

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
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HARTFORD ELEMENTARY EDUCATION : Case 15  
ASSOCIATION : No. 50796  
 : MA-8386  
and :  
 :  
SCHOOL DISTRICT OF HARTFORD JOINT :  
NO. 1 BOARD OF EDUCATION :  
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Appearances:

Mr. John Weigelt, UniServ Director, Cedar Lake United Educators, 411 North River Road, West Bend, Wisconsin 53095, appearing on behalf of Hartford Elementary Education Association, referred to below as the Association.  
Mr. Robert W. Butler, Staff Counsel, Wisconsin Association of School Boards, 122 West Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of School District of Hartford Joint No. 1 Board of Education, referred to below as the Board.

ARBITRATION AWARD

The Association and the Board are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of the Association. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on April 11, 1994, in Hartford, Wisconsin. The hearing was not transcribed, and the parties filed briefs and reply briefs by August 23, 1994.

ISSUES

The parties stipulated the following issue for decision:

Whether the District has violated the Master Agreement by refusing to provide a 3.8% package increase for 1993-94.

RELEVANT CONTRACT PROVISIONS

MEMORANDUM OF UNDERSTANDING

The following memorandum contains the agreements reached between the Hartford Joint One School District Board of Education and the Hartford Elementary Education Association on salary and total compensation for the 1992-93, 1993-94, and 1994-95 contract years.

- A. The parties do hereby agree to the following terms for the 1992-93 contract:
1. Provide for a \$2,175 average salary increase per full time equivalent teacher in 1992-93.

2. Allow the Hartford Elementary Education Association (H.E.E.A.) to place the new money on the salary schedule by altering the percentages between the lanes. No other adjustments will be made on the salary schedule structure by either party.
3. All other tentative agreements reached by the parties through the course of bargaining will be maintained.

B. The parties do hereby agree to the following terms for the 1993-94 contract:

1. Provide for a 3.8% average total compensation increase. The costing of this offer will be derived from the costing form agreed to by the Wisconsin Association of School Boards and the Wisconsin Education Association Council. (A copy of the form is attached.)
2. Provide that all employees would receive their step movement and lane movement, if applicable.
3. Maintain the level of fringe benefits as they existed in the 1992-93 contract year.
4. Maintain the current salary schedule structure.
5. Provide that any monies left over after items B.2, B.3 and B.4 are satisfied may be dispersed by the H.E.E.A. between the BA Base of the salary schedule and the co-curricular schedule.

C. The parties do hereby agree to the following terms for the 1993-94 (sic) contract:

1. Provide for a 3.8% average total compensation increase. The costing of this offer will be derived from the costing form agreed to by the Wisconsin Association of School Boards and the Wisconsin Education Association Council. (A copy of the form is attached.)
2. Provide that all employees would receive their step movement and lane movement, if applicable.
3. Maintain the level of fringe benefits as they existed in the 1992-93 contract year.
4. Maintain the current salary schedule structure.
5. Provide that any monies left over after items C.2, C.3 and C.4 are satisfied may be dispersed by the

H.E.E.A. between the BA Base of the salary  
schedule and the co-curricular schedule.

#### BACKGROUND

The grievance is rooted in the Board's implementation of a Memorandum of Understanding (the Memorandum) which resulted from a tentative agreement reached between the parties on September 13, 1993. 1/ The Board's view of the Memorandum was summarized in a November 22 memo from Greg McElwee, the Board's District Administrator to Tony Falkenthal and Bob Lay, the Association's Chief Negotiator and President, respectively. That memo reads thus:

It is the position of the Board of Education's Negotiations Committee that the agreement reached with the HEEA was settled on the basis of casting forward as the method of projecting teachers' salaries. This has been a past practice here in the district and since it was not specifically identified in the agreement, there was no reason to believe any other method was agreed upon.

The Association responded by filing a grievance, dated December 2, which reads thus:

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1/ References to dates are to 1993, unless otherwise noted.

. . . .

II. The Association asserts that the School District of Hartford Joint #1 is in violation of the current collective bargaining agreement between the parties by failing to adhere to the specific provisions of the Memorandum of Understanding reached between the parties relative to the salary and total compensation for the 1993-94 and 1994-95 contract years (see attached Memorandum). The Memorandum specifically states in paragraph B (5) that "...any monies left over after items B.2, B.3, and B.4 are satisfied, may be disbursed by the HEEA between the Base of the salary schedule and the Co-curricular schedule. Paragraph C(5) provides the same dispersal of monies for the 1994-95 contract.

