

JUL 11 1988

STATE OF WISCONSIN
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
BEFORE THE INTEREST ARBITRATOR

In the matter of the petition of
MARSHFIELD SCHOOL DISTRICT
To initiate Arbitration between
said Petitioner and
MARSHFIELD TEACHERS
ASSOCIATION

Daniel Nielsen, Arbitrator
Case 20 No. 39282 INT/ARB-4531
Decision No. 25078-A
Appointment Date: 02/09/88
Date of Hearing: 05/02/88
Record Closed: 06/15/88
Date of Award: 06/30/88

Appearances:

Central Wisconsin UniServ Council-West, Post Office Box 1606,
Wausau, Wisconsin 54402-1606, by Ms. Mary Virginia Quarles,
Executive Director, appearing on behalf of the Marshfield
Teachers Association.

Wisconsin Association of School Boards, Inc., Box 160, Winneconne,
Wisconsin 54986, by Mr. William G. Bracken, Associate Executive
Director, appearing on behalf of the Marshfield School District.

EXPEDITED ARBITRATION AWARD

The Marshfield Teachers Association, hereinafter referred to as the Association, and the Marshfield School District, hereinafter referred to as the Board, are parties to a collective bargaining agreement covering wages, hours and working conditions for all full-time and regular part-time classroom teachers, learning resource personnel, guidance personnel, teaching department chairmen and psychologists. The last contract expired on June 30, 1987. In December of 1986, the parties exchanged initial proposals on matters to be included in a successor agreement. Thereafter, they met for the purpose of negotiations on four occasions. On August 20, 1987, the Board petitioned the WERC, asking that the Commission initiate arbitration. An investigation was conducted which reflected an impasse in negotiations. By January 8, 1988, the parties had submitted final offers to the Investigator. The Commission issued an Order Requiring Arbitration on January 14, 1988.

On February 9, 1988, the undersigned was appointed as Arbitrator of the dispute. A mediation session was held on May 2nd. The effort at mediation was unsuccessful, and an arbitration hearing was conducted immediately thereafter, at which time the parties were given full opportunity to present such exhibits, testimony, other evidence and arguments as were relevant. The parties stipulated to the issuance of an Expedited Award, containing very brief summaries



of the arguments, and a brief rationale in support of the ultimate conclusions. It was agreed that the Award would be issued on or before July 1, 1988. The parties submitted post-hearing briefs, and the record was closed on June 15th.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

I. ISSUES

The Final Offer of the Association, which is attached hereto as "Exhibit A" contains the following elements:

1. Re-Title Article V as "DISCIPLINE" and expand the acts of discipline requiring just cause to include reduction in rank or compensation and reprimands;
2. Include a provision for overload pay for each class in excess of 5 per day.
3. Introduce a voluntary early retirement plan providing up to five years of paid health insurance for teachers retiring under WRS, who have at least 15 years experience with the District;
4. Place Summer School and Drivers' Education on a daily or hourly rate based upon the BA Base divided by 190 days (7.5 hours per day);
5. Increase the salary schedule by keeping the current structure and increasing the BA Base to \$17,825 in 1987-88 and \$18,820 in 1988-89 (an average increase of \$1,947.64 per returning teacher in 1987-88, and \$1,940.17 p/r/t in 1988-89).

The Final Offer of the Board, which is attached hereto as "Exhibit B" contains the following elements:

1. Increase the salary schedule by keeping the current structure and increasing the BA Base to \$17,645 in 1987-88 and \$18,420 in 1988-89 (an average increase of \$1,650 p/r/t in 1987-88 and \$1,605 p/r/t in 1988-89);
2. Introduce an early retirement plan allowing for retirement with premiums paid for by the Board at the rate in effect upon retirement. Eligibility extends to teachers having 15 years of service and retiring between the ages of 62 and 65;
3. Increase Summer School and Drivers' Education by

50¢ per hour in each of the contract years.

