

MAY 13 1988

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *

* In the Matter of Interest Arbitration *

* MELLENE EDUCATION ASSOCIATION *

* And *

* MELLENE SCHOOL DISTRICT *

* Case No. 12 *

* No. 38859 *

* Arb-4435 *

* Decision No. 24992-A *

* * * * *

REPRESENTED BY:

Barry Delaney, Executive Director - Chequamegon United Teachers, on Behalf of the Association

Kathryn J. Prenn, Attorney, Mulcahy and Wherry, S. C., on Behalf of the District

I. BACKGROUND

On May 26, 1987, 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, 1987. Thereafter, the Parties did not meet for purposes of reaching an accord on a new collective bargaining agreement. On May 28, 1987, the Association and the District filed a stipulation requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On August 26, 1987 a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations. The Parties exchanged intermediate offers and proposed stipulations in September and October 1987 and, by October 19, 1987, the Parties submitted to the investigator their final offers as well as a stipulation on matters agreed upon. Thereafter, on November 13, 1987, the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

Subsequently, the Parties were ordered to select an Arbitrator. The undersigned was so selected. The Parties then agreed to exchange their exhibits directly and provide copies directly to the Arbitrator. Briefs were due February 22, 1988. Reply briefs were submitted and exchanged March 9, 1988.

On March 16, 1988 the Union filed an objection with the Arbitrator concerning the Employer's reply brief. On April 4, 1988 the Employer responded to the Union's objections.

II. FINAL OFFERS AND ISSUES

The primary dispute centers around the amount by which the 1986-87 salary schedule should be increased in 1987-88 and again in 1988-89. These differences spill over into extra-curricular activities with each party proposing to increase that schedule by the same percentage as they apply to each "cell" under their final offer. Additionally, the Union seeks to increase "split-grade" pay, overload pay and longevity pay by the same percentage.

The Board's offer on the salary amounts to 5.75% per cell in 1987-88 and 5.5% in 1988-89. The Union seeks 6.1% per cell in 1987-88 and 6.0% per cell in 1988-89. The offers break down as follows on an average-per-teacher wage-only basis.

	1987-88	1988-89	Combined
	-----	-----	-----
Board	7.04%	6.81%	13.85%
	\$1655	\$1715	\$3370
Association	7.39%	7.32%	13.71%
	\$1738	\$1848	\$3586

The following benchmarks would result under each offer:

	1987-88		1988-89	
	Board	Union	Board	Union
	-----	-----	-----	-----
BA Min	17,028	17,084	17,964	18,109
MA Max	24,542	25,626	26,947	27,164
MA Min	18,901	18,963	19,940	20,101
MA Max	28,352	28,445	29,911	30,152
Sched Max	29,373	29,471	30,989	31,239

III. ARGUMENTS OF THE PARTIES

A. The Union

The Union first addresses comparables. They propose to use the Districts within the Indianhead Athletic Conference which are settled for 1987-88 and 1988-89. They note seven of the remaining ten districts are settled for 1987-88 and four are settled for 1988-89. They do not exclude Hurley as the Employer does. The Employer excludes Hurley because it didn't become a member of the athletic conference until 1986-87 and because it has a 3-year agreement.

The Union believes Hurley should be included since it was included as a comparable in the athletic conference in three different arbitration awards. It is curious to them why the Employer seeks to exclude Hurley, an athletic conference school, but seeks to include non-athletic conference schools from the Lakeland athletic conference as secondary schools. They suggest because Hurley is a contiguous district that it is a much more meaningful comparison than any non-athletic conference school and many of the athletic conference schools.

Additionally, they note that both offers provide less dollar increases on all five benchmarks than the conference averages for 1987-88. The average deviation within the Employer's offer is -\$124 from the Conference average increase of benchmarks while the Union's average deviation is -\$45. They also believe four settlements in 1988-89 is sufficient for comparison purposes.

