STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of		
NORTHWEST UNITED EDUCATORS		
To Initiate Mediation-Arbitration Between Said Petitioner And		Case No. 12 No. 38266 MED/ARB-4271 Dec. No. 24427-A
OSCEOLA SCHOOL DISTRICT		

APPEARANCES

On Behalf of the Northwest United Educators: Michael J. Burke, Executive Director

On Behalf of the District: Shannon E. Bradbury, Staff Counsel Wisconsin Association of School Boards

I. BACKGROUND

On September 23, 1986, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on June 30, 1986. Thereafter, the Parties met on two occasions in efforts to reach an accord on a new collective bargaining agreement. On February 3, 1987, the Association filed the instant petition requesting that the Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act and on March 24, 1987, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations. By April 14, 1987, the Parties submitted to the Investigator their final offers, and the Investigator notified the Parties that the investigation was closed and the Commission that the Parties remain at impasse.

Next, the Parties were ordered to select a Mediator/Arbitrator. The undersigned was so selected and his appointment was ordered April 30, 1987. The Parties met with the Mediator/Arbitrator on June 15, 1987. However, efforts at a mediated settlement were unsuccessful and an arbitration hearing was conducted, post hearing briefs and reply briefs were submitted, the final exchange of which was completed August 14.

II. FINAL OFFERS AND ISSUES

The remaining matters to be resolved by arbitration relates to the amount of the 1986-87 increase for the salary schedule (Appendix A to the 1985-86 Agreement), the co-curricular salary schedule (Appendix B) and the extra compensation salary schedule (Appendix C). The Union proposes to increase each schedule by 6.5%. The Employer proposes to increase the salary schedule by 3.5% and the other schedules by 5%. Neither Party proposes to change the structure of the salary schedule.

According to the Union, NUE's final offer results in an 8.14 percent wage increase over the 1985-86 salary cost, or an average salary increase of $1,903 per returning teacher. The Board's final offer results in a 5.09 percent wage increase over the 1985-86 salary cost, or an average salary increase of $1,191 per returning teacher. According to Board data, the Board's offer amounts to a salary increase of 5.01% or $1,214 per teacher. The total package increase is 5.27%. The Union's offer amounts to a salary increase of 8.01% or $1,941 per returning teacher in salary alone. The total package increase is 8.09% over last year. At the benchmarks, the offers yield the following increases:

	1985-86	1986-87	
		Board ($/%)	Union ($/%)
BA Min	$16,184	$16,750/(566/3.5)	$17,236/(1052/6.5)
BA Max	23,952	24,791/(839/3.5)	25,509/(1557/6.5)
MA Min	17,506	18,119/(613/3.5)	18,644/(1138/6.5)
MA Max	28,535	29,533/(998/3.5)	30,390/(1855/6.5)
Sched. Max	29,571	30,606/(1035/3.5)	31,493/(1922/6.5)

III. ARGUMENTS OF THE PARTIES

A. The Union

The Union focuses on the salary schedule portion of the offers since they see this to be the key issue. With respect to this issue they believe as a threshold matter the Arbitrator must determine which schools will be used for comparability purposes. They recognize that generally speaking the District argues that the Upper St. Croix Valley Athletic Conference should be the sole indicator of teacher comparability and that, since there is only one 1986-87 settlement in the athletic conference, the teacher versus teacher comparability factor in the Statutes should be given little, if any, weight by the Arbitrator. On the other hand, the Union believes that due to the lack of settlements in the athletic conference an expanded set of comparables is appropriate. Specifically, they rely on 31 of 41 school districts in CESA #11 which are settled for 1986-87. Thus, they believe where there is an overwhelming settlement pattern within a geograhic area it is appropriate for the Arbitrator to look beyond the athletic conference so that

the teacher versus teacher comparability factor in the Statutes is appropriately considered. They also cite general arbitral support for this position as well as special reference to two cases within the Upper St. Croix Valley athletic conference where the comparables were expanded--School District of Grantsburg, Dec. No. 30298, 3/83, Arbitrator Richard John Miller, and Frederic School District, Dec. No. 17486-A, 5/80, Arbitrator Sharon Imes.

