STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

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In the matter of the petition of

Fort Atkinson Education Association

To initiate final and binding a arbitration in a dispute between said petitioner and

Fort Atkinson School District

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Daniel Nielsen, Arbitrator

Decision No. 26489-A
Date of Award: 01/26/91

Appearances:

Wisconsin Association of School Boards, Inc., P. O. Box 160, Winneconne WI 54986, by **Mr. William Bracken**, Director of Employee Relations, appearing on behalf of the Fort Atkinson School District.

Capital Area UniServ Council-North, 4800 Ivywood Trail, McFarland, WI 53558 by **Mr. A. Philip Borkenhagen**, appearing on behalf of the Fort Atkinson Education Association.

Arbitration Award

The Fort Atkinson Education Association and the Fort Atkinson School District selected the undersigned to serve as the interest arbitrator to resolve their impasse in their 1989-91 contract negotiations over the issue of early retirement benefits. A hearing was held at the District offices on August 24, 1990 at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The record was held open to receive corrections and other information requested at the hearing. The parties submitted briefs and reply briefs, the last of which were exchanged on October 26, 1990. The Association included a Motion to Strike in its Reply Brief, to which the Board made a response on November 15, 1990. A conference call was held between the parties and the arbitrator on November 19, 1990 during which the Motion to Strike was resolved. The record was closed on that date.

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

I. The Final Offers

There are two issues in dispute -- salary for the 1989-90 and 1990-91 schools years, and voluntary early retirement. The salary dispute involves the base salary, with both parties proposing the same structure for the salary schedule. The Association proposes a base salary of $18,866 in the first year, and $19,400 in the second. The District proposes a 1989-90 base of $18,668 and a 1990-91 base of $19,327.

The current contract provides for voluntary early retirement with the following features:

1. Teachers with a minimum of 10 years' experience become eligible at or after age 55;

2. Teacher opting for early retirement may continue in the insurance group and receive 90% employer payment of their health insurance, with the retiree's 10% contribution paid to the District on a quarterly basis, up to age 70;

3. Teachers retiring between the ages of 55 through 61 receive an annual stipend of $2,500 until either death or reaching a total of $12,500;

4. Teachers retiring between the ages of 62 through 69 receive an annual stipend of $4,000 until the teacher either dies, reaches the age of 70, or receives a total of $12,000.

5. By agreement of the Board and the teacher, the retired teacher's contribution to health insurance may be deducted from the annual stipend.

The Association would modify the voluntary early retirement program to reduce coverage from age 70 to age 65. The Association would also modify the stipend, to provide for a maximum benefit of $12,000 for both categories of retirees. Exempted from these changes would be 13 teachers who were eligible to claim benefits during the 1989-90 school year. These 13 would receive early retirement benefits under the existing system.

The District also grandfathers the 13 employees under the existing system. The District would then establish three other groups of employees for the purpose of phasing in changes in early retirement:

1. The first group would consist of 12 employees between the ages of 55 and 62 as of September 1, 1990. These teachers would be eligible for the 90% insurance benefit between the ages of 55 and 65.

2. The second group would consist of 19 teachers between the ages of 50 and 54 as of September 1, 1990. These teachers would be eligible for the 90% insurance benefit for a maximum of seven years after retirement between the ages of 55 and 65.

3. The third group would consist of all teachers below the age of 50 as of September 1, 1990. These teachers would be eligible for the 90% insurance benefit for a maximum of four years after retirement between the ages of 55 and 65.

Teachers in the second and third groups would be subject to inclusion in a separate insurance group comprised strictly of retirees, should the District negotiate such a group with the carrier. Further, coverage for these teachers would be contingent on the carrier's agreement to extend coverage to retirees. Teachers in the third group filing a declaration of retirement would have the declaration treated as a letter of resignation, terminating any re-employment rights with the District.

The District proposes no change in the retirement stipends available under the current contract.

II. The Statutory Criteria

This dispute is governed by the terms of Section 111.70(4)(cm)7, the Municipal Employment Relations Act. MERA dictates that arbitration awards be rendered after a consideration of the following criteria:

> "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 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 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 of employment, and all other benefits received.

i. Changes in any of the foregoing 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 in private employment."

III. Positions of the Parties

A. The Association's Brief - Main Points

The Association takes the position that its salary offer is the more reasonable in this proceeding because it allows for a modest amount of catch-up with other area schools. On voluntary early retirement, the Association's offer seeks to address the cost concerns of the Board by limiting the scope of the benefit somewhat, and makes the stipend system more equitable by eliminating the $500 age based disparity in lifetime benefits.

A. Comparability

Addressing first the issue of the appropriate comparables, the Association acknowledges that the primary comparable are the schools used by Arbitrator Kerkman in 1979 -- the Badger Conference (including the later added districts of Waunakee and DeForest), plus Edgerton, Jefferson and Whitewater. The Association urges the addition of three contiguous districts, Cambridge, Milton and Palmyra-Eagle as secondary comparables. These three districts share many of the traits that distinguish Fort Atkinson, and are reliable indicators of the settlement pattern. The Association also cites statewide data, noting that several arbitrators have held statewide figures persuasive in interest arbitration proceedings.

