STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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In the Matter of the Petition of the

MERRILL AREA PUBLIC SCHOOL DISTRICT

To Initiate Arbitration between said Petitioner and

MERRILL EDUCATION ASSOCIATION

CASE 22
No. 38790 ARB-4416
Decision No. 25119-A

Rose Marie Baron,
Arbitrator

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APPEARANCES

William G. Bracken, Association Executive Director, Employee Relations, Wisconsin Association of School Boards, representing the Merrill Area Public School District

Mary Virginia Quarles, Executive Director, Central Wisconsin UniServ Council-West, representing the Merrill Education Association

I. BACKGROUND

The Merrill Area Public School District, a municipal employer (hereinafter referred to as the "District" or the "Board") and the Merrill Education Association, (the "Association" or the "Union"), representing a collective bargaining unit consisting of all full-time and regular part-time teachers, have been parties to a collective bargaining agreement which expired on August 14, 1987. On March 1, 1987, the parties exchanged their initial proposals and met on three occasions in efforts to reach agreement. On May 5, 1987 the District filed a petition with the Wisconsin Employment Relations Commission to initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Act. An investigation was conducted and final offers were submitted, resulting in an order initiating arbitration by the Wisconsin Employment Relations Commission issued on February 1, 1988. The parties selected the undersigned from a panel of arbitrators; an order of appointment as arbitrator was issued by the Commission on February 10, 1988. Hearing in this matter was held on April 13, 1988 at the Merrill School District Administration Building, Merrill, Wisconsin. A transcript was made of opening statements and witness testimony only; the parties' exhibits were offered and discussed separately. Briefs were submitted by the parties according to an agreed-upon schedule.

II. ISSUE

The parties have resolved all but one issue through collective bargaining, i.e., the issue of the salary schedule. The salary schedule benchmarks proposed by both parties do not differ significantly; the unresolved matter before the arbitrator is whether there shall be a one-step increment as proposed by the Association or a one-half step increment as proposed by the District.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 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. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable 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, fact-finding, arbitration or otherwise between the parties, in the public service or private employment.

IV. POSITIONS OF THE PARTIES

In this section the Arbitrator will present a summary of the positions of the parties and determination on the threshold matters of comparable communities [Section 111.70(4)(cm)(7)d], costing of final offers (Factor h) and salary schedule structure (Factor j) which must be resolved before a determination can be made as to which of the final offers is to be selected.

A. Comparables

Both parties agree that the school districts which comprise the Wisconsin Valley Athletic Conference are the appropriate primary comparability group. In addition to Merrill, these are:

Antigo	Stevens Point
D.C. Everest	Wausau
Marshfield	Wisconsin Rapids
Rhinelander	

Since there is no disagreement as to the use of the athletic conference, the Arbitrator adopts the districts listed above for purposes of comparability in the instant arbitration.

1. The Association

In addition to these communities, the Association proposes the inclusion of the following statewide districts which are of similar size (excluding Milwaukee schools) as secondary comparables:

Ashwaubenon	Manitowoc
Beaver Dam	Menasha
Burlington	Menomonie
Chippewa Falls	Middleton
Fond du Lac	Neenah
Hudson	

The Association's rationale for including these districts in their presentation is that only two of the eight districts in the athletic conference, Stevens Point and Wisconsin Rapids, have settled for 1987-88 and only Wisconsin Rapids has settled for 1988-89. The Association notes that arbitrators have made determinations on the basis of such a limited sample, however, it offers an expanded comparability group should the Arbitrator require further evidence showing that that the settled Valley schools are in the mainstream of settlements in districts of similar size and characteristics on a state-wide basis. Arbitral authority is cited by the Association in support of the use of secondary comparables and the weight given to state-wide comparisons when area settlement patterns are limited.

