

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of :
PARK FALLS EDUCATION ASSOCIATION :
To Initiate Arbitration : Case No. 14
Between Said Petitioner and : No. 42251 INT/ARB-5255
PARK FALLS SCHOOL DISTRICT : Decision No. 26175-A

Appearances:

WEAC UniServ Council #18 by its Executive Director,
Gene Degner, on behalf of Park Falls Education
Association.

Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys,
by Steven C. Garbowicz, appearing on behalf of Park
Falls School District.

ARBITRATION AWARD

Park Falls Education Association, hereinafter referred to as the "Union" or "Association" and Park Falls School District, hereinafter referred to as "District", "Board" or "Employer", were unable to resolve the remaining issues in their negotiations over the terms to be included in their 1989-1991 Collective Bargaining Agreement. The prior agreement covered the period from July 1, 1987 through June 30, 1989. The Wisconsin Employment Relations Commission caused a mediation hearing to be conducted pursuant to Wis. Stat. 11.70(4)(CM)6 on July 27, 1989. After it was determined that the parties were unable to agree their final offers were submitted. A representative of the Commission declared negotiations deadlocked on August 14, 1989.

The undersigned was selected, by the parties, to arbitrate the dispute. A hearing was scheduled at the school district offices on January 9, 1990. On that date a final mediation

effort proved to be unsuccessful. The arbitration hearing was conducted and both parties submitted a series of exhibits into evidence in the proceeding. The record was held open until January 30, 1990, to permit the District to file a delayed exhibit relating to the cost of mental and nervous benefits in excess of state mandated levels and to permit the Association to respond. The District's delayed exhibit was filed on January 12, 1990. The Association filed its response to the District's exhibit on January 20, 1990, at which time the record was closed.

The parties exchanged their initial briefs; copies were received by the Arbitrator on March 3, 1990. Reply briefs were exchanged on March 13, 1990.

ISSUES IN DISPUTE

The parties' final offers for 1989-90 and 1990-91 identify three issues to which the parties could not agree. These are: the level of salary increase for each year of the contract period, a proposed change in benefits under the group health plan for persons having mental and nervous conditions and, the level of increased compensation for extra-curricular activities.

The Union has proposed a 7.25 per cent across the board salary increase for 1989-90. The Board has offered 6.25 per cent. Both parties have suggested a one year freeze in advancement, for experience only, during the first year of the contract. The Board has calculated its first year offer of 6.25% as a \$1,665 salary increase per teacher with a total package cost of 6.8% or \$2,450 per teacher. It calculated the Union offer of 7.25% to cost \$1,932 in salary and have a package cost of 8.2% or \$2,948 per teacher.

For 1990-91 the Board has offered 4.5%, which, when combined with step increases, equates to 6.23% or \$1,764 in salary only and 7.94% or \$3,052 in package costs. I have calculated the Union's 5.5% offer on the schedule to equal 7.32%, which will result in an average increase of \$2,072 in salary and a package

increase of 8.93% or \$3,474. The cost of the parties' offers and the two year impact of those offers is as follows:

		Package Cost	
Board 1989-90	6.25% = \$1,665	6.8%	= \$2,450
1990-91	<u>6.23% = \$1,764</u>	<u>7.94%</u>	<u>= \$3,052</u>
2-Year Total	12.48% = \$3,429	14.74%	= \$5,502
Union 1989-90	7.25% = \$1,932	8.2%	= \$2,948
1990-91	<u>7.32% = \$2,072</u>	<u>8.93%</u>	<u>= \$3,474</u>
2-Year Total	14.57% = \$4,004	17.13%	= \$6,422

The second issue in dispute is the proposal by the District that maximum benefits for inpatient stays for the treatment of nervous and mental disorders be reduced from the present maximum of 365 days to the minimum mandated by state law which is 30 days. In return the Board would add coverage for experimental organ transplant operations. The Union offer proposes to continue existing benefits for mental and nervous conditions and forego the substituted coverage for experimental transplant surgery.

The Union proposed 5.5% increases for each year of the contract. The Board proposed 4.5 % for each year. Neither party presented evidence or argument in support of their proposal for increased compensation for extra-curricular activities. Based upon the foregoing it appears that in reality there are two issues in dispute. Those issues are the level of increased compensation and health insurance benefits. The position of the parties with regard to these two disputed issues is set forth below.

THE UNION'S POSITION

The Park Falls Education Association outlined the two central issues. The first is the unilateral change in insurance benefits proposed by the Board. The Association strongly objected to reduced benefits for the following reasons:

1. There is no compelling reason for the proposed change.
2. Comparability does not support the change.
3. District health care cost is less than the average cost to comparables.
4. The Board did not offer quid pro quo for the proposed change. The Board has offered less than the average salary granted to settled comparables in addition to proposing reduced health care benefits.
5. The Board has the burden to prove that reduced health care benefits are necessary.
6. Only one comparable school district has agreed to reduce inpatient treatment from 365 days to the state mandated 30 days.

The Association cited the salary issue as the second area of dispute. When Park Falls salary increases are compared to other comparable school district increases, Park Falls has lost ranking at the bench points. The Union argued that it had lost ranking over periods of four, five or ten years, when compared to comparable primary or secondary districts and when compared to other districts in CESA-12 and in the State of Wisconsin. It argued that its offer was necessary to permit Park Falls to catch up to other school districts and to maintain its ranking among comparable school districts.

