

hearing briefs and reply briefs, the last of which was received by the undersigned on July 29th. The Association submitted a written objection to the contents of the District's Reply Brief, insofar as it offered new evidence concerning District hiring of new staff, and mischaracterized the costing techniques used by the District and the Association. The Association further registered an objection to the District's failure to provide information about the number of participants in the tax sheltered annuity option during the 1986-87 school year.

The District submitted a written response to the Association's objections, clarifying the information on tax sheltered annuity participation on August 17th. The Association responded in writing on August 25th, requesting that the information be excluded from the record, since it was new evidence offered after the record had been closed. A telephone conference was conducted on September 2nd, at which time the undersigned ruled that the information on tsa participation should be admitted, since the record was originally held open for its submission, but neither party was diligent in pursuing the information. An opportunity was extended to the parties to make additional arguments based upon the tsa data. The Association's written argument was received on September 8th and the District's on September 9th, whereupon the record was closed.

Having considered the evidence, the arguments of the parties, and the record as a whole, and in view of the statutory criteria of Section 111.70, the undersigned makes the following Award.

I. ISSUE / FINAL OFFERS

The single issue in this case is that of salary for the 1987-88 and 88-89 school years. All other items have been stipulated.

The Association's final offer calls for base salaries of \$19,316 in 1987-88 and 20,361 in 1988-89. This generates salary only increases of \$1950 and \$2050 in the respective contract years.

The District's final offer would establish a base salary of \$19,225 in 1987-88 and \$20,120 in 1988-89. These represent salary only increases of \$1800 in each year.

While the only contract issue presented by the final offers is that of salary, the arguments of the parties disclose disagreements on comparability, costing and economic conditions in the area. Each is addressed in the appropriate sections of the Discussion portion of this Award.

II. STATUTORY CRITERIA

This dispute is governed by the provisions of the Municipal Employment Relations Act (MERA), Section 111.70 of the Wisconsin Statutes. A copy of the relevant portion of the statute is appended hereto as Appendix "A", and is incorporated by reference.

While some of the statutory criteria are not extensively discussed, each has been weighed in arriving at this decision. Those having the greatest bearing on this proceeding are §b, c, d, e, f, g and h.

III. THE POSITIONS OF THE PARTIES

A. The Initial Brief Of The District

The District asserts that the only appropriate group of comparables for Port Washington is the "Kerkman-7", the schools used by Arbitrator Joseph Kerkman in a previous Award involving the parties [SCHOOL DISTRICT OF PORT WASHINGTON, Dec. No. 18726-A (Kerkman, 2/16/82)]. These districts -- Northern Ozaukee, Cedarburg, Brown Deer, Germantown, Grafton, Mequon-Thiensville and Nicolet Union High School -- have been used by the parties to guide bargaining, and there is no compelling reason to expand the already established grouping. There is a sufficient pattern of settlements among the Kerkman-7 to offer guidance to the Arbitrator, and the parties have brought forth evidence concerning these districts which allows for a thorough comparison.

The District cites numerous Arbitrators who have held that the issue of comparability, once settled, should not be reopened, since such a practice leads to instability in labor relations. The Association is engaged in "shopping" among comparables, in order to strengthen its case by citing irrelevant settlements. The District urges the Arbitrator to reject this approach, and abide by the already established comparable pool.

The District asserts that the only appropriate means of costing is the use of a constant staff from the previous year, cast forward /FN1/. The Association exhibits showing actual budget costs, and demonstrating turnover, leaves of absence and the like, are irrelevant as they tend to show actual costs. The District particularly objects to any consideration of Association projections of interest on wage increases not paid since the expiration of the last contract. No arbitral authority exists for the Association's attempt to credit itself with an offset for interest.

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The final offers in this case, using the cast forward costing methods, cost out as follows:

	<u>1987-88</u>		<u>1988-89</u>
Board:	\$1800prt	Salary Only	\$1800prt
	6.1%	% Increase	5.7%
	\$2855prt	Total Package	\$2866prt
	7.43%	% Increase	6.94%
Assoc:	\$1950prt	Salary Only	\$2050prt
	6.6%	% Increase	6.5%
	\$3038prt	Total Package	\$3174prt
	7.91%	% Increase	7.66%

The District characterizes the difference between the parties as being \$31,470 in the first year, and \$52,967 in the second year, according to their costing.

The most important thrust of the District's argument with respect to costs comes from an analysis of income and taxing data. The District has the lowest net taxable income of all the comparables, and the second lowest average total income, according to Department of Revenue statistics for 1986. The residents of the District also have the highest full value tax rate (Port Washington) and fourth highest full value tax rate (Saukville) among the comparable communities. This serves to distinguish the District from its comparables. While the other area districts may have granted wage increases more closely approximating the Association's final offer, the data shows that they have a far greater ability to sustain those increased costs. The Association's focus on County-wide economic conditions distorts the true picture for this district, since it is the poorest section of the County.

The District rejects the Association's attempt to restrict this dispute to a comparison of salary increases across the comparable group. Not only does the economic data show important distinctions between districts, but the Arbitrator must consider the entire compensation picture in determining which offer is more reasonable. The District cites a number of respected arbitrators for the proposition that total package comparisons are more appropriate than simplistic salary only analyses. The total package approach allows for the fact that different districts allocate compensation dollars differently. In this case, the Board has guaranteed the full cost of the fringe benefit package. This is a significant and costly concession

that the District urges the Arbitrator to fully consider in comparing the two offers with other settlements, where the teachers granted concessions to the districts on benefits or work time issues. No such quid pro quo is evident in this case.

Reviewing the statutory criteria, the District argues that its final offer is more fully supported than that of the Association. Since there is no basis for weighting any of the criteria more strongly than the others, this dictates selection of the District's offer.

The District asserts that criterion "a", the stipulations of the parties, must be found to favor the District offer. The parties have stipulated to the District fully paying the increased cost of health insurance, dental insurance, life insurance, disability insurance and pension. The cost of this stipulation, and in particular the 38% increase in health insurance in 1987-88 and 27% increase in 1988-89, is a factor that cannot be ignored simply because the dispute is technically limited to salaries. This criterion justifies reliance on the total package costing urged by the District.