The Association contends that information submitted by the Board on two public employers and one private sector employer is not comparable. Since only one of five private employers responded to the Board's request for information, the single response may not be representative of the private sector. In addition there is no information in regard to job responsibilities for comparability purposes. The public sector employer responses are not comparable since that information is also not complete.

Finally, the Association rejects the utility of the four districts named as secondary comparables in the Kerkman arbitration (Board Ex. 1) and asserts that since the Board did not give them consideration at the hearing, they should have no weight in this arbitration since they were not timely raised.

2. The District

The District opposes the inclusion of the secondary comparables proposed by the Association. In a 1980-81 impasse, the Association proposed the athletic conference districts, and Arbitrator Kerkman based his analysis on the athletic conference as the primary settlement comparability pool. At that time, the Board proposed a secondary group of four districts, i.e, Athens, Marathon, Medford, and Tomahawk, which, while not utilized in that instance, were held to be appropriate if a secondary group of comparables were found to be necessary . These districts were deemed appropriate because they are contiguous, share the same labor market, and are of similar rural nature.

The District further argues that predictability and stability in the parties' long-term relationship is of paramount importance. Both the Board and Union have relied upon the Wisconsin Valley Athletic Conference in reaching voluntary settlements over the past years. To adopt the arbitrary group of state-wide school districts proposed by the Union would undermine further collective bargaining. In addition, size is not the only criterion to be considered; such variables as the labor market, socio-economic characteristics, tax information, levy rates, equalized valuation, etc. must be considered. There are no compelling reasons to overturn the set of comparables historically utilized by the parties.

The Arbitrator has considered the Association's proposal and supporting arbitral authority to include as secondary comparables a state-wide group of similarly-sized school districts and the District's argument in opposition. The District points to an earlier arbitration award which sets forth four districts as the only appropriate secondary comparability group.

It should be noted that the Association does not dispute the use of the primary comparables and cites arbitral authority for arbitrators reaching a decision based on two settlements in an athletic conference of eight. The Association offers the expanded comparability group stating, "If, however, the present Arbitrator seeks a broader data base against which the final offers may be analyzed..." (Association Brief, p. 3, emphasis added).

The Arbitrator is not persuaded that there is a need to go beyond the historic athletic conference comparables in the present case. Long-standing arbitral authority supports the use of the athletic conference as the best standard of comparability in teacher bargaining since the school districts which comprise them are generally geographically proximate, are similar in number of employees, enrollment, and equalized valuation, and share a community of interest.

The Board argues against the inclusion of the Stevens Point 1987-88 settlement since it was not negotiated at the same time as the other districts and represents too high a settlement. The Board claims that the economic environment is not the same now as it was three years ago. On the contrary, the Association asserts that the economic climate is similar, or better, than when Stevens Point reached its settlement in October 1985. The Arbitrator notes that Board Ex. 20 shows that the Stevens Point three-year settlement provided yearly salary increments of 8.4% for 1985-86, 9.1% for 1986-87, with the lowest figure, 7.9%, for 1987-88. The Arbitrator is of the opinion that multi-year contracts are a reality which presently confront parties in collective bargaining and must be given full weight in interest arbitration.

The Arbitrator, therefore, will evaluate the settled contracts in the Wisconsin Valley Athletic Conference for 1987-88 and 1988-89 for purposes of comparison, apply the other statutory criteria, and determine the weight to be applied to these variables in order to determine which of the parties' final offers is the more reasonable.

B. Costing of Final Offers

1. Horizontal Movement

The Board proposes that the correct method includes the cost of lane advancement, i.e., horizontal movement on the salary schedule, and relies on Arbitrator Kerkman's 1981 award (Board Ex. 1) and the fact that the costs for such movement are known to be $28,000 (Board Brief, p. 32). The Board acknowledges that other school districts do not include horizontal movement into their costs and suggests that the Arbitrator exclude horizontal movement costs when comparing its offer to other school districts and include these costs when

looking at the actual cost to the District. The Association raises the same concern with the problem of comparing offers and claims that the District's costing is not based on the accepted standard. It therefore urges that its costing technique shown in Association Adjusted Ex. 12 be adopted.

