IN THE MATTER OF ARBITRATION Between WITTENBERG-BIRNAMWOOD EDUCATION ASSOCIATION (Association) -and- WITTENBERG-BIRNAMWOOD SCHOOL DISTRICT (Administration)	Marvin Hill, Jr., Arbitrator WERC Case 11 No. 37913 MED/ARB - 4164 Decision No. 24359-A

Appearances

For the Association: Mr. Thomas J. Coffey, Executive Director, Central Wisconsin Uniserv Council-North, P.O. Box 1606, Wausau, Wisconsin 54402.

For the Administration: Mr. Steven Holzhausen, Membership Consultant, Wis. Assn. of School Boards, 1812 Brackett Ave. Suite #4, Eau Claire, Wisconsin 54701.

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

This dispute involves negotiations for a 1986-87 collective bargaining agreement. The record indicates that bargaining for a successor agreement began in the Spring of 1986. The parties met in open session to exchange initial proposals on May 20 and July 15, 1986. Thereafter, the parties met on four (4) occasions in attempts to reach a voluntary settlement.

On December 3, 1986 the Administration filed a petition with the Wisconsin Employment Relations Commission (WERC) alleging that the parties were at impasse in negotiations. The Administration further requested that the Commission

initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On February 16, 1987 a WERC investigator conducted an investigation which reflected that the parties were deadlocked in their negotiations. On March 18, 1987, the investigator notified the parties that the investigation was closed and advised the Commission that the parties remain at impasse.

On April 15, 1987 the undersigned was notified by WERC of his selection as mediator-arbitrator. A mediation and arbitration hearing was held on June 9, 1987 at the District's offices in Wittenberg, Wisconsin. After several attempts to mediate the dispute, an impasse was declared. (One issue that was not part of the original impasse--the salary of the basketball coach--was mediated to a settlement). Post-hearing briefs were filed and exchanged through the offices of the arbitrator on July 1, 1987. Reply briefs were received on July 22, 1987 at which time the record was closed.

II. ISSUE FOR RESOLUTION

All issues have been resolved except that of the 1986-87 salary schedule.

III. POSITION OF THE ASSOCIATION

The Association proposes a base salary of $16,400, an increase of $1,000, or 6.5%, over the 1985-86 base salary. No structural change in the schedule is proposed.

In support of its offer, the Association makes the

following arguments:

1. Appropriateness of athletic conference schools as the proper basis for comparisons of wage rates. The Association notes that at the time of the hearing nearly half of the appropriate athletic conference schools had settled. It also pointed out that last year an arbitrator summarized the District's position on comparability as follows:

> The District is prepared to "live or die" by the Athletic Conference. The stability of future collective bargaining between the Association and the DIstrict will be destroyed if other comparables are used in these wage comparisons. (Brief at 4).

The Association contends that its position is consistent with established arbitral dicta. However, the Association argues that if more schools are needed to affirm the requested wage increases, the appropriate group would be the Cooperative Educational Service Agency No. 8 (CESA-8) schools. According to the Association, its choice of comparability groupings avoids selective comparability "shopping" merely to support a particular proposal.

2. Comparability of Wittenberg-Birnamwood to comparable districts using benchmark comparisons, average salary dollars per returning teacher data, and percentage of salary increase.

Benchmark comparisons. The Association argues that its 1986-1987 salary offer is more appropriate than the District's offer when dollars and percentages at all seven of the commonly used benchmarks are analyzed. In this regard the Association offers the following standard benchmark measurements for the athletic conference.

Chart I (Association Exhibit #78 a, b, and c)
Percentage Increase to Average Increase on 7 Benchmarks
of the Association's and the District's Offers --
Settled Schools in Athletic Conference

	Association	District
BA Minimum	+ .7	- 1.3
BA 7	0	-2.0
BA Maximum	+ .2	- 2.2
MA Minimum	+ .3	- 1.7
MA 10	- .7	- 2.7
MA Maximum	- .7	- 2.7
Scheduled Maximum	-1.4	- 3.4

Chart II (Association Exhibit #79 a, b, and c)
Dollar Increase to average increase on 7 Benchmarks
of the Association's and the District's Offers --
Settled Schools in Athletic Conference

	Association	District
BA Minimum	+111	-189
BA 7	+ 39	-345
BA Maximum	+134	-348
MA Minimum	+ 62	-266
MA 10	+ 71	-525
MA Maximum	- 86	-576
Scheduled Maximum	-254	-791

The Association adds that the benchmark evidence from CESA 8 affirms the athletic conference rate of increase and are, in fact, higher than in the athletic conference. (Association Exhibits 107 and 108). The Association concludes that its offer is more appropriate than that of the Administration.