III. STATUTORY CRITERIA

The dispute is governed by the provisions of §111.70 (4)(cm)7, MERA, attached hereto as "Exhibit C".

IV. POSITIONS OF THE PARTIES

A. The Position Of The Board

The Board takes the position that its offer more closely adheres to the statutory criteria, and is therefore preferable to that of the Association. Specifically, the Board's major arguments are:

1. That the Association offer seeks to change the status quo in four significant ways (introduction of an overload compensation system, expansion of just cause protections, expansion of both the term and cost of retirement insurance benefits, and changing the method of payment for summer school and drivers' education). The party seeking such a change in the status quo must offer persuasive and compelling reasons for the change, and show that a quid pro quo has been offered to the other party for some concession sought in the final offer. Here, the Association has shown neither compelling need for change, nor any trade-off to make the final offer palatable to the District;

2. That the appropriate set of comparables for Marshfield is the Wisconsin Valley Athletic Conference, as previously determined by Arbitrator Miller [Dec. No. 18111-A (5/81)]. Although the Association engages in "comparable shopping", and seeks to include an arbitrary grouping of similarly sized districts, it has not produced any evidence of comparability other than a simplistic reference to similar size. The Association ignores such factors as geographic proximity, number of teachers, number of students and assessed valuation, all of which are critical to any comparability analy-

sis. Thus the only appropriate comparables are the athletic conference schools. Of those eight schools, only two have settlements for the 1987-88 school year -- Stevens Point and Wisconsin Rapids. The Stevens Point settlement, however, must be discounted because it is the final year of a three year agreement. The conditions prevailing at the time of that bargain cannot control the outcome of this one.

3. That, because there is only one reliable settlement among the eight comparables, sound arbitral precedent calls for reliance on the other statutory criteria, such as private sector settlements, non-teacher settlements, the cost of living and the interests and welfare of the public.

4. That the Association's overload pay provision amounts to an additional \$500,000 in compensation costs to the second year of the contract. This yields a salary only increase of \$3800 per teacher, or 12.9%. While the Association claims that it does not want the Board to pay this amount, the alternatives -- staffing regularly scheduled classes with new teachers or changing the work schedule -- are unrealistic. The second year package costs, figuring in the overload pay, is 13.1%. Even this figure is understated because it does not take into account the tremendous rate increases for health and dental insurance which most school districts are experiencing. Even the Association's proposed comparables will not support this amount of increase.

5. That the Association has failed to prove any justification for its overload proposal. This proposal appears to be a response to pique over a change from modular scheduling, rather than a response to actual overloading. While the teachers complain about an increase in contact time, the previous arrangement included an Open Department Lab (ODL), which was considered contact time. While the traditional schedule is more structured, there has been

neither an increase in actual contact time, nor a decrease in preparation time under the traditional schedule. The work day has not changed. Thus, there need be no change in compensation, and certainly not the enormous amount sought by the Association.

6. That there is no support among the comparables for the Association's overload pay provision. Only Wisconsin Rapids has anything approaching the system proposed by the Association. Antigo, Rhinelander and Merrill have no overload provisions in their contracts. Those districts that do have overload language pay only for loss of preparation time due to the assignment of an extra class. If the extra class is in lieu of a supervisory assignment, no additional pay is provided. Even Wisconsin Rapids, which has similar language, does not pay 20% for an extra class, instead allowing 15% extra compensation. The weakness of these comparables is exacerbated by the fact that all have more contact time than the high school teachers in Marshfield. There is nothing unique about the situation in Marshfield which would justify the Association's unique language on overload, and its attendant cost.

7. That the prevailing economic conditions, including below average income and above average taxation, relatively modest levels of inflation, a troubled farm economy, and the trend of higher school costs relative to personal income, all point to a need for moderation in salary increases. These considerations must outweigh the one reliable settlement among comparable schools. The Board notes a trend in arbitral thinking toward striking the balance in favor of the interests of the public where comparability is weak.