Consideration of the "interest and welfare of the public" also favors the District offer. Wisconsin residents pay relatively high taxes but earn relatively low incomes when measured by national standards. This problem is acute among the District's farmers, who contribute a disproportionate share of the property taxes. As the economic data already cited shows, the public in the District has relatively less ability to pay large increases for teachers than the public in other comparable districts. Many arbitrators, the District notes, have had occasion to comment on the public interest in relatively modest wage increases for teachers during hard economic times, even in the face of unfavorable comparables.

Turning to the comparability criterion, the District argues that its offer best reflects the prevailing settlement pattern. Although the Association's salary only offer is closer to the average of the comparables in both years in dollar terms, the total package comparisons strongly favor the District:

	<u>1987-88 Salary</u>	<u>1988-89 Salary</u>
Average for Comparables:	+\$1946 [+6.5%]	+\$1968 [+6.1%]
Association:	+\$1950 [+6.6%]	+\$2050 [+6.5%]
District:	+\$1800 [+6.1%]	+\$1800 [+5.7%]

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	<u>1987-88 Package</u>	<u>1988-89 Package</u>
Average for Comparables:	+\$2851 [+7.1%]	+\$2897 [+6.7%]
Association:	+\$3038 [+7.9%]	+\$3174 [+7.7%]
District:	+\$2855 [+7.4%]	+\$2866 [+6.9%]

While the Association enjoys an advantage in 1987-88 salary comparisons, the two offers are equally far from the average on salary in 1988-89, and the District offer is much closer to the average in both years on a total package basis.

Additional support for the District's offer is found in a benchmark comparison. The offer of the District will maintain the ranking of the teachers at all but one benchmark. Only teachers at the BA-6 would suffer a loss of rank, and there the change is from second among the comparables to third. The District's teachers will continue to be well compensated under the Board offer. This is underscored by the fact that Port Washington teachers earn an average of \$2,135 more than other teachers in the state, and that this advantage will increase to \$2,566 under the District's offer.

The District's offer is preferable when compared to the amount of increase received by non-teachers in the District's employ. All represented personnel settled in negotiations for increases of 3.5%. Unrepresented employees received an average of 5.6%. Certainly, the District argues, sound labor relations policy dictates that one group of employees not receive greater increases than others. Otherwise there will be dissension and poor morale.

The District notes that all of the data for private sector increases show a rate of improvement below that of the District's final offer. The maximum general increase for private sector employees was 5%. This also holds true for other non-educational public employees, such as those of Ozaukee County and the City of Port Washington. Without attempting to draw irrelevant comparisons between the duties and qualifications necessary for the various jobs, the rate of increase for other area employees strongly suggests more moderate improvements than those offered by the Association.

§111.70(4)(cm)7, "h" calls for consideration of overall compensation. Again, the District points to the large increases in insurance costs suffered in each contract year, and the dramatic impact that this has on package costs. Under this criterion, the District's offer must be accepted.

The offer of the Board exceeds the relevant CPI increase by 3.5% (3.9% vs. 7.4% package cost). In recent years, settlements have resulted in large, real-dollar

gains for teachers. The Association's offer ignores the general notion that increases should track the CPI, and also takes no note of the recent moderation in public-sector settlements.

The District advances two general arguments in favor of its proposal. The first of these is that the outcome of these negotiations should, in some measure, reflect the public policy movement to control school district spending. The political environment is relevant to public sector negotiations, and it clearly favors moderation. While teachers can expect to be well paid, the very large increases of the past have raised salaries to a reasonable level, and the increases for teachers should now begin to mirror the increases received by other public employees.

The second general argument raised by the District concerns the historical pattern of settlements over the past three voluntary agreements. The District offer is higher than the voluntary settlement in two of those negotiations, and the Association offer exceeds the outcome of all three bargains. No justification has been forwarded by the Association to justify this result.

The District points to two recent arbitral decisions from the Milwaukee metropolitan area that support the District position. Both Arbitrator Kerkman in Greendale and Arbitrator Mueller in Oak Creek-Franklin selected Board offers that were not supported by the salary comparisons because of health insurance issues to which the associations refused to respond. In each case, the salary offers were significantly below the Board's offer in this case. Thus the trend in arbitral thinking favors a responsiveness by unions to the cost of health insurance, and will select a relatively low salary offer where the union is unwilling to share in these increases. This is exactly the case in the instant dispute, except for the generosity of the District salary offer.

Finally, the District disputes the Association's use of national studies such as The Metropolitan Life Survey of Former Teachers in America, the Carnegie Forum report A Nation Prepared, and the Rand report, Who Will Teach. The District complains that the Association has cited, out of context, only those portions of the reports that urge higher pay for teachers, without also citing the major changes in accountability and work quality that are part and parcel of the reports' recommendations. Absent any recognition of the productivity aspects of the reports, the Association's citation of selected excerpts is a misuse of the reports.

The District notes that otehr arbitrators have rejected union attempts to impose, through arbitration, national policy goals such as those cited in this case. It is the responsibility of the state legislature and the governor to adopt and fund any fundamental chages in educational policy. It is not the responsibility of an interest arbitrator.

For all of the foregoing reasons, the District urges that the Arbitrator select its final offer in this dispute.

B. The Initial Brief Of The Association

The Association urges that the comparability group for the intant dispute may be appropriately expanded beyond the seven schools used by Arbitrator Kerkman in 1982. Kerkman did not make any finding that the seven schools used in that case were the only appropriate comparables. Instead, he used those schools which were common to each party's case, and found that they were sufficient to show a pattern of settlements. Certainly these seven remain comparable, and are included in the Association's proposed comparability grouping. Since Kerkman's Award, however, there have been changes in circumstances which justify minor modifications in the comparable pool.