Having determined that the voluntary settlements reached by two of the school districts in the athletic conference are proper comparables, the Arbitrator believes that the proper costing method is the one both parties agree are in general use for comparing salary increments, i.e., those costs associated with vertical movement only. Thus for purposes of the discussion which follows, the Arbitrator will utilize the Merrill final offer figures submitted by the Board in Chart II (Board Brief, p. 33) and Association Adjusted Ex. 12 which exclude horizontal movement.

2. Total Package Costs

The second issue is whether, as the Board argues, the total package cost of the respective final offers is a better measure for purposes of determining which of the parties' final offers is the more reasonable. The Board has submitted data in Chart II and Chart III (Board Brief, p. 33 and 34) showing these figures while the Union has submitted data concerning salary alone. In its Brief, the Board points out that costs of health and dental insurance are projected to increase and the figures given may even be an underestimate of the actual costs to the District. The Board is correct in its statement that overall compensation is one of the statutory criteria to be considered in reaching a final determination. While in some instances the Board's argument that total package costs be given great weight would prevail, the Arbitrator declines to adopt that position in the instant case. The issue as stated by the parties involves movement on the salary schedule, i.e., whether it is to be a full step or a half step increment. No dispute exists as to the fringe benefit package for teachers nor does the Board contend that there is a significant difference between the costs of fringe benefits received by Merrill teachers and teachers employed by other school districts in the athletic conference (see, e.g., data contained in Association Ex. 16 and 17 and Board Ex. 30, 31, 44, and 45). The issue here is narrowly drawn and it is the Arbitrator's opinion that data on vertical increment and salary alone constitute the appropriate analytic tool.

C. Salary Schedule

A matter which is unique to this interest arbitration concerns the non-traditional salary structure established in the prior negotiations for the Merrill School District teachers. The background regarding this "compressed" salary schedule was the focus of much of the testimony of witnesses at the hearing and argument of the parties and it will be summarized below.

In mediation leading to the 1985-87 contract, the parties agreed to change from a 14-step salary schedule to a 10-step schedule such as the one in the D.C. Everest School District. In addition, the new schedule changed the lanes (degree plus number of educational credits). For the first year the parties agreed on the B.A. base of $16,500 and the amount of $375,000 for 196 returning full-time staff (8.2% salary only). In the second year the parties agreed on a B.A. base

of $17,350 and an allocation of $386,708 for the salary schedule. In addition, Section 4.2 provided that teachers were to remain frozen on step in the second year, 1986-87, and not receive a vertical increment. Following mediation a committee composed of five teachers, two administrators, and one Board member met to place teachers on the new, compressed schedule. Problems involving the equitable distribution of the available funds became apparent during this meeting. In order to avoid having some teachers receive a windfall and others getting too little, the Union negotiators proposed using a formula, i.e., placement in the appropriate educational lane, then 7% plus $230. In order to accomplish this on the compressed vertical schedule, the union committee members recommended use of half-steps. The Board did not object to this method of placement since its major concern was the allocation of the available money.

The Association contends that the Board's present offer of a half-step increment is an attempt to dismantle the compressed, ten-step salary schedule previously agreed upon. The intent of the parties was to reduce the number of steps previously required to reach the maximum from fourteen to ten; the Board's proposal now increases the number of steps to nineteen with its half-step plan. The use of half-steps in the 1985-86 contract was clearly was for initial placement on the salary schedule. The status quo at the time negotiations began for the 1987-88 contract was a freeze on vertical advancement; both parties have now abandoned that position.

