Arbitration	*	
	*	
of	*	
	*	
RICE LAKE AREA SCHOOL DISTRICT	*	
	*	
and	*	ARBITRATION AWARD
	*	
NORTHWEST UNITED EDUCATORS	*	Arbitrator: James L. Stern
	*	
re	*	
	*	
Terms of the 1977-1979 Agreement; WERC Case XV, No. 22480, MED/ARB-13	*	Decision No. 16242-B
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INTRODUCTION AND BACKGROUND

On January 12, 1978, the Northwest United Educators, hereinafter identified as the NUE, filed a petition with the Wisconsin Employment Relations Commission, WERC, to initiate the mediation-arbitration procedure under Section 111.70(4)(cm)6 of the Municipal Employment Relations Act in the dispute of the NUE and the Rice Lake Area School District, hereinafter identified as the Board. According to the WERC, the parties had met on nine occasions between September 30, 1976, when the NUE opened negotiations for an Agreement to succeed the one expiring June 30, 1977, and November 16, 1977 when the parties met in mediation with a WERC staff member. Failure of the parties to reach agreement in these meetings or during the investigation subsequent to the filing of the petition for mediation/arbitration led the WERC to conclude that, as of March 7, 1978, the parties were at impasse. Therefore, on March 7, 1978, the parties submitted to the WERC a stipulation of agreed upon items and their final offers for resolving the remaining items.

The WERC thereupon ordered the initiation of the mediation-arbitration step and furnished the parties with a panel of five names from which they selected a neutral mediator-arbitrator. Said arbitrator being unavailable, the parties requested a second panel and again selected a neutral mediator-arbitrator and so notified the WERC which in turn, on April 11, 1978, issued an order designating the undersigned to serve as the neutral mediator-arbitrator. Also, the WERC issued a notice to the public stating that pursuant to the provisions of Section 111.70(4)(cm)6.b. any five citizens of the jurisdiction could file a petition for a public hearing in this matter. No timely petition being received by the WERC, the mediator-arbitrator commenced the mediation procedure.

The parties met jointly and separately with the mediator-arbitrator on the evening of May 22, 1978, but were unable to resolve any of the ten items in dispute. It was further agreed by the parties that additional mediation would be fruitless and that the mediator-arbitrator should move the parties into arbitration. The arbitrator therefore notified the parties in writing on May 23, 1978, of the failure of mediation and of his intent to commence arbitration unless both parties withdrew their final offers prior to May 31, 1978.

Neither offer was withdrawn and the parties agreed to hold the arbitration meeting on July 19, 1978 starting at 9 a.m. and to post the appropriate public notices announcing the date, time and place of the arbitration meeting so that members of the public could attend if they desired. The arbitration hearing was held and concluded on that day. Appearing for the Board was Stevens L. Riley, Attorney; appearing for the NUE was Robert E. West, Executive Director.

Extensive exhibits and written arguments were introduced by the NUE at the arbitration hearing. The Board also introduced many written exhibits but made its written arguments primarily in the form of a post-hearing written brief submitted August 18, 1978. The NUE, in turn, filed a reply brief on August 25, 1978. On October 5, 23, and November 3, the NUE forwarded to the arbitrator decisions of other arbitrators and information about other settlements which it believed relevant. On

October 16, 1978, the arbitrator wrote to the NUE and Board asking whether they would be willing to stipulate that the arbitrator could resolve the issues by conventional arbitration rather than being forced to select one of the final offers in its entirety. Both the NUE and Board rejected the arbitrator's request in letters dated October 18, and 25, 1978 respectively. (In passing, the arbitrator notes that he received but gave no standing to an unsolicited memorandum from the Wisconsin Education Association Council protesting the arbitrator's request to proceed by conventional arbitration and requesting the arbitrator to withdraw his request.)

The final offers of the Board and the NUE are reproduced on the following pages. In the subsequent portion of this opinion, each of the ten issues is discussed separately and then the final offers as a whole are evaluated. Finally, the findings and award are stated.

ANALYSIS OF THE TEN ISSUES

ISSUE #1 - Salaries:

The major monetary difference between the Board and the NUE is whether the salary schedule should be increased by $400 in 1978 and in 1979 as proposed by the Board, or whether in addition to the $400 annual increase in the base, the increments for each year of service should be increased from 4.00% to 4.15% as proposed by the NUE. As a percent of total teacher salaries, the difference between the parties is about one percent. In dollar terms, the difference in the 77-78 school year is $19,690 and the difference in the 78-79 school year is $21,814 (Source is Board Exhibit #1, pp. 32, 33, 35, 36 and 60).

In justifying their respective positions, the Board and the NUE stressed different "comparables." The Board chose as its primary comparison nineteen other CESA #4 school districts which had settled their '77-'78 agreements. The NUE chose the eight other school districts which, with the Rice Lake School District, make up the Heart O' North Athletic conference. Both parties advanced substantial arguments in favor of their respective positions. The statute states that the mediator-arbitrator should give weight to comparisons with other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

Clearly, the comparables chosen by the Board and the NUE are among those contemplated by the statute. Furthermore, there is considerable overlap in the Board and NUE lists of comparable school districts. Two school districts had to be eliminated from the analysis because they had not reached agreement on their new contracts at the time of this arbitration. One of these, Barron, was in both the Heart O' North athletic conference and CESA #4 while the other, Hayward, was in the athletic conference but not in CESA #4. Of the other six schools in the Heart O' North athletic conference, besides Rice Lake, four were also in CESA #4 and therefore were included in both the Board list and NUE list of comparable school districts.