The Union stated that both parties recognized that catch-up is needed, and agreed to putting additional money into the salary schedule and freezing longevity increases during the first year of the contract. Because of the first year freeze in longevity, the Union's offer should be viewed as 5.5% and the Board's offer at 4.5% for each year of the contract when the offers are compared to settlements with other comparables. The Association argued that because catch-up is needed, the salary it proposed is closer to voluntary settlements in the conference than the Board's offer. It concluded that the Union's offer is preferable because the Board proposed changes in insurance benefits with no

quid pro quo and because the Union's offer was closer to comparable settlements.

The Union argued that the six other schools of the Lumberjack Athletic Conference constitute primary comparables in this proceeding. It suggested that two sets of secondary comparables should be the Lakeland Conference and CESA-12. The Association said it would also refer to statewide trends in teacher negotiations.

The Association noted that while there are variations in how school districts develop salary schedules, comparisons of teacher salaries by bench points on salary schedules is a recognized method of comparing contract offers. It suggested BA Min, BA-7, BA Max, MA Min, MA-10, MA Max, and Schedule Max are appropriate levels for comparison in this proceeding.

The Association then developed its reasons for being "most concerned about this unilateral change in insurance benefits." It argued that the Board proposed to change the inpatient stay for the treatment of nervous and mental disorders from 365 days to the state mandate of 30 days. The Union noted that of the seven schools in the Athletic Conference, only Medford's health plan is limited to the state mandate. The other six districts provide up to 365 days of inpatient treatment for these disorders. The Union cited evidence that the cost to provide health insurance to Park Falls teachers is \$99.39 for single coverage and \$257.11 for family coverage, while the average cost to the conference districts is \$102.73 and \$263.53 for the respective coverages. The foregoing demonstrates that the District failed to meet its burden of proof to require change from the status quo. The Union cited numerous decisions by other Arbitrators which held as follows:

1. A three pronged test was employed by one Arbitrator to modify contract language. That test required a showing that contract language gave rise to a condition requiring change, that the proposed change may reasonably be expected to remedy the condition and that

the change not place an unreasonable burden on the other party.

2. Arbitrators should be cautious in inserting new provisions in a contract, or deleting existing provisions which affect the conditions of employment as distinguished from the compensation for such employment.
3. Arbitrators are not inclined to change positions in collective bargaining agreements to which the parties have voluntarily agreed in the past.
4. The party suggesting change must show compelling need, must show present language is unworkable and that new language will not impose an unfair burden on the opposing party.

The Association cited strong language from other arbitration awards which applied the foregoing principals to:

1. Two Districts' offers which would have frozen annual increment placements on the salary schedule.
2. An Association's proposal to significantly depart from the voluntarily negotiated salary schedules.
3. An Association's proposal to change a previously agreed upon longevity methodology.
4. An effort by one party to revise an existing salary index.
5. A District's effort to revise the percentage-per-cell method previously achieved through bargaining.
6. An offer by the employer to raise its hiring rates disproportionately over increases offered to experienced teachers.

In those cases the Arbitrators expressed reluctance or refused to adopt a change in the terms of an existing collective bargaining agreement. The Park Falls Education Association likened the District's proposal to reduce the maximum allowable days of inpatient care for nervous and mental disorders to the cases cited above. It argued that this is a drastic change in

insurance benefits which the District could not achieve through negotiation. It argued that the District did not offer a quid pro quo for the proposed change, and therefore the Association would be disadvantaged in the next round of negotiations if the Arbitrator imposed the change upon the Association. The Union said it would be a different matter if the District was offering additional dollars as a quid pro quo to buy out the contract proposal on a one year basis.

The Union explained the salary issue by asserting that the parties had agreed prior to arbitration to take the money which would normally be spent on increments and add that money to the percentage increase to help with a catch-up. It noted there is a differential between the steps of about 1.75% for each year. The Union said the parties' offers were respectively 5.5% for each year by the Union and 4.5% for each of the two years by the Board. When adjusted to reflect the catch-up agreement the two year offers equalled 7.25% and 5.5% by the Union and 6.25% and 4.5 % by the District for the two year period.

The Union argued that catch-up is needed in the Park Falls District. It said both parties recognized that need. To demonstrate the need for catch-up the Association presented charts which compared Park Falls rankings at the seven bench points during 1984-85 with its rankings in 1988-89. The chart for the primary comparables in the Athletic Conference showed Park Falls dropped 2 rankings at each of the BA bench points and slipped one rank at each MA-10 and Schedule Max for a total loss of 8 ranking points. Similar charts showed a total of 8 points lost among the 11 school Lumberjack Conference and 12 points lost among the 19 districts located in CESA-12.

Three additional charts demonstrated the total dollar increases granted at the seven bench points over the four year period for the Athletic Conference, Lumberjack Conference and CESA-12 districts. The total pay increases received by Park Falls teachers were less than the total average increase for other Athletic Conference schools by between \$226 and \$596 at the

seven bench points. Increases fell below Lumberjack Conference average increases at all 7 bench points, and at 6 of the 7 bench points for CESA-12 districts. Park Falls salaries dropped in comparison to the best salaries in the Athletic Conference at the first 5 bench points by between 2.2 and 7.07 percent over the four year period. They improved by 6.69% at MA Max and by 3.61% at Schedule Max.