B. Salary

The Association acknowledges that its offer is somewhat above the area average:

	1989-90 School Year		
	Average Salary $		*Average Salary %*
Primary Comparables	*$*	*1635*	*5.83%*
District Offer	*$*	*1602*	*5.77%*
Association Offer	*$*	*1912*	*6.89%*

	1990-91 School Year		
	Average Salary $		*Average Salary %*
Primary Comparables	*$*	*1763*	*5.85%*
District Offer	*$*	*2251*	*7.67%*
Association Offer	*$*	*2060*	*6.95%*

The Association asserts, however, that this higher than normal increase is necessary to redress the constant slippage realized by District teachers over the past several contracts. The faculty is entitled to a reasonable degree of catch-up in this bargain given the fact that it lags behind salaries paid to teachers in contiguous districts at every benchmark. The Association argues that its offer is a programmed effort to achieve catch-up over the long term by exceeding the area average by approximately 1% per year until the income disparities are eliminated. The Board's offer does not appear to aimed at any long term catch-up, since it falls below the average in the first year, and exceeds the average in the second year only, the Association presumes, as an inadequate attempt to buy out the valuable early retirement benefit.

C. Early Retirement

The Association points to the fact that the voluntary early retirement (VER) benefit was introduced to the contract in 1976-77 as a 60% payment of insurance to age 65. The current level of 90% payment to age 70 has been in place since 1979-80. While the Board has, from time to time, attempted to modify portions of this benefit, it has never prior to this bargain undertaken a serious effort make any substantial change. In this round of bargaining, the Board initially sought to reduce the benefit's reach from age 70 to age 65. Only after nearly a year of bargaining did the Board escalate its demands to the present final offer position. In fact, the Association's final offer pretty nearly tracks the initial offer of the Board in this set of negotiations.

The Association has made concessions in early retirement in recognition of the increasing costs of health care. Given that health care costs for citizens 65 and over are higher than for those under 65, the limitation of the benefit to teachers between the ages of 55 and 65 is a significant move. Moreover, the Association offer eliminates the age discrimination inherent in the $500 greater stipend paid to younger retirees by reducing that benefit. The District does not acknowledge these concessions, seeking instead to completely gut the benefit. Such drastic action, the Association contends, is at the very least premature. The District's position is premised upon fanciful projections of health care costs ten years into the future. If, in fact, costs rise at the rate projected by the District, the parties can address that problem in future rounds of bargaining.

The District ignores the savings generated by enticing higher paid experienced teachers to retire. Replacing the teachers grandfathered under both offers for the 1989-90 school year with lower paid teachers will save the District $72,000 in the first year. Projecting the cost savings of early retirement over the eligible retirees and factoring in the reduction proposed in the Association offer will yield a savings by the second year of the contract of $595,000 after the payment of insurance benefits. The District's cost arguments pale when viewed in light of the actual savings realized through VER.

The Association contends that a review of the benefits available in comparable districts, and the trend of bargaining in those districts, favors its slight reduction in the status quo over the Board's more drastic approach. Certainly the existing benefit is superior to all but one district, but the remainder of the districts have been moving to improve their retirement benefits rather than reduce them. Moreover, internal comparisons to retired administrators shows that those employees receive fully paid health insurance for more than five years. Certainly the Board's effort to reduce the teaching staff's benefit to four years cannot be reasonable in the face of this contrary practice. As to comparisons with the local private sector, the Association dismisses such data as unreliable, since it does not show whether bargaining was involved in the development of the retirement programs, nor does the District's survey data reveal the remainder of the compensation program for private sector workers.

The Association characterizes the District's reduction of retirement benefits as "cumbersome, punitive and damaging." The District would distinguish between groups of teachers on the basis of age as of September 1, 1990, rather than considering years of service. Thus Association witness Quinn, who has 23 years of service but is only 46 years old would receive less in the way of benefits than a teacher with only 11 years of service who happened to be 50 on the arbitrary date. This undercuts one of the premises of VER -- that faithful service is rewarded. Further, the aspect of the offer allowing a separate insurance group for retirees and termination of coverage if the carrier refuses to extend coverage to retirees is totally unjustified. The provision for terminating re-employment rights upon application for early retirement is, the Association argues, a slap in the face to teachers.

For all of the foregoing reasons, the Association maintains that its final offer should be preferred.

B. The District's Brief - Main Points

The District takes the position that its offer is more reasonable under all of the statutory criteria. The incredible disparity between the existing VER benefit and those found in other districts justifies a phasing down of those benefits to more realistic levels, particularly in light of rapidly rising insurance costs which will greatly increase the burden borne by the District in coming years for already retired teachers and the 13 grandfathered under each offer. On salary, the Board takes the position that there is no justification for the catch-up increases sought by the faculty, since its current standing is the result of voluntary collective bargaining.