8. That the Board's offer is preferable when compared to salaries at other conference schools. While a benchmark analysis is difficult, owing to the compression of several

conference schedules, such analysis is instructive. The Marshfield schedule is admittedly weak at the minimums and the BA Maximum. The goal of the schedule, however, is to encourage additional education. The Board notes that the MA Maximum is the second highest among the comparables, and \$1,512 above the median. The average salary in Marshfield is \$555 above the average for the conference, and the Board's teaching staff enjoys the second highest average total compensation in the conference. Marshfield's teachers are well compensated relative to other teachers.

9. That a review of private sector settlements, and non-teacher public sector settlements, including other internal settlements, do not justify the increases sought by the Association. Arbitrators are increasingly reliant upon these comparables, and inevitably find that they will not support the very large increases sought by teachers. This is the case here, where the Board's 6.0% and 5.5% pay increases are generous by comparison with those being granted in other sectors.

10. That the Board offer, since it exceeds the cost of living, is more reasonable. It maintains the standard of living for employees, while recognizing that the inflation rate has stabilized. The settlements in past years have vastly outstripped the cost of living, the relative decline in CPI over the past few years has not been matched by a moderation in salary demands. The trend now, however, is towards a rate of increase more reflective of CPI. The importance of this factor is boosted by the lack of a clear settlement pattern. CPI must therefore be weighed on its own merits. It clearly favors the Board.

11. That the Association's VER proposal is unreasonable, since it provides no cap to protect the Board from runaway insurance cost increases. The comparables show a consistent

pattern of teacher contribution to the health insurance upon retirement. The Board's proposal to cap insurance at the rates applicable upon retirement is therefore more consistent with both current practice and the comparables. Given the excessive cost of insurance, and the lack of any showing of need for the proposed change, the Board's offer should be preferred.

12. The Association's proposal to extend "just cause" protection to "reprimands" and "reductions in rank or compensation" is vague, and will lead to an increase in grievances. The Union has shown no need for this change in the status quo and their proposal has no support among the comparables.

13. The Association's proposal to change the manner in which summer school and drivers' education is paid has no rational basis. There is no good reason to link these duties with the BA Base, rather than independently bargaining the flat hourly rates. The overwhelming practice in comparable districts is to pay on an hourly basis for these services.

Overall, the Board characterizes the Association's position as unfair. The Association seeks a salary increase which is identical to that pursued by all of the other teachers in the conference. It also seeks, however, major changes in the language of the agreement and a large expansion of benefits. There is no trade-off in the Association offer for these dramatic improvements. The arbitration process should mirror the likely outcome of bargaining. The Association's offer would not reflect any realistic voluntary outcome.

B. The Position Of The Association

The Association takes the position that its Final Offer more realistically addresses the legitimate needs of the Marshfield teaching staff than does that of the Board. Its offer is supported by the comparables, and

by considerations of equity. Specifically, the Association argues:

1. That the primary comparables for Marshfield are the 8 schools in the Wisconsin Valley Athletic Conference. While only Stevens Point and Wisconsin Rapids are settled for the 1987-88 school year, their close geographic proximity entitles them to great weight, and they may thus be determinative of this dispute. Both strongly support the offer of the Association on wages. Further support is found in the secondary comparables proposed by the Association. While an arbitrator will not normally look beyond the athletic conference, there is ample precedent for expanding the comparables in situations where settlements are non-existent or inconsistent within the conference.

2. That the small number of responses to the Board's salary survey by private sector firms (two replies) makes private sector comparisons meaningless. Further, the public sector responses are unreliable because of distinctions between the jobs performed, and the circumstances of the other public sector employees. In any event, it is well-established that non-teacher settlements are not nearly as persuasive an item of proof for appropriate levels of increase as other teacher settlements are. Thus the arbitrator should primarily rely on the teacher settlements cited by the Association, rather than the private sector and municipal sector settlements put forth by the Board.