. . . .

The Association, then, interprets the Memorandum to require a 3.8% total package based on the actual increase in costs from the 1992-93 to the 1993-94 school years. Between those school years, eight teachers either retired or resigned from the Board. The difference between the salaries (including FICA and retirement payments) of the teachers who left Board employment and their replacements is, by the Association's calculation, \$120,608.

To flesh out the parties' disagreement, it is necessary to sketch the bargaining which preceded the tentative agreement of September 13. It is undisputed that the Board has, for at least twenty-five school years, used the cast forward method of costing salary increases. The parties have shared this form of costing since at least the 1987-88 school year. As applied by the parties, this required that the increase in salary from one school year to the next be based on moving the full time equivalent (FTE) teaching positions from the school year preceding any projected salary increase(s). That teaching complement would be moved forward one step on the salary grid for each year of the contract being negotiated. This method ignores actual changes in teaching staff, and assumes the complement from the base year actually remains in place for the duration of the agreement being negotiated. As applied by the parties, changes in educational lanes were not costed against the salary package being negotiated.

The parties' bargaining for a successor to their 1989-1992 collective bargaining agreement stretched from at least the Spring of 1992 through the fall of 1993. The Board consistently costed each offer using the cast forward method. Costing sheets exchanged from the Board to the Association reflected an FTE complement held constant for the duration of the proposed successor agreement. In October of 1992, a WERC Investigator mediated the parties' negotiations. On January 6, another investigation session was conducted. In mid-January, the parties began a mail exchange of proposed final offers which was to last several months.

In a proposed final offer submitted to the Investigator and dated March 24, the Board included the following language in a "cost control" proposal:

. . . .

1. The 1992-93 staff will be cast forward one year for the 1993-94 school year. Teachers shall be moved

vertically on the schedule, but educational lane placement shall be held constant.

. . .

The same language was included in the Board's proposed final offer of May 6. Association proposed final offers did not expressly address costing methodology. On May 11, the Investigator closed the investigation.

The parties continued to negotiate after the close of the investigation. On September 13, the parties met in an attempt to reach agreement on a successor contract without invoking interest arbitration. By this time, the legislature had passed, and the Governor had signed, Act 16, which restricted access to interest arbitration. That act required the WERC to establish administrative rules for its implementation. As of September 13, the Commission had not adopted those rules, but had sought the input of interested parties. In response to this request, representatives from the Wisconsin Education Association Council (WEAC) and the Wisconsin Association of School Boards (WASB) met and ultimately agreed to a means by which settlements could be costed in compliance with the demands of the new act. That effort resulted in the WASB's promulgation of a document headed "WASB/WEAC COSTING FORM TO DETERMINE QEO." That document was a one page sheet consisting of a list of cost items with three columns to state the cost of each listed item. The three columns were headed "BASE YEAR," "1ST YR QEO," and "2ND YR QEO." Below the "GRAND TOTAL" line appeared one blank line for an entry of "F.T.E."

The WASB also promulgated explanatory "NEGOTIATION NOTES" which accompanied the costing form noted above. Those Notes consist of four pages, and the notes state that the form reflects cast forward methodology, but includes lane changes within that methodology.

Falkenthal testified that the Association wanted to secure a 3.8% total package increase and as much latitude as possible in how that increase was distributed on the salary schedule. He noted that the Association consistently refused to consider a QEO as a basis for settlement. He also noted the Board used the term "QEO" to characterize some of its September 13 offers, but did not use that term to characterize the offer which resulted in tentative agreement.

Robert Butler served as the Board's Chief Spokesman, and his notes from the September 13 meeting show the exchange of several offers. The first went from the Board to the Association, and is reflected in his notes thus:

1. 92-93:2050/PRT . . .
2. 93-94:Q.E.O. based on costing form developed between  
WASB/WEAC.
3. 94-95:Q.E.O. based on costing form developed between  
WASB/WEAC.

His notes then reflect the following Association counter-offer:

92-93\$2300/PRT . . .  
93-943.8% T.P. -  
94-953.8% T.P. - . . .

His notes reflect the Board countered thus:

92-93:\$2100/P.R.T. . . .  
93-94:3.8% T. Package . . .  
94-95:Q.E.O. T. Package . . .