A. Comparables

The District accuses the Association of comparability shopping in attempting to expand the traditional Kerkman comparables to include Cambridge, Milton and Palmyra-Eagle. . The Kerkman comparables, ratified in a subsequent arbitration by Arbitrator Krinsky, provide sufficient data for a decision in this case and there is simply no reason, The District argues, for relitigating the already settled question of comparability. As to the statewide figures cited by the Association, the District cites decisions by this arbitrator and others indicating that statewide comparisons are not reliable indicators of likely settlement patterns in a specific region.

B. Salary Schedule

The Board argues that its salary position is amply supported by the established settlement trend in comparable districts:

	1989-90 School Year			
	Salary $	*Salary %*	*Package$*	*Package%*
Comparables	*$1,579*	*5.5%*	*$2,551*	*6.7%*
District Offer	*$1,601*	*5.8%*	*$2,723*	*7.4%*
Association Offer	*$1,912*	*6.9%*	*$3,110*	*8.4%*

	1990-91 School Year			
	Salary $	*Salary %*	*Package$*	*Package%*
Comparables	*$1,811*	*6.0%*	*$2,688*	*6.6%*
District Offer	*$2,251*	*7.7%*	*$3,465*	*8.8%*
Association Offer	*$2,060*	*6.9%*	*$3,250*	*8.1%*

For the two years of this contract, the Board is offering 2% or $462 above the average salary settlement, and 2.9% or $949 above the average package settlement. This improves the rank of the District's teachers among the comparables. Benchmark comparisons demonstrate that the Board's offer more nearly reflects the prevailing settlement pattern at each of five pertinent benchmarks.

The Board rejects the Association's claim that extraordinary increases are necessary for catch-up. The last arbitration award between these parties covered the 1985-86 contract, and the two contracts since that time have been the result of voluntary agreements. The Association should not be permitted to reopen those bargains, and the arbitrator should not second guess the tradeoffs that the parties have voluntarily negotiated. This is particularly true in light of the fact that the ranking of the District's teachers has improved over recent contracts, and improves further under the Board's offer:

Fort Atkinson Ranking at the Benchmarks

Year	*BA Base*	*BA Max*	*MA Base*	*MA Max*	*Sch. Max*
1987-88	*12 of 12*	*8 of 11*	*11 of 11*	*11 of 11*	*8 of 11*
1988-89	*11 of 12*	*7 of 11*	*11 of 11*	*11 of 11*	*9 of 11*
1989-90(B)	*6 of 11*	*6 of 10*	*7 of 10*	*10 of 10*	*7 of 10*
1990-91(B)	*6 of 8*	*4 of 7*	*6 of 7*	*7 of 7*	*5 of 7*

Salary Only Increases Compared to the Average of the Comparables

1987-88	*+$ 70*
1988-89	*-$ 32*
1989-90(B)	*+$ 22*
1990-91(B)	*+$440*

The District also notes that the Association's catch-up argument focuses solely on theoretical salary levels, ignoring the other elements of the total compensation package.

Private sector settlements and wage increases for non-teaching public employees are uniformly lower than the offer of the District, and thus the District position must be favored under those statutory comparison criteria. Consideration of the cost of living also favors the District, inasmuch as its offer exceeds the inflation rate over the contract by 3.9%. Over the past ten years, benchmark salaries have increased by anywhere from 19% to 22% over the rate of inflation. Viewed in either the short term or long term, the cost of living dictates selection of the District offer.

Turning to total compensation, the District notes that its offer exceeds the settlement rate by 1.9% over the two years of the contract, while the Association seeks an increase of 3.2% above the settlement rate. Overall compensation is a critical consideration where, as here, valuable benefits heavily supplement the salary offer. In this regard, the District urges that strong consideration be given to the stipulations reached in bargaining, wherein the District agreed to continue the very expensive 90% payment of health insurance and 100% payment of dental insurance.

The District characterizes its residents as having below average incomes among the comparables while paying the highest property tax rate. In spite of this, District teachers enjoy the 4th lowest pupil/teacher ratio among comparable districts. The public has made a strong commitment to quality education in Fort Atkinson, and should be given credit for this effort under the "interests and welfare of the public" criterion. The District argues that the local economy still suffers lingering effects of the weak farm economy, and points to the generalized need for property tax relief in Wisconsin. Selection of the Board offer, it is argued, will have no adverse effects on the quality of education, since there have been ample applicants for vacant teaching positions and no exodus of experienced teachers from the District.

C. Early Retirement

The critical issue in this case, the District asserts, is voluntary early retirement. Both parties agree that the status quo must be changed because of the enormous cost increases in health insurance and the question is whether the District changes or Association changes most effectively address the problem. The District contends that its offer is designed to provide a long term solution without unduly penalizing the workforce. The Association offer, on the other hand, relieves the District only of its obligation to contribute to the Medicare supplement between ages 65 and 70. This supplement costs only 57% of the regular premium amount, and thus the Association offer does little to address the increasing cost of regular insurance coverage.