3. A benchmark analysis shows that the Marshfield faculty is below the conference average at virtually every benchmark of the salary schedule. Marshfield ranks eighth out of eight at the BA Minimum, seventh at the BA Maximum, sixth at the MA Minimum, and seventh at the MA Maximum. This below average rank is also reflected in a comparison with the secondary comparables. While the Schedule Maximum in

Marshfield is second in the conference, the number of credits required to reach the maximum is nearly 21 over the conference average. The teachers in Marshfield are plainly entitled to the modest amount of catch-up that the Association offer would provide. The Association notes that the average benchmark salaries under the Board Final Offers in unsettled conference schools and the two settled schools are closer to its Final Offer than to that of the Board. This denotes not only the need for catch-up, but the overall reasonableness of the Association position.

4. That four of the conference schools pay overload amounts to the teachers for assignment of a sixth class, with the average payment being 18.75% of salary. The Association's proposed 20% overload is therefore consistent with the conference pattern. The need for this language is established by the unreasonable action of the Board in unilaterally changing the teaching day to add an extra class and increase the workload by 21% without any offer of additional compensation. While the Board has a legal right to determine the content of the workday, it has an equitable duty to compensate the teachers. Its failure to offer any response to this problem reveals a disregard for principles of fairness, and should weigh against the Board. The Board's assignment of a sixth class entails far greater responsibility for grading and student contact, and a concomitant loss of preparation time and contact with colleagues. Left unaddressed, the problem posed by the Board's unilateral action will damage the long term relationship of the parties.

5. That the Association's proposal on retirement insurance is more reasonable than the Board's in terms of the four major points of comparison - eligibility, termination of benefits, amount of benefit and beginning date. The

Association ties its retirement proposal to WRS retirement, thus preventing an employee from claiming the benefit without actually retiring. The Board's proposal is not reasonable, in that it does not provide such a safeguard. The bulk of the comparable districts terminate coverage at age 65, as does the Association offer, by tying it to Medicare eligibility. The Board's early retirement proposal contains a termination upon Medicaid eligibility, raising the possibility of termination before 65 because of medical emergency. Thus the Board would terminate health insurance when the retiree needs it most.

In the area of term of benefit, the Board would terminate benefits after three years, while the comparables range from 40 months through seven years. The cap proposed by the Association is 5 years, which is far more in line with the comparables. The Board proposal is also unreasonable when one examines the notice period for claiming the benefit. The Board asks for notice some eight months prior to retirement (January 1st for retirement in the Fall semester). The Association requires two to three months advance notice. The comparables generally do not require any advance notice. Plainly, the Association offer is the more reasonable by this measure.

While the Association's proposal will make possible massive savings for the District by encouraging the early retirement of 19 teachers, all of whom would be replaced with teachers at the lower levels of the salary schedule. At the extreme, this will save the Board \$369,409. This contrasts with a savings under the Board offer of \$40,191. Because the Board's proposal is so very restrictive, it would allow for only two teachers to retire during the contract term.

6. That the just cause provision of the Association is more reasonable, since it clarifies the scope of just cause protection within the district. The Association notes that five of the comparable districts have just cause standards broader than that specified under current contract language.

7. That the Board has not successfully distinguished itself from other districts that have settled at levels consistent with the Association offer. The interests of the public are best served by adequately compensated teaching personnel, as shown by a small business survey. There is no inability to pay argument to be made in Marshfield, since the levy rate is less than 90% of the conference average. The local population is relatively wealthy, and the unemployment rate is the lowest in the region.