In 1982, the District was affiliated with the Braveland Athletic Conference. Today, the District is a part of the North Shore Athletic Conference. This supports the addition of three schools which were excluded from the 1982 grouping -- Shorewood, Wauwatosa and Whitefish Bay. Athletic conference membership is the most usual basis for determining comparability in school district disputes. A second basis for including particular schools within a comparability grouping is their inclusion with Port Washington-Saukville in a common comparability grouping for other disputes. The decisions of Arbitrator Fleischli in Nicolet Union High School (8/25/82) using Whiefish Bay, Shorewood and Wauwatosa in a comparability grouping with the District, and Arbitrator Zeidler in Cedarburg Schools (3/28/83), including Shorewood and Whitefish Bay among the secondary comprables where Port Washington-Saukville was a primary comparable, show that these districts are considered to be comparable for the purposes of interest arbitration.

The additional schools urged by the Association are all contained within the Milwaukee Standard Metropolitan Statistical Area. That the District closely identifies itself with suburban Milwaukee schools is shown by their own advertisements for administrators, which describe the District as "a Milwaukee area suburban school district".

All of the proposed districts are historically joined by common traits. All are members of CESA #1, and all are either contiguous or geographically proximate. The Association argues that, given Kerkman's decision to leave comparability an open question, it is appropriate to expand the list of comparables at this time, so as to include all truly comparable schools.

The Association offers an overview of public policy issues and the general economic conditions in the Port Washington-Saukville area. The Association first notes that the overwhelming weight of opinion, as expressed through national surveys and studies, is that teaching is a seriously underpaid profession, and that the public interest in fostering and maintaining a quality system of education requires improvement in both compensation and working conditions for teachers. Teaching does not compare well in terms of financial reward or general societal esteem with other professions, and this is reflected in the high turnover rates among teachers. The inability to attract and retain good teachers undercuts national competitiveness with nations such as Japan, where the profession is more highly regarded.

The Association cites the Endicott Report on salaries as illustrative of the problem. The Report details the hiring rate for other professionals possessing either a Bachelors or a Masters degree. The Report shows a disparity of over \$4,000 in starting teacher salaries in the District versus the average starting salary for a graduate in other professional fields possessing only a bachelors degree. Further, the rate of increase in starting pay for the past ten years has consistently widened when one compares teachers with other surveyed professional groupings.

Even if starting pay is not an issue, as the District seeks to prove by its claim that it has a surplus of applicants for each opening, the studies all note the problem of creating financial incentives for experienced teachers to remain in the system. A focus only on starting salaries belittles teaching as a full-time career.

Turning to local economic conditions, the Association argues that the record shows a robust economy, experiencing, in the words of one local official, "a hiring boom". Unemployment has been lower in Ozaukee County than in the other counties surrounding Milwaukee over the past four years, and is running below the state average of 5%. Residents of the District are generally more highly educated than those of the County generally, and are employed in higher paying occupations. The poverty rate for both the District

and the County is below 5%, and the median disposable income for Ozaukee County is the highest in the state of Wisconsin at \$36,376.00. The number of household with incomes over \$50,000 is 27.5%. This compares with statewide figures of \$24,483 and 11.8% respectively.

The Association notes that the District has attempted to portray itself as in some way tied to the farm economy. Only 4.75% of the District's tax levy is derived from agricultural real estate. Ozaukee county is not counted among the 28 rural counties in Wisconsin, because it does not exceed the state average in percentage of earnings flowing from agriculture. In short, there is simply no basis for the District's farm related arguments. Even if the District had some claim to being farm dependent, the Association asserts that arbitrators have been reluctant to weigh that general public interest more heavily than the broad interest in improving teachers' salaries. This is especially true where there can be no relevant distinctions drawn between the District and its comparables in terms of farm dependency.

The Association asserts that the interests and welfare of the public are best served by selection of its final offer. The District conceded that there was no issue of ability to pay in this case, while reserving the right to argue "unwillingness to pay". This unwillingness has been apparent throughout the negotiations, but the Association argues that it has no basis in the economic state of the District. It is, instead, simply stubbornness by the School Board and its negotiators.

The Board has stated its objectives in budgeting as including a desire to "hold overall cost increases at a reasonable and affordable level" and to provide increases in compensation to staff "based on the CPI inflationary index, local conditions, private sector developments, merit and other settlements in comparable school districts". The District's residents showed no particular interest in the public budget hearing conducted by the District, and no questions were asked regarding the 7.66% budgeted increase for instructional staff services. Plainly this amount of increase was acceptable to the Board, which budgeted the amount, and the residents, who raised absolutely no objection to the budget.

The impact of the Association's offer on the tax rate in the District is negligible. The Association notes that the School Board had reported a 7.7% decrease in the

property tax levy for 1987-88. Projecting the cost of the Association offer versus the Board offer in this case, the Association argues that it would cost the owner of a \$70,000 house between \$15.74 and \$18.33 over two years to pay for the Association's offer. Plainly, the Association concludes, there is no question but that the public has the ability to pay for the salary increase proposed in its offer. This ability is enhanced by the fact that the District is collecting interest on sums of money which are owed to teachers as wage increases.

The Association avers that, by any measure, its wage offer is more reasonable in comparison to increases received by other teachers. The average benchmark increase among the ten Association comparables for 1987-88 was 5.6%. The Association's offer increases each benchmark by 5.35%, while the District offer contemplates an increase of 4.85%. In 1988-89, the average for the comparables is 5.26%, while the Association increases each by 5.4% and the District would raise each benchmark by 4.7%. Over the two contract years, the comparables would increase by an average of 0.11% more than the Association's offer and 1.31% more than the District offer.

The same pattern is shown in comparing the dollar amount increases at the benchmarks. The variance from the comparables average is shown as follows:

STEP	1987-88		1988-89	
	<u>Assoc.</u>	<u>District</u>	<u>Assoc.</u>	<u>District</u>
BA	-\$ 18	-\$109	+\$102	-\$ 48
BA 7th	-\$ 79	-\$197	+\$ 17	-\$176
BA Max.	+\$ 56	-\$ 81	+\$318	+\$ 93
MA	-\$ 91	-\$196	+\$ 13	-\$160
MA 10th	-\$269	-\$415	-\$150	-\$390
MA Max	-\$ 86	-\$251	+\$ 25	-\$245
Sched. Max	-\$ 7	-\$185	-\$ 49	-\$341

As to rankings within the comparable group, the Association recognizes that its offer create slightly more change in rankings than that of the District. The Association notes, however, that its offer will better maintain the actual relationship between the District's teacher salaries and the comparables when measured by the more accurate method of comparing dollar and percentage deviations from the benchmark averages.