The Board argues that the salary schedule which has existed for the last two years is no longer a traditional salary schedule comparable with other school districts but is nothing more than a list of teacher salaries. Teachers were placed on the salary schedule in 1985-86 so that their raises were equitable; their years of experience had nothing to do with where they were placed. There can be no expectation that the usual "one step for one year" increase will be granted. The parties agreed to remove the automatic vertical advancement language in the previous contract which means that the one step increase for one year of teaching experience principle was completely voided. There is no doubt that the entire issue of movement on the salary schedule was to be negotiated each year. It is not possible to compare movement on Merrill's unique salary schedule with other comparable school districts.

The Arbitrator has reviewed the documentary evidence, testimony of witnesses, and arguments of the parties on the matter of the salary schedule. It is clear that the parties agreed during mediation for the 1985-87 contract to a compressed salary schedule of ten steps with twelve lanes. Placement of the teaching staff on the new schedule was done by a committee of union and employer representatives. Equitable considerations made the use of half-steps for the initial placement necessary; there was no relationship between a teacher's years of experience and placement on the salary schedule. No objections to the use of half-steps or the resulting teacher placements were raised. Teachers remained frozen on the step assigned during the second year of the contract.

There can be no disagreement that the amount of a yearly increment, or whether there shall be any increment at all, is a matter to be negotiated by the parties. The question in the instant case of whether the structure of the salary schedule is ten steps or nineteen steps is somewhat different. Although the

testimony is replete with references to a "compressed" salary schedule, and that was clearly the intent of the parties, the actuality in the contract is a half-step structure with nineteen steps (Association Ex. 2, Appendix B). The Arbitrator agrees with the Association that the half-step schedule was for purposes of placement only, however, there is no persuasive evidence in the record regarding movement or salary structure beyond the term of the 1985-86 and 1986-87 contract. The Arbitrator is of the opinion that the parties were free to negotiate a new salary structure for 1987-89. Having failed to reach agreement during voluntary collective bargaining, the final offers of the parties were submitted for arbitration. Since the structure of the salary schedule and the dollar amount and percentage of salary increment are inextricably intertwined, the selection of one of the parties' final offers will determine which salary schedule will be adopted.

There is no significant difference in the salaries at the benchmarks in the final offers of the parties in the present interest arbitration. The Association's 1987-88 proposed B.A. base is $18,444 and the M.A.+30 at maximum is $35,228; the Board, $18,450 and $35,240 respectively. The Association has submitted a ten-step salary schedule and proposes the addition of contract language, i.e., Section 4.2 Vertical Advancement: A teacher shall advance one step vertically on the schedule annually. The Board's salary schedule is the one utilized in the previous contract which consists of 19 steps, i.e., Steps, 1, 1.5, 2, 2.5, 3....9.5, 10; it proposes a half step where possible from the 1986-87 contract.

Table I below is a summary of the final offers of the parties.

TABLE I

MERRILL AREA PUBLIC SCHOOL DISTRICT
FINAL OFFERS: Salary only

	1987-1988		1988-1989	
	$	%	$	%
Board	1,602*	6.0	1,560*	5.5
Association	1,968	7.4	1,902	6.6

*Although the parties' statement of dollar amounts vary, these are not significant differences; data presented on percent of increase are consistent.

V. DISCUSSION

Having resolved the threshold issues of the comparable school districts, the costing, and the salary schedule, the Arbitrator will apply the remaining statutory criteria set forth in Sec. 111.70(4)(cm)7 in order to reach a decision as to which of the parties' final offers on salary increment is the more reasonable. No question has been raised as to criterion a, the lawful authority of the municipal employer; criterion b, the stipulations of the parties and criterion i, changes in foregoing circumstances, are not at issue herein.

A. Criterion d--Comparison of Wages of Merrill Teachers with Teachers in the Wisconsin Valley Athletic Conference

The following table compares the Board and Union offers with the two settled school districts in the athletic conference.