V. DISCUSSION

A. Summary Findings

1. Comparables. The primary comparables for the district are the schools in the Wisconsin Valley Conference. The secondary comparables proposed by the Association are not shown to have anything in common with Marshfield other than size. There is no proof that Burlington in Racine County, Middleton in the Madison suburbs and Manitowoc, with its troubled manufacturing economy, can logically be compared with Marshfield. The forces that shape a labor agreement in these locations -- local economic conditions, area settlements, the political willingness to support the schools -- may or may not obtain in Marshfield. There is no evidence that the bargainers in Marshfield have traditionally relied on these far flung districts for guidance. Where, in a particular conference, the teachers or boards form a stubborn island in a sea of settlements, reference to the consistent pattern throughout the remainder of the

state may be persuasive evidence. Here it is of little use.

The private sector comparables cited by the Board are inadequate in number to show any pattern of settlement in the area. There is no way of reliably determining the percentage of the area labor force impacted by the increases at St. Joseph's Hospital and the Marshfield Clinic, and neither facility engages in collective bargaining with its employees.

The non- K-12 public sector comparables cited by the Board are, on the whole, appropriate. The UWC-Marshfield/Wood County settlement is not persuasive, since it is an increase bargained on a statewide basis, and under a very significantly different bargaining law.

The statewide and national bargaining data provided by both sides has some relevance under the "interests and welfare of the public" criterion, but is not persuasive under the comparability criteria.

2. Cost of the Offers. The parties differ slightly in their estimations of the percentage increases represented by the offers. This dispute, amounting to 0.1%±, is not in any way determinative of the case. The undersigned will use the parties own costing of their respective offers on salary (including longevity) and fringe benefits (excluding VER and Overload). These are:

1987-88	<u>Salary Only</u>	<u>Total Package</u>		
Board:	+\$1669 6.0%	+\$2383	6.4%	
Assoc.:	+\$1967 7.1%	+\$2723	+7.3%	
1988-89	<u>Salary Only</u>	<u>Total Package</u>		
Board:	+\$1625 5.5%	+2380	+6.0%	
Assoc.:	+\$1960 6.6%	+2786	+7.0%	

These figures do not include the Board's speculation about insurance increases in the second year.

The second year costs are greatly increased by the Association's impact language on Overload. In order to accomodate this provision, the Board must either pay an additional 20% or hire part-time faculty to cover the sixth class assignment. Either alternative will boost the Board's costs. The second year costs of the Association offer in salary are increased to +\$3818 or 12.9%. On the other hand, acceptance of the Association's Overload proposal also requires acceptance of the VER proposal, which offer the potential for savings of \$318,000 at the extreme. This cost savings, however, is speculative when compared to the certain impact of the Overload pay. The actual cost of the Association's second year cannot be accurately computed, but appears to be at least \$180,000 more than the salary schedule increase proposed for 1988-89.

B. Conclusions

1. Salary. The salary proposal of the Association is more reasonable when viewed strictly against other area teacher settlements. This advantage is reduced by the small number of settlements, and the fact that Stevens Point is a multi-year agreement. The Board offer is consistent with the rate of increase for other public sector employees, particularly other District employees. The interests of the public criterion is inconclusive, as the Board has not shown any particular financial distress among District residents.

The catch-up argument of the Association is not determinative. The rank of Marshfield teachers is the result of voluntary settlements, and is not as low in terms of overall compensation as it seems when only wages are examined.

The cost of living criterion favors the Board, as its offer more nearly reflects increases in the CPI.

Neither party holds a decisive advantage on the salary schedule issue.

2. Overload Pay. The Association has demonstrated that the concept of overload pay is accepted by a majority of the districts among the comparables. Furthermore, and contrary to the Board's assertion, the need for a provision of this type is established by the district's unilateral action in expanding the number of classes and thus the volume of work. The quid pro quo for an overload provision may be provided by some specific bargaining proposal, or it may be provided by the increased volume of work already being performed. The Board is correct in its assertion that the overall work day has not been changed, but the addition of formal instructional time within the work day does affect the intensity of effort during the day, and may be properly held out as meriting some additional compensation.