When the two offers are compared on the basis of dollars per returning teacher, the Association's is again the more reasonable. Over a two year period, the Association offer is \$4,000 per returning teacher, or \$50 more than the average two year increase among the comparables. The District's offer, on the other hand, is \$3,600 per returning teacher, or \$350 per teacher less than the average. This pattern holds true when comparisons are made to other schools within the CESA, athletic conference, the UniServ area and the four county Milwaukee Standard Metropolitan Statistical area. No matter what group is employed as the measure, the Association offer is clearly preferable on the basis of salary dollars per returning teacher.

The Association anticipates that the District will argue in favor of a more modest pay increase based upon the recent increases in health insurance costs. There is, however, little distinction between the insurance situation in this district and that in the comparable districts which have settled for wage increases closer to the final offer of the Association. While acknowledging that the rate of increase has been high, the Association points out that this is true for virtually all of the comparables. Furthermore, the actual premiums paid by the District are below the average rates paid by comparable school districts. All of the districts in the comparability grouping have the same \$100/\$200 front-end deductible that the teachers in Port Washington-Saukville pay.

The District has made an issue of insurance concessions at two of the comparable districts. Teachers in Cedarburg agreed to pay increases over 15% in the second year of the contract. The faculty in Brown Deer agreed to pay the district a tax deductible contribution in each year of the contract in order to retain fully paid insurances. In each case, the premiums and/or anticipated increases were well in excess of those relevant to Port Washington.

Given that the District is in relatively better shape on the overall insurance costs than the comparables, and that insurance is not an issue in dispute in this case, the Association asserts that evidence concerning premium increases should be given little weight in deciding this dispute. If, for some reason, the issue of overall cost is given weight, the Association asserts that it should be offset by staff reductions and leaves during the contract term. The evidence adduced at hearing shows a savings of between \$236,000 and \$284,000 from personnel changes in the coming year. This reduces the cost of the Association's package to between 1.26% and 2.13%.

The Association criticizes the nature of the evidence introduced by the District which attempts to show a pattern of settlements in the private sector. No opportunity was available for cross-examining the preparers of the District's salary surveys, and many unanswered questions remain about the information contained therein. It is not possible to determine whether the increases in many private sector jobs were negotiated, and whether the general increases are supplemented by profit sharing or other compensation systems. Further, there is no indication of whether the employees covered by the surveys perform duties similar to those of the District's teaching staff, nor what the educational and professional qualifications of these persons might be. Further, the District restricted its private sector data to District companies, while offering public sector data on seven other districts. In short, the information brought forth concerning private sector settlements is flawed and inconclusive.

Similar criticisms are directed at the District's survey of other school district settlements. The District employed a questionnaire asking only what concessions the districts had obtained, without inquiring about any quid pro quos that might have been accorded the Associations. The Association suggests that this survey is designed to produce biased results, and is not useful as a guide to what negotiations in surrounding districts yielded.

The Association directs the Arbitrator's attention to the data concerning the characteristics of the Port Washington faculty. 62.57% hold a Masters degree or higher, and over 80% have 10 years of teaching experience or more. The staff works an average of 50 hours or more per week, on average, without counting the time devoted to improving professional skills and obtaining additional education in the summer. Plainly, the District enjoys a superior staff.

The statute mandates an examination of the offers in light of the CPI. The Association cites the nearly universal interpretation of this provision among arbitrators that the best reflection of the weight to be accorded CPI is the reasonable rate of increase negotiated by other bargain-ers in comparable districts. The District has introduced misleading charts that attempt to overstate the increase in teacher salaries relative to CPI by including experience increments in the wage increase projections. The purpose of vertical and horizontal increments is not to compensate for increases in the cost of living. The more accurate measure of salary increases vis-a-vis CPI is the use of a constant benchmark. A comparison on this basis shows that, over a twenty year period, salaries have lagged behind the

No national studies have urged increases for custodians, secretaries, clericals or administrators as a matter of urgent national policy.

For all of the foregoing reasons, the Association asks that its offer be selected.

C. The Reply Brief Of The District

In response to the Association, the District argues that no valid reason for expanding the comparables has been proven. The Kerkman-7 were judged to be sufficient under identical circumstances some six years ago, and have been referred to in bargaining since that time. The mere fact that the athletic conference has changed is not a compelling reason to change the established comparability group, particularly where no evidence was introduced at the hearing to show that the parties have referred to the conference or the CESA for guidance in bargaining.

The Board again disputes the Association's use of selected excerpts from national studies to show a need for higher teaching salaries. The need is for better teachers, and there is no automatic correlation between higher wages and better teaching. A comprehensive reform is urged by the national studies, and the Association's piecemeal approach does nothing to accomplish that end.

The District disputes the Association's contention that economic data shows this to be a prosperous area. While county-wide statistics certainly show a high income level, the data for the District shows that it does not enjoy the prosperity of surrounding communities. Residents of the Port Washington-Saukville School District have incomes of \$10,000 less than their counterparts in the cited comparables.

The Association's citation of a budgeted increase of 7.66% for staff services does not support their conclusion that a 7.66% package can therefore be funded. The budgeted increase must accommodate additions to teaching staff and other actual changes which are not reflected in the theoretical 7.66% cost of the Association proposal.

The interests of the public are plainly served best

by an offer which reflects their more modest financial means when compared to surrounding communities. The low income and high taxes in the District mandate that the Boards' offer be selected so long as it is within the realm of reason.

The Board notes that the Association brief does not address total package increases, because it knows them to be unfavorable to its case. The package approach is the best measure of the actual value of each offer. Benchmark comparisons are misleading, since salary schedules may be subject to internal tinkering such as increment freezes which invalidate benchmark comparisons. By any measure, the Board's offer maintains a competitive compensation plan. It should therefore be preferred.