His notes reflect the Association countered, with alternative offers, thus:

#### #1

1992-93 2100/PRT . . .  
 93-94 3.8% T.P. . . .  
 94-95 3.8% T.P. . . .

#### #2

92-93 2250/PRT.-  
93-94 3.8% T.P. . . .  
94-95 3.8% T.P. . . .

His notes reflect the Board countered thus:

92-93: 2175/PRT. . . .  
93-94: 3.8% T.P. . . .  
94-95: Q.E.O. . . .

His notes then reflect the following as the parties' tentative agreement:

92-93: 2175/PRT. . . .  
93-94: 3.8% T.P.  
94-95: 3.8% T.P.

Each party ratified the tentative agreement reached on September 13.

The parties' differences on how the tentative agreement was to be costed became apparent when the Ardis Nicholaus, the Board's Assistant Administrator for Business Services, attempted to fill out the costing sheet to be attached to the Memorandum. It is undisputed that the "NEGOTIATION NOTES" accompanying this form was not attached to the Memorandum, or distributed by the Board to the Association until the processing of the grievance.

Further facts will be set forth in the DISCUSSION section below.

#### THE PARTIES' POSITIONS

##### The Association's Initial Brief

After a review of relevant testimony and the Board's position, the Association notes that the Board's denial of the grievance is rooted in past practice and in the costing form developed by the WASB and WEAC. Acknowledging that the parties used the cast forward method to cost proposals in prior bargaining, and that the Memorandum presumes the use of cast forward methodology to set the 1992-93 school year costing, the Association argues that this methodology "prohibits costing lane changes into the costing totals." Because the Memorandum requires lane movement, the Association concludes the Memorandum departs from the parties' past practice in bargaining and from the costing form instructions developed by the WASB and WEAC. The Association concludes:

(T)he costing of this package was a departure from anything done in the past . . . . It was an artificial costing method created by both the enactment of new legislation and the need of the parties to find a compromise between that legislation and the need to settle.

From this, the Association asserts that "the actual intent of the parties in reaching their agreement . . . is . . . sufficiently in dispute so as to require interpretation by the arbitrator."

The language of the Memorandum is, according to the Association, ambiguous. Because there is no past practice available to resolve this ambiguity, the Association contends that the most persuasive interpretive guide available is the maxim that ambiguous language should be construed against the party who drafted it. In this case, that maxim requires, the Association contends, that the Memorandum should be construed against the Board as its drafter.

##### The Board's Initial Brief

After an extensive review of the evidence, the Board contends that the most persuasive guides to interpreting the language of the Memorandum are "the past practice on the subject, the bargaining history on the subject and the literal meaning of the words and terms used in the contract language."

Arbitral standards on what makes a past practice binding have, according

to the Board, been satisfied in this case. Noting that the parties have used the cast forward method of costing "for close to twenty-five years," the Board concludes the practice has been established over time. That the Memorandum is silent on the costing methodology underscores, the Board asserts, that there is no persuasive reason to deviate from the parties' established costing methodology.

The Board then contends that bargaining history supports the use of cast forward costing. Testimony and documentation establish, according to the Board, that "every settlement offer costing which was presented to the Union during the course of the 1992-95 contract negotiations was calculated by using the cast forward method of costing." The Board argues that the Association never represented that any proposal should be costed on the basis of actual expenditures.

Acknowledging that it drafted the Memorandum does not, according to the Board, undermine the conclusion that the parties used cast forward methodology to reach agreement on the Memorandum. The Board asserts that testimony of its negotiators, evaluated in light of the provisions of the Memorandum, establish that "the memorandum of understanding was drafted in order to be in accordance with the new provisions of sec. 111.70 Wis. Stats." That the Board incurred a modest insurance increase coupled with the absence, at the time the Memorandum was agreed to, of WERC rules defining the costing methodology appropriate to a qualified economic offer (QEO), establishes, the Board argues, that "it naturally followed that the Board would propose the interim form and rules agreed to by WASB and WEAC."

That the WASB/WEAC costing form was attached to the Memorandum underscores, the Board avers, that the parties sought to make the Memorandum consistent with the modifications to the MERA. Acknowledging that the costing on that form includes lane movement, the Board asserts "(t)his is the only change in the costing method." Testimony of Board witnesses, provisions on the WASB/WEAC costing form, and provisions of the Memorandum itself each underscore that the Memorandum incorporated cast forward methodology, according to the Board.