Regarding the main issue of salary schedule, the Union makes numerous benchmark comparisons. First, they note the average percentage increase in 1987-88 was 6.3% at all five of the common benchmarks. This means both offers are below the average settlement in terms of percentage increase. The Employer's offer deviates from the average by -.55% on all benchmarks while the Union's offer deviates by only -.20% on all benchmarks. Similarly, on a dollar basis at the benchmarks, both offers provide less dollar increases on all five benchmarks than the Conference averages for 1987-88. The average deviation within the Employer's offer is -\$124 from the Conference average increase of benchmarks while the Union's average deviation is -\$45.

Similar comparisons are made for 1988-89. The Employer's offer is below the Conference average on all five benchmarks (on a percentage increase basis) while even the Union's offer is below on four of the five benchmarks. The Employer's average benchmark deviation from the average settlement is -0.7% while the Union's average deviation is -0.2%. The same is true for dollar increases. The Employer's offer provides less dollar increases on all five benchmarks compared to the Conference averages for 1988-89. Even the Union's offer provides for less dollar increases on four of the five benchmarks when compared to the Conference averages. The Employer's average dollar deviation from the Conference average is -\$127 while the Union's is -\$18.

Regarding longevity pay and overload pay the Union draws attention to the fact that the District's offer contains a two year freeze on wage rates for longevity and overload pay for large classes while the Union's offer provides 6.1% (1987-88) and 6.0% (1988-89) increases for these two wage rates. For longevity the total cost difference for both years combined is \$1,381 and for overload it is \$100. The Union cannot understand why the Employer has offered a wage increase for regular teaching salaries, split grade overloads and extra

curriculars but not for longevity and class size overload. It is the Union's opinion that there is simply no justification to change the relationship of pay for teachers with large classes to the pay for extra work for all of the other thirty-eight classifications of extra work.

They also direct their attention to the cost-of-living and interest-and-welfare of the public criteria. They believe the settlement pattern is the best indicator of the cost-of-living. In terms of the welfare of the public the District is clearly able to meet the cost of the Association's offer since the difference between them is so small. For two years the total salary difference is \$7,062 and for total compensation there is an additional difference of \$2,838. Thus, the total difference for wages and fringe for two years is \$9,900.

In terms of rebuttal arguments, the Union submitted an extensive brief. With respect to comparables, some of those arguments have already been noted. Additionally many of their rebuttal arguments were expressed or implied in their principal arguments. However it is appropriate to note a number of others.

First they note that the Employer argues that other municipal employees and private employees are receiving significantly lower wage rate increases than those offered by the Board or the Union. However citing Arbitrator Krinsky in Ondossagon School District, Case 28, No. 37838 they don't believe this is a meaningful comparison since the Employer has not shown any historical relationship between Mellen's teaching salary increases compared to non-teaching public and private employees. Moreover they note that along with Mellen there are three other school districts in Ashland County, two of which are settled. One of these two is Butternut and its 6.5% and 6.3% increase per cell doesn't reflect lower municipal settlements.

They also believe the Employer's comparisons to wage increases in other public and private sectors is flawed since it doesn't compare total compensation. They suggest this is important since it is possible that these other settlements and/or management dictates included higher premiums for existing benefits and new costs for new benefits which off-set lower wage rate increases. They also believe the District's comparisons in this regard are selective.

They also seek to counter the Employer's arguments on the interest-and-welfare-of-the public by contending Mellen actually has the sixth highest mill rate- not the first highest as argued by the Employer. They also note that for 1987-88 the Mellen District will receive \$188,640 more in State Aids than it received in 1986-87. This represents a 16.4% increase. The total cost increase of the Union's offer represents an increase of \$81,085 for 1987-88 and another \$84,164 for 1988-89. The Mellen District can pay for the total cost increases of the

Union's offer for both years with just the increased monies from State Aids. Thus there is no increase needed from local taxes and thus there is no negative impact on the local taxpayer.