The Union stated that Park Falls' poor economic settlement of 4.5% agreed to in 1988-89 when other districts received increases between 5-6% contributed to the loss in rankings by Park Falls. It provided an exhibit which showed the average increase at the bench points was between \$128 and \$188 higher for other athletic conference schools between 1987-88 and 1988-89. A comparison with other CESA-12 districts produced similar results with differences at the bench points between \$192 to \$361.

The Union argued that over a ten year period, between 1978-79 and 1988-89, Park Falls salaries have fallen below the average salaries at bench points when compared to the Athletic Conference, CESA-12 and the statewide average. The Union supported this argument with charts numbered X and XI and referred the Arbitrator to its exhibits numbered 86-86b and 88-88b. It concluded this presentation by referring to an exhibit showing average salaries and statewide rankings for the seven schools of the Athletic Conference. This exhibit showed that in 1979-80, Park Falls average salary at seven bench points was \$14,389 and ranked 5 of 7 in the Athletic Conference and 186 statewide. For 1988-89, Park Falls average salary was \$25,535, ranked last in the conference and had slipped 52 places to 238 in the State of Wisconsin.

The Association concluded its salary argument by observing the Employer must have recognized the need for catch-up or it would not have offered 6.25% with a freeze in the increments for the first year of this contract. It argued the 4.5% offer for the second year of the contract would be an injustice to Park Falls teachers. It argued the Union offer of 14.5% over 2 years

combined about 1% catch-up combined with a pay request that is comparable to Tomahawk's 13.4%, Phillips' 13.09% and Medford's 12.93% two year 1990-92 contracts. It argued that the District's offer of 12.48% is less than the agreements for settled comparables.

In the final section of its Brief, the Association reviewed the facts of this case with the criteria set forth in Wis. Stat. 111.70(4)(cm)7. It stated there was no question about lawful authority and no dispute about the final offers of the parties. It argued that the District did not present any argument about inability to pay in relationship to the interest and welfare of the public standard. The Union said that it had thoroughly argued the comparison of wages, hours and conditions of employment of teachers in Park Falls with those of other employees providing similar services.

It argued that the record was void of evidence relating to comparisons with other employees generally in public employment in the same and in comparable communities. It concluded that, that void indicates that other public employees are paid along the same percentage or it is not a prevalent factor in this case.

The Union said evidence relating to employees in private employment in the same or comparable communities is incomplete. It said the employer's evidence failed to disclose the kind of private sector responsibilities and wages it was attempting to compare with teachers.

The Association noted that exhibits relating to the consumer price index had been introduced by the District. It argued many Arbitrators had found the best basis for judging the cost of living is the standard of settlements in comparable districts. It noted that in addition to the cost of living, Prentice [sic] teachers clearly need catch-up wages if they are going to remain in the mainstream of education employment. The Union then cited a series of previous arbitration decisions that had found, "the proper protection against the cost of living increases is determined by the voluntary settlements ... in comparable

districts." It argued that the statutory standards relating to "overall compensation", "changes in circumstances" and "other factors not confined to the foregoing" had been addressed in the Association's presentations relating to the specific issues of the employer proposed to change insurance benefits and compensation. The Association concluded its Brief by summarizing those points which it had argued. It then restated its position that its offer should be preferred by the Arbitrator.

DISTRICT'S POSITION

After setting out the statutory criteria governing these proceedings, the Park Falls School District stated, "there are really two issues upon which the District and the Association are divided. It described the reduction in health insurance coverage as a reduction of the "policy provision providing for 365 days of coverage in a mental health unit to 30 days, and, in return, would propose to add to the health insurance policy, coverage for experimental transplant surgery." It noted that the Union argued this was a take-away without receipt of a comparable benefit. The District stated that it would argue that the Association would be receiving a benefit in return for one which was being reduced.

The second issue relates to the salary offers of the parties. Both offers for 1989-90 deny the teaching staff an experiential step increase. The Union has requested 7.25% and the District has offered 6.25% for the first year of the contract. During the 1990-91 contract year the offers include 5.5% and 4.5% on cell increases from the Union and employer, respectively. Both offers would restore step increases during the second year of the contract. The District noted that it had offered a 4.5% increase in extracurricular compensation for each year of the contract compared to the Union's request for 5.5% each year.

The District recognized that in situations such as this, where a change in health care benefits is requested, Arbitrators

have routinely held that to obtain a change in the contract there must be some sort of quid pro quo for the change. The District stated there were two reasons for its requesting reduced coverage for inpatient nervous and mental disorders. The first is a saving to the District for health insurance premium cost of approximately \$10,900 each year after adding the additional cost for experimental transplant surgery. This amounts to a saving of 7.2% of the District's health insurance premium cost for the first year.

The second reason for proposing the change is because, as far as the Employer knows, no member of the Union has ever utilized this particular benefit. The District argued that it is not proposing a take-away because it is not deleting a benefit completely. The benefit would continue; the District is simply proposing to reduce the benefit from unlimited coverage to the State of Wisconsin mandated minimum coverage of 30 days.

The Employer pointed out that during 1988-89, Park Falls insurance costs ranked sixth out of the seven schools in the athletic conference. During that year, the Conference District of Northland Pines paid 95% of both single and family policy costs; another, Phillips, paid 100% of single coverage, but only 90% of the family premium. Park Falls and four other Districts paid 100% of both single and family health insurance costs. The Employer said that its cost had moved up to third out of six schools for 1989-90, and that it was still paying all of the cost of both single and family coverage. No information was presented for Northland Pines for 1989-90. Lakeland was shown as paying 86% of both single and family premium for this period.