Average Salary Dollar Increase per FTE. According to the Association, its offer is only $67 above the average increase in comparable athletic conference districts while the District is $394 below the average increase in comparable districts. (Brief at 14).

Percentage Increase per FTE. Again, the Association

finds its offer of .42 percent below the average increase to be more reasonable than the District's offer which is 2.41 percent below the average increase. (Brief at 15).

The Association argues that the percentage increase per FTE and average increase per FTE evidence is reliable and was consistently calculated. Moreover, the Association maintains that the District attempted to use actual costs rather than projected costs when calculating cost for Amherst. The Association claims that it used the projected figures and therefore the Association's costing for Amherst should be accepted.

Historical Evidence. The Association contends that the teachers at Wittenberg-Birnamwood not only lost dollars in relationship to their previous standing but also lost rank from 1984-1985 to 1985-1986. This slippage is evident when either the athletic conference or the CESA 8 is used as a comparison group. The Association wants only to maintain the established rankings. (Brief at 17-18).

Additional evidence. The Association includes specific statewide evidence to support its offer. (Association Exhibits #124, #111, and #118). It is also pointed out that although Wild Rose has not settled, the last offer presented by the Wild Wood District is supportive of the Association's position. (Association Exhibit #110).

3. Exclusion of Almond, Iola-Scandinavia, and Port Edwards for benchmark comparisons. The Association points out that these three districts are in the athletic conference

but that they do not have traditional salary schedules. Citing arbitral opinions, the Association argues that meaningful benchmark comparisons cannot be made to schools that do not have traditional pay systems.

4. Interests and welfare of the public. In this regard the Teachers, citing arbitral opinions, contend that the pattern of settlements decisively support the Association's position and that this position meets the interests and welfare of the public. The Association argues that it is not in the interest and welfare of the public for an arbitrator to move in the opposite direction from the pattern established in the area through collective bargaining in the absence of an inability to pay on the part of the school district. (Brief at 25, citing Arbitrator Rice in Plum City, Dec. No. 22049-A, 1985).

According to the Teachers, the record is devoid of any evidence that any special conditions exist to justify special treatment for its wage increases. Wittenberg-Birnamwood is the second largest district in the conference and receives state aid at a substantially higher level than most conference schools. Moreover, the District has provided no evidence that the farmers in the Wittenberg-Birnamwood area have any more difficulties than the farmers in comparable districts. In short, the District's "isolationist" view is wholly unsupported by the facts and inconsistent with the welfare criterion.

5. The settlement pattern as the basis for measuring

the cost of living criterion. With respect to the cost of living criterion, the Association maintains that the one common statement by most arbitrators is that the wage pattern is the best indicator of the proper cost of living increase. Citing Arbitrator Kerkman's decision is Merrill Area Ed. Association (Dec. No. 17955, 1981) and other decisions, the Teachers assert that the employees as a party to an interest arbitration are entitled to no greater or less protection against cost of living increases than are the employees who entered voluntary settlements.

6. Failure of the District to make private sector wages a relevant comparable. The Association submits that, consistent with arbitral authority, private sector wage increases should not be given much weight in comparison to teacher settlements. (Brief at 34).

IV. POSITION OF THE ADMINISTRATION

The District proposes a base salary of $16,100, an increase of $700 (4.6%) over 1985-86, with no change in the current salary structure. According to the Employer, its package increase of 6.6% is overly generous and fits the criteria cited in Section 111.70 (4)(cm)7 of the Wisconsin Statutes. In support of this position the following arguments are made:

1. Comparable school districts. The Administration agrees with the Association that the best comparable schools

are those in the athletic conference. In this respect the District believes that the comparability groupings should not be changed from year to year to advance either party's argument. Management argues against using the CESA - 8 schools as a relevant benchmark.

The Board believes that the school districts that are in the athletic conference form a comparability pool that can be justified on the many factors that arbitrators have traditionally and consistently relied upon in determining comparability. According to the Administration, these factors include the following: (1) number of pupils; (2) number of teachers; (3) pupil-teacher ratio; (4) expenditures per pupil; (5) equalized valuation per pupil; (6) tax levy per pupil; and (7) total levy rate. (Brief at 11).

The District concludes that the Association has not shown any compelling reasons for comparing Wittenberg-Birnamwood to school districts in the CESA - 8 grouping.