The Board reminds the arbitrator that insurance is a major consideration in this case. While not directly in dispute, the large increases in premiums reduce the monies available for salary increases. The Association's figures showing that the insurance rates for the District are somewhat lower than surrounding districts is not relevant. The percentage of increase, and the effect on package costs should be the guiding factor.

The Board rejects the Association's attempts to reduce the cost of its offer by taking credit for staff turnover. The methodology is improper, and the District doubts that the Association will be willing to take less of an increase in the future when staff is being added. There is no basis for giving the Association the credit it seeks against the cost of its final offer.

The Board defends its survey information concerning the private sector. Common sense dictates that the most relevant private sector settlements are those which affect District taxpayers. Thus the survey should be limited to the settlements within the District. The evidence is persuasive in showing that private sector increases do not come close to those being requested by the teachers.

Similarly, the public sector survey was designed to show that other settlements do not compare with that sought by the Association when insurance concessions are considered. For all the Association's complaints about methodology, the fact remains that it was unwilling to make similar concessions.

The Association's attempt to link teacher salaries with those of other professionals is misleading, since teachers work only nine months per year, while other professionals work a full twelve months. The attempt to extend the teachers' year by showing that they work more

than 40 hours per week ignores the fact that virtually all professionals work more than a standard work week. That is the nature of professional work.

The Board refutes the Association's arguments over the consumer price index by pointing out that arbitrators generally accept the inclusion of vertical increments in CPI comparisons. The point is what a teacher is paid over a period of time versus the increase in CPI over that same period. Such an analysis cannot exclude the increment. The Board also notes that the Association's use of a twenty year period to measure against is based upon a simple necessity -- an examination of any shorter period of time, such as the past five years, shows that teacher salaries have far outstripped the CPI.

In closing, the Board stresses that its package is by far the more reasonable when measured by package cost. The Association proposal is a full percent more expensive than the average of the comparables in the second year, while the Board offer is above the average in both years.

D. The Reply Brief Of The Association

The Association reiterates its contention that Arbitrator Kerkman made no conclusive determination of comparability in his 1982 award. The Arbitrator expressly left open the possibility of considering other comparables if the stipulated comparables were inadequate. The need did not arise at that time. That does not foreclose a reconsideration of comparability at this time.

The more important omission in the District's argument against expanding the comparability grouping is its failure to consider the changes in \$111.70 in May of 1986. Those revisions separated the comparison criteria for similar public employees, public employees in general and private sector employees, creating three criteria where previously there had been only one. The changes also, however, expanded the scope of comparables for similar public employees. Whereas the comparisons of public employees in general and private sector employees remained tied to the requirement that they be employed in the same or comparable communities, comparisons for public employees performing similar services are not restricted to comparable communities. Arbitrator Kerkman, among others, has interpreted this change to accord weight to all proffered teacher to teacher comparisons.

There is not one piece of evidence for the Board's assertion that the public is unwilling to pay for the increases called for in the Association offer. Indeed, the opposite is true, given the passage without opposition of a budget designating an increase identical to the Association's offer. The Board ignores its stipulation at the outset of the hearing that there is no question of an inability to pay in this case. It attempts to paint a picture of an overtaxed community when the local municipalities are proceeding with expensive capital improvement projects such as a new jail and sewer line without apparent objection from the taxpayers. The District itself has embarked upon a 2.4 million dollar construction project, which the Association doubts would be undertaken if the local taxing climate was quite as desperate as the Board claims in its brief.

The high tax situation in the District is not the result of high instructional costs. The per pupil expenditure of \$4668 and per pupil salary cost of \$2889 compare to an average of \$4834 and \$2863 among the comparables. The difference in taxes springs from the District's decision to commit resources to debt service, a cost which cannot reasonably be charged against the teachers.

The Association again rejects the Board's private sector data as incomplete and unreliable. The great weight of arbitral authority holds that teacher-to-teacher comparisons are far more meaningful in resolving interest disputes, and these comparisons support the Association's final offer.

The CPI is better measured by the pattern of settlements than by the flawed analyses offered by the District. The Association notes that settlements within the District over the past five years prove that negotiated agreements will not generally track the CPI.

The District's total package cost information is suspect, the Association claims, because the source of the information is unknown. The surveys used by the District do not indicate who provided the data, and these people were unavailable for cross-examination. No one was present to explain who crossed off information typed on the original surveys and wrote in new figures. There is no explanation of how the package costs were arrived at, or what the details of the negotiations were in these districts. The Association urges that the package costs offered by the District be disregarded, and the more reliable salary only figures be used as the basis for comparison. Should the arbitrator be uncomfortable with a benchmark analysis,

given the possibility of distortions caused by increment freezes and the like, the Association urges that average salary increases, and dollars per returning teacher be the basis for comparison. Another possibility raised is the use of minimum and maximum salaries, which cannot be distorted by an increment freeze. By any of these reliable measures, the Association offer is superior.

The Association registers its strong objection to the District's "back-door" attempt to modify its final offer and insert insurance as an issue in this dispute. Insurance was an issue settled very early in bargaining, and if the Board truly felt that it was central to the case, it should have made insurance a part of its final offer. Making salaries less competitive does nothing to address the perceived insurance problems facing the District.

Again, the Association stresses that insurance costs in this District are not out of the ordinary -- they are, in fact, below the average of the comparables. The teachers in Port Washington have been the leaders in the area in accepting modifications to their insurance designed to save the District money. The Association agreed to a change in carriers in 1984-85 which decreased premiums. In 1986, the Association voluntarily added a \$100/\$200 front end deductible and a pre-admission review provision which again reduced premiums. Some of the comparables cited by the District have yet to make these modifications. The effect of these concessions has been to produce an average yearly increase of only 7.02% since the switch in carriers. The District is wrong to ignore these recent concessions and attempt to portray its teaching staff as villains on the insurance issue.

IV. DISCUSSION

A. Comparability

Contrary to the District's arguments, it does not appear that Arbitrator Kerkman ruled on what would be the only appropriate comparables in his 1982 Award. Instead, Kerkman ruled that the seven districts common to both parties' lists of proposed comparables were sufficient to show a pattern. The practical effect of this decision, however, is to establish the Kerkman-7 as the first points of reference for these parties in negotiations. Whatever the intended scope of Kerkman's ruling, the decision established a set of primary comparables.