The District referred to its delayed exhibit in which the insurer stated, "psychiatric and substance abuse from 1986 through 1988 is up on an average of 46%. As you can see, this particular benefit is very costly and costs are continuing to escalate." It then noted that all of the Districts in the Athletic Conference, except for Medford which provides the state minimum coverage, provide 365 days of coverage. It then argued

if this was a benefit being utilized, the coverage afforded to comparables would be evidence not to change. However, since the benefit is not being used why continue to spend the funds to maintain the coverage?

The District denied that its offer constituted a health insurance take-away. It stated that in the event it were found to be a take-away, the offer to pay for experimental transplant surgery is a quid pro quo. This new coverage will cover organ transplants available through modern medical research. The likelihood of utilizing this new coverage is as great as the usage of the mental and nervous condition coverage which is currently available.

The District reviewed its proposal for a 6.25% salary increase in 1989-90. It stated the proposal would result in an average increase of \$1,665 per teacher and bring the average salary up to \$28,317. The package increase is 6.8% or \$2,450 which will result in an average total package cost of \$38,409 for each teacher. It compared the Association's proposal at 7.25% resulting in a \$1,932 increase and average salary to \$28,584. The Union's package increase at 8.2% would increase package costs by \$2,948 up to \$38,907 for each teacher in the system. Noting the factors to be considered by the Arbitrator, the District stated that the comparison of wages with comparable public employees in comparable communities was most often used by Arbitrators. It did not argue that Park Falls School District could not meet the cost of the proposal. The District stated it would base its argument upon comparable wages paid to comparable public employees in comparable communities, salaries in private employment in Park Falls School District and the consumer price increase for the past year.

The District pointed to a scattergram and concluded most Park Falls teachers were at steps 10-12 on the bachelors schedule and the 13th step on the masters schedule. It said the Association offer would have greater impact upon that majority of teachers. The District said it had to look out for the best

interests of all of Park Falls teachers and consider future hiring. It argued that the District's offer maintains those teachers at the upper end of the salary schedule comparatively with those in other schools of the Athletic Conference.

The District argued that feeder schools to Lakeland Union High School should not be included as comparables. It argued the feeder schools are separate school districts, are not in the Lumberjack Conference, are not similar public employees and are not similar communities to other schools in the Lumberjack Athletic Conference. It argued each of the feeder schools presents its own set of issues and problems which need to be addressed. The Association did not present evidence about those issues in its exhibits. The schools should be excluded. In past arbitration proceedings, including the most recent in 1987, the Athletic Conference was considered the most comparable group.

The District argued that this is not a catch-up pay situation. It supported that argument by pointing out that contracts for the past three years have been bargained in good faith between the parties. It argued that if Park Falls is in a catch-up situation, it is because the Association bargained itself into that position. The District cited previous arbitration decisions which discussed the catch-up issue. Both stated "a catch-up argument is essentially one of fairness and the best measure of a fair ranking is that which the parties have achieved through voluntary negotiations." The District concluded that no catch-up is in order and that issue is not even an issue in this case. "The parties have negotiated in good faith for these contracts and, while it is unfortunate that other districts have increased at a far greater rate than Park Falls District, that does not mean that Park Falls School District has been placed in a catch-up position."

The District pointed to its exhibits relating to average salary settlements in Park Falls and in the Athletic Conference for 1987-88 and subsequently. It argued that for 1987-88, Park Falls had the second highest percentage increase in the

conference, for 1988-89, it had the fourth highest. For 1989-90, the District's offer would rank fourth of six settled districts, including Park Falls. It argued that Park Falls total compensation increase during 1987-88 ranked number one in the conference in percentage increase. It ranked third in that category for 1988-89, and for 1989-90, the Board offer would rank fourth among six settled districts. It argued those rankings do not favor a catch-up.

The District reviewed benchmark rankings for the three years 1987-88 through 1989-90 at BA Base, BA-6, and BA Max. It stated Park Falls would retain its ranking of 5, improve one rank to 3 and retain its rank at 5 under the Board's offer at the those Benchmarks, respectively. It argued that over the past three years the District is essentially maintaining its status in the conference. It compared rankings over the three-year period under the Employer's offer. They are MA Base 4-4-4, MA-9 rankings are 4-5-4, MA Max 6-7-6. The Board noted most of the same rankings would be maintained under the Union's offer for settlement. At Schedule Max Park Falls ranked seventh out of seven schools in 1987-88 and 1988-89. The District argued that its offer will result in Park Falls being sixth out of the six settled schools in 1989-90. It argued the Union offer would do little or nothing to advance the rank of Park Falls among comparables.