2. Total cost of both final offers. The Administration argues that its final offer would amount to a total package increase of 6.6%, or $2,000 per teacher while the Association's proposed increase would be 8.4% or $2,569 per teacher. The Board also compares costs based only on the salary schedule itself. In this regard, the District calculates a 6.2% increase, or $1,420 per teacher, as a consequence of its proposal and an 8.2% increase, or $1,881 per teacher, for the Association's offer. Further, the

District points out that the parties are $52,064 apart in total package terms which reflects a difference of $569 per teacher. (Brief at 12).

3. The statutory criteria. The Board maintains that the welfare of the public would be better served by its offer since Wittenberg-Birnamwood is a predominately rural school district and the farm economy is depressed. Although the Administration does not plead inability to pay, it points out that there has been a decline in farm incomes over the past several years and that the public's ability to pay should be considered by the arbitrator. According to the District, the ability to pay criterion should be given more weight than the comparability criterion. The Board submits that its offer is more reasonable than the Association's offer and that its offer best meets the statutory criteria.

According to the Administration, its final offer exceeds the cost of living as measured by the Consumer Price Index (CPI) by 4.8%. The Board does not seek to settle at or near the inflation rate of 1.8%. However, the Board does believe that the Association's offer, which it says exceeds the CPI by 6.6%, is unreasonable and excessive. The District asks the arbitrator to give the same weight to the cost of living criterion and the comparability criterion.

With respect to the comparability criterion the Administration makes two major arguments. First, the Board contends that private sector settlements support its offer. (Administration Exhibits #38, #39, and #40). It is argued

that the Board's offer reflects salary increases in the private sector and that these increases followed changes in the CPI. Second, in its brief the Board compares the parties' final offers with various benchmarks of the Central Wisconsin Athletic Conference School Districts and presents the following data:

BENCHMARK RANKINGS

	BA	BA-7	BA-MAX	MA	MA-10	MA-MAX	SCHED MAX
1985-86	4	2	1	5	2	2	2
1986-87							
BOARD	5	4	2	6	2	3	3
ASS'N	3	2	1	3	1	2	2

Anticipating the Association's argument that the Association's offer improves its ranking and restores its position to 1984-85 levels, the Administration urges the arbitrator to reject this argument and claims it "should not be penalized for going to arbitration in 1985-86 and having its offer selected by the Arbitrator." (Brief at 27). The Board argues that its offer leaves the teachers above the conference average on all the benchmarks except the BA and the MA base which are $136 and $167 below the average. The District notes that the Wittenberg-Birnamwood district has historically ranked high on all the benchmarks. The District maintains that its offer basically maintains its position on the benchmarks and is a moderate and fair package increase, especially in light of the district's economic conditions.

V. DISCUSSION

A. The Statutory Criteria

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

> a. The lawful authority of the municipal employer.
> b. Stipulations of the parties.
> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities.
> e. The average consumer prices for goods and services, commonly known as the cost-of-living.
> f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
> g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
> h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

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

B. Comparability

The athletic conference as a benchmark. There is no question that most Wisconsin interest arbitrators have

designated the athletic conference as the preferred comparable for evaluating the parties' final offers. As stated by Arbitrator Neil Gundermann in Tigerton Schools (Dec. No. 23001, 1986):

> A review of arbitral authority indicates that as a general rule arbitrators favor the athletic conference as the preferred set of comparables. The selection of the athletic conference as the preferred set of comparables is due at least in part to the fact that the parties themselves frequently rely on the athletic conference schools as being comparable. There are also certain assumptions made regarding the athletic conference, which may not always be true. It is assumed that schools in the same athletic conference are approximately the same size in terms of students and staff, are generally in the same geographic area, and generally reflect the same type of constituency, i.e. urban, suburban or rural. If these assumptions are supported by the evidence, the athletic conference is the preferred set of comparables to be considered.

Likewise, Arbitrator Gordon Haferbecker, in Wittenberg-Birnamwood (Dec. No. 35705, 1986) had this to say concerning the use of the athletic conference as an appropriate benchmark:

> In teacher arbitration cases, arbitrators and the parties have often used the area athletic conference as the basis for comparing salary and other contract issues. This is because the districts in an athletic conference usually are not too different in enrollments, size, or faculty and size of community. They are often in a fairly similar labor market with similar economic conditions. Conference districts are usually within the same geographic area.

While Arbitrator Haferbecker recognized that in some cases the athletic conference may not be the best set of comparables, it is noteworthy that he stated that for Wittenberg-Birnamwood the athletic conference was the best set of comparables. At page 6 of his award the arbitrator concluded:

> The Arbitrator accepts the District's position that the Athletic Conference in this case does represent the best set of comparables. I would recommend its use in future negotiations with the parties--but it would be appropriate to eliminate Port Edwards because of its urban character, its distance, and because it is a paper mill community; and Iola-Scandinavia and Almond-Bancroft, because of their non-traditional schedules, should be excluded from bench mark comparisons.