The undersigned agrees that, as a matter of labor relations policy, an established set of comparables should not be altered without some compelling reason. The generally

accepted view of a statute that employs comparisons to guide the parties and the arbitrators is that there must be a stable and definable set of comparables to look to, and that predictability is crucial to the operation of such a law over time. This view must, however, be reconciled with the legislature's amendment of MERA in 1986.

In disputes arising prior to May of 1986, the parties and the arbitrators were to look to settlements among public employees providing similar services, public employees generally, and private sector employees in comparable communities. The legislature changed that portion of the law, breaking each of the three groups into separate criteria to be considered separately. In making this change, they retained the language concerning comparable communities for public employees generally, and for private sector employees. The restriction to comparable communities was removed from the new criterion "d" dealing with comparisons to "other employees performing similar services." On the face of the statute, therefore, teachers are to be compared to teachers generally, wherever they may be found.

The obvious legislative intent in changing criterion "d" was to expand the scope of comparability among similar public employees. For the reasons noted above, this creates a tension within the law, given the general policy favoring "voluntary settlement through the procedures of collective bargaining" (§111.70(6), MERA), and the need for stability in achieving that goal.

The legislature's directive that all similar public employees be considered in determining the bounds of a reasonable settlement does not necessarily require that all such groups be given equal weight. The language of the statute is sufficiently broad to allow consideration of national averages. These figures, reflecting different labor markets, bargaining laws and funding mechanisms, cannot be treated as having the same relevance as statewide averages, which result from a relatively uniform educational structure. Even the Association acknowledges that there must be distinctions drawn, when it excludes K-8 schools within the athletic conference from its primary comparables. Just as there may be distinctions made based upon the type of population served by a school, so must there be consideration of factors such as size, geographic proximity, economic characteristics of the districts, and all of the other factors traditionally employed as measures of comparability. Under the former statutory language, a sufficient number of distinguishing factors might lead an arbitrator to refuse to consider a given settlement. Under the new language, the settlement is relevant and must be considered. The distinctions now go to how much weight should be given

the settlement.

In balancing the need for stability against the legislature's desire to expand the scope of comparability, the undersigned concludes that the appropriate primary comparables for the Port Washington-Saukville School District are the Kerkman-7 and two of the three schools proposed by the Association -- Whitefish Bay and Shorewood. These schools are included in the North Shore Athletic Conference, which is the traditional first measure of comparability. They roughly proximate to the District in size and location, and have been cited in the same comparability groupings as the District in other arbitration awards. Wauwatosa is excluded from the primary comparables, even though it is also a member of the North Shore conference. Aside from its somewhat more urban character, the Wauwatosa School District is approximately twice as large as the next largest district in the comparability group, and is three times as large as the average for the other nine schools cited as comparables. While Arbitrator Kerkman did not foreclose the issue of primary comparability in his 1982 Award, and although the legislative change invites re-examination of previous comparability determinations, the undersigned is not of the opinion that a district as atypical as Wauwatosa can be termed a primary comparable based solely on membership in the athletic conference. It is more appropriately grouped with the other schools cited by the Association as a generally comparable district.

Thus the undersigned concludes that the primary comparables for Port Washington-Saukville are Brown Deer, Cedarburg, Germantown, Grafton, Mequon-Thiensville, Nicolet Union High School, Northern Ozaukee (Fredonia), Shorewood and Whitefish Bay. Other schools cited by the parties will be treated as general comparables, with a weight accorded them consistent with their historical significance to bargaining, relative size, economic conditions, and geographical proximity.

B. Merits

1. The Lawful Authority of the Municipal Employer

There is no issue as to the lawful authority of the municipal employer to implement either salary proposal.

2. The Stipulations of the Parties

The District asserts that the stipulations of the parties are relevant to the salary dispute, because the

District agreed to pay the entire cost of health and dental insurance increases early in the bargain. This argument is more appropriately considered in the "overall compensation" and "comparability" portions of the Award. The parties have not entered into any stipulations regarding the salary issue, other than their agreement at the outset of the hearing that there was no issue as to the municipal employer's ability to pay the increases sought by the Association.

3. The Interests and Welfare of the Public

The District, as noted, does not dispute its ability to pay for the Association's offer, but asserts instead the political unwillingness to pay. This resistance is based upon its perception of itself as a high-tax/low-income community among the comparables. Certainly the income data for the District reveals that it is relatively less affluent than most of the surrounding communities. While the area poverty and unemployment rates are low, so too is the average income relative to neighboring districts. The average total income of \$24,715 is 7th of the 8 districts in the Board's initial set of comparables, and the undersigned is confident that the addition of Shorewood and Whitefish Bay will not upset that ranking.

As to the high-tax portion of the District's argument, it is perhaps overstated. The average tax rate among the comparables, adjusting for the addition of Shorewood and Whitefish Bay, is .02810, or \$1967 on a \$70,000 house. The District's taxpayers pay between \$2036 in the City of Port Washington and \$1922 in the Village of Saukville, on average, for the same house. The range is \$69 above the average to \$45 below the average./FN2/

Another component of the high-tax argument made by the District which needs some review is the reason for the tax rate. The District carries a relatively large debt service, while maintaining lower than average educational costs per pupil. The average educational cost per pupil in 1986-87 among the comparables was \$4,942, or some \$529 more than the District's \$4,413 per pupil expenditure./FN3/ The allocation between instructional costs and other expenses such as capital improvements is entirely within the province of the school board, and the undersigned does not presume to criticize the District's choices. However, where an argument is advanced that high taxes should equate with lower salaries, there needs to be some examination of whether the salary level is the reason for the relatively high tax rate in the first place, and whether the District's professed concern over taxes is reflected in other areas of expenditure.