The District then prepared a table comparing the difference between Park Falls salaries with the salaries of those five districts having settled 1989-90 contracts. That table which set out the differences between Park Falls salaries at the seven benchmarks is marked Employee Table I attached hereto. It explained the significance of this information by comparing Park Falls salaries with those of Phillips at BA Base. In 1987-88, Phillips teachers received \$1,014 (the Table showed \$1,018) more than Park Falls teachers at this benchmark. For 1988-89 the disparity had grown to \$1,286. The District urged the Arbitrator to closely examine the data, which it said, showed that the

TABLE I

PHILLIPS SCHOOL DISTRICT:

<u>Base</u>	<u>Year 1987-88</u>	<u>Year 1988-89</u>	<u>Year 1989-90</u>
BA	+ 1018	+ 1286	+ 1126
BA+6	+ 297	+ 585	+ 334
BA Max	+ 1128	+ 1520	+ 1259
MA	+ 950	+ 1248	+ 1057
MA 9th	+ 311	+ 662	+ 351
MA Max	+ 910	+ 1336	+ 1018
Sched. Max	+ 361	+ 780	+ 409

MEDFORD SCHOOL DISTRICT:

<u>Base</u>	<u>Year 1987-88</u>	<u>Year 1988-89</u>	<u>Year 1989-90</u>
BA	+ 482	+ 510	+ 312
BA+6	+ 14	+ 18	- 258
BA Max	- 1120	- 1162	- 1553
MA	- 146	- 152	- 414
MA 9th	- 218	- 224	- 576
MA Max	+ 1300	+ 1364	+ 1054
Sched. Max	+ 1680	+ 1664	+ 1454

TOMAHAWK SCHOOL DISTRICT:

<u>Base</u>	<u>Year 1987-88</u>	<u>Year 1988-89</u>	<u>Year 1989-90</u>
BA	- 39	+ 129	+ 22
BA+6	- 376	- 180	- 1118
BA Max	- 30	+ 231	+ 43
MA	+ 437	+ 656	+ 539
MA 9th	+ 1381	+ 1725	+ 624
MA Max	+ 1801	+ 2201	+ 2090
Sched. Max	+ 2197	+ 2638	+ 2536

ASHLAND SCHOOL DISTRICT:

<u>Base</u>	<u>Year 1987-88</u>	<u>Year 1988-89</u>	<u>Year 1989-90</u>
BA	- 540	- 302	- 454
BA+6	- 663	- 361	- 549
BA Max	+ 647	+ 1100	+ 959
MA	- 1776	- 1577	- 1817
MA 9th	- 1082	- 727	- 974
MA Max	+ 950	+ 1479	+ 1329
Sched. Max	+ 130	+ 579	+ 309

LAKELAND SCHOOL DISTRICT:

<u>Base</u>	<u>Year 1987-88</u>	<u>Year 1988-89</u>	<u>Year 1989-90</u>
BA	+ 1788	+ 2018	+ 1595
BA+6	+ 2814	+ 2846	+ 1450
BA Max	+ 1110	+ 944	+ 350
MA	+ 5064	+ 5198	+ 4901
MA 9th	+ 6207	+ 6026	+ 4720
MA Max	+ 3075	+ 2754	+ 2199
Sched. Max	+ 7625	+ 7224	+ 6864

District's position has in fact, and is in fact, improving with relationship to those schools having settled contracts. The Employer argued these facts do not support the need for catch-up and show that the District's offer is more reasonable than the Union's.

The District stated that both parties offers exceed the increased cost of living measured by the consumer price index. It argued the Employer's offer was more reasonable and comparable with this standard in these proceedings. Referring to its Exhibit #22 (in reality #122), which reported increased private sector wages at 2% to 3%, the District argued that its offer exceeds local comparables.

The District explained that its 1990-91 offer of 4.5% on each cell translated to an average salary increase of 6.23% or \$1,764, bringing the average to \$30,081. The package cost would increase by 7.94%, \$3,052 for each teacher. The Union's 5.5% would result in an average salary increase of \$2,072, resulting in an average salary of \$30,656. The package increase is 8.93% or \$3,474 for each teacher. The District said that when compared with conference schools settled for 1990-91, the Union offer would rank number one while the Employer's offer ranks four out of five. It concluded that the Board's offer would maintain its historic position while improving its comparability with other schools in the conference.

The District noted that the only other area of disagreement relates to proposed increases for extracurricular activities. It said that neither party had submitted information on this issue and should not be a determinative factor in the Arbitrator's decision. The Board believes it has the more reasonable overall offer and that its offer maintains the position Park Falls has held in the conference over the past three years. The Board's offer is most comparable and should be selected by the Arbitrator.

REPLY BRIEFS

The Union stated that the level of utilization of the mental condition benefit is not the issue. The value to the teachers consists of having protection through insurance against a catastrophic loss. Park Falls has less than 100 teachers. Not all health procedures occur on a random basis to less than one in one hundred population. The bargaining unit prefers the benefit. The proposal to reduce the benefit is the issue. Experimental transplant benefits is not a quid pro quo because it has not been utilized or requested by the Union.

The Union reasserted its position that there is need for a catch up pay increase. The structure of the offers of both parties indicates that both parties recognize this fact. It is not fair for the teachers to give up an incremental step increase during the first year so that the Board can reduce the second year offer to less than the conference average.

The Board responded that its proposal to reduce the insurance benefit is not restricted by the rule of the Adams County three pronged test which had been cited by the Union. The contract language does not give rise to conditions that require change. The Board proposal does not delete a benefit, but merely reduces one. The change does not impose an unreasonable burden on the other party.

A quid pro quo does not have to be in the form of a wage increase. The offer to provide transplant coverage is more applicable to the teachers than the benefit the Board has proposed to reduce.