The arbitrator does not think it proper to confine the comparables to just those schools in the Heart O' North athletic conference as is suggested by the NUE. Nor does he think it proper to include all the CESA #4 schools regardless of size as suggested by the Board. School district size is an important factor and the arbitrator therefore thinks that the smaller schools in CESA #4 should not be regarded as primary comparables. The arbitrator sees no reason, however, to exclude from a list of primary comparables any school in CESA #4 which is as large as schools in the Heart O' North athletic conference. The arbitrator agrees with the Board argument that these schools should be included, although he does not accept the Board argument that all CESA #4 schools should be regarded as basic comparables regardless of size.

The smallest school district in the Heart O' North athletic conference is Chetek with 67.5 FTEs. Osceola is the smallest of the CESA #4 school districts included in the list of primary comparables selected by the arbitrator and has 66.6 FTEs. Essentially, the arbitrator is dropping the 15 smaller CESA #4 districts from his analysis of primary comparables on the ground of size and keeping the top eight, besides Rice Lake, for which data are available. In school district comparisons it is customary to compare with other districts of similar size and with those in the

BOARD OF EDUCATION
RICE LAKE AREA SCHOOL DISTRICT

FINAL OFFER

The Board of Education of the Rice Lake Area School District proposes that all provisions, with appropriate date changes, shall remain the same, except those tentatively agreed upon and as stipulated on March 7, 1978, as in the 1975-76 and 1976-77 collective bargaining agreement except the following:

ARTICLE XI Compensation

A. Base Salary 1977-78 9300
Yearly Experience Increment 4%

B. Base Salary 1978-79 9700
Yearly Experience Increment 4%

ARTICLE XIII Insurance

A. 1977-78 Year Single Policy Holder $23.70 per month
Family Policy Holder $66.50 per month

B. 1978-79 Year Single Policy Holder Full Dollar Amount
Family Policy Holder Up to $72.00 per month

Harold N. Koethe

Submitted 11:45 p.m.
March 7, 1978

FINAL OFFER

NORTHWEST UNITED EDUCATORS— RICE LAKE

1. Substitute for Article XV, Section A:

Fair Share

A. NUE, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, NUE and non-NUE, fairly and equally, and all employees in the unit will be required to pay, as provided in this Article, their fair share of the costs of representation by the NUE. No employee shall be required to join the NUE, but membership in NUE shall be made available to all employees who apply consistent with the NUE constitution and bylaws. No employee shall be denied NUE membership because of race, creed, or sex.

B. The employer agrees that effective thirty (30) days after the date of initial employment or thirty (30) days after the opening of school it will deduct from the monthly earnings of all employees in the collective bargaining unit an amount of money equivalent of the monthly dues certified by NUE as the current dues uniformly required of all members, and pay said amount to the treasurer of NUE on or before the end of the month following the month in which such deduction was made. Changes in the amount of dues to be deducted shall be certified by NUE fifteen (15) days before the effective date of the change. The employer will provide NUE with a list of employees from whom such deductions are made with each monthly remittance to NUE.

C. NUE and the Wisconsin Education Association Council do hereby indemnify and shall save the Rice Lake School District Board of Education harmless against any and all claims, demands, suits, or other forms of liability including court costs that shall arise out of or by reason of action taken or not taken by the Board, which Board action or non-action is in compliance with the provisions of this Agreement, and in reliance on any list or certificates which have been furnished to the Board pursuant to this Article, provided that any such claims, demands, suits, or other forms of liability shall be under the exclusive contro of the Wisconsin Education Association Council and its attorney

D. This provision shall become effective upon the date this Agreement is signed.

2. Substitute in Article XI, Section J:

All teachers shall be compensated for extra-duties on after-hour educational chores at the rate of $5.00 per hour for 1977-78 and $6.00 per hour for 1978-79; the above...

3. Add to Article XII, Section B after Sub. h:

One day of this personal leave shall be granted to teachers for personal business. Teachers using this one day of personal leave shall provide twenty-four hours notice to the immediate supervisor. No more than five teachers shall be allowed personal leave on any one day. In the event that more than five applications are received, the earliest five requests shall be honored. The teacher shall pay the cost of the substitute for this one day.

4. Substitute for Article XI, Section I:

The mileage rate shall be increased to 17¢ per mile for the 1977-78 contract term and to 18¢ per mile for the 1978-79 contract term.

5. Substitute for Article XI, Section H:

Unit leaders shall be compensated at the rate of $450 annually for the 1977-78 contract term and at the rate of $500 per year for the 1978-79 contract term.

6. Substitute for Article XI, Section G:

Building Principals shall be compensated at $60 per teacher with Interns counted as 1/2 teacher.

7. Amend Appendix A:

The base salary for the 1977-78 contract term shall be $9300 and $9700 for the 1978-79 contract term.

8. Substitute in Article XIII, Section A:

The district will pay the full cost of the health/surgical/major medical insurance plan now in effect to be written in the collective bargaining agreement as the actual dollar amount for both years of this agreement. The actual amounts shall be substituted for the amounts contained in the 1976-77 agreement when the amounts are available.