In the instant case both parties have agreed that the schools in the Central Wisconsin Athletic Conference are comparable to Wittenberg-Birnamwood. Moreover, there is some precedent (which I have followed) for excluding Iola-Scandinavia, Almond, and Port Edwards from a benchmark analysis since these three districts do not have traditional salary schedules. Manitowoc School District (Kerkman, 1984); Port Edwards School District (Weisberger, Dec. No. 20915-A, 1985); Two Rivers School Dist. (Yaffe, Dec. No. 18610, 1981).

The Cooperative Educational Service Agency No. 8 (CESA-8) schools as a benchmark. The relevance of the CESA-8 schools is another matter. The Union has submitted evidence designed to show that CESA-8 school districts are comparable to Wittenberg-Birnamwood. Clearly, some of the CESA districts may be comparable to Wittenberg-Birnamwood. Other characteristics of some CESA schools--geographic proximity, economic base, and levy rate--tend to diminish their usefulness as a comparable. In this regard I agree with Arbitrator Gill Vernon's analysis in School Dist. of Marion (Dec. No. 19418, 1982) where he stated:

> Arbitrators have generally held that schools in the athletic conference should be used as comparables . . . Outside of schools in the athletic conference and other stipulated schools, a party seeking to include districts as comparable must demonstrate a reasonable basis, in

terms of the factors normally considered to establish comparability, for the schools they consider comparable. This demonstration should be persuasive and go beyond mere assertion to adequately rebutting challenges by the opposition to the alleged comparability. The neutral must be convinced that the justification for comparability is more than an inclusion of a district(s) solely because they tend to support a parties' [sic.] position.

Where, as here, 10 of 16 conference schools have settled, 1/ the athletic conference should be the primary comparable for evaluating the parties' final offers.

What do the comparables show? When the comparables are examined, the Association would appear to make the better case. The following data is particularly telling:

Central Wisconsin Athletic Conference
Settlement Data
1986-87

District	Dollars per FTE	Salary % Increase
Marion	2,095	9.97
Menominee Teachers	2,059	9.49
Amherst	2,015	10.31
Almond	1,925	10.80
Iola	1,767	8.28
Manawa	1,766	8.37
Rosholt	1,753	8.65
Port Edwards	1,654	6.59
Shawano	1,562	6.60
Shiocton	1,437	6.43
Average	1,803	8.55

1/ Eight settlements in the Central Wisconsin Athletic Conference were reported as of June 2, 1987, the date of the hearing. On June 22, 1987 the Association, with proper notification to Mr. Holzhausen, enclosed information on two (2) additional settlements (Rosholt & Iola-Scandinavia), bringing the number of conference settlements to ten. In its Reply Brief at 4 the Association asserts that 11 of the 16 conference schools have settled. The Board, in its Reply Brief at 1, asserts that the number is 12.

Wittenberg-Association	1,881	8.15
Wittenberg-Board	1,420	6.16

As illustrated, the Union's offer is approximately one-half percent lower than the reported average increase for the conference. The Administration's offer of 6.16% (total package 6.6%) would amount to an allocation that is approximately 2.4% less than the average settlement. Similarly, the Association's offer is $67 above the average increase in the conference while the District's is $394 below the average increase. Further, when the Association's benchmark measurements are studied (see Chart I & II, supra at 4), the evidence indicates that the Teachers' offer is on target with the comparable increases while Management's offer is significantly below the going rate of increase.

From a historical perspective, the Association has argued that acceptance of the Administration's position would further deteriorate the 1985-86 ranking. In its Reply Brief at 3 it submits the following data:

Benchmark Rankings for Settled Schools in the Athletic Conference (standard salary schedules)

	1984-85	1985-86	1986-87	
			Ass'n	Board
BA Minimum	3	4	3	5
BA Step 7	2	2	2	4
BA Maximum	1	1	1	2
MA Minimum	3	5	3	6
MA Step 10	1	2	1	2
MA Maximum	2	2	2	3
Schedule Max	1	2	2	3

Objecting to the Association's historical ranking analysis, the Administration points out that its final offer

was accepted in 1985-86 because Arbitrator Haferbecker felt it was more reasonable than the Association's offer, even though it resulted in a loss of ranking on some of the benchmarks. If this loss of position was unreasonable, submits the Board, the arbitrator would have selected the Union's offer. In the District's eyes, the arbitrator in the instant case cannot select the Union's offer on the basis of restoring lost ground. To do so, it is argued, would undermine the mediation/arbitration process and penalize the District for having its offer selected in 1985-86.

The easy answer to this argument is that a party's offer would not be selected only on the basis of a historical analysis. The statute mandates otherwise. Further, in this case selection of the Union's offer will not restore the Teachers' 1984-85 salary index ranking. As noted, the Association's offer increases the schedule ranking (relative to 1985-86) at three benchmarks; the Administration's offer would result in a decrease in six benchmarks. There is simply no justification for selecting an offer that decreases six of the seven benchmark rankings from what they were in 1985-86. The case is even more compelling when 1984-85 is used as the starting base.

C. Interest and Welfare of the Public

In evaluating the parties' final offers, the Act mandates that the Arbitrator weigh the interest and welfare of the public. One could write a dissertation on how arbitrators have applied this criterion. At minimum it

includes balancing the need for professional teacher salaries that attract and hold quality faculty against the ability and willingness of the district and state taxpayers to finance such an increase. In Burlington Area School District (Dec. No. 17135-A, 1979), Arbitrator Frank Zeilder addressed this criterion and differentiated between "general public interest" and "employee interest." He pointed out that occasionally the two coincide; however, at times, they do not.

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

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

Arbitrator Sharon Imes, in Bayfield School Dist. (Dec. No. 36840, 1987), concluded that a wage offer which was not comparable was less reasonable, at least where the employer was unable to demonstrate its financial condition is any different than that of the comparable districts. In the words of the arbitrator:

> Not only does the District's offer result in a lesser increase in percent and dollars at the benchmarks than among the comparables but it causes a greater movement away from the average than has been maintained by the District in the past. As can be seen in the following chart, the District's offer causes additional deterioration in salary at all the benchmark positions. The Association's offer, on the other hand, maintains almost the same position relative to the average as has

existed for the past three years.

* * *

> In addition to the deterioration shown through the benchmark analysis, a comparison of the total package and salary average increases both in dollars and percent indicates the District's offer is not only less than the average established by the comparables, but is less than the lowest settlement. Since the District is unable to demonstrate that its financial condition is any different than that of the comparable districts, a wage offer which is not comparable is found to be less reasonable.

Arbitrator Miller, in Elva-Sturm School District (Dec. No. 36060, 1986) similarly reasoned that the public interest is served when making regular overall improvements that are consistent with trends and patterns among comparable schools.

It is my opinion that the interest and welfare criterion favors the Association's proposal. The District has offered an increase that is well below the average for the conference. In addition, the Board's offer will result in further deterioration of the salary schedule. The Administration has not established that the economic conditions in Wittenberg-Birnamwood are significantly different than those in other benchmark schools, nor has management demonstrated that the District does not have the ability to pay the Association's proposal. Simply stated, under this record it is not in the interest and welfare of the public for an arbitrator to move in the opposite direction from the pattern established in the area through collective bargaining.

D. Cost of Living

The often-quoted Arbitrator Joe Kerkman discussed the

cost-of-living criterion in the Merrill Area Education Ass'n (Dec. No. 17955, 1981) decision. According to Arbitrator Kerkman:

> [T]he undersigned concludes that the proper measure of the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and associations have settled for who experienced the same inflationary ravages as those experienced by the employees of the instant Employer. The voluntary settlements entered into in the opinion of the undersigned create a reasonable barometer as to the weight that cost of living increases should be given in determining the outcome of an interest arbitration. The employees as a party to interest arbitration are entitled to no greater or less protection against cost of living increases than are the employees who entered into voluntary settlements.

Arbitrator Neil Gundermann, in Tigerton School District (Dec. No. 23001, 1986) similarly reasoned:

> A number of mediator/arbitrators have concluded that the cost of living is best reflected by voluntary settlements. In more precise terms, voluntary settlements tend to reflect the weight given to the cost of living by the parties, and do not necessarily reflect the actual cost of living.

I believe the thoughts of Messrs. Kerkman and Gundermann reflect the better weight of authority. The cost-of-living data support the Board but, in the instant case, the comparables deserve more weight. The impact of inflation upon employees in a given area is best reflected by the level of contract settlements that evolve during the period under consideration.

E. Conclusion

Section 111.70(4)(cm)6.c through 7.h of the Act mandates that the total final offer of the Association or the District

my decision is for the Association.

VI. AWARD.

The Wittenberg-Birnamwood Education Association's final offer is awarded.

Dated this 19th day of August 1987, DeKalb, Illinois.

Marvin Hill, Jr.

Marvin F. Hill, Jr.
Arbitrator