arguments regarding Gibralter and Sevastopol. Neither district is in geographic proximity to the District, and the fact that the District no longer competes with those districts in athletic events removes a factor often considered by arbitrators in determining comparables, i.e., the athletic conference. The fact that the District was not considered a comparable in an arbitration proceeding involving Gibralter further supports the District's position that Gibralter is not an appropriate comparable.

While Kiel and Chilton are larger than the District, both of those districts are in geographic proximity to the District. Additionally, Kiel and Chilton have been considered among the comparables in prior arbitration proceedings between the parties and there has been no change in circumstances which would warrant their exclusion at this time. Therefore Kiel and Chilton are still appropriate comparables.

It is argued by the Board that Stockbridge should be included in the comparables, although it was not included in the last two arbitrations. There is insufficient evidence upon which to base a conclusion that Stockbridge is an appropriate comparable.

Based on the record, the undersigned finds the following districts to be comparable:

| | | |
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| Brillion | Freedom | Mishicot |
| Chilton | Hilbert | Valders |
| Denmark | Kiel | Wrightstown |

Four of the comparables (Chilton, Denmark, Freedom and Kiel) have reached settlements for 1986-87. The parties are in dispute as to the terms of the Freedom settlement.

The Association's final offer includes a BA base salary of $16,690, or an increase of $1,075 at the BA base with vertical increments of $695, an increase of $50. The Association's final offer represents a salary increase of $1,855, or 8.7% per returning teacher. The total increase per returning teacher, including fringes, would be $2,507 per teacher, or 8.9%.

The Board's final offer includes a BA base salary of $16,365 or an increase of $760 at the BA base with vertical increments of $645, the current increment. The Board's final offer represents a salary increase of $1,110 or 5.2% per returning teacher. The total increase per returning teacher, including fringes, would be $1,619 per teacher, or 5.7%.

According to Association Exhibit 24, the four districts that have settled have reached agreements providing the following dollar increases per returning teacher, and percent of increase in the total package.

| | Dollars per Returning Teacher | Package Percent Increase |
|---|---|---|
| Chilton | $1,795 | 7.8% |
| Denmark | 1,754 | 7.6% |
| Freedom[1] | 2,000 | 8.0% |
| Kiel | 1,757 | 7.4% |
| Association Offer | 1,855 | 8.9% |
| Board Offer | 1,110 | 5.7% |

Based on the above data, the average dollar increase per returning teacher of the settled districts is $1,826.50, including the Association's figure for Freedom.

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1. The figures for Freedom are in dispute.

The Board argues that four settlements do not represent a sufficient universe upon which to base an award, and therefore the other statutory criteria must be given greater weight. This is especially true, according to the Board, where three of the four settlements involved non-traditional means in arriving at settlements including increment freezes. With the deletion of Gibralter and Sevastopol, there are nine comparables in the group. If Freedom is excluded, there are three settlements. While it would be preferable if all of the comparables had settled three settlements gives some indication of a range; however, three settlements cannot be viewed as having established a prevailing pattern of settlements. Thus, the pattern established by these settlements is less compelling than it would be if the pattern was set by a larger universe.

Although it is argued by the Board that in Denmark, Chilton and Kiel the parties agreed not to move teachers on the salary schedule but to freeze them at their current experience level, making any comparisons difficult if not impossible, certain the cost incurred by the various districts in terms of dollars is a measure of the costs of the settlements. It may very well be that the three settled districts did not grant increases in what may be characterized as the traditional manner of compensating teachers, but this does not alter the fact that the district incurred costs in reaching their settlements and for purposes of comparison those costs are valid regardless of the manner in which the money was allocated.

If the cost per returning teacher is used as the basis of comparing the final offers, the Association's final offer of $1,855 is $28.50 above the average of the settled districts, including Freedom. If Freedom is excluded, the average of the remaining three districts is $1,768.67 per returning teacher. The Association's final offer of $1,855 per returning teacher is $86.33 above the average. In contrast, the Board's final offer of $1,110 per returning teacher is $716.50 below the average

per returning teacher if Freedom is excluded from the average. If the cost per returning teacher were the sole basis for determining comparisons, the Association's final offer would have to be preferred.

In the last arbitration involving these parties, Arbitrator Malamud rejected as the basis for comparing settlements the cost per returning teacher noting that such figure relates to salary only, and thus does not reflect the actual costs to the District. The undersigned is in basic agreement with the rationale of Arbitrator Malamud. Board Exhibit 29 shows the total package costs of three of the four settled districts. The total package costs of these districts are as follows: Denmark--$2,311, Kiel--$2,167, Chilton--$2,353.[2] The Association's total package cost is $2,507 and the District's total package cost is $1,619. The average total package cost of the three settled districts is $2,277, $230 less than the Association's final offer and $658 more than the Board's final offer. On a total package cost comparison basis, the Association's final offer is closer to the average of the settled districts than is the Board's final offer, and on that basis would be preferred over the Board.

In addition to a higher base, the Association's final offer provides for an increase in the vertical increment of $50 per increment. It is argued by the Association that an increase of that magnitude is justified as a "catch-up." However, in the arbitration award issued by Arbitrator Malumud on March 25, 1986 involving these same parties, he addressed the issue of "catch-up" by concluding:

> "Accordingly, if one looks to either 1984-85 salary schedule or the one generated by the District's offer for 1985-86, it is clear that catch up is not appropriate, in this case."

It is significant to note that at the time of the Malamud award nine of the eleven comparables had settled. In reviewing the data reviewed by Arbitrator Malamud, the undersigned concurs

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2. Because the parties disagree as to the cost of the Freedom settlement, it has not been included.

with the conclusion reached by Arbitrator Malamud that catch-up is not a factor in this case.

As a result of the Malamud decision, which awarded the Association's final offer, the vertical increment was increased by $90. The Association has demonstrated no compelling rationale to increase the vertical increment by an additional $50 one year later.

While it is true that at certain of the benchmarks the District is low, most notably at the BA maximum, it is also true that the District has fewer steps at the BA lanes than do a number of the other districts. Based on the use of medians, the District is not so low at the benchmarks as to support a catch-up argument. Moreover, 15½ FTE's of a total of 39.67 FTE's are at the maximum of the BA lanes, while only three are at the maximum of the MA lanes. This suggests that those at the maximum of the BA lanes still have opportunity for movement by obtaining additional credits.

The statute requires the arbitrator to consider factors in addition to comparables. Sec. 111.70(4)(cm)7 states in part:

> "In making any decision under the arbitration procedure authorized by this subsection, the mediator/arbitrator shall give weight to the following factors: . . ." (Emphasis added)

The section then proceeds to list the factors. Essentially the Association argues that the controlling factor is "d":

> "Comparison of wages and 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 service . . ."

The Board argues that other factors are at least as compelling, including the cost of living, the interest and welfare of the public, and the wage increases received by other public employes as well as the wage increases received by private sector employes.

The cost of living, as measured by the Consumer Price Index, increased 1.5% during the period July 1985 to July 1986. Both final offers exceed, by a substantial amount, the increase in the CPI. The Association, relying upon Arbitrator Kerkman's decision in Merrill (Dec. No. 17955-A, 1/81) as well as other decisions, argues that the pattern of settlements is to be preferred to the cost of living, as the pattern of settlements reflects how similar parties, i.e., other districts and their teachers, have weighed the cost-of-living factor in their settlements. Even a cursory review of arbitration decisions involving teachers leads to the conclusion that cost of living, as a factor to be considered by the mediator/arbitrator, has not generally been the controlling factor. Mediator/Arbitrators have generally favored settlements of other districts as a more appropriate factor in reaching a decision.

Certainly the acceptance of comparable settlements as the basis for a decision, to the exclusion of the cost of living, has rational appeal. It may be argued that those districts which arrived at voluntary settlements considered the cost-of-living factor in arriving at their voluntary settlements, and the weight given the cost of living in a voluntary settlement should be the same weight given in an arbitrated settlement. While such rationale may be appealing, the mediator/arbitrator, unlike the parties who arrive at a voluntary settlement, is required by statute to consider the cost-of-living factor. The undersigned finds the argument that the weight to be accorded the cost of living is the weight reflected in voluntary settlements not totally persuasive, as there is no means of determining the weight the parties accorded cost of living compared to any other factor in a voluntary settlement, if indeed cost of living was given any weight.