TABLE II

Wisconsin Valley Athletic Conference

1987-88 and 1988-89 Salary Settlements

	1987-88		1988-89	
School District	$ Increase	% Increase	$ Increase	% Increase
Stevens Point	2,221	8.0	---	---
Wisconsin Rapids	1,998	7.3	1,874	6.4
Mean	2,109	7.7	1,874	6.4
Merrill Board Offer	1,602	6.0	1,560	5.5
Merrill Union Offer	1,968	7.4	1,902	6.5

Note: Slight discrepancies exist between reported increases shown in Union Adjusted Ex. 12 and Board Ex. 40, however, they do not significantly affect the outcome of the comparisons.

Inspection of the data above shows that for 1987-88 the Board 's offer is $507 and 1.7% below the mean while the Union's offer deviates from the mean by minus $141 and 0.3%. In 1988-89 the Board's offer is $314 and 0.9% below the mean while the Union is $28 and 0.1% above the mean. Based on these data, the Union's final offer is determined to be the more preferrable.

B. Criterion e--Comparison of Merrill Teachers with Other Employees in Public Employment

The Board has submitted data showing the percent of increase receiving by municipal employees, both union and non-union. In Lincoln County for 1988 non-union employees will receive a 3% increment, union employees (highway, social service, clerical, deputies, etc.) will receive between 3% and 3.5%. In the City of Merrill non-union employees, police, fire, and AFSCME will receive 3.5% increases. Administrative, clerical, custodial, food service, and aides employed by the Merrill School District will receive 3%.

Based on this criterion, the offer of the Merrill School Board is the more reasonable.

C. Criterion f--Comparison of Merrill Teachers with Employees in Private Employment.

The Board has submitted data on one private employer in Merrill which indicates that its 35 salaried, non-union employees received a 4% increase in 1987. Since no information is provided as to the the level of positions, education and experience required, the Arbitrator concludes that no basis exists for a meaningful comparison. This data, therefore, will not be given weight in reaching a determination on the parties' final offers.

D. Criterion g--Cost of Living

The Board argues that the cost of living, as measured by the consumer price index, is the measure of inflation and represents the statutory criterion which the arbitrator must weigh. In spite of arbitral holdings to the contrary, the cost of living is not the settlement to which other employer and employee groups voluntarily agree. The CPI increased 3.9% from July 1986 to 1987; the Board's offer is well above the CPI, while the Union's offer is unreasonable and excessive.

The Association contends that the best measure of the cost of living and one which has been consistently relied upon by arbitrators as the fairest and most objective is the voluntary settlement pattern reached by labor and management within the area, both in times of high and low inflation.

The Board has submitted data on the Consumer Price Index from July, 1980 through July, 1987 (Board Ex. 67) and a history of Merrill School District settlements comparing the CPI increase with the Salary and Total Package figures (Ex. 68). Relevant portions of this data is summarized below:

TABLE III

COMPARISON OF CPI INCREASE AND MERRILL SALARY SETTLEMENTS

Contract Year	% CPI Increase	% Salary Increment
1982-83	6.3	9.8
1983-84	2.2	7.9
1984-85	3.1	7.1
1985-86	3.8	8.2
1986-87	1.2	7.8
1987-88	3.9	6.0 (Board Offer) 7.4 (Union Offer)

This table clearly shows that the last five settlements in Merrill have exceeded the CPI by a range of 3.5% to 6.6%. Both the present offers of the Board and the Union exceed the 3.9% CPI for 1987-88. What conclusion is to be drawn from this data? It appears that the cost-of-living criterion has had relatively little impact on Merrill voluntary settlements during a period of stable consumer prices. This bears out the widely held belief that during periods of rapid increase in consumer prices the cost of living can be one of the most important factors in deciding upon a final offer, while during periods of relative stability the weight afforded it declines and other factors, such as comparison with voluntary settlements, take on greater relative importance. While the number of comparable school districts being considered in the instant case is admittedly small, these settlements were negotiated under the same general economic circumstances and reflect the weight given to the cost of living by the parties.