With respect to salary comparisons the Union notes that the Employer compared only actual benchmark salaries and did not compare percentage and dollar increases within the Indianhead Athletic Conference. They submit the traditional method in Mellen of comparing offers uses the dollar and percentage increase comparisons of benchmarks. It is still their contention that their offer more closely parallels the benchmarks in the Athletic Conference. They present data which shows that this is true with or without Hurley in 1987-88. The differences are nearly the same. In 1988-89, excluding Hurley, the Association is still .3% behind the average benchmark increases at four of the five benchmarks. They present a similar analysis for dollar increases which shows excluding Hurley that for 1987-88 the Union offer in 1987-88, as it does in 1988-89, provides less of an increase than does the average.

The Union also compares the two year benchmark increases in percents and dollars for the four Athletic Conference Schools in 1987-88 and offer the following:

**TWO YEAR PERCENTAGE INCREASES
1987-89**

	<u>BA MIN</u>	<u>MA MIN</u>	<u>BA MAX</u>	<u>MA MAX</u>	<u>SCHED MAX</u>
Average	13.2%	13.2%	12.6%	13.2%	13.2%
BOARD	11.6	11.6	11.6	11.6	11.6
Difference From Average	(-1.6)	(-1.6)	(-1.0)	(-1.6)	(-1.6)
UNION	12.5	12.5	12.5	12.5	12.5
Difference From Average	(-0.7)	(-0.7)	(-0.1)	(-0.7)	(-0.7)

1987-89 DOLLAR INCREASES

	<u>BA MIN</u>	<u>MA MIN</u>	<u>BA MAX</u>	<u>MA MAX</u>	<u>SCHED MAX</u>
Average	\$2134	\$2282	\$2960	\$3429	\$3512
BOARD	1863	2068	2795	3102	3214
Difference From Average	-271	-114	-165	-327	-298
UNION	2007	2228	3011	3342	3463
Difference From Average	-127	-54	+51	-87	-49

The Union also challenges the Board's comparisons of total salary increases by offering a different costing for Drummond. Taking this into consideration, Mellen is .1% above the average compared to -.37% for the Board offer without Hurley in 1987-88. In 1988-89 the District is .8% behind the average and the Association is .3%. On the basis of average-dollar-increase-per teacher even excluding Hurley, the average two year increase was \$3,505. Thus, the District's offer is \$-135 below the average and the Association's is +81 average.

Last, the Union recalculated total compensation increases in other districts to reflect the same assumption for increases in Health insurance (15.5%). Their data shows that for 1987-88 the Union offer provides a percentage total increase per teacher equal to the average if Hurley is included. If Hurley is excluded, the Employer's offer of 7.5% is closer to the average of 7.3% for 1987-88 versus 7.9% for the Association. For 1988-89, the Union's total percentage cost increase of 7.6% is closer to the average of 8.1% versus 7.1% for the District. Thus, over the entire two-year period, the Union's offer provides a total cost percentage increase closer to the average of the districts settled for two years. On dollars they submit that for 1987-88, the Union's offer provides an average total dollar increase per teacher (\$2,487) closer to the average (\$2,495) if Hurley is included. If Hurley is excluded, both offers are equal distance from the average. One is +59 above and one is -59 below the average. For 1988-89, the Union's total dollar increase per teacher of \$2,582 is closer to the average of \$2,602 versus \$2,398 for the District. Thus over the entire two-year period, the Union's offer is closer to the average settlement in terms of total dollar increase per teacher.

B. The District

The Board first addresses comparables. They believe with the exception of Hurley, the Indianhead Athletic Conference should be the primary comparable group. They do not believe that the inclusion of Hurley would be appropriate since it is for three years (1985-88) and since it did not become a member of the Indianhead Athletic Conference until the 1986-87 year, when the district was already into the second year of its settlement. They also note that in two recent decisions, arbitrators excluded Hurley from Indianhead Athletic Conference comparisons.

The Board also proposes to use the Lakeland Athletic Conference as a "secondary" comparable group for 1988-89. It is their belief that with fewer than half of the Indianhead Conference schools settled for 1988-89 and with the spread of salary increases ranging from 5% per cell to 7.88% per cell, it is too early to discern a consistent settlement pattern among the primary comparables for 1988-89. Therefore they argue it is necessary to expand the comparables. They also believe, for

reasons detailed in their brief, that the Lakeland Athletic Conference schools are similar to Mellen. For the reason and the fact 12 out of 15 schools are settled for 1987-89, they urge the arbitrator to heavily consider these comparisons.

They, like the Union, offer benchmark comparisons. However they look at the wage levels, not increases, at the benchmarks. Excluding longevity and Hurley, they present the following:

1987-88

	BA Min	BA Max	MA Min	MA Max	Sched Max
	-----	-----	-----	-----	-----
Average	\$17,345	\$25,374	\$18,690	\$28,227	\$29,256
BOARD	17,028	25,542	18,901	28,352	29,373
Difference	(-317)	(+163)	(+211)	(+125)	(+117)
From Average					
UNION	17,084	25,626	18,963	28,445	29,471
Difference	(-261)	(+247)	(+273)	(+218)	(+215)
From Average					

	BA Min	BA Max	MA Min	MA Max	Sched Max
	-----	-----	-----	-----	-----
Average	18,339	26,591	19,629	29,527	30,253
BOARD	17,964	26,947	19,940	29,911	30,989
Difference	- 375	+ 356	+ 311	+ 389	+ 736
From Average					
UNION	18,109	27,164	20,101	30,152	31,239
Difference	(-230)	(+573)	(+472)	(+625)	(+986)
From Average					

They contend that the data clearly shows that the Board's offer is more consistent with the comparable schools.

They also calculate the conference average for average dollars per teacher at \$1,689 wages and \$2,425 total compensation. For 1987-88 the Board at \$1,655 and \$2,367 per teacher respectively is closer to the average than the Association in 1988-89. The Board is -34 below the average compared to the Association who is +49 above. In 1988-89 the average wage settlement in the Athletic Conference was \$1,815 and the average total compensation increase was \$2,440. The Board offer is -100 and -42 below the average in these counts compared to +33 and +142 for the Association.

Turning its attention to the Lakeland Athletic Conference they provide Data which shows the average per cell increase in 1987-88 was 5.70 and 5.68 in 1988-89. On total wages the average settlement was 7.33 and 6.94. This compares most favorably with their offer and in their opinion lends itself to a strong inference in favor of their offer.

They also stress that the settlements in the Lakeland Conference show a trend of moderation. They note this trend toward moderation was a factor in Arbitrator Yaffe's decision in Washburn. Moreover they contend the Union's proposal to increase the class overload compensation is without merit, since no other school in the Indianhead Conference and only one school in the Lakeland Conference provide any extra compensation based on class size. The Board would also note that Mellen's total fringe benefit package matches or exceeds the package provided by other schools in the Conference.

The District next addresses the cost of living factor. Against this factor they contend the Board offer is more reasonable. The CPI-U was 3.9% in January 1987 and 4.5% in November 1987. Thus the Board offer is 150% the rate of inflation.

The Board argues as well that unionized municipal employees are receiving significantly lower wage rate increases than offered by the Board or sought by the Union. Voting that the law enforcement and highway employees in Ashland County have reached voluntary wage settlements of 3.5% for 1987 and 1988.

A survey of private employers in the Mellen area also reveals significantly lower wage rate increases. The survey indicates that three of the area's larger private employers have most recently provided wage rate increases in the 4% to 5% range.

These settlements and other economic considerations cause the Board's offer to be more consistent with the interest and welfare of the public. These other economic considerations include the fact that the mill rate necessary to operate the Mellen School District has increased over 50% since 1980-81, the fourth highest increase in the Indianhead Conference. And the fact Mellen was tied with Hurley for the highest mill rate in the Indianhead Conference.

Furthermore, Mellen has the second lowest per capita income in the Indianhead Conference. Its per capita increase is lower than twelve of the fifteen schools in the Lakeland Conference. Also Ashland County is not growing as fast as Bayfield which has a higher total taxable income which mitigates the burden of school taxes.

The Board also submitted a rebuttal Brief. They raised for the first time (subject to the objection of the Union) the fact Solon Springs had a frozen increment in 1987-88 and argue that

for purposes of a benchmark analysis, it should also be excluded for 1987-88. They did note in their initial brief that at the bottom of the salary schedule, Solon Springs' teachers received 5.8% per cell, plus a 2.0% salary adjustment. Thus to the Board it is apparent that Solon Springs saw itself in a catch-up situation and, therefore, applied a gimmick each year in an effort to boost its benchmarks. Since gimmicks have not been used by the other schools in Indianhead Conference who have settled for 1987-88 and/or 1988-89, the Board believes that Solon Springs' gimmicks should not be considered in a benchmark analysis for 1987-89. They then go on to present a new benchmark analysis excluding Solon Springs including percentage increases, dollar increases and rank.

They also believe their costing calculations of the Drummond settlement are more reliable than the Union's. Much of the rest of their rebuttal brief extensively stresses in more emphatic detail the arguments put forth in their principal brief.

They also challenge the Union argument on State Aids. They assert that this argument reflects two essential misunderstandings as to the nature of state aids. First, state aids are not forwarded to school districts categorically for the purpose of paying teacher salaries and benefits. Rather, equalization aids are expressly sent "without strings attached" to be used for a wide variety of educational purposes. Second, the Union consistently ignores the fact that the Mellen School District receives comparatively high level of state aids solely because it has a relatively low property value per student to tax to support educational programs. In fact, Mellen has the lowest amount of property value per student in the Indianhead Conference.

IV. OPINION AND DISCUSSION

The most remarkable thing about this dispute is how close the parties really are. There are many ways to dramatize the very slight difference. Over two years on a per cell basis less than one percent apart (.85%). On a total wage basis they are less than 1% apart over two years. On an average per teacher they are (.6%) or 3/10 of 1% per year. They are \$216 per teacher on average apart for two years or \$108 per year.

In other words if the teachers lose this case their gross salary for the 24 month period (1987-89) will be \$9 a month less than their final offer and if the District loses it will cost them in salary \$9 a month/teacher or roughly \$294 a month total. It is too bad compulsory mediation isn't available under the revised statute.

The Arbitrator stresses these minor differences because they accentuate the normal complexities inherent in comparing final offers with settlements and total compensation in other

relatively similar schools. If the differences were more dramatic, it would be difficult enough to make an ultimate decision in view of any number of unique factors. An arbitration decision isn't just a mathematical exercise. One must, in evaluating the data, exercise one's sense of judgement.

For instance, do we give as much weight to Solon Springs in 1988-89 as other schools because it was in a catch up position or as much to Mercer because of how small it is and because it seems to be out of step. If we don't, how much weight do we give these settlements? On one hand, to what degree does it weigh against the Association that it is only one of few schools who have longevity and oversize class pay and on the other hand how much does it weigh against the Board that they offer no increase in these benefits.

These kinds of permutations make distinguishing between almost indistinguishable offers even more difficult than normal. This is as close as it gets. . . a photo finish.

The comparative data utilized by both parties demonstrates this. By excluding or including Hurley or Solon Springs or the Lakeland schools only the slightest favor is shown for the parties respective offers. For instance even if it is appropriate to exclude Hurley and Solon Springs the following data from the Employer rebuttal brief shows this case is a "dead heat."

BA Min	11.74	1,974	11.25	1,863	(-111)	12.10	2,007	(+ 33)
BA Max	11.74	2,915	11.25	2,795	(-120)	12.10	3,011	(+ 96)
MA Min	11.74	2,114	11.25	2,068	(- 46)	12.10	2,228	(+114)
MA Max	11.74	3,214	11.25	3,102	(-112)	12.10	3,342	(+128)
Sch.Max	11.74	3,313	11.25	3,214	(- 99)	12.10	3,463	(+150)
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Total								
Avg. for								
all Bench-								
marks	11.74	2,706	11.25	2,608		12.10	2,810	

Total		
Difference		
Against		
Average	(-.49/+\$98)	(-.36/+\$104)

This shows the parties are, on an average benchmark basis, nearly the same amount above and below the average. Percent wise on average the Association seek .49% more at each benchmark than the average and the Board .36% less. An absolute difference of .13%. The District on average offers \$98 fewer dollars at each of the five benchmarks on average compared to the group and the Union seeks \$104 more dollars per benchmark. The total dollar difference for all the benchmarks against the group average for the District is -488 and -521 for the Association. This is a scant \$33 difference.

Obviously some kind of tie breaker is needed. The District looks to the Lakeland Athletic Conference for guidance in 1988-89. However even this is a borderline call. This Arbitrator has expanded comparables before where there have been none or there are one or two settlements. In this case there are four settlements. Two of the four are quite consistent. Thus there isn't as much compulsion to look beyond the Athletic Conference as there sometimes is. This is particularly true since this data combined with the more than abundant data for 1987-88, gives a fairly good two-year picture.

The District also looks in its reply brief to exclude Solon Springs from its benchmark comparisons on average percent and dollar increase. Yet at the same time it includes Solon Springs in its benchmark levels comparisons in its principal brief. If Solon Springs should be excluded for some benchmark purposes in 1987-88 it should be excluded for all benchmark comparisons.

Keeping this in mind the Arbitrator believes that an appropriate tie breaker under these circumstances is an analysis of the relative wage levels at the benchmarks and the final offers impact on previous wage levels.

The following chart represents (1) the difference between the salary benchmarks in Mellen versus the comparable average in 1986-87 and (2) the difference between the comparative average in 1987-88 (minus Solon Springs) and the offers at the benchmarks:

	1986-87	1987-88	
		Board Offer	Assoc. Offer
BA MIN	-219	-355	-299
BA MAX	- 10	- 98	- 14
MA MIN	+200	+171	+233
MA MAX	-237	-109	- 16
SCHED MAX	- 49	-180	- 82
Total Average	-315	-571	-178

It can be seen from this that generally speaking, the teachers will lose ground in 1987-88 relative to 1986-87 under the Board offer. They would lose more ground overall than is gained under the Association offer. Moreover, there is still a small disparity under the Association offer.

The Board did point to 1988-89 benchmark levels contending that under either offer Mellen would be ahead of the pack. However the benchmark averages in the four settlements in 1988-89 is deceiving since one of the four is Butternut which is very atypical. It is abnormally low. For instance in 1986 it was \$875 below the conference average (including Butternut) at the BA MIN, \$1,729 below at the BA MAX \$1,478 below at the MA MIN, \$-1,910 at the MA MAX and \$2,762 behind at the schedule max.

Thus it can be reasonably anticipated that even if the rest of the settlements came in even somewhat below Bayfield and Mercer, the relative wage levels in Mellen at the benchmarks will not improve as dramatically as the Employer suggests. It is more reasonable to believe that the 1987-88 relative wage level disparity will remain the same and not increase or decrease dramatically in 1988-89.

Accordingly the wage level disparity under the Board's offer in 1987-88 tips the scales in favor of the Union. It is not unreasonable to give them \$9 more per month more of a wage increase considering that even under the Association offer they still will be somewhat behind the average in wage levels.

Other factors tipping the scales in their favor are (1) the lack of an increase in longevity and class size overload pay under the Board offer and (2) the fact Hurley has a more healthy salary level. The relatively higher wage levels in Hurley will tend to have some gravitational pull on Mellen at least in the future. This is regardless whether or not it is considered a comparable for this contract term.

AWARD

The final offer of the Association is accepted.



Gil Vernon, Arbitrator

Dated this 6th day of May, 1988 at Eau Claire, Wisconsin.