In this case, not only is the Association seeking a total package increase in excess of the voluntary settlements of the settled comparables, but an increase which far exceeds

the cost of living. It must be noted that the Board's final offer of 5.7% also exceeds the cost of living by a significant amount. Based on the increase in the cost of living, the cost-of-living factor is more supportive of the Board's final offer than the Association's final offer.

The Board introduced evidence relating to both public sector and private sector settlements. The Association challenged the relevancy of the data, noting that the information related to percentage increases without regard to basic wage data thus precluding a determination of whether the increases were applied to a high or low wage rate.

There is some validity to the Association's objection. The data provided by the Board was expressed in percentages which precluded a full analysis of the actual dollar amount of the increases as well as a comprehensive analysis of the wage rates to which the percentages were applied. Nonetheless, percentage increases do serve as a guide to the magnitude of settlements in the public and private sector.

The data provided for Manitowoc County covers a number of agreements covering both professional and non-professional employes. The increase for County employes in all bargaining units for 1986 was 3.2%. This included six bargaining units all of which are organized. Village of Reedsville employes, who are not organized, received an increase of 1.93%. Certainly the Village of Reedsville cannot be viewed as setting a pattern.

A review of the private sector data provided by the Board indicates a broad range of increases ranging from no increase to increases in the 3% to 4% range. The data provided for the private sector was quite extensive and included a wide range of industries. None of the data provided for either the public or private sectors indicated settlements of the magnitude being sought by the Association. In fact, the Board's final offer exceeds the pattern of settlements in the public and private sectors.

It is undisputed that teacher salary settlements have exceeded the settlements in the public and private sectors. The Board's final offer, while not equal to the settlements arrived at in the three settled comparables, exceeds the settlements in both the public and private sectors on a percentage basis. In the opinion of the undersigned, the public and private sector settlements tend to give more support to the Board's final offer than to the Association's final offer.

Both parties quoted from arbitration decisions which addressed the issue of the public interest and welfare. As with the issue of cost of living, it has been argued that the interest and welfare of the public is most appropriately addressed by utilizing voluntary settlements among comparables as the guide, as the economic conditions affecting the comparables also affect the parties to the dispute in a similar manner. It can be argued that unless a public employer is experiencing economic conditions which are unique, it is in the public's interest and welfare to grant increases which are competititve with the increases granted by other public employers in order to attract and retain competent personnel. There is nothing in the record in this case which would serve as a compelling reason for awarding either party's final offer based on the public's interest and welfare. There is nothing in the record to indicate that an award in favor of the Association would result in dire consequences to the public or the taxpayers, or that an award in favor of the Board would result in dire consequences to the teachers.

Based on the record, it must be concluded that the settlements of the three comparable districts whose settlements are not disputed are more favorable to the Association's position than to the Board's position. However, it must be noted that the Association's final offer exceeds the total package settlements of the three settled districts. Both the Association's final offer and the Board's final offer exceed the cost of living

by a substantial margin. The available data regarding public sector settlements and private sector settlements indicate that both final offers exceed the pattern of settlements in both the public and private sector.

The Association's final offer exceeds the average of the settled comparables, which are already substantially in excess of other public and private sector settlements and the CPI. Under such circumstances, the Association has a heavy burden in justifying its position. In his award last year, Arbitrator Malamud found, with nine of the eleven districts settled, that there was not a case for catch-up. Despite this fact, he awarded the Association's final offer. Therefore, catch-up cannot be persuasively argued as a factor in the instant case. Although the three settled comparables in this case favor the Association's final offer, consideration must be given to the other statutory criteria. In this case the statutory criteria, including CPI, public sector settlements and private sector settlements favor the District's final offer. Under the circumstances of this case the undersigned cannot find sufficient justification for awarding a total package increase of 8.9%--an increase in excess of the other settled districts.

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

## AWARD

That the District's final offer and the previous stipulations of the parties be incorporated into the Agreement.

Neil M. Gundermann, Mediator/Arbitrator

Dated this 31st day
of July, 1987 at
Madison, Wisconsin.