9. Amend Appendix A:

The annual longevity increment shall be 4.15 percent for both years of this agreement.

10. Article IX, Section A - delete "and at least the beginning and ending dates shall be established by March 1 or the Board shall establish these dates."

11. Add to Article XI, Section F:

This section shall apply to all teachers including elementary teachers when special teachers are absent.

12. Substitute in Article XVIII, Section B:

Northwest United Educators shall be given the opportunity to negotiate the impact of any Board of Education decision which has an impact on the wages, hours, or working conditions of bargaining unit members.

13. Salary, insurance, unit leaders' and building principals' pay, mileage, and extra-duty pay shall be retroactive to July 1, 1977.

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same part of the State. In this instance, the arbitrator believes that the ten districts he has used in his analysis meet the criteria listed in the statute. (Note: The arbitrator relied upon NUE Exhibit #2, page 5 for the information about FTEs of school districts in both the Heart O' North athletic conference and in CESA #4.)

Table 1 contains a comparison of the 77-78 salary structures of the ten comparable school districts selected by the arbitrator with the salary structures proposed by the Board and the NUE. These ten school districts include four districts which are both in CESA #4 and in the Heart O' North Athletic Conference, two districts which are in the Heart O' North Athletic Conference but not in CESA #4, and four districts which are in CESA #4 but which are not in the Heart O' North Athletic Conference. The arbitrator notes that he would have included Barron and Hayward in his analysis except that Barron had not settled and Hayward data were not included in the Board analysis. The arbitrator does not believe that the exclusion of Hayward materially changes the results of the analysis.

Table 1 shows that both the Board and NUE proposals are reasonable. Under either proposal, the Rice Lake teachers would not be appreciably out of line with the ten other school districts listed in Table 1. It should be noted, however, that Rice Lake is considerably larger than the other districts, having about 60% more FTEs than the second largest district with which it is being compared, and being almost twice as large as the average of the districts with which it is being compared (193%). So far as size is concerned, Rice Lake is the leader and, if other factors still to be considered are equal, would be expected to have a salary structure that is equal to any other in CESA #4.

The analysis shows that the average increment in the ten other districts is 4.18% and $387. This is slightly higher than the NUE proposal and by itself suggests that the arbitrator should choose the NUE proposal. However, the Board proposal of a 4.00% increment averaging $372 is not very far out of line and has the advantage of being the present increment. This presumably puts the burden on the NUE. Why should the present 4% increment be increased? No evidence was introduced by either party showing theoretical or educational grounds for one size increment in place of another. Is a 3% increment bad, a 4% increment good, and a 5% increment bad? Just how big should the increment be in order to pay teachers fairly for their increased length of service? Even if one party had introduced evidence suggesting that one increment was superior to another on theoretical grounds, the arbitrator doubts whether the state of knowledge is sufficiently advanced to distinguish between the merits of a 4.00% and a 4.15% increment.

Possibly, a more practical way to evaluate the merits of the two proposals is to look at the structures which would result depending on which proposal is chosen. Under which proposal does the relationship of the top of the Rice Lake structure to the top of the other districts in the analysis more closely parallel the relationship which exists at the bottom since the relationships at the bottom will not be changed regardless of which proposal is chosen. A comparison of the Board and NUE proposals against the averages and rankings shown in Table 1 suggest that at the beginning BA lane, the top of the Rice Lake structure is a little low relative to the relationship of the Rice Lake beginning BA salary at the bottom of the lane. To the contrary, however, the Rice Lake top is relatively high compared to the standing of the Rice Lake bottoms in the other three lanes shown in the analysis. This can be seen most easily by looking at the ranking of Rice Lake at the bottom compared to the top in each lane under each proposal. On the basis of this type of comparison, it appears that the BA top in the beginning lane is in need of an increase in excess of that suggested by the Union while the Board proposal is sufficient to maintain the relative position of the tops of the Rice Lake schedules in other lanes.

Another standard against which to measure the NUE and Board salary proposals is to compare the relative position of Rice Lake in '78 under each proposal with what it was in a previous year. This comparison would indicate whether increases in Rice Lake in recent years were larger, about the same or smaller than those received by teachers in the neighboring districts. The parties did not provide data on salaries for all ten districts listed by the arbitrator in his Table 1 but Union Exhibit #7, page 17 shows the BA maximums and MA maximums in '75 for six of the ten districts listed in Table 1. In '75-'76, the BA and MA maximums at Rice Lake ranked