While equitable considerations may favor the introduction of an overload provision, the specific provision proposed by the Association goes well beyond the scope of the need. The Association demands a 20% premium for the sixth class. This ignores the fact that, under the modular schedule formerly in place, contact time in the form of the Open Department Lab was required beyond five formal classes. Certainly this time was not as structured as the sixth class now required, but teachers could reasonably have been expected to perform instructional duties during at least a portion of the ODL. The Association's brief concedes that the actual increase in instructional time under the traditional schedule is more on the order of 8% than 20% (Assoc. Brief, pg. 24).

As noted, the comparables support the concept of an overload pay provision. With the exception of Wisconsin

Rapids, the other contract provisions all allow the districts to avoid overload payments by assigning the sixth class in lieu of a supervisory assignment. This permits the districts to assign instructional duties to teachers, while covering supervisions with aides or other non-teaching personnel. Wisconsin Rapids does not have such an escape clause, but provides only a 15% payment for teachers working an additional class.

Neither party's position is reasonable on the issue of Overload. The Board ignores the problem by refusing to make any gesture towards compensating teachers for the increased effort required by the traditional schedule. The Association seeks to secure the most restrictive and expensive overload provision in the conference. It appears that the Association's proposal is more punitive than compensatory in nature. It seeks to force a return to modular scheduling or, in the alternative, force the Board to pay a penalty for its decision to change schedules.

The Board's position is favored as being less unreasonable than the Association's. While acceptance of the Board offer leads to an inequitable result for the term of the contract, it does not foreclose consideration of a more proportional response to overload problems in the future. As a practical matter, adoption of the Association offer will force the Board to either abandon its managerial choice of a standard schedule, or pay a built-in penalty well beyond this contract term. The status quo is the lesser of the two evils.

3. Voluntary Early Retirement. The two central issues in early retirement are the amount of the insurance contribution and the duration of the benefit. The Board proposes to improve the current program by paying the health insurance at the rate of contribution in effect at retire-

ment (in dollar terms), while the Association seeks an improvement to a level of payment equal to the contribution in effect at any given time for the active staff. The comparables favor the Board's position. On the question of duration, the Board seeks to maintain eligibility at age 62 through age 65. The Association seeks to improve this by setting eligibility at age 55. Both parties propose a threshold of 15 years in the District for eligibility. The comparables are mixed. Most would not extend the benefit to persons aged 55, but have longer durations of benefits than three years. The Association's position is somewhat more reasonable because of the Board's unique reliance on Medicaid eligibility to terminate benefits, where most such provisions terminate upon eligibility for Medicare.

The voluntary early retirement issue slightly favors the Association.

4. Just Cause. The Board is correct in its claim that the term "reduction in rank or compensation" is too vague. However, the failure of the Board to extend just cause protection to, for example, a disciplinary denial of an increment, while requiring just cause for the less drastic measure of a short suspension strikes the undersigned as illogical. While the Association's proposal is flawed, it is on balance more reasonable than the Board's position.

5. Drivers' Education and Summer Pay. The hourly rate proposed by the Board is more consistent with the comparables than the BA Base calculation proposed by the Association.

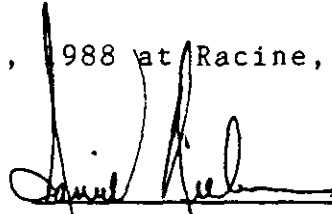
VI. AWARD

The Overload issue is determinative. It has the most significant long-term implications for the parties. While

neither party's proposal on the issue is reasonable, the flaws in the Board position are more easily corrected in future bargains.

On the basis of the foregoing, and the record as a whole, the undersigned directs that the Final Offer of the Marshfield School District be incorporated into the collective bargaining agreement for the years 1987-88 and 1988-89.

Dated this 1st day of July, 1988 at Racine, Wisconsin:



Daniel Nielsen
Arbitrator