The District argued that the Union's evidence and argument for catch-up are not convincing. The present relationship of Park Falls to other school districts in benchmark rankings does not indicate that a catch-up is in order. That position was bargained between the parties over the years with the exception of one contract which was arrived at in arbitration. The structure of the District's salary offer does not necessarily

indicate that the District froze increments to allow for a catch-up. The District wanted to put more dollars into the salary schedule to benefit all of the teachers to provide everyone with a more equal salary increase.

In spite of arguments to the contrary both the District's offer and the Union's offer far exceed the cost of living increases measured by the Bureau of Labor Statistics.

DISCUSSION

The parties have agreed that the seven school districts of the Lumberjack Athletic Conference are primary comparables in the proceeding. Those schools, in addition to Park Falls, include Ashland, Phillips, Medford, Tomahawk, Northland Pines and Lakeland. The Lumberjack Athletic Conference does not include four elementary schools whose students feed into Lakeland Union High School. The Union referred to the comparable group as the Athletic Conference. The District referred to this same group of schools as the Lumberjack Conference. Settlement data from these school districts is the basis for comparison of wages, hours and conditions of employment of the municipal employees involved in this proceeding with those of other employees performing similar services, as required by Wis. Stat. 111.70(4)(CM)(7)d. The parties have defined the issues to be reviewed as health insurance and salary. They will be discussed in that order.

The dispute over the insurance issue arises out of contract language that the District will pay 100% of the cost of health insurance:

... of an approved hospital-surgical insurance to both the Board and the Association. The group insurance plan in effect as of the date of the agreement shall continue unaltered for the term of this agreement.

The employer who is proposing to alter a term in the policy has the burden of showing that the proposed change is necessary. It has based its argument to support this burden on two facts:

1. The cost of the benefit it proposes to reduce is escalating.

2. That cost is not justified because the benefit has never been used.

The employer through exhibit #47 has established the 1989-90 cost saving would be \$12,402. Based upon the projected cost increase of 25% (Er. Ex. 32), the second year saving would be \$15,052. No offset for the cost of transplant surgery is included in this cost analysis. The analysis is intended only to quantify the cost of the benefit proposed to be reduced. That two year saving appears to be \$27,094. There is no evidence in the record how much this benefit cost over the course of the previous contract. It is therefore not possible to estimate how much of the cost savings would be attributable to the escalating cost of this benefit as opposed to cost savings realized by just dropping an existing contract benefit.

If the increasing cost of a benefit justified the proposal to reduce the benefit, the effect of the proposed change upon the other party must be considered. There is no evidence that the \$27,094 cost associated with extended coverage of nervous and mental disorders is not justified. The Board's argument that no one has utilized the benefit ignores the value of insuring against catastrophic loss. The Board's delayed exhibit cited the average charge per inpatient day in 1988 at \$687. Based upon that cost, if one teacher or insured's family member suffered the full consequences of the Board's proposed reduction in benefits, it could amount to 335 days times \$687 or a cost of \$230,145. There is no evidence in the record about morbidity rates or lengths of stay for nervous and mental disorders. Therefore, the arbitrator is unable to quantify either the probability that the proposed change might impact a Park Falls teacher or the financial impact that might result from the proposed change.

The evidence presented by the District is that between 1986 and 1988, for cases involving psychiatry and substance abuse admissions are up 7%, days per 1,000 have increased by 21%,

length of stay is up 12%, cost per admission is up 36%, and the cost per participant has increased by 46%. That information combined with the fact that the change would result in a saving of approximately \$27,000 convince this arbitrator that the Board's offer would result in the reduction of a substantial benefit.

The only evidence in the record indicates that all of the other districts in the Athletic Conference provide up to 365 days of coverage for mental and nervous disorders except for Medford which provides the mandated minimum of 30 days coverage. The Board argued that since most of the other school districts have insurance policies issued by a different insurance carrier, there is no way to compare coverage. Those policies have not been placed in evidence. The evidence is sufficient to convince the arbitrator that teachers in five of six comparable districts have coverage which is similar to existing coverage in Park Falls. Since the Board has proposed to change this benefit, the burden of proof to refute that conclusion rested with the Board. There being no evidence in the record to support the Board's argument, that argument is rejected.

The Board has argued that its proposal to reduce an existing benefit does not constitute a "take-away" because the benefit will continue in a reduced form. The Board's proposal would save the District \$27,000 compared to the two year cost of \$16,000 for disability insurance. If the District proposed to unilaterally discontinue disability benefits it would be proposing a take-away. Based upon the comparative cost of the benefit it seeks to reduce, and the cost of other contract benefits, it appears that the Board has proposed to take away a benefit.

The Board has argued that if it is found to have taken away a benefit, the offer of transplant insurance is a quid pro quo. It argued that it is more likely the teachers would benefit from this new coverage than one which has not been used. The Union did not ask for the coverage. It has refused to accept organ transplant coverage as having equal value with extended coverage

for mental and nervous disorders. Based upon actual first year costs of \$1,135.80 for transplant coverage and \$12,042 for mental an nervous disorders it is impossible to conclude that the offers are equal. Based upon the foregoing, I have concluded that the District's offer does propose to take away an existing benefit. The value of that benefit is difficult to quantify. There has been no reduction of similar benefits among comparable school districts. Those conclusions favor the Association's offer.

The Association has stated that, based upon the structure of the first year offers, both parties recognize the need for a catch-up pay increase. The Board has argued that a catch-up is not necessary. It explained that it had structured its first year offer to put more money into the salary schedule for all of the teachers. A catch-up salary increase is an extraordinary remedy in arbitration proceedings. The burden to establish the need for such a remedy rests with the party who is advocating the same. The Union has supported its catch-up argument with statistical information for the Athletic Conference , Lumberjack Conference and CESA-12 School Districts for the five contract years including 1984-85 through 1988-89. It also presented a summary of rankings at the benchmarks for alternate contract years from 1978-79 through 1988-89. The latter data included statewide rankings for the period. The arbitrator has reviewed this information carefully and concluded that the Association has not made its case for a catch-up salary increase. The easiest way to explain this conclusion is contained on Union Exhibits 86-95a. That data supports the Union's conclusion that its overall position has eroded, over these periods, compared to other districts in the Athletic Conference and in the State of Wisconsin. It also demonstrates that Park Falls teachers have improved their position at one benchmark. However, Park Falls' greatest losses occurred during those years in which negotiated settlements were arrived at. Two other districts in the Athletic Conference had a greater loss in statewide rankings than Park Falls over the ten year period. This information is not

sufficient to convince the arbitrator that the extraordinary remedy of a catch-up salary increase is warranted for 1989-90.

Both parties presented a great deal of comparative salary data in summary form. Those summaries, prepared on personal computers, present similar categories of data in different form. As a result discrepancies appear to exist. This phenomenon is exemplified by Union Exhibit 91 and Board Exhibits 54 and 55. The Union, relying on per cell calculations for five settled comparables, determined that average salary increases equalled \$1,824 or 6.58% for 1989-90. The District, relying on average salaries for four voluntary settlements, reported the average increase at \$1,847 or 6.9%. For that year the Union exhibit reports Ashland granting \$2,171 or 8.2% per teacher in salary. The Employer's exhibit reported Ashland at a \$2,188 or 8.1% increase. The arbitrator has reviewed all of the financial data presented by the parties. The discrepancies which have been observed are not significant and have not influenced the arbitrator's decision.

The Association's salary offer exceeds that of the District by \$17,259 for 1989-90 (Er. Exhibits 24 and 31). This difference amounts to an average of \$268 for each teacher in the system. For 1990-91 the difference is \$36,979 or an average of \$575 for each teacher (Er. Exhibits 27 and 34). The offers of the parties have been compared to the salary schedules of four other Athletic Conference districts with 1989-91 contracts and the one district with only a 1989-90 contract. Those districts are Phillips, Medford, Tomahawk and Lakeland, and Ashland, respectively. Two separate comparisons were conducted.

Each party's salary offer was compared to the percentage and dollar increase granted in settled districts for the two year period of the contract. Since Ashland is not settled for 1990-91, the arbitrator derived a second year figure for Ashland by taking the average of 1990-91 data for the other four settled schools. Since there are discrepancies in the data, the following table includes a summary of both parties' data.

TABLE II

This Table Summarizes Employee Exhibits 54 and 55
and Union Exhibit 91

<u>District</u>	<u>Employer Exhibits</u>	<u>Union Exhibits</u>
Ashland *	\$4,013 = 14.25%	\$4,005 = 14.30%
Medford	3,472 = 13.00%	3,469 = 12.93%
Phillips	3,548 = 13.40%	3,586 = 13.36%
Tomahawk	3,726 = 13.50%	3,958 = 13.20%
Lakeland	3,301 = 9.80%	3,277 = 9.70%
Average:	\$3,612 = 12.70%	\$3,659 = 12.70%
Park Falls Board:	\$3,429 = 12.48%	\$3,424 = 12.48%
Park Falls Union:	\$4,004 = 14.50%	\$3,996 = 14.50%

* Derived by taking average of second year of settled districts.

The summary shows that the Board's offer is very close to the percent increase granted in settled districts over the two year period. That offer which is only .22% below the average, however, would result in a dollar increase of between \$183 (Board data) to \$235 (Union data) less than the average increase granted in other districts. The Union offer which appears to be almost 2% above the average increase would result in a dollar increase of between \$337 and \$392 above the average. A cursory review of the settled districts reveals that the Lakeland settlement has had a depressing effect on the averages. That District with the highest salary schedule in the conference was settled through arbitration for 1989-91. Its settlement should not be considered indicative of the trend in voluntary settlements in the Athletic Conference. With Lakeland's settlement removed from consideration, the data provided by the Union reflects the average two year settlement of 13.53% and \$3,754. If we compare the offers without Lakeland the parties are equidistant from the

average percentage settlement but the employer's offer is more distant from the average than the Union's in terms of dollars.

TABLE III

1989-91 Settlement with Lakeland not Included

	Average Settlement	Board offer	Union
Employer Exhibits	\$3,689 = 13.53%	- \$325 = 12.48%	+ \$250 = 14.5%
Union Exhibit	\$3,754 = 13.45%	- \$330 = 12.48%	+ \$242 = 14.5%

The use of a derived salary increase for the second year of Ashland's contract affects the reliability of that data. Since the offers are so nearly equidistant from the average of other settlements, and because data for Lakeland and Ashland is not entitled to equal weight, further analysis has been made.