Table 1. '77-78 SALARY STRUCTURE COMPARISON

District	Status*	'77-78 Average Increase %	'77-78 Average Increase $	'77-78 Beginning B.A. Bottom - Top	'77-78 Ending B.A. Bottom	'77-78 Ending B.A. Top	'77-78 Beginning M.A. Bottom - Top	'77-78 Ending M.A. Bottom - Top
Amery - 97.6	C	4.00%	$372	$9,300 - $14,136	$9,858	$14,694	$10,416 - $15,624	$11,718 - $16,926
Elcomar - 84.4	A	4.09	380	9,300 - 13,480	9,700	14,640	10,000 - 15,320	10,400 - 16,100
Gretak - 62.6	B	4.50	414	9,200 - 13,340	9,600	14,784	10,000 - 15,400	10,400 - 16,016
Cumberland - 74.1	B	4.02	366	9,105 - 13,865	9,905	15,045	10,205 - 15,725	11,005 - 16,525
Leipsmith - 90.6	B	4.00	368	9,200 - 13,248	9,800	13,848	10,000 - 15,600	10,600 - 16,200
Maple/Northcentral - 88.1	A	4.97	455	9,160 - 14,616	9,640	15,096	9,860 - 16,600	9,560 - 16,660
Osceola 66.6	C	4.00	383	9,585 - 13,802	10,185	15,074	10,385 - 16,460	10,585 - 16,777
Spooner - 98.2	B	4.81	445	9,250 - 13,700	9,850	15,550	10,050 - 15,870	10,450 - 17,015
St. Croix Falls - 69.2	C	3.39	315	9,300 - 13,080	9,700	13,900	10,200 - 14,820	10,700 - 15,500
Unity - 82.5	C	3.98	370	9,300 - 13,740	9,750	14,560	9,850 - 15,310	10,395 - 15,525
Average = 81.9	—	4.18%	$387	$9270 - $13,701	$9,799	$14,719	$10,097 - $15,673	$10,609 - $16,355
Fox Lake (UP) - 158.0	B	4.15	$356	9300 - 13,545	9,700	14,933	10,100 - 15,968	10,500 - 17,036
Fox Lake (CAP) - 158.0	B	4.00	372	9300 - 13,392	9,700	14,744	10,100 - 15,756	10,500 - 16,800
Ranking of 11								
Fox Lake (NUE) 1	—	4	4	2-6	7	7-9	5	5 - 3 - 6 - 1
Fox Lake (Board) 1	—	6-9	6-7	3-6	8	7-9	6	5 - 4 - 6 - 3

Notes: Source: 1115 Exhibit #2, p.5 and Record Exhibit #1, pp 43-49.

* Status 'A' is in Athletic Conference but not in CESA #4; 'B' is in both; 'C' is in CESA #4 but not in the Athletic Conference

fourth and third respectively out of the seven districts (Bloomer, Chetek, Cumberland, Ladysmith, Maple/Northwestern, Rice Lake and Spooner). If the Board proposal were to prevail, the Rice Lake BA and MA maximums in '77-'78 would rank fifth and third respectively; and under the NUR proposal would rank fifth and second.

This type of longitudinal analysis shows that, relatively speaking, the Rice Lake BA maximum will have slipped slightly under either the NUE or Board proposal and that the Rice Lake MA maximum will have held its own under the Board proposal and gained slightly under the NUE proposal. Again, this analysis is not conclusive. It doesn't show that either proposal is "wrong" and the other is "right." It seems appropriate, therefore, to turn to the actual increases that will be received by Rice Lake teachers under each proposal and compare these increases to increases in the consumer price index.

According to the NUE reply brief, the Consumer Price Index increased by 7.4 percent from June, '77 to June, '78. Under the Board proposal the average increase including longevity increments would be 6.34 percent. The NUE states that its proposal would raise average wages by 7.34 percent and as such is preferable to the Board proposal because it matches the change in the consumer price index better than the Board proposal. The NUE relies upon Board Exhibit #2 for the salary information underlying its estimates of average increases. The arbitrator examined Board Exhibit #2 carefully and calculated the absolute and percent average increases that teachers at the top of the schedule in '76-'77 and those not at the top of the schedule would receive under the Board and NUE proposals.

Under the Board proposal, the 48 teachers at the top of their respective lanes in '76-'77 would receive in '77-'78 average annual increases of about 4.27 percent or approximately $603, while the 85 full time teachers not at the top of their lanes (excluding those who started during the year) would receive 7.62 percent, or approximately $883. Under the NUE proposal, teachers at the top of their lanes would receive average increases of 5.63 percent, or $813, while the 85 teachers not at the top of their lanes would receive average increases of 8.39 percent, or $966. Under either proposal, it seems clear that teachers who were not at the top of their lanes would receive average percentage increases greater than the increase in the consumer price index. At the same time, teachers who were at the top of their lanes would receive average increases which were less than the increase in the consumer price index. From the point of view of teachers at the top of their lanes, the NUE proposal seems more equitable.

The arbitrator recognizes that the teachers are protected against much of the escalation in health care costs by the fact that the Board has been and will be paying most or all of the health insurance premium, a matter to which consideration is given in the analysis of Issue #2. Even so, in so far as the statutory criterion of changes in cost of living are concerned, the NUE proposal seems more equitable than the Board proposal. It is necessary, however, to also examine which proposal is preferable under another statutory provision, "ability to pay."

In assessing ability to pay, the arbitrator noted the reliance of the Board on levy limits and the reliance of the NUE on comparative school tax rates. The Board presents no comparative evidence showing for each of the school districts in CESA #4 the net operating cost per pupil or the tax levy rate. The NUE does so for the Heart O' North Athletic Conference. The arbitrator relies upon the same school districts selected for wage comparisons and finds six of these listed in NUE Exhibits #26 and #27. The $1,182.89 '76-'77 net operating cost per pupil of Rice Lake is lower than any of the six other districts with which it is being compared (Bloomer, Chetek, Cumberland, Ladysmith, Maple/Northwestern and Spooner) and is about $270 or 19 percent less than the average of these six districts. A similar comparison of tax levies shows that Rice Lake is lower than any of the six districts and that its 12.26 tax levy rate is about 3.5 points or 22.2 percent less than the average tax levy rate of the six districts.