The Board's offer of 6.0% for the first year of the contract is closer to the 3.9% CPI increase in 1987-88. The Arbitrator is not inclined to place reliance on this factor in the instant arbitration however based upon several factors. First, the relative stability in the economy limits the influence of the CPI as noted above. Second, the settlements in the comparable communities, albeit of a limited scope, are representative of the historic comparability group. Finally, the long-standing lack of effect of the CPI on the parties' past voluntary settlements, all of which were greatly in excess of the CPI, lead to the conclusion that no determinative weight can be accorded to this factor.

E. Criterion c--The Interests and Welfare of the Public and the Financial Ability to Meet the Costs of the Settlement

It should be noted at the outset that the Board has not claimed an inability to pay the cost of the Association's proposed offer, but rather argues that its offer more properly reflects the interest and welfare of the public. In support of this position, the Board has supplied voluminous data describing, inter alia, serious economic conditions and high taxes in Wisconsin generally and the problems in the farm economy in particular.

The Association submits that its offer will not impose an undue burden on Merrill taxpayers. It points out that the local economy is growing, i.e., total income in Merrill increased 10.11% in 1986, the greatest increase within the athletic conference. On a state-wide basis, forecasts of an increase in manufacturing are cited. The Association also provided data indicating that farm employment in the district was 9.6%, exceeded by speciality profession (9.9%), other service (12.4%), Prod. (sic) Craft Repair (12.5%), administrative support (13.2%), and machine and assembly (15.8%).

There is no question that the farm economy in Wisconsin has suffered over the past several years and that property tax bases have been reduced in farming communities. Farmers in the Merrill school district have shared in the declining income and problems related to property taxes. The Board argues that taxpayers in the district do not want to see their taxes increased and that they wish to contain spending, thus the Board has proposed its modest increase for teachers. However, Merrill farmers do not constitute the entire tax base nor is there any evidence in the record to show that that taxes will necessarily increase in Merrill if the teachers were to be awarded the final offer proposed by the Association (13.9%, salary only for two years) rather than that of the Board (11.5%), a difference of 2.4%. The Board has not established that its circumstances differ markedly from those of the two settled communities. Both parties have argued forcefully for their positions, i.e., the welfare and interest of the public in controlling spending and taxes versus the commitment; of the public to attracting competent teachers, maintaining experienced teachers and rewarding those who have sought additional training and received advanced degrees. After a careful review of the evidence submitted, the Arbitrator has concluded that, on balance, the welfare and interest of the public in the instant case is better served by the Association's offer.

VI. SUMMARY AND CONCLUSIONS

The Arbitrator selected the school districts in the Wisconsin Valley Athletic Conference as the appropriate communities for comparison of wages, hours and conditions of employment for Merrill teachers for 1987-88 and 1988-89. It was further determined that costing of the parties offers would be based on a consideration of vertical movement on the salary schedule and would be based on salary only, not a total package analysis. The question of the salary schedule structure, i.e., ten steps versus nineteen steps, was held to be related to the amount and percent of increment and would be resolved by the selection of either parties' final offer.

In evaluating the final offers of the parties, it was found that the comparison of teachers wages (Criterion d) and the interests and welfare of the public (Criterion c) favors the Association. The offer of the Board is preferable in comparison of other employees in public employment (Criterion e). No weight shall be given to Criterion f, employees in private employment. The issue of Criterion g, cost of living, was a troublesome one, with one aspect favoring the employer, another the union, and in general, not serving as a meaningful analytic tool in the present case. It was therefore held not to be of determinative weight in these proceedings. The criteria favoring the Association's final offer outweigh that of the Board's offer and the Arbitrator, therefore makes the following award:

VII. AWARD

The final offer of the Merrill Education Association, along with the stipulations of the parties, is to be incorporated into the written 1987-88 and 1988-89 Collective Bargaining Agreement of the parties.

Dated this 14th day of July, 1988 at Milwaukee, Wisconsin.

Rose Marie Baron

Rose Marie Baron, Arbitrator