The District's income and tax argument may, in the abstract, justify moderation in the amount of increase sought by teachers. The undersigned is troubled, however, by the advancement of a political unwillingness to pay argument based solely on a statistic showing relative income levels. There is no evidence of distress in the local economy. Unemployment is low, and the record shows a relatively robust local business climate. The School Board's budgeted increase of 7.66% in instructional staff costs was adopted without comment after a public hearing which focused on other issues. Local units of government are engaging in major capital improvements such as sewer expansion, jail expansion and the School Board's own district office facility and elementary school expansion projects. While no question has been raised as to the need for these projects, they raise some question as to the degree of actual resistance to necessary public expenditures by the people of the District.

Certainly the public will have a general interest in keeping the cost of public services as low as possible. The will also have a general interest in keeping the quality of municipal services as high as possible. These two general interests are supported by the various state and national studies introduced into evidence by both parties. As general interests, though, they do not distinguish one district from another. The distinction that the District advances is that taxes are higher and incomes lower. As to the former point, 70% of the District residents pay taxes that are 3½% over average, while 30% pay at a rate 2½% below the average. The income statistic does not, by itself, suggest lower increases for teachers. There is no line of arbitral authority for the proposition that rates of increase will be guided by average incomes within a district. Absent a showing that average income has decreased, it must be assumed that the existing salaries reflect an acceptable level of compensation for teachers relative to the income of the district residents. The rate of increase does not then logically hinge on income levels, as they have already been taken into account in the existing schedule.

As noted above, the broad based policy studies cited by the parties go to generalized interests of the public, and cannot be said to tilt the balance under this criterion. Consideration of the interests and welfare of the public is inconclusive.

4. Other Employees Performing Similar Services

Neither party seriously disputes the proposition that the Association's offer is more fully supported by the comparables when viewed on the basis of salary increase alone. The average dollar increase among the nine primary comparables was \$1969 per returning teacher in 1987-88, yielding a percentage increase of 6.52%. The Association's final offer is \$19 below the average and results in a 6.55% increase. The Board offer misses the average by \$169 and yields 6.05%.

In the second year of the contract, the comparables averaged an increase of \$1975 per returning teacher, an increase of 6.10%. The Association offer generates a dollar per returning teacher increase of \$2050 for 1988-89, or 6.46%. The Board's 1988-89 proposal would pay an average of \$1800 per returning teacher, or 5.7%.

Over the two years of the contract, the Association's offer exceeds the primary comparables by \$56, while the Board would pay returning teachers \$344 less than the average. On a percentage basis, the Association offer exceeds the comparables by 0.39%, while the Board offer is 0.87% below the average.

The general comparables cited by the Association favor the Association position somewhat more strongly than do the primary comparables. The average dollar per teacher increase for schools within the CESA exceeds the Association offer by \$153 and the District offer by \$553. The settlements for schools within the MSMSA exceed the Association's proposal by \$106 and the Board offer by \$506, over two years.

The District premises its argument on total package cost increases, and the insurance cost increases that drive them. The District's evidence shows it to be above the average of the Kerkman-7 in package costs in both years of the contract because of insurance increases. While the Association raises many evidentiary objections to the Board's exhibits, the undersigned accepts the representations of the Board concerning its package cost evidence. The Association's objections are essentially that there is no chance for a cross-examination of the preparers of Board summaries, and various perceived defects in the exhibits which are common to the summary evidence received in interest proceedings.

The District is correct in its assertion that overall package costs favor its offer. In reviewing the data

for those districts where package costs are available, it is apparent that the Association's offer exceeds the settlements by approximately \$464 in package costs over the two years of the contract, while the District offer would fall approximately \$24 below the average per returning teacher cost of the Kerkman-7 comparables.

The Association offer is the more reasonable when the salary issue is viewed in the abstract, while the District offer more nearly matches the comparables for which data is available when insurance increases are factored into the equation. On balance, the undersigned is persuaded that the salary comparisons are the more valid measure in this particular dispute.

The District's stress on the insurance issue ignores the fact that the only issue on which the parties submitted final offers is salary for the next two years. On the basic issue in dispute, the Association offer is the more reasonable. Acceptance of the District offer on salary will do nothing to address their insurance costs, which are below those of the Kerkman-7 comparables for which the District produced evidence. The Association has produced persuasive evidence showing that the District has received concessions on insurance in the past, placing it squarely in the mainstream of other districts in terms of deductibles and carrier language. The Association has also agreed to a carrier change in the recent past to reduce insurance costs. These concessions are the very types of changes that the District urges should be the quid pro quo in this case for a salary increase at or near the average for the comparables. The record shows that the concessions made in other districts this year were accepted by the Association in prior years.

The parties' final offers identify salary increases as the central issue. The Association's offer is preferable on the issue of salary. The District's concerns over health insurance rates cannot be directly addressed in the dispute before the Arbitrator and would be more appropriately raised by making an offer dealing with that issue expressly.

Consideration of settlements with other employees performing similar services favors the Association offer.

5. Comparison With Public Employees Generally

The salary offer of the District is closer to the pattern of settlements for non-teacher public employees in the area. Increases for these employees range from a high of 5.63% for the District's own non-represented employees to a low of 3.0% for law enforcement employees in the Sheriff's unit. While there is no consistency to the figures among other public sector employees, all of the settlements are closer to the 6.1% offer of the District than the 6.5% proposed by the Association.

Consideration of the increases received by non-teaching public employees favors the final offer of the District.

6. Comparison with Private Sector Employees

The data provided for private sector employees is inadequate for the purpose of drawing general conclusions. Only four private sector employers responded to the survey, and three of those indicated that their employees were not represented for the purpose of collective bargaining. The impact of these four employers on the labor market in the area cannot be determined.

Consideration of the increases received by private sector employees is inconclusive.

7. Increases in the Cost of Living

The undersigned has had occasion to discuss the cost-of-living criterion in other cases, and agrees with the mainstream of thought that the weight accorded the CPI is best indicated by the settlements reached by other parties bargaining in the same climate as the parties to this dispute. This view does not, contrary to the District's argument, discount the cost-of-living as an independent factor to be considered under the statute. In the absence of other settlements, the arbitrator is obliged to assign his own weight to the cost of living. This is also true where the settlements are mixed, demonstrating no pattern to suggest how heavily the cost of living might weigh in a particular dispute. In this case, there is a clear pattern of salary settlements in area districts. The cost of living in those districts is no different than the cost of living in Port Washington. The undersigned cannot assume that the negotiators here, had they been able to arrive at a voluntary settlement, would have assigned a greater weight to the CPI than all of their neighbors had assigned. Certainly there is no proof that that has been the practice in the past.