The NUE analysis of ability to pay impresses the arbitrator and it appears to him that the Rice Lake District ability to pay is sufficient to meet the costs of the NUE proposal. The arbitrator does not find that the additional costs of the NUE proposal are, in themselves, sufficiently large to breach the levy limits imposed by the State of Wisconsin. NUE Exhibit #33 suggests that much of the additional cost of the NUE salary proposal is offset by the savings resulting from the retirements and quits of higher paid teachers and their replacement by lower

paid teachers. The arbitrator therefore does not find that the possible further breach of levy limits, and need to amend the appeal for an exemption already being sought, is a sufficient bar to the selection of the NUE proposal if other factors warrant such a choice.

In so far as Issue #1 is concerned, the arbitrator believes that the NUE proposal is preferable to the Board proposal. Adoption of the 4.15 percent increment for longevity will make the slope of the bottom to the top of the beginning BA lane more comparable to the other districts and will also protect to a greater degree the real wages of teachers at the top of the lanes who, under the Board proposal would receive percentage increases far less than the 7.4 percent increase in the consumer price index. It should be noted, in passing, that the percent and dollar increases shown in Board Exhibit #2 reflect both longevity and additional education. For example, the increase of $1031.75 or 6.58 percent for teacher I.J. in '77-'78 under the NUE proposal includes the value of increased education which led to her placement in the MA +16 lane in '77-'78. If she had remained in the MA + 8 lane, as she apparently was in '76-'77, her increase under the NUE proposal would have been $869.50 or 5.55 percent.

Finally, the relatively low tax rate and operating cost per pupil suggest that the slightly increased cost of the NUE proposal will not saddle the district with an unfair burden. Nor will adoption of the NUE proposal put the Rice Lake salary structure at the top of the rankings except for the top of the ending MA lane. Considering that Rice Lake is by far and away the largest district, the resulting salary structure under the NUE proposal seems more equitable than the structure which would prevail under the Board proposal.

ISSUE # 2 - Health/Surgical/Major Medical Insurance

The arbitrator sees no reason to deviate from the list of comparables used in his analysis of the salary issue and therefore compared the respective positions of the Board and the NUE with the practices of the larger school districts in CESA #4 (shown on page 71, Board Exhibit #1) and the two districts outside of CESA #4 but in the Heart O' North Athletic Conference (Bloomer and Maple/Northwestern--NUE Exhibits #36, 37 and 38). Of these ten comparable districts, nine paid the total family premium in 1977-78 and presumably continued to pay the full premium in 1978-79. The dollar amount represented by the premium paid by Rice Lake in 1977-78, when it also would be paying the full amount under its offer, would place Rice Lake below six of the eight other districts within CESA #4 with which it is being compared. (The NUE Exhibits do not show the dollar amounts paid for family coverage in 1977-78.)

The arbitrator believes that it is not improper for the Board to continue to pay the full family coverage in 1978-79 as proposed by the NUE and, as the Board was willing to do so at the time of the arbitration hearing when it thought that the increase from 1977-78 to 1978-79 would not raise the cost of the premium above the $72 per month limit on family coverage which it proposed. Since practically all of the other comparable districts seem committed to pay the full costs of the family premium, the arbitrator does not think that the Board reasons for wishing to pay less than full coverage are persuasive.

The Board argues that unless there is some payment by the teacher that there may be injudicious use of medical services and that all married teachers will sign up for the plan even when their spouses have the same plan available at their respective places of employment. It should be noted that the NUE argued in its reply brief (p. 12) that the Board had not proposed a non-duplication of benefits clause and that such a proposal presumably would have taken care of the problem of married teachers signing up for programs already held by their spouses through other employers. The arbitrator recommends therefore that, in the event he chooses the final offer of the NUE, the parties give consideration to the idea of including a non-duplication of benefits clause in the Agreement. It is clearly beyond the power of the arbitrator to order the inclusion of such a clause but there is nothing preventing the parties from voluntarily agreeing to do so.

The Board also argues that its $20 per month increase in the contribution over the two year period is sufficient and that it should not have to pay more. The Board notes further in its post hearing brief (p. 13) that the teachers have been contributing to the family premium in the years prior to 1977-78. The arbitrator acknowledges that

under the Board proposal, the employee contribution to the family coverage in 1978-79 will be $6.82 monthly as compared to the $11.27 monthly contributed during the 1976-77 school year. This is not an unusually large amount--State employees, for example, pay a small share of their family premium--and, given the sharp percentage increase in medical care cost premiums that the Board must absorb, is not an unreasonable proposal.

On the whole, however, the arbitrator finds that the comparability evidence is more persuasive than the Board arguments on this issue, particularly in view of the Board position at the arbitration hearing when it assumed that its offer represented full coverage for the 1978-79 school year. The arbitrator therefore believes that the NUE position on this issue is slightly preferable to the Board position.

ISSUE #3 - Waiver Clause:

By the time that this award is received by the parties, almost one and one-half years of the two year agreement will have passed. The new waiver clause proposed by the NUE would only serve to advance negotiations on some unidentified topic by a few months. This arbitrator does not see undue harm accuring to the NUE if the existing language in the 1975-1977 remains in place during the remaining months of the 1977-1979 agreement.

The arbitrator notes the NUE reference to the WERC decision in the Sheboygan School Board Case in which the WERC stated that "opportunity to discuss" does not require bargaining and "strongly suggests a waiver of such statutory duty." (See NUE Exhibit #1, p. 84). The arbitrator believes this to be a sound argument in favor of changing the language of the existing waiver clause. He is, however, equally persuaded by the Board argument that no abuse of the existing language is cited by the NUE. On this particular issue, therefore, since the agreement has only a relatively short time still to run, the arbitrator prefers the Board position to that of the Union.

ISSUE #4 - Calendar:

The arbitrator's thinking on this issue is similar to his thinking about Issue #3. In theory, the NUE proposal is sound--why should an agreement contain a clause on a bargainable subject which states that if the parties have not reached agreement on a calendar by a specific date, the Board position will prevail. At the same time, as was true in Issue #3, the NUE has not shown that this clause operated unfairly during the 1975-1977 agreement. It appears also from the briefs of the parties that the NUE didn't bother to submit a calendar proposal for 1978-1979 prior to March 1, 1978. Given that the existing agreement will have only a short time to run and that no significant problem has occurred because of the existence of the present language, the arbitrator favors the Board proposal on this issue.

ISSUE #5 - Compensation for Elementary Teachers when Special Teachers are Absent:

It is clear to the arbitrator from his reading of the two WERC cases cited by the parties that the NUE believes that elementary school teachers should receive additional pay when required to fill in for a special teacher such as a music teacher. The NUE argues that since high school teachers are paid when required to act in the capacity of a substitute teacher, it is only "equitable" that elementary teachers receive pay under analogous conditions. The Board argues that the situation is not analogous--filling in for an absent music teacher means keeping your regular class for an additional half-hour as opposed to taking someone else's class for a fifty-five minute period. The arbitrator agrees that there is some difference between the two situations and one is more onerous than the other. Even so, the absence of a special teacher does place a slightly greater burden on the elementary teacher.

The Board argues further that this type of situation rarely arises and that the NUE could cite only one instance in which it occurred during the 1975-1977 agreement. The Board stated that it has made every effort to obtain substitutes when special teachers are absent. It seems to the arbitrator that like "call-in" pay in manufacturing, the expansion of this benefit to cover elementary teachers would in theory encourage the Board to intensify its efforts to find substitutes for special teachers. In practice, the arbitrator does not think that the incentive will be very great since the problem arises so infrequently and therefore involves a rather minute increase in the school budget.

As was the case in Issues #3 and #4, the arbitrator would far prefer to go with the existing language for the short remaining period of this agreement and have the parties negotiate further on this matter when considering their next agreement. It seems somewhat antithetical to the highest aspects of professionalism to be paid for small deviations in one's workload, yet, more and more, it seems as if teacher contracts are institutionalizing these arrangements. And once begun, as is the case for high school teachers filling in when substitutes are not available, it tends to spread to other teachers on "equity" grounds. Despite his sympathy for the elementary teacher who has to take on this additional work, the arbitrator believes that the rareness of this sort of incident does not require that it be immediately remedied by him and that it can be resolved by the parties in their forthcoming negotiations. The arbitrator finds that on this issue he has a slight preference for the Board position.

In passing, the arbitrator wishes to note that the NUE loss of two grievance arbitrations on this issue is not grounds for denying the proposal under the criteria for interest arbitration specified in the Wisconsin statute. In fact, it could be argued to the contrary--that is, only through negotiations and/or interest arbitration can a contract be changed in order to prevent the reoccurence of an outcome which one group regards as inequitable.

ISSUES #6 & #7 - Compensation for Extra Duties and for Unit Leaders and Building Principles:

These two issues are taken together because the basic question is the same in both. Compensation for extra duties and for unit leaders and building principals have not been increased since 1971-1972. The NUE argues that prices have increased nearly fifty percent in this period and that the rates should be increased in order to keep those pay rates current. The Board argues that the rate set then was fair and need not be increased. Furthermore, the Board argues that the chore of ticket taking at athletic events is voluntary and isn't worth more than the current rate.

The arbitrator believes that the NUE argument is the stronger of the two. If the rates were set properly in 1971-1972, it seems unlikely that this same rate is proper today. If the rate had been set at some percent of the hourly wage paid teachers or in relation to the wage paid to the custodial force, it surely would have increased substantially since 1971-1972. Therefore, on this issue, the arbitrator favors the NUE position.

ISSUE #8 - Fair Share:

Setting aside ideological considerations for the moment, as does the Board in its arguments, there is still the question of what is the pattern in so far as fair-share is concerned at comparable school districts. Using the same ten districts selected in analyzing the salary issue, the arbitrator finds that six of the eight "comparables" in CESA #4 have fair share while two have only dues deduction. Of the two Heart O' North comparables, one has fair share and one does not. (Page 83 of Board Exhibit #1 is relied on for this calculation.) The NUE proposal to include fair share is therefore more like the situation in comparable school districts than the Board proposal. When post-hearing developments are taken into account, the statistics become even slightly more favorable to the NUE proposal--Osceola has agreed to fair share, thereby changing the comparable CESA #4 six-to-two count to a seven-to-one count.

On the question of the legality of a fair share proposal which may require the Board to deduct funds for activities which it believes to be beyond those required to negotiate the agreement and administer it, the arbitrator can only reiterate the

position he took in the Manitowoc case. In that instance, the arbitrator stated that the WERC must make the decision and that it would be unfortunate if individual arbitrators attempted to extend their authority into this area. So far as this arbitrator is aware, no other arbitrator has ventured into the morass and attempted to do this job for the WERC.

The arbitrator sees no need to repeat his views on the question of the basic ideological reasons for and against fair share. Personelly, if given the authority to adopt an in-between-position, he would favor both a referendum before such a scheme becomes operative and also either some "grandfather" arrangement or a permanent possibility of diverting the fair share payment to charity if the individual so desired. In so far as this issue is concerned, the arbitrator prefers the NUE position to that of the Board. Although union shops may not be prevalent in Northwest Wisconsin--a point raised by the Board--fair share is clearly the pattern in the larger school districts in CESA #4 and the Heart O' North athletic conference.

ISSUE #9 - Personal Leave:

The evidence on the personal leave practices of the ten districts selected as "comparables" by the arbitrator is somewhat limited. The NUE Exhibit #51 provides some evidence but not enough to make a judgment on just what is the prevailing practice. The arbitrator, therefore, must decide this issue on equity grounds measured against the general criteria mentioned in 111.70(4)(cm)7.h. The arbitrator does not think that a teacher should be denied a personal leave on the day before his or her marriage--and in neither of the cases cited by the NUE was the leave denied.

In both cases, however, the personal leave was an unpaid leave. Under the NUE proposal, such leaves would be paid leaves although they would be charged to sick leave and although the teacher would have to pay the cost of the substitute teacher hired to fill in for the day. The Board estimates that the cost of the substitute is approximately one-half that of the regular teacher. Under the Board proposal, such leaves would be unpaid leaves of absence and would be subject to approval by the Superintendent.

The arbitrator notes the types of personal leave problems listed in Union Exhibit #50 and realizes that some of them don't lend themselves to classification under the categories listed on Union Exhibit #48, the application form for attending conferences. Furthermore, the arbitrator realizes that individuals will differ in their assessment of the relative importance of such functions as the national softball tournament, the Elks convention, a trip to Las Vegas and assisting a minister husband in a church function. None of these activities are of direct benefit to the Board. Yet, employers in public and private industry grant leaves routinely for such personal activities--provided that the leaves do not interfere with normal business. In some instances, these will be unpaid leaves and in some paid leaves.

The problem at Rice Lake seems to be, in part, who should pay for the leave, but largely seems to go to the approval procedure and the varying results arising under the existing procedure. The arbitrator would far prefer that the parties resolve this matter themselves in the forthcoming negotiations and make no judgment on this issue. If it were standing alone he might require more evidence on comparability in order to reach a judgment. Also, if it were standing alone and he was forced to pick one proposal or the other on this issue he would have a marginal preference for the NUE position. It seems to the arbitrator that the loss of a sick day and the payment of the substitute's wage will prevent this from becoming a mechanism by which teachers secure one less work day per year as is alleged by the Board in its post-hearing brief.

ISSUE #10 - Mileage:

The NUE did not submit data showing the mileage rates paid at Heart O' North conference schools but relied instead on arguments based on the increased costs of operating an automobile (NUE Exhibit #52). The Board introduced an exhibit showing the mileage rates paid in 1977-1978 at CESA #4 schools (Board Exhibit #1, p. 105). Included in the Board's exhibits were eight of the ten comparables relied on by the arbitrator in analyzing other issues.

Seven of the eight comparables paid 15¢ a mile in 1977-1978 and one paid 17¢ a mile. The Board proposal to continue payment of 16¢ per mile would place Rice Lake above all but one of the comparables while the NUE proposal of 17¢ a mile in 1977-1978 and the 18¢ per mile in 1978-1970 would put Rice Lake at the top of the list. Post hearing evidence submitted by the NUE indicated that one of the CESA #4 comparable schools (Osceola) had raised mileage from 15¢ to 17¢ for the 1978-1980 period.

The arbitrator does not deny that the cost of operating an automobile is increasing each year and that mileage payments should not be allowed to fall far behind. For that reason, the arbitrator thinks that it would be appropriate to increase mileage rates in the contract following this one. At this time, however, it appears that Rice Lake is already a leader. If the NUE demand were to be granted effective for the years 1979-1980 and 1980-1981, it might be sound. At this stage, however, it is premature in relation to the status of the comparables. For that reason, the arbitrator prefers the Board position on this particular issue.

ISSUES #1-10 TAKEN AS A WHOLE

Observers of the final-offer package process have praised it because it provides an incentive for the parties to settle as many issues as possible and to narrow the gap on those which cannot be completely resolved. Also, it has been noted, however, that, when the theoretically expected convergence effect does not take place, the final-offer package process may force arbitrators to select a package which is inferior to one that is a blend of both offers. This is one of those rare cases in which the arbitrator is faced with ten unresolved issues instead of the more customary one, two or three issues.