The Union charged that if the Board's offer was selected, salaries at the benchmarks would erode over the life of the contract. It argued that it is not fair for Park Falls teachers to give up a step increase in 1989-90 only to have their salaries erode at the benchmarks over the second year of the contract. The information relating to comparability at the benchmarks is set out on Employer Exhibits 63-71, 75-83 and 85-87. Table IV compares Park Falls' salaries in 1988-89 with the seven school conference average at each benchmark. The negative number in the third column indicates how many dollars Park Falls is below average at each benchmark. The affect of the respective parties' offers for 1989-90 is compared to the four districts with 1989-90 settlements in column four. Their 1990-91 offers are compared with the averages for three districts with settlements for that year. The right hand column indicates the two year impact of the offers at the benchmarks. For example, at B.A. Base, the Union's

offer would result in an \$89 improvement leaving Park Falls only \$419 below average rather than \$508 below in 1988-89. The Board offer would result in further erosion of \$289 leaving Park Falls \$797 below the average at the benchmark.

Over the two-year contract period, the Union offer would result in a total gain of \$1,285 at the 7 benchmarks. As a result of this gain, Park Falls pay would be above the average of three settled districts at BA-6 and BA-Max. The Board offer would result in further erosion of salaries at five of seven benchmarks. Park Falls would fall a total of \$2,657 further below this average at the seven benchmarks. The Union's concern that the Board's second year offer would cause further erosion at the benchmarks appears to be valid. That concern causes the Arbitrator to believe that the Union's offer is most comparable to salary increases being granted to other employees performing similar services.

Arbitrators are required to give weight to the ten separate criteria set forth in Wis. Stat. 111.70(4)(cm) 7. The foregoing discussion reflects the principal arguments of the parties. These arguments focused on two of the criteria, namely, comparisons with other employees performing similar services and overall compensation including fringe benefits. There is no question that both offers are within the lawful authority of the employer. The stipulations of the parties or the ability to pay are not issues in this proceeding. There is no evidence in this record which permits a comparison of the wages and conditions of employment of the employees in this proceeding with those of other public employees.

The employer did introduce evidence that employees in the private sector received 2 and 3% increases for 1989 and 1990. It also introduced evidence that the consumer price index has increased by less than either party's offer. These factors would seem to support the lower of the two offers. The relevance of that evidence to the present proceeding has not been

TABLE IV

A COMPARISON OF 2 YEAR IMPACT OF THE OFFERS
ON AVERAGE SALARIES AT 7 BENCHMARKS

	1988-89 Salary Park Falls	Compared to Average of Conference	1989-90 Average of 5 Settled Schools	1990-91 Average of 4 Settled Schools	2-Year Impact
B.A. Base	\$17,882	\$18,390 -508			
Union Offer			\$-342	\$-419	\$ +89
Board Offer			-520	-797	-289
BA-6	\$22,514	\$22,873 -359			
Union			+254	+248	+607
Board			+28	-232	+127
BA-Max	\$27,146	\$27,524 -370			
Union			+62	+410	+788
Board			-212	-172	+40
MA Base	\$20,162	\$20,855 -693			
Union			-621	-1,276	-583
Board			-853	-1,702	-1,009
MA-9	\$27,524	\$28,605 -1,081			
Union			-555	-915	+166
Board			-829	-1,494	-413
MA-Max	\$30,796	\$32,410 -1,614			
Union			-1,231	-1,198	+416
Board			-1,537	-1,845	-231
Schedule Max	\$32,696	\$34,979 -2,283			
Union			-1,988	-2,477	-194
Board			-2,314	-3,165	-882

demonstrated. For that reason, those factors are not entitled to much weight in determining the outcome of this proceeding.

The Union introduced a substantial amount of data, in summary form, about the four feeder schools to Minoqua UHS and about other CESA-12 school districts. It suggested these constituted secondary comparables. Since four other Athletic Conference districts have 1989-90 settlements, and three are settled for 1990-91, it was not necessary to search for other comparable districts. Evidence relating to the proposed secondary comparables has statutory relevance for comparisons under Wis. Stats. 111.70(4)(cm) 7d, e, g, and h. The information presented in this record for secondary comparables is severely limited. More complete data was included in the record for settled Athletic Conference schools. Therefore, the arbitrator did not rely upon information relating to secondary comparables in arriving at his decision herein.

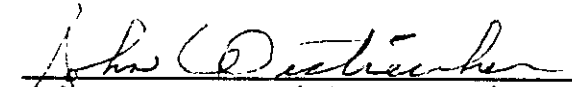
The parties have defined the issues about which they could not agree as salary and health insurance. The Board's first year salary offer is closer to the average percentage and dollar increases granted in those comparable districts which have arrived at a settlement. That offer would not reduce the deficiency of Park Falls salaries with average conference salaries at five of the seven benchmarks. The Board's second year offer would result in erosion at all benchmarks over 1989-90 and an overall loss at five of seven benchmarks compared to 1988-89. The Union's two year offer would result in an increase over 1988-89 at five of seven benchmarks. Park Falls teachers will be going without an experiential step increase for 1989-90 under either offer. They will remain below the average conference salary at five of seven benchmarks in 1990-91 under the Union offer.

The total two year salary difference between the offers is \$54,148. The Board offer includes the reduction of an existing benefit which would save \$27,094. Nothing of equal value has

been offered in return for that proposed reduction of an existing benefit.

Based upon the foregoing it appears that the offer of the Park Falls Education Association is the more reasonable offer. That offer and the agreements of the parties shall be incorporated into the 1989-90 and 1990-91 collective bargaining agreement as required by law.

Dated this 23rd day of April, 1990, at Madison, Wisconsin.



John C. Oestreicher, Arbitrator