The District asserts that the most common length of insurance coverage for retirees in comparable districts' early retirement plans is slightly over three years, and that its offer would ultimately lead to a four year benefit. Thus the District offer would allow modest financial relief for taxpayers while still allowing teachers an above average benefit. Assuming a 20% annual rate of increase for health insurance and a 9% annual rate for dental insurance, the offers exceed the median lifetime benefit among the comparables:

	Maximum Early Retirement Benefit	
	Single	Family
Median of the comparables	*$ 12,500*	*$ 15,979*
Board offer exceeds the median by:		
Group A (15 years)	*$93,734*	*$214,729*
Group B (10 years)	*$39,051*	*$105,356*
Group C (7 years)	*$19,430*	*$ 50,673*
Final (4 years)	*$ 8,076*	*$ 19,028*
Union offer exceeds the median by		
Group A (15 years)	*$93,734*	*$214,729*
Final (10 years)	*$38,551*	*$104,856*

Comparisons with private sector workers in the area show that voluntary early retirement plans of any type are relatively rare, and that under the District's offer teachers would enjoy a much better benefit than most of their private sector counterparts. Consideration of comparability strongly support the District's position.

The District argues that its approach to phasing down the VER benefit is a reasonable accommodation of the public's need to control costs and the teachers' desire to have early retirement available to them. Even though no quid pro quo should be required in a case where both sides seek to change the status quo, the Board has offered a larger than normal wage increase in the second year of the contract when the change takes effect. By contrast, the Association seeks large increases in both years of the contract. The Board notes that an excessive "buyout" is inappropriate, since the Association never made any wage concession in order to secure VER in the first place. Further, the Board has grandfathered employees to insure that those who have a reasonable expectation of receiving the existing benefit are insulated from the change. These features represent a balanced approach to addressing a costly problem.

The District dismisses the Association's claim that VER "saves" the District money by replacing highly paid staff with less experienced staff. Retired employees perform no services for the District, and monies spent for services not performed are simply an additional cost. Furthermore, the salary schedule assumes that more experienced teachers are more valuable and the District suffers a loss in productivity and quality when it is forced to rely on less experienced staff. Association figures supposedly demonstrating a salary savings are flawed because they assume that teachers, absent early retirement, remain in the classroom until age 70. The average retirement age in Wisconsin schools is actually 63. Any monies spent for benefits beyond that age have no offset in salary savings. The District asserts that the excess benefit in Fort Atkinson represents a very significant cost exposure when the rapidly increasing costs of insurance are factored in, and that far from saving money for the District, VER costs the District money.

The District urges that the minor changes made in its offer in allowing a separate insurance group for retirees and terminating coverage if the carrier refuses to offer insurance to retirees are simply prudent and realistic business practices which should have no bearing on the outcome of this arbitration. Similarly, the provision stating that an application for early retirement constitutes a resignation is a minor facet of the offer, and serves only to clarify the status of the retiring teacher and the responsibilities of the District. These changes are reasonable requests.

For all of the foregoing reasons, the District urges that its final offer be selected.

C. The Association's Reply Brief - Main Points

The Association reiterates its belief that the contiguous districts of Cambridge, Milton and Palmyra-Eagle should be used as comparables, noting that the District itself has repeatedly argued for the use of these districts in the past. The District also, the Association argues, relies in part upon statewide data to support its arguments concerning VER, while objecting to such data for wage comparisons. It is the District that is comparability shopping.

The Association urges caution in using the costing data argues in the District brief, since the District has inflated cost figures by including extended contracts, extra-curricular pay, extra duty pay and the like. These inflated claims are consistent with the District's entire line of misleading arguments in this case. On the VER issue, the District constantly makes reference to a 15 year benefit, ignoring the fact both parties have proposed eliminating that benefit. Furthermore, 15 years of experience with early retirement in this district shows that the average retirement age is 59.7 years, which means the benefit under the Union offer is limited, as a practical matter, to just over 5 years.

The District has taken its most extreme position into arbitration, gambling on winning big. The Association argues that such a result would be bad for the bargaining relationship, and that massive changes in a voluntarily negotiated benefit should be achieved voluntarily rather than through arbitration. The District's arguments about future costs are built upon a series of questionable assumptions, including a 20% per year increase in health insurance rates which its own "expert" disclaimed, noting that he could not project increases for ten years. The District also compares future costs of VER with those in other districts, using Fort Atkinson's lower insurance rates as the effective rate in the other districts. This artificially reduces the actual cost of the benefit in comparable districts.

The District consistently ignores the savings it realizes through the VER program, by paying lower salaries to replacement teachers. Its calculations are flawed, in that it routinely substitutes assumed and updated costs for the actual costs it has incurred over the years. Actual experience shows a cost savings to the District, and even the District's own calculations show a net savings for the next six years. Should health insurance premiums increase sufficiently over those six years to jeopardize the savings, the District can propose changes at that time. The radical change sought in this final offer is, the Association argues, premature.

The Association again asserts that there is no justification for establishing a separate insurance group for retirees. This must inevitably lead to increased insurance costs for this group. The provision that allows the District to terminate retiree insurance if the carrier is unwilling to provide such coverage is an open invitation for unilaterally terminating this benefit, inasmuch as the District would be able to negotiate such a change with the carrier and then blame the carrier.

The Association rejects the District's argument that salary catch-up is not justified. The teachers in Fort Atkinson have fallen from 70th in the state in average salary to 175th over the past ten years. In those ten years, the teachers have received the lowest increases, both in percentage terms and dollar terms, among the comparables. The Association concedes some improvement in rankings for several benchmarks, but notes that deterioration of rank occurs at the MA Maximum and Schedule Maximum, where 63.5 FTE teachers are placed. Although the District was able to persuade Arbitrator Krinsky that local economic conditions were bad, and thus prevail in the 1985-86 arbitration, it has greatly improved its financial condition since that time, and can well afford to allow the faculty to make up some lost ground.

For all of the District's claims that total compensation favors its offer, the Association notes that benchmark rankings using combined salary and fringe benefit values refute that argument:

	Benchmark	*Single Insurance*	*Family Insurance*
1988-89	*BA Base*	*11th of 12*	*11th of 12*
	MA Max	*12th of 12*	*12th of 12*
	Schedule Max	*10th of 12*	*11th of 12*
1989-90	*BA Base (Union)*	*5th of 11*	*6th of 11*
	MA Max (U)	*9th of 11*	*11th of 11*
	Sched. Max (U)	*8th of 11*	*7th of 11*
	BA Base (District)	*6th of 11*	*7th of 11*
	MA Max (D)	*11th of 11*	*11th of 11*
	Sched. Max. (D)	*9th of 11*	*10th of 11*
1990-91	*BA Base (Union)*	*5th of 8*	*4th of 8*
	MA Max (U)	*8th of 8*	*7th of 8*
	Sched. Max (U)	*6th of 8*	*6th of 8*
	BA Base (District)	*5th of 8*	*4th of 8*
	MA Max (D)	*8th of 8*	*7th of 8*
	Sched. Max (D)	*6th of 8*	*6th of 8*

Total compensation is not nearly so generous as the District represents it to be.

The District has completely failed to show any nexus between its generic data on private sector salaries and national economic conditions, and the actual economy of Fort Atkinson. These arguments should accordingly be rejected.

D. The District's Reply Brief - Main Points

Early retirement and runaway health insurance costs are the real issue in this dispute. The Association misrepresents the Board's initial offer on VER by claiming it is identical to the Association's final offer. The Board's initial position called for a ten year benefit, but also capped contributions at the dollar amount for contract year 1988-89. This significant change is not incorporated into the Association offer.

The Association originally received coverage to age 70 as the result of an error in drafting the language in 1979. The District's current Business Manager was then the chief bargainer for the Association, and he testified that the parties intended only ten years of benefit, from age 55 to age 65. It was not until 1984 that the parties mutually agreed to clarify the VER program to extend coverage to age 70. Although retirees were given coverage to age 70 prior to 1984, it was only because the District recognized the ambiguity of the then existing language and did not wish to deny benefits to teachers who might have been misled into believing that benefits actually were guaranteed past age 65. Thus the Association's offer to drop the benefit from age 70 to age 65 really reflects a return to the originally negotiated benefit level.

The Association is refusing to deal with the serious problem of rising health care costs, preferring instead to force an arbitrator to reform the system. The District's offer should be preferred because it represents a long term plan to control costs. The District assails the Association's claims that VER generates any "savings" for the District, again noting that it constitutes payment for services not rendered, and that any salary differential is being offset by the increase in insurance costs.

Association claims notwithstanding, the overwhelming weight of the comparables favors moderation of the VER benefit. The stipend offered early retirees in Fort Atkinson is higher than any of the comparables other than Monona Grove, and the current benefit of 15 years' coverage far outstrips the area standard of 3 or 4 years of insurance. The private sector data offered by the District is the best evidence of private sector trends in the record and should be accepted as proof that the Board's offer is the more reasonable.

The District has constructed its offer to give employees ample notice of the early retirement benefit they will receive when they retire. Certainly, the District offer will be a reduction of benefits, but it no less fair that some employees receive a lower benefit than they might have expected than it was for employees to suddenly receive this benefit in 1976. Change will inevitably run counter to some people's expectations, but the change proposed by the District is reasonable, necessary and fully supported by the comparables.If comparables can be used to add or increase benefits, the District argues, they can also be relied upon to bring exorbitantly expensive benefits into line. A decision favoring the District, it is claimed, will eliminate a major financial concern of the Board and set the stage for addressing the salary concerns of the Association.

The District strongly objects to the Association request for catch-up salary increases. The ranking of the District's teachers is the result of voluntary collective bargaining. Furthermore, the teachers will achieve identical rankings under either party's final offer, so rankings cannot dictate the result in this case. The Board's offer make significant improvements at the BA Base, the BA Maximum and the MA Base. The MA Maximum's relationship to the comparables is unchanged from the 1988-89 contract year, and there is about $1,000 of erosion at the Schedule Maximum. These latter two benchmarks would still be within 5% of the median for the comparables, and thus should not create any great problems.