In some respects the arbitrator blames himself for this situation in that, during the mediation process, he attempted to resolve the entire matter rather than recognizing that the two major "gut" issues--wages and fair share--would have to be arbitrated. If the arbitrator had adopted a more limited perspective and concentrated only on mediating the issues other than fair share and wages it is possible that he could have persuaded the parties to reach agreement on some or all of the other eight issues.

Even subsequent to the arbitrator hearing the arbitrator hoped that the parties would resolve some or all of the remaining issues and, failing this, would give the arbitrator the authority to depart from the final-offer selection process and allow him to fashion a compromise settlement. Both parties were resolute, however, and denied this request. The arbitrator, therefore, has no choice but to select one of the packages even though it incorporates some features which he normally would not support if he had been given the authority to modify proposals. For example, the NUE salary proposal is, in the arbitrator's opinion, preferable at the top of the beginning BA lane but slightly excessive at the top of the ending MA lane. Also, the NUE fair share proposal does not provide for a referendum nor does it provide any mechanism to exempt the small number of teachers who oppose fair share and who might be asked instead to make their payment to charity.

In making his determination of which package as a whole he would select, the arbitrator first classified the issues into two groups--those which were major issues and those which were minor issues. Into the first category, the arbitrator placed the salary dispute, fair share and the insurance premium. The insurance premium did not seem to be a major issue at the time of the hearing but the subsequent announcement that the premium for 1978-1970 would be in excess of the Board estimate at the time of the hearing moved this issue out of the possible no-cost status in which it originally fell. The remaining seven issues are considered by the arbitrator to be less important than the major ones enumerated above. The arbitrator believes that, unless the total weight of the minor issues is substantially on one side or the other that the selection of the final offer should be based on the positions of the parties on the major issues.

Before moving to the overall analysis of the minor and major issues, the arbitrator notes that, despite the many issues to be resolved, the parties are relatively close in terms of the total economic impact of the respective packages. The cost of the NUE package for the two years exceeds the Board package by only one percent ($43,580/$4,351,037--derived from page 28 of Board Exhibit #1). This figure

understates the difference slightly because of the small cost impact of the minor items and because of the increase in family insurance premiums over the amount offered by the Board. Even so, it should be recognized that in terms of total impact, the parties are not far apart even though the number of issues and the intensity of feeling about these issues give the opposite impression.

The seven issues categorized by the arbitrator as minor are: waiver clause, calendar, compensation for elementary teachers when special teachers are absent, compensation for extra duties, compensation for unit leaders and building principals, personal leave and mileage. As was stated in the issue by issue analysis, the arbitrator has a slight or decided preference for the Board positions on waiver, calendar, compensation for elementary teachers when special teachers are absent and mileage while he expressed a preference for NUE positions on each of the following issues taken separately--compensation for extra duties, compensation for unit leaders and building principals and personal leave.

The arbitrator need not decide whether the four minor issues on which he favors one side outweigh the three issues on which he favors the other side. Nor does he have to decide how much weight to give to a slight preference rather than a clear cut preference. It is sufficient only, since these are relatively minor issues compared to the other three, to state that the choice of either package on the basis of the merits of the major issues will not saddle the losing party with a particularly onerous problem because of losing the minor issues.

We turn finally, therefore, to a consideration of the major issues. The arbitrator has already stated that he prefers the NUE positions on salaries, insurance premium and fair share. It seems therefore that he should choose the NUE proposal. The Board, however, argues further that the total demands of the NUE are just too much, that they show an unwillingness to compromise and that the Board position should be chosen because the NUE "chose not to pare its list of 'goodies' down to the bare minimum" and because "if any one of [the minor non-economic items] appears unreasonable as compared to the Employer's position to retain present, previously bargained-for contract language, then the entire Union proposal should and must be rejected." (Board post hearing brief, pages 23-24).

The arbitrator recognizes the strength of the Board argument but does not agree with the conclusion reached by the Board. None of the individual minor proposals in the NUE final offer is unreasonable enough to affect the package as a whole. The arbitrator agrees that the NUE had a long list of items and that it sought to achieve in one negotiations more than is customarily achieved. The NUE argues, however, that contract language achieved under the pre-1978 statute was bound to be more favorable to the Board in areas such as Rice Lake than language which may and should prevail in the future and that because the framework for bargaining was unfair to the teachers in the past, an arbitrator should not be bound by the old maxim of not changing previously agreed-upon language unless it is clearly demonstrated that it has operated inequitably.

This arbitrator recognizes that the selection of the NUE final offer will improve the agreement substantially from the point of view of the NUE. The arbitrator agrees that it represents a greater jump than he would have preferred to have seen. The only consolation that he can offer the Board is that, in his opinion, this first year quantum jump is not one which should prove to be a yearly occurence. In effect, the NUE is gaining through this arbitration some items which it well may have negotiated in the coming months--or which might be granted next year by some other arbitrator if the parties again were unable to resolve their differences.

FINDINGS AND AWARD

With full consideration of the criteria listed in the statute and after careful and extensive examination of the exhibits and arguments of the parties, the arbitrator finds that the NUE final offer is preferable to that of the Board and therefore selects, as the 1977-1979 Agreement, the final offer of the NUE and orders that the 1975-77 Agreement be amended by the incorporation into it of the final offer of the NUE and the other items to which the parties have stipulated.

11/15/78
November 15, 1978

James L. Stern /s/
James L. Stern
Arbitrator