CESA #11, in their opinion, is an appropriate group for expansion purposes. All schools are members of CESA and participate in various programs of an educational nature. Additionally, the CESA's mission is to serve the needs of local school districts. Included as CESA activities are curriculum meetings, monthly meetings for superintendents, monthly or quarterly meetings for principals, as well as meetings on suicide prevention, children at risk, the National Diffusion Network, the Job Training Partnership Act, alcohol and other drug abuse, and human growth and development. Additionally, in the 1986-87 school year, there was even greater CESA activity due to involvement on how the local school districts can and should comply with the new educational standards by the fall of 1988. They note that Arbitrator Marvin Hill, Jr., recently found CESA to be an appropriate comparable pool in the School District of Black Hawk, Dec. No. 37184, 4/87.

Against these considerations, the NUE asserts that the Arbitrator, in rendering his decision in this matter, must award the final offer which most closely approximates what the Parties would have agreed upon had they reached a voluntary settlement. It is their opinion that a review of the salary data in this case clearly establishes that NUE's final offer closely approximates the agreement the Parties would have reached if a voluntary settlement had occurred.

In support of this offer, the following benchmark comparisons were presented:

1986-87 Average Benchmark Increases

	CESA #11		NUE			BOARD		
	$	%	$	(Diff)	% (Diff)	$	(Diff)	% (Diff)
BA Min	1083	6.9	1052	(-31)	6.5(-.4)	566	(-517)	3.5(-3.4)
BA Max	1426	6.3	1557	(+131)	6.5(+.2)	839	(-587)	3.5(-2.8)
MA Min	1232	7.2	1138	(-94)	6.5(-.7)	613	(-619)	3.5(-3.7)
MA Max	1726	6.5	1855	(+129)	6.5(--)	998	(-728)	3.5(-3.0)
Sched. Max	1860	6.7	1922	(+62)	6.5(-.2)	1035	(-825)	3.5(-3.2)
BA 7th	1254	6.5	1304	(+50)	6.5(--)	703	(-551)	3.5(-3.0)
MA 10th	1541	6.6	1599	(+58)	6.5(-.1)	861	(-680)	3.5(-3.1)

Based on this, it is apparent to NUE that their final offer is slightly above average in terms of dollar increases (except at the BA and MA minimums) and slightly below average in terms of percentage increases. On the other hand, the Board's final

offer is dramatically below average both in terms of dollar and percentage increases at the 7 benchmarks. They also analyze the impact of the offers in terms of rank within CESA #11 concluding that while NUE's final offer, taken as a whole, maintains the District's historical ranking, the Board's final offer results in an erosion of the District's historical ranking at each benchmark and, on average, results in a loss of ranking from 5th to 11th place among the comparables.

The NUE also looks toward a more limited set of comparables consisting of 13 CESA #11 school districts which are geographically proximate, that have a student enrollment and an FTE within the range of student enrollments and FTE's within the Upper St. Croix Valley Athletic Conference. These 13 school districts are: Boyceville, Cameron, Chetek, Clear Lake, Colfax, Cumberland, Durand, Elk Mound, Glenwood City, Prescott, Spring Valley, St. Croix Central and Turtle Lake. They offer the following benchmark comparisons:

Average 1986-87 Benchmark Analysis

	13 Schools		NUE		Board	
	$	%	$ (Diff)	% (Diff)	$ (Diff)	% (Diff)
BA Min	1036	6.6	1052(+16)	6.5(-.1)	566(-470)	3.5(-3.1)
BA Max	1411	6.2	1557(+146)	6.5(+.3)	839(-572)	3.5(-2.7)
Ma Min	1151	6.7	1138(-13)	6.5(-.2)	613(-538)	3.5(-3.2)
MA Max	1663	6.2	1855(+192)	6.5(+.3)	998(-665)	3.5(-2.7)
Sched. Max	1731	6.2	1922(+191)	6.5(+.3)	703(-531)	3.5(-2.9)
BA 7th	1234	6.4	1304(+70)	6.5(+.1)	703(-531)	3.5(-2.9)
MA 10th	1484	6.4	1599(=115)	6.5(+.1)	861(-623)	3.5(-2.9)

Thus, they contend no matter what combination of school districts are considered, there is simply no support for the Board's excessively low final offer. They recognize there is one settlement in the athletic conference (Webster). However, it has a unique salary schedule not lending itself to easy benchmark comparison. However, the fact remains that the average salary increase in the Webster School District was 8.5 percent. This is obviously supportive of NUE's 8.14 percent wage proposal. The Union also addresses an arbitration award issued July 27, 1987 involving the School District of Grantsburg (Arbitrator Imes). It is significant, in their opinion, for two reasons, (1) the award represents another decision within the athletic conference in which the arbitrator relied upon an expanded comparable pool and (2) the arbitrator awarded NUE's 6.5 percent per cell final offer--the same percent per cell final offer present in this case.

They also mention that the Osceola School District Superintendent was increased by $3,500, or 8 percent, for the 1986-87 school year. This, too, supports NUE's request for a $1,903 increase per returning teacher, or 8.14 percent. Further, the fact that the Osceola Superintendent was the highest paid superintendent in the athletic conference in the

1985-86 school year (and will undoubtedly be in the 1986-87 school year) indicates that the Osceola School District has assumed a wage leadership position both with the Superintendent and the teaching staff. This arbitration proceeding should not destroy this relationship.

The Union also offers argument on other statutory factors. On cost of living, NUE submits that there is abundant arbitral precedent which holds that the best indicator of the cost-of-living is the pattern of settlements among the comparables. Thus, they argue its final offer must not be viewed in isolation as it relates to the cost-of-living.

Regarding the factor relating to the "interest and welfare of the public," they anticipate an argument by the Board in this regard. In response they believe the evidence establishes that the Osceola School District is certainly no different than many of the other school districts in CESA #11 that have settled contracts for the 1986-87 school year. For instance, the District's levy rate ranks fourth lowest among eight athletic conference schools. Overall, the District's levy rate is about average when the thirty settled CESA #11 school districts are considered and the Osceola School District has the second highest median family income in the Upper St. Croix Valley Athletic Conference. Thus, they conclude that the Osceola School District is in better financial shape than many of the other settled school districts in the area.

B. The District

The main argument of the Employer is that their offer best meets the concerns of the interest and welfare of the public. While they don't argue that it has an absolute inability to pay the teachers' salary demands, it does contend that instead the ability of the District's taxpayers to meet that unlimited tax must be addressed along with the District's unemployment figures. For instance, for April at 7.7% Polk County had an unemployment rate 1.6% above the state average 6.1%. The other two counties represented in the conference fared a little better; Burnett had a rate for April of 6.9% and St. Croix was below the state average at only 4.8%. When year to date averages are considered matters are even worse. Polk County had a 9.9% rate and Burnett 10.4%.

Another factor, in their opinion, which demonstrates the taxpayers limited ability to pay is the property tax delinquency rate. In 1986, Polk County had a tax delinquency increase of an astounding 24.4% over the previous year (1985 taxes are collected in 1986) for a total of uncollected property taxes of over $2.4 million. St. Croix County was in an equivalent situation, with an increase in delinquencies of 24.1% and total dollar delinquency of over $2.7 million. Burnett came in a distant third with an increase of "only" 9.6% over 1985 collections.

The tax levy has also been on a continuous rise. In the 1983-84 school year, the levy for Osceola was approximately $2.03 million. The following year the levy was $2.15 million; in 1985-86 it was $2.3 million and for this year, 1986-87, it was a $2.72 million. This has been accompanied by a 4% decrease in equalized value in 1986 over 1985. Much of this relates to the decline in agricultural land values which they emphasize is only one aspect of the serious problems in agriculture. All of these considerations cause them to question whether an 8% wage increase is supportable.

Next, the District argues that their offer is most reasonable in light of the wages and settlements of other similarly situated employees. In this respect, they consider only districts in the Upper St. Croix Valley conference (Frederic, Grantsburg, Luck, St. Croix Falls, Somerset, Unity and Webster) since historically these schools have looked to each other's wage patterns in setting salary schedules. They urge the Arbitrator to reject the Union's attempt to expand the comparables especially to all the widely diverse CESA #11 schools. They cite a number of cases in support of this contention. Since there are no useful comparisons available, they contend comparisons of benchmark salaries must carry comparatively lesser weight in situations where there are no settlements and the District feels the economic news sufficiently compelling to essentially dwarf such arbitrary comparisons from outside the athletic conference.[1]

They do, however, believe it is significant to note that for the past three years, Osceola has had the distinction of having the highest average teacher salary in the conference, as well as the highest overall compensation per teacher. For instance, the average teacher salary in the athletic conference was $22,564 compared to the average in Osceola of $24,055. Against this they calculate that if the average salary in every other conference school was to be increased by an outside amount of 8%, Osceola would still be number one under the Board's offer, thereby maintaining the spirit was well as the rank of the previous agreements.