Given the difficulty in making reliable benchmark comparisons where, as here, other districts have artificially placed teachers on the schedule without regard to their actual years of experience or made other structural changes, the arbitrator should focus on the amount of increase for 1989-90 and 1990-91. The pattern of settlements in the comparables group plainly favors the District offer. The District is proposing to spend $455 more than the average salary settlements over the two years of the contract. While this is intended as a tradeoff for the VER changes, it also serves to improve the competitive standing of the District's salaries.

IV. Discussion

Three issues are presented in this case. The parties have a minor disagreement over comparability, a more significant dispute over salary and a major dispute over voluntary early retirement.

A. Comparability

The Association offers no persuasive reason for expanding the comparability grouping which was first established by Arbitrator Kerkman, ratified by

Arbitrator Krinsky, and modified by mutual agreement to include schools added to the athletic conference. While an argument may be made for the comparability of the three districts urged by the Association, the fact is that they have not been traditional benchmarks for the bargainers in Fort Atkinson, and the addition of these schools to the comparability pool will serve only to undermine the stability of the collective bargaining relationship. Absent any compelling reason to add to the comparability group, either directly or in the guise of "secondary comparisons", the undersigned finds that the Kerkman comparables -- Middleton, Monona Grove, Monroe, Oregon, Sauk-Prairie, Stoughton, Edgerton, Jefferson and Whitewater-- plus new athletic conference members DeForest and Waunakee are the appropriate grouping for comparison purposes.

B. Salary Schedule

The disagreement over salaries is more one of form than of substance. Both parties have made offers above the settlement average, and both admit that there is relatively little difference ($119 per returning teacher) between the offers by the end of the contract term:

Chart I

1989-90 School Year

		Average Salary $	Average Salary %
Primary Comparables	$	1635	5.83%
District Offer	$	1602	5.77%
Association Offer	$	1912	6.89%

1990-91 School Year

		Average Salary $	Average Salary %
Primary Comparables	$	1763	5.85%
District Offer	$	2251	7.67%
Association Offer	$	2060	6.95%

The Association justifies its salary position by making an appeal for 1% of catch-up per year, while the District suggests that it is offering a higher than normal salary increase as the quid pro quo for the VER change, and denies there is any need for catch-up increases.

Comparing the salaries paid to Fort Atkinson's faculty with those paid in comparable districts is somewhat difficult given the structural changes made in area districts. This difficulty is minimized, however, by using only the minimums and maximums in the following chart, in order to exclude different placements for teachers within the body of the schedules. The undersigned has also added an adjusted average figure, to account for anomalous salaries at the extremes:

Chart II
Comparison of Fort Atkinson Salaries to Kerkman 12 Districts

1988-89 School Year

Benchmark	Average Salary	FA% of Ave	Median Salary	FA% of Med.	Adj Ave. Salary[1]	FA% of Adj Ave
BA Base	$18035	95.1	17877	95.9	18000	95.3
BA Max	$24976	90.6	24370	92.9	24637	91.9
MA Base	$20279	94.7	20217	95.0	20345	94.4
MA Max	$32758	91.0	31802	92.8	32403	91.0
SchedMax	$36310	92.1	34373	97.3	35686	93.7

Chart III
1989-90 School Year

Benchmark	Average Salary	% of Ave	Median Salary	% of Med.	Adj Ave. Salary	% of Adj Ave
BA Base	$19054		18595		18969	
Association:	$18866	99.0	18866	101.5	18866	99.5
District:	$18668	98.0	18668	100.4	18866	98.4
BA Max	$26046		25321		25762	
Association	$23945	91.9	23945	94.6	23945	93.0
District	$23694	91.0	23694	93.6	23694	92.0
MA Base	$21417		21099		21396	
Association	$21043	97.9	21043	99.7	21043	98.4
District	$20822	96.8	20822	98.7	20822	97.3

1 This figure adjusts the average by eliminating the highest and lowest salaries among the comparables.

MA Max	*$34206*		*33561*		*33986*	
Association	*$31201*	*91.2*	*31201*	*93.0*	*31201*	*91.8*
District	*$30874*	*90.2*	*30874*	*92.0*	*30874*	*90.8*
SchedMax	*$37707*		*36037*		*37118*	
Association	*$35373*	*93.8*	*35373*	*98.2*	*35373*	*95.3*
District	*$35003*	*92.8*	*35003*	*97.1*	*35003*	*94.3*