Precedent from interest arbitration further documents the pervasive use of cast forward methodology in school district bargaining, according to the Board. The policy basis for this has been amply established in interest arbitration and is applicable here, according to the Board. That the Association's method of costing would cut against teachers in times of staff expansion, and that the Association itself acknowledges the propriety of cast forward methodology in two of the three years covered by the Memorandum solidifies its case, according to the Board.

Viewing the record as a whole, the Board requests that the grievance be denied.

#### The Association's Reply Brief

The Association argues initially that the Board's argument on the use of past practice ignores the fundamental fact that the Memorandum specifically departs from past practice by including lane movement in the costing methodology:

The Memorandum . . . was written to clarify the fact that we were relying upon a new methodology of costing for this settlement only. That methodology was in part a



creation of the parties in reaching a voluntary agreement and in part a reaction to the new QEO legislation, not past practice.

That the Board costed its offers using cast forward methodology and the WASB/WEAC costing sheet fails to resolve the grievance, according to the Association, because (1) the Association never agreed to a QEO; (2) the costing sheet was never referred to during negotiations; (3) the Memorandum departs from past costing methodology; and (4) the parties did not reach agreement until the Association advanced a proposal which dispensed with QEO based costing and distribution.

The Association contends that the Board's use of bargaining history attempts to "have it both ways," by expecting "to enforce the QEO language on the one hand" while drafting "procedures which differ from the QEO on the other." Bargaining history prior to the parties' final meeting is, according to the Association, murky at best. That interest arbitrators have used cast forward methodology establishes, the Association concludes, only that those decisions "were made in a different bargaining environment, under a different law, and for reaching resolution in different circumstances."

The Association then specifically challenges Board inferences based on the fact that the costing sheet was adopted by the WASB and WEAC, and based on the use of a single number of FTEs for each year of the contract. On the latter point, the Association argues that the parties agreed to use a set number of positions without regard to the identity of the occupant.

Viewing the record as a whole, the Association contends that the only reliable means to resolve the ambiguity posed here is to construe the ambiguity against its drafter.

#### The Board's Reply Brief

The Board notes initially that under any view of the Memorandum "a static number of employees should be used." This supports, the Board concludes, its contention that cast forward methodology is presumed in the Memorandum. Beyond this, the Board contends that the Memorandum "was drafted in such a manner so as to be consistent with the recently enacted provisions of sec. 111.70, Wis. Stats." The provisions cited by the Association to indicate the parties sought to provide the Association with a pool of funds to disburse actually establish only that the Memorandum seeks to prevent the Association from freezing teachers at their present step and lane to free money for "the top of the schedule." An analysis of the provisions of the Memorandum establishes, according to the Board, that those provisions were drafted to make the settlement consistent with the then emerging law.

Acknowledging that the difference between the parties is whether savings traceable to teacher retirements were to find their way to the salary schedule does not alter any of its contentions, the Board argues. If the parties sought to spend these savings, according to the Board, some mention of this fact would have found its way into the Memorandum. That actual cost methodology departed from past practice and the absence of any mention of that methodology in the Memorandum underscores, according to the Board, that the parties continued to view the cast forward method as that appropriate to their bargaining.

The Board then disputes Association contentions that their bargaining team specifically rejected a QEO settlement in favor of the 3.8% settlement referred to in the Memorandum. Noting that a "QEO settlement" and a "3.8% settlement"

are "not mutually exclusive," the Board argues that a 3.8% settlement based on cast forward costing is the only persuasive means to give meaning to relevant bargaining history. Beyond this, the Board argues that it consistently costed packages on the cast forward basis, and communicated this to the Association. That lane changes were brought into this methodology by changes in the law shows no more, the Board asserts, than the "basic principal of cast forward costing" survived. Association protestations regarding the use of the WASB/WEAC costing sheets and basic cast forward methodology defy, according to the Board, any realistic view of the bargaining context.

A review of the evidence establishes, the Board contends, that the Memorandum "is in conformance with the past practice which existed between the parties," as well as with arbitral precedent, enacted changes to MERA and the WASB/WEAC costing form. The Association's arguments, according to the Board, are "based upon its displeasure with the QEO law and not with the substance of the agreement between the parties." The Board concludes that the Association has not met its burden of proving the Memorandum was drafted to bring actual cost methodology into the parties' bargaining.