Comparisons are also made by the District to other municipal employees in the area. For instance, of its three possible units, Burnett County has settled with two of them. In the Sheriff's Department, the employees got 2.5% and 3% for a two-year agreement. The Highway Department crew got nearly 3% for 18 months for 1986-87. Polk County gave its employees 3% for 1986, and had not yet granted a 1987 increase. Regarding private sector employees they note that last the cost of living criteria is considered. For cities of Osceola's size, the cost

1. They object to the inclusion of the Grantsburg decision since it was received after the original due date of the brief (July 27).

of living rose 2.7% from April 1986 to April 1987. The fiscal year-to-date total, from August 1986 to April 1987 (representing the bulk of the applicable school year) was an increase of 0.5%. The Board's present offer is ten times that amount; the Union's offer is sixteen times the rise in the CPI.

IV. OPINION AND DISCUSSION

Of major import in this case is the fact there is only one voluntary settlement in the athletic conference, the comparable group traditionally utilized by these Parties. In view of this the Union expands the comparable group and in doing so places great weight on criteria (d). In contrast, the Employer does not expand the comparable group instead it limits itself to historical and projected comparisons within the athletic conference. Correspondingly, they believe, due to the lack of settlements, greater weight should be given to the other statutory criteria such as cost of living and the interest and welfare of the public.

It is the opinion of the Arbitrator that it is proper in limited circumstances to expand the traditional comparable group. One such circumstance is where there are no or few settlements in the group of comparables traditionally utilized by the Parties.

This isn't to turn standard arbitral thought regarding comparables on its head. This Arbitrator, among others, has strongly endorsed the use of traditional comparable groups, usually the athletic conference, where sufficient comparison exists. Parties should be loathe in the face of sufficient comparisons to go outside the traditional group shopping for favorable comparisons. Nor should they argue for a different comparable group in each bargain just because of the partisan light it sheds. Stability should be maintained in bargaining and where sufficient comparisons exist the traditional group should prevail for purposes of criteria (d).

However, where sufficient comparisons in the traditional group don't exist it is not a reasonable application of the statutory criteria to conclude criteria (d) evaporates. If other reasonable comparisons can be to other comparable schools, it is important that they be made.

Such comparisons to voluntary settlements are a very important and useful tool in objectively deciding the appropriate salary increase. Other Parties, no doubt, when arriving at voluntary settlements, just as arbitrators are directed to do by the statutue, consider all the statutory criteria. They, in the process, give rational consideration to the appropriate mix and influence the individual criteria should have as a whole.

Thus, consideration and deference to a pattern of voluntary settlements is, relatively speaking, a rather objective measure

of the statutory propriety of an offer. This is because it reflects the thoughts of many individuals (labor and management alike) knowledgeable as to the relevant factors, under similar circumstances, not just a single arbitrator with perhaps a much more limited view as to appropriate teachers salaries than the collective consensus.

This explains why this Arbitrator doesn't believe criteria (d) goes out the window when settlements aren't available in the traditional comparables. However, this Arbitrator also believes that comparisons to non-traditional schools do not necessarily deserve as much weight as traditional comparables. As it has been stated before the weight to be given to non-traditional comparables diminishes in proportion to the strengths of the inferences which can be drawn from those comparisons. The validity of the inferences also depend on the facts and circumstances of each case including the relative value of the evidence on the other criteria.

For instance, the inferences to be drawn from some non-traditional comparables might be very weak since the only settlements are in very distant schools or schools quite different in size or economic make-up. In other cases, very strong comparisons can be made for opposite reasons.

With these thoughts in mind, it is appropriate for the purposes of this case to look beyond the athletic conference for evidence for the purpose of applying criteria (d). An evaluation must be made concerning the value of these particular comparisons and they must be weighed against the inferences to be drawn from the evidence on the other criteria.

In looking for expanded comparables, the Arbitrator rejects the wholesale approach offered by the Union in the form of CESA #11 schools. Even the group of thirteen schools is problematic due to factors such as distance.

Accordingly, for the purposes of criteria (d), under these facts and circumstances, comparisons to what ever extent possible will be made to the following schools:[2]

---

2. Grantsburg is included as a comparable. At the hearing, the Arbitrator asked the Parties if they wished to close the record as of the date of the initial briefs. Each Party replied affirmatively. The intent with this suggestion was to give meaning to criteria (G) while giving some practical closure to the record. By using the due date of the brief each Party would have an opportunity to address late breaking awards in their reply briefs. Although the original due date was July 27 it was extended to August 3 and the Grantsburg decision was issued July 27. The Union gave notice of its intent to rely on the award in its cover letter to its initial brief. Accordingly, the Employer has had an opportunity to respond to the award in its reply brief and it is properly part of the record.

Grantsburg	Glenwood City
Webster	Boyceville
Cumberland	St. Croix Central
Turtle Lake	Baldwin/Woodville
Clear Lake	

All these schools are within the same range of comparability factors (FTE, pupil, distance equalized value etc.) relative to Osceola as are all the athletic conference schools.

Much instructive data concerning the settlements in these schools can be extrapolated from the record. The following represents an analysis of the increases at the benchmarks:

	BA Min	BA Max	MA Min	MA Max	Sched. Max
	% $	% $	% $	% $	% $
Avg. Incr.	6.46/1017	6.28/1450	6.46/1132	6.23/1677	6.2/1730
Final Offers:					
Association	6.5/1052	6.5/1557	6.5/1138	6.5/1855	6.5/1922
Difference	+.04/+35	+.22/+6	+.04/+6	+.27/+178	+.3/+192
Board	3.5/566	3.5/839	3.5/613	3.5/998	3.5/1035
Difference	-2.96/-451	-2.78/-611	-2.96/-525	-3.0/-857	-2.7/-695

It is clearly apparent from this data that the Union final offer is more consistent with these other settlements. The Union is somewhat high but not anywhere near the same degree as the Board is low. On average the increases received at each benchmark are $627 less than those received in the other schools. This is a significant difference, equating to over $50 per month less of a salary increase than other teachers. Additionally, the Webster settlements on a percentage basis favors the Union.

The District did make some projections based on average teacher salaries showing Osceola would continue to be a leader at the Board's offer even if an 8% award were rendered everywhere else in the athletic conference. However, this was based on average teachers salaries which is largely dependent on experience. Osceola may have a very senior staff thereby distorting these comparisons. Total reliance on average salaries is ill-advised since with several retirements or resignations of very senior teachers an average salary figure could be significantly altered. This is one reason why benchmarks are more reliable.

Another reason this kind of analysis isn't persuasive is that assumes that the present wage relationships are distorted and need altering. Such would be the opposite of a catch-up situation. When unions are seeking a greater increase than the pattern to catch up wage levels arbitrators hold the unions to a

high standard. The same should apply for employers when arguing for "slow down." They should establish a significant disparity and the need to alter the past relationship. The proof of this is lacking in this record.

This analysis on comparables must be weighed against the other statutory criteria. The cost of living, the interest and welfare of the public and other public and private sector settlements are all relevant. Moreover, where traditional comparables aren't available, other factors deserve more weight. Thus, the Arbitrator is required to balance the various indicators/criteria.

In this case, the inferences to be drawn from the settlements in other schools are fairly strong. This is primarily because the comparability is fairly strong. For instance, an approximation of levy rates between Osceola and the average of the expanded comparables is within $.18 (12.56 vs. 12.38), the equalized value per member is within $1274 (135,504 vs. 136,778) and state aid per pupil is within $81 per pupil (1479 vs. 1560). Additionally, none are farther from two districts away except Cumberland which is closer than Webster in athletic conference schools.

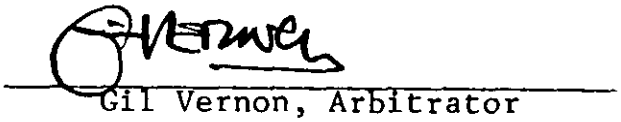
More significantly, while the cost of living and the other economic data (unemployment, tax delinquencies, etc.) are important there is nothing in this record to suggest that Osceola is substantially different in this regard than other school districts. Granting for the sake of argument there are some differences, there are not enough differences to justify the great disparity between the Board offer and settlements in the general area.

Accordingly, the Arbitrator believes that comparability in this case is controlling. Other settlements subsume and give appropriate weight to all the various criteria and objectively point up that the Union's final offer is more appropriate.

It is also the Arbitrator's opinion, that the salary schedule issue should control the other two more minor issues in view of its much greater importance.

AWARD

The Final Offer of the Union is accepted.



Gil Vernon, Arbitrator

Dated this 24th day of November, 1987 at Eau Claire, Wisconsin.