Chart IV

1990-91 School Year

Benchmark	*Average Salary*	*% of Ave*	*Median Salary*	*% of Med.*	*Adj Ave. Salary*	*% of Adj Ave*
BA Base	*$19596*		*19595*		*19713*	
Association	*$19400*	*99.0*	*19400*	*99.0*	*19400*	*98.4*
District	*$19327*	*98.6*	*19327*	*98.6*	*19327*	*98.0*
BA Max	*$27883*		*27443*		*27622*	
Association	*$25608*	*91.8*	*25608*	*93.3*	*25608*	*92.7*
District	*$25512*	*91.5*	*25512*	*93.0*	*25512*	*92.4*
MA Base	*$22175*		*22627*		*22445*	
Association	*$21728*	*98.0*	*21728*	*96.0*	*21728*	*96.8*
District	*$21646*	*97.6*	*21646*	*95.7*	*21646*	*96.4*
MA Max	*$36144*		*35514*		*36009*	
Association	*$33368*	*92.3*	*33368*	*94.0*	*33368*	*92.7*
District	*$33242*	*92.0*	*33242*	*93.6*	*33242*	*92.3*
SchedMax	*$40390*		*39490*		*40157*	
Association	*$37830*	*93.7*	*37830*	*95.8*	*37830*	*94.2*
District	*$37688*	*93.3*	*37688*	*95.4*	*37688*	*93.9*

Reviewing these charts, it is apparent that the schedule is weak at the maximums by virtually any measure. Since a large proportion of the faculty in Fort Atkinson is found at the top steps (104.5 of 171 in 1989-90), the Association has a reasonable concern over this weakness. The relative position of teachers at the maximums in Fort Atkinson, however, is the result of voluntary collective bargaining. A request for catch-up pay increases is essentially an appeal to equity, and the best measure of a fair level of compensation is the overall package the parties have constructed through years of negotiation across the table. While the Association can point to the Krinsky Award in favor of the District as having set back its salary position, that Award was followed by two successive voluntary settlements ratifying the salary relationships. The catch-up request is an invitation to reopen and reconsider the bargaining judgments made in the last two sets of negotiations. While the maximums are sufficiently weak to justify some redistribution of salary dollars, on balance the undersigned concludes that the competitive position of the District is not so bad as to justify the Association's request for 2.16% over the average for the two years of the contract.

As a practical matter, there is little to choose from between the two salary offers. Even accepting for the purpose of analysis the catch-up argument of the Association, both salary offers close the gap at the maximums, differing by approximately 0.3% in the final rankings. As the need for extraordinary catch-up increases is not persuasively established in this record, the undersigned finds that the salary offer of the District is the more reasonable, tracking more closely the settlement pattern while narrowing the difference between Fort Atkinson and comparable districts at the maximums.

C. Voluntary Early Retirement

The major point of disagreement between the parties is over the District's desire to substantially cutback on the VER benefit which has been included in the contract in its present form since the 1979-80 negotiations. The benefit allows for 90% payment of insurance premiums for a maximum of 15 years between ages 55 and 70. The Association has proposed reducing the benefit to a ten year benefit, ending at age 65. The District proposes phasing the benefit down, from 15 years to 10 years to 7 years and, finally, to 4 years, depending upon the which age group an employee is in as of September 1, 1990.

The primary argument of the District is that the 15 year benefit is wholly inconsistent with the VER benefits in comparable districts, and exposes the District to very large liabilities for health insurance costs which benefit workers who are no longer providing any services to the District. Thus, the District argues that there is a need to change the status quo because of costs, and that the change is supported by consideration of comparability. Each party has provided numerous calculations of the cost to the District for insurance benefits versus the savings realized by replacing a high seniority teacher with a lower paid, less experienced teacher. Each party, to some extent, "cooks" its figures by making assumptions that are at odds with the actual experience of the District with early retirement.

In order to more accurately assess the costs and savings of the VER system, and the need for change in that system, the undersigned has created a chart reflecting the actual experience of the parties, rather than the theoretical possibilities under the language.[2] Both parties are proposing to limit the benefit to a maximum of age 65, so the District's arguments concerning insurance costs for the years between age 65 and 70 are not particularly relevant to the selection of one or the other final offer and costs between those years have been excluded from the analysis. The average retiree in Fort Atkinson retires at age 59.7, when he or she is paid approximately 1.8 times the base salary, and is then replaced by a teacher at 1.2 times the base. The experience for all school districts in the state is retirement at age 63.5, so the salary savings realized by replacement should arguably not be credited for the final year and a half since the District would likely have realized those savings without having to pay the insurance benefits. By the same token, the theoretical insurance costs prior to age 59.7 may be discounted, given the actual experience of the District with VER.

Chart V

Age	*Replacement at 1.20*	*Retiree at 1.80*	*Salary Differential*[3]	*Health Ins Benefit*[4]	*Dental Ins. Benefit*[5]
59	*$20,580*	*$30,870*	*$ 3,087*	*$ 806*	*$ 97*
60	*$22,509*	*$32,773*	*$10,264*	*$3,226*	*$351*
61	*$24,580*	*$34,413*	*$ 9,833*	*$3,872*	*$382*
62	*$26,603*	*$36,133*	*$ 9,530*	*$4,646*	*$417*

2 In constructing the chart the undersigned has accepted the worst case scenario insurance increases of 20% per year for health insurance and 9% per year for dental insurance. The salary increase assumptions are 5% per cell. Obviously, to the extent that actual experience varies from these assumptions the validity of the savings figure will be drawn into question.