#### DISCUSSION

The parties' dispute centers on the Memorandum, and the stipulated issue specifically focuses on Section B, 1.

The reference in Section B, 1, to a "3.8% average total compensation increase" is not clear and unambiguous. Teaching complements at school districts vary from year to year in response to many factors such as student enrollment, teacher mobility and educational policy. How to cost this variance in a fashion

which meaningfully measures the impact of budget expenditures on a negotiated salary grid has been a source of discussion between bargainers and interest arbitrators for years.

Using actual year to year salary costs gives an accurate picture of expenditures, but may give a distorted view of the impact of bargained changes to a salary schedule. Where a district expands its teaching staff, actual cost methodology could show a significant budget increase for salaries where the parties had agreed to freeze the salary grid. By the same token, where a district shrinks its teaching staff, actual cost methodology could reflect no increase in salary expenditures where the parties had negotiated a substantial improvement in the salary grid.

Cast forward methodology employs the fiction that teaching complements do not vary. This fiction sacrifices the actual cost impact of budget expenditures to portray a more accurate impact of negotiated increases on the grid itself. Arbitrator Dan Nielsen evaluated the method thus:

The cast forward method of costing is a standard tool in public sector negotiations. While it misrepresents the real costs of a settlement to the District, it does accurately portray the degree to which continuing staff will benefit from the new package. It also allows for accurate comparisons of settlements across districts with different staffing patterns. While it is true . . . that the cast forward method counts "ghost" faculty against the package in times of staff reduction, it also insulates the faculty from having any increase in staff charged against its package in times of expansion. 2/

As a working generalization, cast forward methodology is the preferred method of costing for use in interest arbitration outside of cases involving an allegation of an employer's inability to pay the requested increase.

Against this background the reference to a "3.8% average total compensation increase" could yield different amounts of money depending on whether actual costs or cast forward methodology was employed. The reference is broad enough to encompass either methodology and cannot, therefore, be considered clear and unambiguous.

The parties dispute what is the most persuasive means to resolve this ambiguity. Broadly speaking, the most persuasive guides for the resolution of contractual ambiguity are past practice and bargaining history, since each focuses on the conduct of the parties whose agreement is the source and the goal of contract interpretation. In this case, the application of those guides is troublesome, but does favor the Board's interpretation over the Association's.

Because the interpretive guides are secondary to the disputed language, it is appropriate to address the language prior to the application of the interpretive guides. The language of Section B, 1, of the Memorandum points toward cast forward methodology. It incorporates the WASB/WEAC "costing form."

That form, with its explanatory notes, expressly provide for cast forward methodology. Even without regard to the explanatory notes, the form itself points to cast forward methodology by using a single "base year" and including

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2/ Marshall School District, Dec. No. 24072 (Nielsen, 8/87) at 15.

only one line for the entry of "F.T.E."

It is, however, necessary to say the language "points toward cast forward methodology" since the language does not definitively address the point. The Memorandum incorporates only the costing form, not the explanatory notes. Those notes were not exchanged until the processing of the grievance. Beyond this, although the individual occupants of teaching positions changed, the total FTE teaching complement for the district did not change over the relevant term of the Memorandum. Thus, the single entry on the costing form for "F.T.E." is applicable to either cast forward or to actual cost methodology in this case.

This is the background against which the interpretive guides touched upon above must be applied. Past practice is not determinative here. However defined, the essence of the binding force of a past practice is the agreement manifested by mutually known conduct. In this case, it is apparent the parties have, without significant exception, used cast forward methodology to cost their proposals, including the first school year covered by the Memorandum.

It does not, however, follow from this that the parties mutually understood that methodology would be used for the second year of the Memorandum. The enactment of Act 16 was not without controversy, and brought a considerable amount of confusion in its wake, particularly before the Commission passed administrative rules. That in the environment created by Act 16 bargaining parties might seek to use actual cost methodology as a vehicle to promote voluntary settlement cannot be dismissed as implausible. This cuts against the assertion that the parties, solely through past practice, mutually understood cast forward methodology determined the application of Section B, 1. Contrary to the parties' past costing methodology, the Memorandum costs the impact of lane changes against the package. This further weakens the contention that the parties' past conduct established a binding understanding governing the negotiations of September 13.