Consideration of the cost-of-living criterion is inconclusive. Both offers exceed the increases in the cost-of-living over the relevant time period. While the District offer is closer to the rate of increase in CPI, the Association offer is closer to the settlement average which reflects the weight that other bargainers have placed on CPI.

8. Overall Compensation Presently Received

The District asserts that this criterion favors selection of its offer. Certainly the rate of increase in overall compensation proposed by the Association exceeds the rate of increase in overall compensation received in the comparables for which data is available. The overall level of compensation presently received by teachers in the District, and the overall level that will be received under either offer, however, will have the Port Washington-Saukville teachers substantially below their peer group. The Association offer would have total compensation set at \$1660 per teacher under the average of the Kerkman-7 in 1987-88, and \$1381 below average in 1988-89. The District offers sets the deficiencies at \$1843 in the first year, and \$1873 in the second year. Contrary to the opinion of the District, the undersigned finds that consideration of this criterion slightly favors the Association's offer.

9. Other Factors Normally Considered

The Board cites two factors under the "catch-all" criterion of the statute. First, the District urges that the Arbitrator give weight to the prevailing political mood in favor of meaningful property tax relief. It is true that the legislature and the governor have seriously discussed property tax relief proposals in the past legislative session. It is also true that no agreement was reached on the appropriate means of providing that relief. What was thought to a compromise measure was vetoed, and the veto was sustained. Such relief must come on a state-wide basis. It is not within the province of an interest arbitrator to initiate a "property tax relief" program on an ad hoc basis through decisions ignoring the existing statute and substituting personal views as to the prevailing political sentiments in Madison.

The second factor urged by the Board is bargaining history. The Board points out that the Board offer is above previous voluntary settlements in total package costs. The same exhibit cited (Board #24) also shows that it is well below all of the previous settlements in the percentage of salary increase, and is well below two of the three in amount of package increase relative to in-

crease in GPI. The Board's argument in this regard is somewhat inconsistent with its position that settlements should track trends in the cost-of-living. As discussed in §4, supra, salary comparisons are the issue in this case, and take precedence over the package argument in light of the failure of the District to address the insurance issue that underlies the package cost issue.

Consideration of criterion "j" is inconclusive.

V. CONCLUSION

The portion of the contract in dispute is the amount of salary increase for the 1987-88 and 1988-89 school years. The Association's offer is the more reasonable in that its proposal is far closer to the prevailing rate of increase in neighboring districts. The District's package cost argument makes this a substantially closer decision than would otherwise be the case. However, given that the District has made no proposal in this proceeding on the insurance that causes the inflated package cost, that the concessions claimed for other districts have already been made by this district's teachers, and that the actual cost of insurance under either offer is below the average for the comparables, the Association's advantage on the amount of salary increase is determinative.

On the basis of the foregoing, the record as a whole, and in consideration of the criteria for determining interest disputes under Section 111.70, the undersigned makes the following

AWARD

The final offer of the Port Washington-Saukville Education Association is preferable under the terms of the statute, and is hereby incorporated into the 1987-89 collective bargaining agreement between the parties.

Signed this 19th day of September, 1988 at Racine, Wisconsin:

Daniel Nielsen
Arbitrator

Footnotes:

FN1 - There was a substantial dispute between the parties concerning the costing methods employed by the District and the Association. The District improperly employed a cast-backward method in costing single insurance/tax sheltered annuity benefits. The Association did not cost the total package because of the District's failure to provide information on the number of enrollments in tax sheltered annuities. Both of these disputes were addressed in a conference call on September 2, 1988. Over the objection of the Association, the undersigned allowed the District to submit the correct enrollment figures. The parties were afforded an opportunity to submit revised arguments reflecting the additional information. Both parties submitted such additional argument. The letter summarizing the conference call and ruling is appended hereto as Appendix "B".

In light of the revised figures and the correction of the District's costing, many of the arguments made by the parties in their initial and reply briefs became irrelevant. Other portions required recalculation of data. The undersigned has modified the figures where appropriate to accurately reflect the data in the record.

FN2 - See Board Exhibits #98 and #110

FN3 - See Board Exhibit #19

§111.70(4)(cm)7:

7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. The 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of otehr employes in private employment in the same community and in camparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. 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.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. 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.

Daniel Nielsen
Mediator/Arbitrator

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[30]

September 2, 1988

Mr. William Bracken
WISCONSIN ASSOCIATION
OF SCHOOL BOARDS, INC.
Post Office Box 180
Winneconne, WI 54986

Ms. Debra Schwoch-Swoboda
CEDAR LAKE UNITED EDUCATORS
411 North River Road
West Bend, WI 53095

RE: Port Washington-Saukville
Conference Call on Status
of the Record

Dear Mr. Bracken and Ms. Schwoch-Swoboda:

This will confirm this afternoon's discussion concerning the status of the record. I agree with Ms. Schwoch-Swoboda's concerns over submission of new information after the closing of the record. With respect to the data concerning tax sheltered annuity participants, however, my notes indicate that the record was held open for the data in dispute. The issue is not whether the information should have been submitted after the hearing. It is, instead, the timing of the submission.

From our discussion, it does not appear that either party was attempting to gain tactical advantage from withholding the data. It does appear that there was a less than diligent effort to provide the information, but both parties have some responsibility in that area. I will receive the information, but will allow additional argument on its significance. Written arguments will be postmarked no later than Wednesday, September 7th. It is my hope that this deadline will avoid unduly delaying the issuance of the Award. I will still attempt to issue the Award at the end of next week.

On the question of how the District was costing for benefits, I have advised both parties that a cast forward method is appropriate, and that the District's change from a cast back to a cast forward is not relevant whenever submitted, since the cast back method would not have been accepted in any event.

Very truly yours,

Daniel Nielsen
Arbitrator