3 1988-89 schedule increased by experience increment and assuming 5.0% salary increase per year.

4 1988-89 family rates increased by 20% per year

5 1988-89 family rates increased by 9% per year

63	*$28,767*	*$37,939*	*$ 4,586*	*$5,575*	*$454*
64	*$31,080*	*-0-*	*-0-*	*$6,690*	*$496*
Total			*$37,300*	*<$24,815 >*	*<$2,197>*

The foregoing suggests that the VER program, when limited to age 65, is not quite the financial albatross the District portrays it as, although assuming that insurance costs increase at a rate substantially beyond salary increases it will eventually move into the status of a break even or loss proposition for the District. The analysis also suggests that the greatest relief for the District is realized by limiting the years of insurance coverage beyond age 63.5, when the program's value as a retirement incentive ceases. Since the teacher would, based upon average experience across the state, retire at 63.5 without the incentive, all insurance payments past that age are purely an expense to the District. Furthermore, the District is assured of paying out insurance costs for every early retiree at the back end of the benefit, while experience suggests that employees do not make much use of the insurance benefit at the front end, between the ages of 55 and 59.7. This greatly increases the value of the Association's concession reducing the maximum age to 65 from 70, even allowing for the lower premium cost of the Medicare supplement in effect for those years, since it effectively reduces the benefit as used from 10.3 years of insurance coverage to 5.3 years.[6] Certainly the District continues to have a theoretical exposure for an additional 4.7 years on the front end of the VER benefit, but in analyzing the need for a change in the status quo, actual experience is a more reliable guide than potential exposure.

The District is correct in asserting that the VER benefit is at odds with the pattern in comparable districts. although much of the excess benefit appears to be realized on paper rather than in practice. Like the weak salaries at the maximums, this abnormality is the result of voluntary collective bargaining. The District is asking the arbitrator to reopen and relitigate the past negotiations over VER, just as the Association asks to revisit past bargains over salary. The undersigned has the same reluctance to do so with the VER proposal of the District as with the catch-up proposal of Union. Certainly in each case reasonable movement towards the

6 Carrying forward the assumptions about insurance cost increases in Chart V, the value of health and dental insurance for the ages between 65 and 70 for the hypothetical retiree would have been $35,896, even at 57% of the regular premium.

average could be made. Absent the change made by the Association in reducing the benefit from a maximum age of 70 to a maximum age of 65, the District's argument of compelling need for change might well justify reopening past bargains. The increasing costs of insurance do suggest that the cost of VER is on the verge of outstripping the benefit it produces in lower salaries. In much the same way that the District's higher than normal salary proposal blunted the Association's catch-up argument, the Association offer on VER has voluntarily conceded five years of coverage in the age range where there is no offsetting salary savings for the District. Given the District's average retirement age of nearly 60, this effectively cuts the length of the benefit in half. The Association has taken responsibility for the problem of cost in the VER program, and has made a proposal that addresses the most critical area of concern for the District. Should future experience indicate that usage of the benefit prior to age 60 is becoming the norm, the District can revisit the issue in negotiations at that time. However, given what is currently known about the usage and costs of VER, the undersigned concludes that the need for change is sufficiently met by the Association offer and that the change proposed by the District goes beyond the demonstrated need for change. Accordingly, the VER offer of the Association is preferred in this proceeding.

The undersigned has considered the relatively minor changes beyond years of eligibility in both parties' proposals. The conclusion on the central issue of years of eligibility outweighs any impact the minor features might have on selection of one offer or the other. The stipend change proposed by the Association is a reasonable modification, although the claim of necessity based upon age discriminbation liability appears to be overstated in light of failure of any person to press such a claim over the past 15 years. The undersigned agrees with the District that the savings clause of the contract should be a sufficient response to the legal concerns of the Association. The District's resignation and separate group proposals are reasonable. An employee seeking to guarantee a valuable benefit such as VER can legitimately be expected to clarify his or her future employment plans when making the application. The ability to establish a separate group is an option that makes sense as a means of safeguarding the financial integrity of the insurance plan for all employees. Given that the District pays 90% of the premium, it seems unlikely that it would attempt to increase retiree insurance costs without compelling reasons. The ability of the district to terminate coverage for retirees if its insurer refused to write the policy is somewhat more problematic, as it is not entirely clear what the District's obligations would be after such termination, nor what the precise circumstances would be that would justify the termination.

V. Conclusion

The District's offer is preferable on the issue of salaries. The differences on salary are relatively small, however, and both parties acknowledge that the primary issue is Voluntary Early Retirement, where the Association's position is more reasonable. In light of this, and after full consideration of the statutory criteria, the undersigned makes the following

AWARD

The final offer of the Fort Atkinson Education Association is selected and, together with the stipulations reached in bargaining, shall be incorporated into the collective bargaining agreement for the school years 1989-90 and 1990-91.

Signed this 26th day of January, 1991 at Racine, Wisconsin:

Daniel Nielsen, Arbitrator