While the parties' past bargaining conduct does not establish a binding practice, it is a crucial element of the bargaining context surrounding the agreement reached on September 13. The Board, as was customary, costed any proposal using the cast forward method. The Association broke from custom by viewing a "3.8% average total compensation increase" to be based on actual costs. Neither the testimony at hearing nor the language of the Memorandum clearly note this break in custom. Association witnesses noted they emphatically and consistently rejected a QEO settlement. Butler's notes track this by noting a difference between "QEO" and "3.8%." This difference does not, however, establish any understanding on actual cost methodology. Under Act 16 an offer can be a QEO yet generate less than 3.8%. Butler's notes, standing alone, indicate no more than movement from a "minimum QEO" to a 3.8% total package.

Thus, the distinction in his notes between "QEO" and "3.8% T.P." does not necessarily indicate agreement to actual cost methodology. Under either form of costing, the Board moved beyond the minimum required by law to avert arbitration.

Against this background, the bargaining history does not demonstrate any mutual understanding on the use of actual cost methodology. That the Memorandum, for the 1993-94 school year, tracks QEO-based concepts underscores this conclusion. This bargaining context makes it impossible to adopt the Association's view of the Memorandum. Grievance arbitration turns on granting the bargaining parties the benefit of their bargain. On this record, the evidence will support the conclusion that the parties, at a minimum, agreed on a 3.8% total package using cast forward methodology. The Association urges the agreement went further, but the evidence will not support this with any degree of assurance. The language of the Memorandum points to cast forward methodology. The parties' bargaining history points to the use of cast forward methodology. There is insufficient evidence to stretch the parties' agreement beyond this point. Accordingly, the grievance must be denied.

Before closing, it is appropriate to tailor this conclusion more closely to the parties' arguments. The Board has urged that the Association should be presumed to have been aware that the costing form incorporated into Section B, 1, utilized cast forward costing. As noted above, interpretive guides based on the parties' own conduct are preferable to presumptions imposed from outside the bargaining relationship. The evidence will not support a conclusion that Association bargainers were aware of the cast forward methodology expressed in the notes attached to the form incorporated by Section B, 1. There is no persuasive reason to doubt the Association contention that they were unaware of the contents of the notes until the grievance was processed.

The Association contends that the ambiguity of Section B, 1, should be construed against its drafter. This principle has been employed as a guide for interpreting labor agreements. Its use in this context is, however, limited. As discussed above, the general principle is not rooted in the language at issue or in the conduct of the bargaining parties who created the language. Such logical fictions are, as touched upon above, best applied as a last resort where interpretive guides rooted in the bargaining parties' conduct are not available. More specifically, the general principle of construing ambiguous language against its drafter is rooted in contract law, and is most persuasive where the contract at issue is one of adhesion, drafted as a form by the party asserting its provisions:

(T)he general rule that ambiguous contract language must be construed against the drafter . . . has particular force where, as here, there is a substantial disparity of bargaining power between the parties, and a standard form is supplied by the party drafting the form. 3/

The general principles of contract law can perhaps be given more persuasive force if rooted to the parties' bargaining conduct. The record, however, shows no indication the Board sought to obscure the purpose of its proposal, or to deceive the Association. The use of cast forward methodology, unlike that of actual costs, was firmly rooted in the parties' bargaining relationship. The

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3/ Goebel v. First Federal Savings and Loan Association, 83 Wis.2d 668, 675, 266 N.W.2d 352 (1977), citations omitted.

absence of a clear understanding regarding a switch to actual cost methodology cuts more against the Association than the Board, since it marked a clear break in custom. That the Board formally stated its costing assumptions in the final offer exchange regarding a cost control proposal underscores this conclusion. The breakdown in communications by which the Association took the reference to a "3.8% average total compensation increase" to refer to actual costs cannot, on this record, be persuasively held against the Board.

In sum, the record will support the conclusion that the parties agreed to at least the 3.8% average total compensation increase implemented by the Board. The record will support the conclusion that the Association believed the agreement went further, incorporating savings attributable to staff turn-over into the package. The record will not, however, support the conclusion that this conclusion was mutually understood. Accordingly, the grievance must be denied.

AWARD

The District has not violated the Master Agreement by refusing to provide a 3.8% package increase for 1993-94.

Dated at Madison, Wisconsin, this 7th day of November, 1994.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator