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In the Matter of Mediation-Arbitration Between *
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Northwest United Educators *
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-and- *
*
School District of Barron *
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Case XII
No. 22481
MED/ARB-14
Decision No. 16276-A

Appearances: Losby, Riley & Farr, S.C. by Stevens L. Riley, for the
School District, and

Robert E. West, Executive Director for Northwest United
Educators.

On April 10, 1978, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator in the above captioned case. A mediation meeting was held at Barron, Wisconsin, on July 7, 1978. There was no petition filed for a public citizens hearing and thus no public hearing was held. The mediation meeting failed to resolve any of the outstanding issues. The parties agreed that if neither withdrew its final offer they would proceed to arbitration and do so by waiving an arbitration hearing and instead submitted written briefs and reply briefs. The undersigned provided written notice to the parties on July 10, 1978 of his intent to proceed with arbitration unless they withdrew their offers within ten days. Neither party withdrew its offer. The record in the case was completed with an exchange of briefs and reply briefs. The reply briefs were exchanged on September 13, 1978.

The briefs and reply briefs were thorough and comprehensive, and in total several hundred pages of evidence and arguments was submitted. These documents were read by the arbitrator and evaluated in light of the statutory criteria for the mediator-arbitrator's decision. Because of the voluminous record, only portions of the parties arguments and data are set out below, but the entire record was considered.

The final offers of the parties on the unresolved issues certified to the mediator-arbitrator by the WERC, are as follows:

Barron Area School District

ARTICLE VI - Working Conditions and Placement

Delete present paragraph C in its entirety, and substitute therefore the following:

C. The normal teaching load shall be determined by the Administration in consultation with the teacher within generally accepted standards.

ARTICLE VIII - Lay-Off

Delete the entire Article and replace with the following:

A. When the Board in its discretion determines to eliminate or reduce a teaching position because of a decrease in enrollment, budgetary or financial limitations, education program changes or for any other reason to reduce staff for reasons other than the performance or conduct of the teacher, the Board will on an individual basis, and in comparison with other teachers, evaluate and decide which teacher or teachers are to be laid off or reduced in load accordance with the following criteria.

- B. The criteria to be used are "qualifications", "lenth (sic) of departmental service" and "length of service in the district".
- (1) The following standards shall be applied by the Board in making the comparative evaluation of "qualifications":
- Teaching performance in the district as previously and currently evaluated by the appropriate supervisor;
- Appropriateness of training, experience and certification with respect to the remaining teaching assignments which must be filled;
- Academic achievements, and, where applicable;
- Co-curricular assignments or activities held or to be filled.
- (2) In the event two or more teachers are found to be equally qualified upon application of the above standards, then length of departmental service shall prevail, and if equal, length of service in the district shall prevail.
- (3) The term "department" shall mean the subject area in which the teacher is teaching during the current school year. Examples of primary departments are art and music. Examples of secondary departments are English, math and history. By enumeration, no restriction is placed on the number of types of departments.
- C. When a teaching position is made available and there are laid off teacher(s) having recall rights and the desired qualifications established for the position, then if more than one qualified laid off teacher has recall rights, the Board shall, after applying the standard for comparing individual "qualifications" set forth in paragraph B, recall the most qualified one. If two or more teachers subject to recall are found to have equal "qualifications", then the laid off teacher having the greatest length of previous service, if any, in the department shall be first recalled; and, if departmental service is equal, then the teacher having the greatest length of previous service in the district shall be recalled.
- D. The board shall mail the recall notice by certified mail to the teacher's last known address. The notice of recall shall advise the teacher of the time and place that the teacher is to report for duty.
- (1) It shall be the teacher's responsibility to keep the Board informed as to the teacher's current address.
- (2) If the Board does not within 14 calendar days from the date of mailing the notice receive written confirmation of the teacher's acceptance of recall, the teacher loses all rights to be recalled: Failing to report at the requested time and place will void the recall and all reemployment rights of the recalled teacher.
- (3) Reemployment rights for a teacher laid off under this section shall terminate on September 1 of the year next following the year in which the layoff occurred.

APPENDIX B - 1977-78 SALARY SCHEDULE

Years of Experience	B.A.	B.A.+8	B.A.+16	B.A.+24	M.A.	M.A.+8
0	9,300	9,400	9,500	9,700	10,100	10,300
1	9,672	9,776	9,880	10,088	10,504	10,712
2	10,044	10,152	10,260	10,476	10,908	11,124
3	10,416	10,528	10,640	10,864	11,312	11,536
4	10,788	10,904	11,020	11,252	11,716	11,948
5	11,160	11,280	11,400	11,640	12,120	12,360
6	11,532	11,656	11,780	12,028	12,524	12,772
7	11,904	12,032	12,160	12,416	12,928	13,184
8	12,276	12,408	12,540	12,804	13,332	13,596
9	12,648	12,784	12,920	13,192	13,736	14,008
10	13,020	13,160	13,300	13,580	14,140	14,420
11	13,392	13,536	13,680	13,968	14,544	14,832
12	14,014	14,162	14,310	14,356	14,948	15,244
13				14,994	15,602	15,906

APPENDIX B - 1978-79 SALARY SCHEDULE

Years of Experience	B.A.	B.A.+8	B.A.+16	B.A.+24	M.A.	M.A.+8
0	9,800	9,900	10,000	10,200	10,600	10,800
1	10,192	10,296	10,400	10,608	11,024	11,232
2	10,584	10,692	10,800	11,016	11,448	11,664
3	10,976	11,088	11,200	11,424	11,872	12,096
4	11,368	11,484	11,600	11,832	12,296	12,528
5	11,760	11,880	12,000	12,240	12,720	12,960
6	12,152	12,276	12,400	12,648	13,144	13,392
7	12,544	12,672	12,800	13,056	13,568	13,824
8	12,936	13,068	13,200	13,464	13,992	14,256
9	13,328	13,464	13,600	13,872	14,416	14,688
10	13,720	13,860	14,000	14,280	14,840	15,120
11	14,112	14,256	14,400	14,688	15,264	15,552
12	14,504	14,652	14,800	15,096	15,688	15,984
13				15,504	16,112	16,416

Northwest United Educators

1. 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 Barron 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 control of the Wisconsin Education Association Council and its attorneys.
- D. This provision shall become effective upon the date this Agreement is signed.
- 2. A. Vocational education teachers who are required to work beyond the normal work time for the purpose of maintaining and preparing equipment shall be compensated at \$6.00 per hour.
- B. Teachers required to perform athletic scouting duties shall be reimbursed for mileage and compensated \$9.00 per scouting event.
- C. Future Business Leaders Association, HERO, and Future Homemakers Association advisors shall be compensated on the co-curricular schedule at 1.5 percent.
- 3. The base salary for the 1977-78 contract term shall increase by \$450 (\$9200). The increment shall remain at 4.5 percent.
- 4. The base salary for the 1978-79 contract term shall increase by \$500 (\$9700). The increment shall remain at 4.5 percent.
- 5. Librarians required to work beyond the normal work time shall be compensated at \$6.00 per hour.
- 6. Teachers required to chaperone school dances shall be compensated at the regular extra-duty pay rate (\$4.50 per hour).

The current layoff and teaching load clauses are as follows:

Layoff

- A. Where it becomes necessary to decrease the number of teachers by reason of a substantial decrease in student population in the school district, the Board may lay off the necessary number of teachers on the basis of certification and seniority; provided, however, that when the difference in seniority is no greater than three (3) years, the final determination shall be made on the basis of performance as evaluated by the teacher's immediate supervisor.
- B. No teacher may be prevented from securing other employment during the period he is laid off under this Article. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. No new or substitute appointments may be made while there are laid-off teachers available who are qualified to fill the vacancies.

Teaching Load

The normal teaching load shall be determined by the administration in consultation with the teacher within generally accepted standards as set forth by the following recommendations with the final decision remaining the prerogative of the administration:

1. It is requested that a music, art and physical education teacher and/or aide be provided for the elementary grades to allow unscheduled time for teacher planning and preparation
2. Each Elementary and Middle School teacher shall have an average of 90 minutes student free preparation time per day during the regular 5 day student week, inclusive of a thirty (30) minute duty free lunch period. The preparation period will be in 25 minute blocks.
3. The primary teaching load shall not exceed an average of 25 pupils per teacher in a building and intermediate not to exceed an average of 30 pupils per teacher in a building. This is to be adjusted in a homogeneous grouping so that the top three groups would have up to 30 and the low group no more than 20.
4. The Senior High School teacher shall be provided with a minimum of 40 percent unstructured time to allow for preparation, individual instruction, open labs, etc.
5. The Senior High School class size and distribution.
 - a. Teachers will participate in scheduled large groups (unlimited), scheduled small groups (8-13), and scheduled labs (12-20) for purposes of instruction. These groups will be kept as reasonable and close to these sizes as possible.
 - b. Any teacher with more than a total of 80 students shall not be assigned more than three preparations nor three large groups.
6. If an individual feels that his teaching load is excessive, the grievance procedure shall apply as defined in Article XI.

Each issue in dispute is described below with an indication of the parties' positions, and the arbitrator's analysis. Following the issue by issue analysis there is a summary of the arbitrator's findings and his last-offer package decision as required by the statute.

1) Salary Schedule: The parties are in agreement that the contract arising from this mediation-arbitration should be a two year contract for 1977-79. They are in agreement also with regard to the structure of the salary schedule insofar as number of steps and number of lanes is concerned. They differ, however, on what the base salary and increments should be. The District offers a higher BA base salary in each of the two years than is contained in the Association's offer (\$9300 and \$9800 offered by the District; \$9200 and \$9700 offered by the Union). The District wants the salary increments reduced to 4.0% from the current 4.5% whereas the Union offers to maintain the 4.5% increments. In the first year the District offers also to add \$250 to the top step.

Union Position:

The Union believes the District has shown "no logical reason" for changing the increment structure previously agreed upon. The Union uses the athletic conference (Heart O'North) as a basis for salary comparisons to demonstrate that "the NUE proposal for 1977-78 falls very close to the average increase at the minimum and maximum levels" whereas, it argues, the District's proposal would provide more generous increases to teachers at the BA minimum while reducing the increases

given to those at BA maximum. The Union emphasizes that this movement to increase minimum salaries at the expense of maximum salaries is exaggerated under the District's offer for 1978-79. The Union emphasizes that its offer provides "relatively consistent increases at all levels of the salary schedule while the District's offer works to penalize experienced teachers in both dollar and percentage terms."

The Union contends also that the District's offer falls short of the increase in the cost of living as does the Union's offer, but the Union emphasizes this as a reason for equitably distributing the salary increases to all teachers. The Union disputes the contention of the District that increments should be calculated in determining whether a teacher has kept up with the cost of living.

In support of its position the Union draws comparisons also with increases given across the State of Wisconsin in school districts of Barron's size. The Union also presents data comparing the District to the local VTAE district and to wage settlements for selected professional occupations in the private sector.

Lastly, the Union disputes any claim by the District of inability to pay the increases sought in the Union's offer, and points out that in bargaining the District did not raise ability to pay arguments. The Union compares the percentage increases of both parties' offers at the minimum and maximum of the BA and MA, and demonstrates that while both offers are below the cost of living increase of 6.7% in the period of July, 1976 to July, 1977 and 7.4% from July, 1977 to July, 1978, the effects are especially severe at certain points of the Board's offer, namely 3.4% at the BA maximum in 1976-77, and 3.4% at the BA maximum and 3.2% at the MA maximum in 1977-78.

The Union takes note of the fact that in the current round of bargaining the District has agreed to add an MA+8 lane to the schedule. In the Union's view, however, the addition of that lane does not significantly alter the deterioration in the relative position of experienced teachers nor the deterioration of the position of experienced teachers in the District compared to other districts in the athletic conference if the District's final offer is implemented.

The Union stresses that in negotiations the District did not raise questions of its ability to pay. The Union is in disagreement, in any case, with the District's calculation of the costs of the respective offers and by the Union's calculation the District's offer for two years is a 13% increase, while the Union's increase is 15.09%. The Union also disagrees with the District's assertion that the District's offer is limited by State cost control considerations, and notes that the statutes provide that cost controls for a given year can be exceeded if they result from an arbitrator's award.

The Union objects to the District's use of CESA #4 school districts for the purpose of wage comparisons, because of the significant differences in size of school districts. The Union notes that with the exception of Rice Lake, Barron is the largest school district in CESA #4 and that fact notwithstanding the District's exhibits indicate that the District's wage schedule is not at the top of the CESA #4 schools.

The Union objects also to the District's selection of 32 schools on a statewide basis which allegedly have "comparable enrollment and financial equivalence." The Union notes that the District provides no data to support this allegation, and notes also that the data are presented for just one year so that no comparisons of Barron's relative position over time are possible.

District Position:

The District contends that over the years it has maintained a very competitive position with other school districts in the area. The District contends also that with the exception of teachers at the very top of the schedule, teachers' earnings have more than kept up with the increase in the cost of living over the last ten years. The District disagrees with the Union's position that wages received as additional increments should not be counted toward the cost of living. According to the District's calculations its two year proposed package represents an increase over 1976-77 of 15.47% while the Union's package would represent an

increase of 17.7%. This, in the District's opinion will result in its exceeding cost controls, if the Union's offer is implemented, and while that can be appealed under the statutes because it results from an arbitrator's decision, "the Board of Education feels we have a moral responsibility to follow the intent of the law as closely as possible."

The District contends that its BA salary level offer is justified, and that at the MA level its offer is "very comparable" to other districts.

It argues that its citizens have supported education well, but there is a significant movement in the district aimed at keeping educational costs down.

Using the athletic conference for comparison, and using its final offer the District demonstrates that it is in first place when comparing the BA base for 1977-78, ranked second at the top of the BA lane, fourth at the highest BA base, and fourth at the top of the BA schedule. These comparisons do not include Rice Lake whose salary has not yet been determined by an arbitration award.

The District draws comparisons also with the CESA #4 schools which have settled for 1977-78 and ranks third of 20 at the BA base, second at the top of the BA lane, tenth at the highest BA base, and fourth at the top of the BA schedule.

Using data which the District purports to have gotten from the Department of Public Instruction, it shows Barron ranked tenth of 32 schools of "comparable enrollment and financial equivalence."

Looking at the Masters schedule, the District ranks second at the MA base in the athletic conference, fifth at the top of the MA base, and seventh at the highest MA base, again without including Rice Lake. The District notes too that the MA comparisons are even more favorable to it since only the Maple District requires fewer than the 8 MA credits needed in the District to get to the top of the schedule and every other district in the conference requires 20 credits or more.

Looking at CESA #4 schools settled in 1977-78 the District ranks 5th at the MA base, and at the top of the MA lane, tenth at the highest MA base and 7th at the top of the MA schedule, of 19 school districts.

Using the same data source mentioned above, the DPI, the District ranks 13th of 32 schools at the MA base in districts of "comparable enrollment and financial equivalence."

The District in its exhibit 10-31 shows a comparison of the increments in other schools in the athletic conference. It demonstrates that two districts have a 4.0% increment, one has 4.02%, one has 4.08%, and one has 4.1%. Using CESA #4 districts for comparison the District demonstrates that the great majority of schools have increments of 4.0% or less and only two, Chetek and Spooner have increments of 4.5% or more and they are both in the athletic conference.

The District contends that its position that the increments should be lowered is justified by conference and area comparisons and that the present 4.5% increment has resulted in an inequity in which there has been a disproportionate amount of salary money placed at the top of the schedule producing "a higher-than-average MA top salary and a lower-than-average BA base salary."

Discussion:

In the arbitrator's view the statutory criteria that are most relevant to the salary issue in view of the parties' presentation are: comparisons, the cost of living, and other factors normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining. In the arbitrator's view the lawful authority of the school district is not in question in this case, and the District has also not made a persuasive case that it lacks ability to pay the salary offer of the Union. There is also not persuasive data presented by either party to suggest that the overall compensation paid by the District is an issue in this case.

The comparisons deemed most relevant to this dispute by the arbitrator are comparisons within the athletic conference (*i.e.*, schools of relatively similar size in the immediate geographic area) and schools of similar size in other areas of the state. The arbitrator does not view as particularly relevant or persuasive comparisons with the vocational school system, and comparisons with districts which put the District in a favorable light when compared to substantially smaller districts in the same geographic area. Thus the arbitrator has by and large found the Union's comparisons more meaningful than the District's since the Union's comparisons are with the athletic conference and schools in the state of similar size, and over a period of years, whereas the District's comparisons are primarily with CESA area school districts of all sizes and not over a period of years. Also, the District's information concerning districts in the state of "comparable enrollment and financial equivalence" does not contain sufficient facts about those districts for the arbitrator to rely on them as being appropriate comparisons. The wage comparisons with the other districts in the athletic conference are as follows, showing all but Rice Lake which is in arbitration. The median salary was calculated by the arbitrator. The rest of the information is from Union exhibit #9.

1977-78 Heart O' North Athletic Conference
(figures in parentheses are % increase over 1976-77)

	<u>BA Minimum</u>	<u>BA Maximum</u>	<u>MA Minimum</u>	<u>MA Maximum</u>
Bloomer	9,300(3.9)	14,640(5.3)	10,000(3.6)	16,100(5.2)
Chetek	9,200(5.1)	15,009(6.5)	10,000(4.7)	16,241(6.0)
Cumberland	9,105(3.9)	15,045(4.2)	10,205(4.0)	16,525(4.2)
Hayward	9,150(5.2)	14,050(6.6)	9,850(4.8)	15,385(6.3)
Ladysmith	9,200(4.5)	13,848(7.2)	10,000(4.2)	16,200(6.6)
Northwestern	9,160(5.3)	15,096(7.1)	9,860(4.9)	17,380(6.1)
Spoooner	9,250(3.9)	15,550(3.9)	10,500(3.6)	17,015(3.7)
Median	9,200(4.5)	15,009(6.5)	10,000(4.2)	16,525(6.0)
Barron				
(Union)	9,200(5.1)	15,216(4.9)	10,000(4.7)	16,067(6.8)
(District)	9,300(6.3)	14,994(3.4)	10,100(5.6)	15,906(5.8)
Rice Lake	Not Settled			

The following figures show the 1978-79 settlements for those athletic conference districts which have reached settlements for 1978-79 at this time. The information is taken from Union exhibit #10.

1978-79 Heart O' North Athletic Conference
(figures in parentheses are % increase over 1977-78)

	<u>BA Minimum</u>	<u>BA Maximum</u>	<u>MA Minimum</u>	<u>MA Maximum</u>
Bloomer	9,750(4.8)	15,350(4.8)	10,450(4.5)	16,850(4.7)
Chetek	9,650(4.9)	15,924(6.1)	10,450(4.5)	17,156(5.6)
Hayward	9,650(5.5)	14,730(4.8)	10,350(5.1)	16,080(4.5)
Spoooner	9,800(6.0)	16,340(5.1)	10,600(5.5)	17,825(4.8)
Barron				
(Union)	9,700(5.4)	16,015(5.3)	10,500(5.0)	16,866(5.0)
(District)	9,800(5.4)	15,504(3.4)	10,600(5.0)	16,416(3.2)

In 1975-76 and 1976-77 the median salaries of the other districts in the athletic conference, and Barron's rank were as follows: This information was extrapolated by the arbitrator from Union exhibits #11 and #12.

<u>1975-76</u>	<u>BA Minimum</u>	<u>BA Maximum</u>	<u>MA Minimum</u>	<u>MA Maximum</u>
Median of other Districts	8,350	13,348	9,150	14,878
Barron:	8,250	14,176	8,738	14,544
Rank:	8 of 9	2 of 9	9 of 9	5 of 9
<u>1976-77</u>				
Median of other Districts	8,780	14,095	9,625	15,580
Barron:	8,750	14,506	9,550	15,040
Rank:	6 of 9	2 of 9	6 of 9	3 of 9

The 1977-78 ranking of Barron is as follows, not including Rice Lake:

	<u>BA Minimum</u>	<u>BA Maximum</u>	<u>MA Minimum</u>	<u>MA Maximum</u>
Union offer	3 of 8	2 of 8	3 of 8	8 of 8
District offer	1 of 8	6 of 8	2 of 8	8 of 8

The District's offer at the BA level is very competitive. There is no dispute about that, and in fact it would result in the District gaining ground on comparison districts at the BA base. The District's offer would also be very competitive at the MA base and would gain ground on comparison districts there as well. The problem, in the arbitrator's view, is what happens to teachers in both the BA and MA levels who are experienced, and have been in the District for several years. The District has apparently made a judgment that it prefers to put money into beginning salaries at the expense of an even percentage distribution to all teachers. It has done this by offering to reduce the increment from 4.5% to 4.0%. It bases this decision on comparisons of increments in other districts.

The arbitrator has two reactions to the District's decision. The first reaction is that the comparisons within the athletic conference do not persuade him that the District needs to change its salary structure or more particularly that he should impose the change. The District is not out there by itself paying a 4.5% increment and is not disadvantaged either in salary or size of increment when compared to a significant number of other districts in the conference. In addition to Barron which has paid 4.5% increments, Chetek pays 4.5% increments, Spooner pays 4.31% and Maple pays 4.97%. Thus, of eight other districts in the conference three pay as high or higher increments than Barron does. While there may be a basis for arguing in negotiations that the increments should be reduced, the data do not show persuasively that the District as an employer is so disadvantaged as to demonstrate a need to change the salary structure.

The arbitrator's second reaction is that the effects of reducing the increment are significant at the top of the schedule. The arbitrator has looked at the result of the District's proposal for 1978-79 in comparison to other districts in the athletic conference which have settled for 1978-79 as of this time. Those districts are Bloomer, Chetek, Hayward and Spooner. Using the BA Maximum as a reference point, in 1977-78 under the Union's final offer, Barron would be \$576 ahead of Bloomer and in 1978-79 that would have increased to \$665, or a relative gain of \$89 for the Barron teacher. Using the District's final offer, however, Barron would be \$354 ahead of Bloomer in 1977-78 and that would be reduced to \$154 or a relative loss to the Barron teacher of \$200 in comparison to the Bloomer teacher.

Looking at Chetek, using the Union's offer, Barron is \$207 ahead of Chetek in 1977-78 and \$91 ahead of Chetek in 1978-79. That is, using the Union's offer the Maximum BA teacher has suffered a relative loss of \$116. Using the District's offer, Barron is \$15 behind Chetek for 1977-78 and \$420 behind Chetek in 1978-79. Thus under the District's final offer the BA Maximum teacher in Barron would have suffered a relative loss of \$415 in comparison to Chetek.

Looking at Hayward, under the Union's offer a BA Maximum teacher in Barron would be \$1166 ahead of a Hayward teacher in 1977-78 and that would have increased to \$1285 in 1978-79, or a relative gain of \$119 for the Barron teacher. Using the District's offer, the Barron teacher would be \$944 ahead of the Hayward teacher in 1977-78 but the difference would be \$774 in 1978-79, or a relative loss for the Barron teacher of \$170.

Lastly, looking at Spooner, using the Union's BA Maximum offer, Barron is \$334 behind Spooner in 1977-78 and \$325 behind Spooner in 1978-79. Thus the Barron teacher would suffer a relative loss of \$9 to the Spooner teacher. Under the District's offer, however, the Barron teacher would be behind the Spooner teacher by \$556 in 1977-78 and by \$836 in 1978-79. Thus the Barron teacher would suffer a relative loss of \$280 to the Spooner teacher.

A similar analysis would show similar results at the MA Maximum level. Another indicator of the relative deterioration of the position of experienced teachers in Barron is to view the rankings within the athletic conference over time. The Union shows in its exhibits #9, 10, and 11 that from 1975-76 through 1977-78 the Barron BA Minimum teacher would improve its rank from 8th to 2nd under the Union's offer, and 8th to 1st under the District's offer, the BA Maximum teacher would stay ranked at 2nd under the Union's offer, but would go from 2nd to 5th under the District's offer.

The arbitrator is concerned that there is not persuasive justification for this change in distribution of salary money with its disproportionately negative effect on more experienced teachers. While it is true that experienced teachers are not having their pay cut and indeed are getting substantial dollar increases under the District's proposed offer, they are getting fewer dollars and in some cases substantially fewer dollars than they would if the Union's offer were implemented reflecting a more even distribution of dollars than results from the District's plan to raise the base salary and reduce the increments.

In the arbitrator's view the District's offer represents a substantial restructuring of the salary schedule because of its redistribution of salary money. Without a very persuasive argument as to why experienced teachers should be treated less favorably than inexperienced teachers, an argument that does not come through in the District's presentation, the arbitrator believes that such a restructuring of the parties' relationship should result from voluntary collective bargaining and should not be imposed by an arbitrator. In the arbitrator's view one of the "other factors" that an arbitrator normally takes into account in the determination of wages is the affect of his award on the parties' collective bargaining relationship. Arbitrators generally view the voluntary bargaining process, not arbitration, as the means by which fundamental changes in relationships should be achieved, so that arbitration will not become a substitute for bargaining.

The parties devoted considerable space in their briefs to the appropriate calculation and application of cost of living figures, and whether the respective offers do or do not keep up with the cost of living. At issue is whether or not the earnings of a teacher through increments should be calculated in determining whether that teacher has kept up with the cost of living. This arbitrator does not feel it necessary to make a judgment on that issue in this case, since even assuming for argument's sake that the District's offer keeps up with the change in the cost of living, it is still the case, in the arbitrator's view, that the distribution of that money in the District's offer is of sufficient cause for concern to outweigh considerations of the cost of living.

Based on the above discussion, it is the arbitrator's opinion that on the salary issue the Union's offer is more reasonable.

Fair Share

Union's Position:

The Union proposes that there be a fair share agreement covering all teachers, thus requiring that all teachers pay their fair share of the costs of representation by the Union should they chose not to belong to the Union. The Union emphasizes that such an agreement is authorized by statute. The Union recognizes that there is

pending litigation before the WERC pursuant to the Wisconsin Supreme Court's Browne decision concerning the determination of what constitutes an appropriate fair share payment. The Union notes that its final offer conforms to the present statutory wording, but it states that "NUE is prepared to comply with whatever findings the WERC or any other court or tribunal of competent jurisdiction may make. NUE offers in its proposal a save harmless clause to the Employer to protect any of the Employer's interests and also notes that the collective bargaining agreement provides at Article VI a savings clause which mandates immediate negotiations for any provision which is found to be illegal."

The Union cites the need for fair share because of its view that all teachers should be required to share in the costs of achieving the benefits of bargaining, and especially so since the Union is obligated by statute to represent all bargaining unit members whether or not they are Union members.

The Union cites in support of its position the fact that in the athletic conference, four schools have fair share agreements while two do not, and three others, including Barron, are in arbitration on the issue for 1978-79. While disagreeing with the District that CESA #4 districts are an appropriate comparison, the Union notes that fourteen of these districts have fair share agreements, while five additional districts have maintenance of membership clauses requiring that present Union members retain their membership.

District's Position:

The District is opposed to granting a fair share agreement. The District rejects the Union's rationale that all teachers should pay for the benefits they receive, since, according to the District, "all employees are forced to accept what is ratified by the union membership, they are actually captive passengers because they are no longer allowed to gain benefits suitable to them as individuals by means of self representation . . ." The District contends that unless the minority of teachers who are dissatisfied with the union have the right to withhold their support, there is no check left on the majority. The District sees a fair share agreement as depriving individuals of their freedom of choice not to belong to an organization, and the District characterizes fair share as "legalized extortion." The District is also concerned about the legality of the specific fair share proposal made by the Union. It contends that under the Union's proposal funds would be used for purposes which go beyond the guidelines articulated by the Wisconsin Supreme Court in the Browne decision. The District asks the arbitrator not to rule in the Union's favor because if the WERC or the courts determine that the Union's fair share offer is illegal, the District could be liable to a prohibited practice charge, or a suit for failure to implement the arbitration award. It states, "The Board is not asking the arbitrator to find that the proposed clause is illegal, but rather the Board is saying to the arbitrator that this clause is sufficiently ambiguous so as to lead to future litigation and does not further the ends of labor peace." That litigation is not avoided, according to the District, merely because the Union's offer contains a save harmless clause and a savings clause. In addition, the District offers comparisons with other districts showing that in Northwestern Wisconsin only 14 of 71 districts have fair share. This includes 10 of the 26 districts in CESA #4 which have fair share, according to the District.

Discussion:

The arbitrator is not philosophically opposed to fair share agreements and he does not share the frequently repeated assertion by the District that a fair share agreement constitutes "legalized extortion." The District in making such an assertion in effect accuses the Legislature of the State of Wisconsin of permitting and/or encouraging "legalized extortion," an assertion that is not accepted by the arbitrator.

While being favorably disposed to fair share agreements, the arbitrator is also generally in favor of their coming into being as a result of voluntary agreement between the parties, since they do involve a fundamental element of the relationship between a district and a union and affect all of the employees of the district. The arbitrator might impose a fair share agreement on a district which it was clear was a hold-out in a situation where a significant majority of comparable districts had such an agreement. Such is not the case here, however, where at most a bare majority of districts in the athletic conference and CESA #4 have fair share agreements.

The arbitrator does not view the Union's offer as illegal on its face, and he shares the view of Arbitrators Stern in Manitowoc and Zeidler in CESA #4 that the appropriate amount of fair share deduction is properly left to the WERC and the courts where the matter is pending.

Thus, on the fair share issue, while finding such an agreement proper, and not immoral or illegal, the arbitrator is disposed toward leaving that issue for the parties to bargain voluntarily and especially in light of the comparable statistics which do not make a persuasive argument that it should be imposed. On this issue, therefore, the arbitrator would tend to support the District's position, although dissociating himself from the District's rationale for its position.

Compensation for Extra Work

This issue involves the offer by the Union to require pay under various circumstances for vocational education teachers, athletic scouting, FBLA, HERO and FHA advisors, librarians, and teachers chaperoning school dances.

Union Position:

The Union emphasizes that its offer would provide pay for these activities only where the District "requires" that teachers perform these extra duties. Thus, for vocational teachers it stresses that this is only for work "beyond the regular work time which is required for maintaining and preparing the equipment . . ." With regard to librarians, the Union emphasizes that the District has already agreed to pay for extra work at an hourly rate of \$6.00. The Union asserts that the District has refused to make that agreement a part of the contract. The Union stresses that its offer for each of the activities listed in this part of its final offer provides for compensation which is not in excess of amounts normally provided by the District for teachers performing other required extra duties.

Responding to the District's arguments against this compensation, the Union emphasizes that the decision about "who makes the decision regarding the requirement . . . (that the work is beyond normal work time) . . . is clearly the Employer's. The Employer has total control to decide whether or not additional work beyond normal work is required. If the teachers make that decision on their own, then the additional work must be considered to be voluntary." With regard to chaperoning dances, the Union rejects the District's view that this is or should be considered a duty required of all teachers and without compensation. The Union states, "we are all aware of any association that teachers have with students can be a learning experience and that these associations with students provide teachers with valuable insights. We cannot, however, justify this reality to require a considerable amount of work at undesirable times without some form of extra compensation."

District Position:

Regarding the vocational teachers, the District is concerned that the teacher will in fact determine what work is required and will thus control the amount of pay for such work, since it is the teacher who frequently judges what work needs to be done in maintaining equipment. The District sees the Union's offer as adding to a definitional problem which already exists in the current Master contract which states, "As teaching is a professional occupation the job performance rather than the amount of hours is the criteria for satisfactory compliance with the contract. Therefore, teachers shall be on the job a sufficient number of hours as necessary to complete their work assignments." The District notes with regard to the Union's offer that the offer does not state "required by the Employer." In the District's view there has not been a problem with the workload of vocational teachers and it asserts that the Union's offer in this regard is premature.

Regarding pay for athletic scouting, the District contends that this demand of the Union's is also premature since the District's current policy is that there is no athletic scouting. Any scouting that does occur is on a purely voluntary basis.-

Regarding FBLA, HERO and FHA advisors, the District takes the position that these organizations are an "intra-curricular activity and as such are a part of the instructional program and not apart from the instructional program."

Regarding extra pay for librarians, the District contends that its agreement to pay \$6.00 per hour refers only to work performed after the end of the school year, and not for work during the regular school year.

Regarding dance chaperones, the District rejects the Union's offer because up until the present time the District has regarded dance chaperoning in the same category as supervising of club activities, to be equally distributed among the faculty, and as ". . . an integral part of any secondary school program and therefore considered to be a normal responsibility of all faculty members." The District goes on to state that "to consider this function as an extra assignment with a stipend would allow some or all employees to opt out of the assignment and thus leave an integral part of the program without supervision."

Discussion:

The arbitrator is supportive of the notion that employes ought to be paid for work required of them by their employer and this is especially so where that work is outside of normal working hours. This particular offer made by the Union has some troublesome aspects, however.

The District has reason to be concerned about the wording of the Union's offer in particular with regard to the vocational teachers and the librarians (less so with respect to scouting) because while there is an inference that "required" means "required by the District" it doesn't state that in the Union's language, and the fact that the Union clarifies its position in its brief doesn't alter the fact that there is ambiguity in the wording of the final offer.

The arbitrator is sympathetic to the notion that teachers called on to chaperone dances on evenings and week-ends should receive additional compensation for these activities, although he is not aware of what the practice generally is in that regard, nor is he aware of what the practice is with regard to compensation of teachers in other districts for FBLA, HERO and FHA activities.

Thus, on this aspect of the final offer the arbitrator would tend to support the District's position because of the wording of the Union's final offer and the lack of clarity and persuasiveness of the Union's position on certain aspects of it.

Layoff

Because the District proposes to eliminate the current layoff language and substitute new language, its position is presented first.

District Position:

The District wishes to be able to retain new teachers in the event layoffs are necessary. It states, "In most cases, these newly-hired people are excellent teachers. But because of the order of employment, that teacher will be unable to remain. From the experienced teacher's point of view, 'order of employment reduction means that it really doesn't matter if they are a competent teacher as long as they were hired enough years ago--they'll have a job.'" The District feels that the current language is overly restrictive in permitting layoffs only where there is a decline in district enrollment. It feels that economic considerations must also be taken into account.

The District feels that the necessity of allowing it to make layoffs because of changed economic circumstances is especially important now that a district can be required by an arbitrator to grant a union's final wage offer.

The District also objects to the fact that while certification of teachers is considered in the order of layoff, such things as department, training and experience are not. The District views its proposal as balancing seniority with other factors, rather than having seniority as the principal determinant of layoff order.

The District emphasizes, too, that its proposal contains an orderly procedure for recall and one with a one year time limit, as contrasted to the present procedure which contains no time limit.

Union Position:

The Union takes the position that there is no justification for the District's offer to completely redo the layoff procedure to make it easier to layoff teachers and to devalue seniority in determining which teachers are to be laid off. The present contract language has been in the 1973-74 agreement and the 1975-77 agreement and was the result of voluntary collective bargaining between the parties. The only grievance arbitration arising under that language, according to the Union, was determined in the District's favor. The Union sees no reason to agree to a reduction in job security for its members and in its view the District has not made any persuasive argument as to why changes should be made. Given all of the criteria for layoff suggested in the District's offer, according to the Union, there would never be a situation in which two or more teachers would be found to be equal, and thus seniority would not be a controlling factor.

The Union finds the District's concern for new teachers "admirable" but it finds the District's ". . . arbitrary attack on the more experienced teacher (to be) disgusting."

Discussion:

The District seeks to completely revamp the layoff language. It offers no persuasive reason why this has to be accomplished at this time or why it need be done by an arbitrator. There is nothing perfect about the current layoff language, and arguably there should be more conditions under which layoff should be allowed, and perhaps there should be factors in addition to seniority and certification which control the order of layoffs, and perhaps there should be some limitation placed on the length of recall rights. However, what is involved here is an attempt by the District to have an arbitrator completely restructure the parties' collective bargaining relationship by devaluing seniority as a factor in determining who is laid off, and by making it more possible for layoffs to occur and for the District to retain newer teachers at the expense of older more experienced teachers.

The District offers no facts to demonstrate that its present situation requires this drastic change at this time. It offers no evidence to show that its current layoff language is more restrictive than layoff language in comparable school districts. The arbitrator holds strongly to the view that unless exceptional circumstances prevail, a fundamental change in layoff language or any other fundamental aspect of the bargaining relationship should be negotiated voluntarily by the parties, not imposed by an arbitrator. The parties voluntarily bargained the current layoff language and have lived with it through two contracts without apparent difficulty. As noted above in the one dispute that did occur, the District prevailed before an arbitrator. Just as they bargained the current layoff language, the parties should bargain any changes in it. On this issue the arbitrator strongly supports the Union's position.

Working Conditions:

Since it is the District which proposes to delete the present contract language, the District's position is presented first.

District Position:

The District proposes that the language relating to teaching load be changed because it ". . . is vague and does not apply accurately to the schedule presently operating at the Barron High School." With the elimination of the redundant language, according to the District, the Union remains free to grieve and go to arbitration if it is not satisfied with the teaching loads set by the administration in consultation with the teacher. As examples of redundancy the District cites the fact that there is no longer a junior high school and that those grades no longer utilize modular scheduling, and references to these are made in the contract language that the District seeks to eliminate.

Union's Position:

The Union contends that the District has provided no justification for eliminating the recommended standards found in the language pertaining to teaching load. The language has been in the contract since 1974 and the Union contends there has been no controversy over it. By deleting the language, the Union contends, the District

would delete any reference to what the parties jointly had in mind when they agreed to define work load in accordance with generally accepted standards.

Discussion:

The present teaching load language, containing recommendations for generally accepted standards was negotiated by the parties in 1974. There is no evidence that it has caused problems. It is the arbitrator's view that changes in such language should be negotiated where possible, not imposed by an arbitrator. The District asserts that at least some of the language is vague or redundant. The Union denies that, and the arbitrator does not find the record on this point sufficient for making that judgment. Even if the language were redundant, however, it would be the arbitrator's judgment that changes such as this should be negotiated by the parties. The District has shown no compelling reason for the arbitrator to change the language. Thus, on this issue, the arbitrator supports the Union's position.

Summary:

The statute requires that the arbitrator choose one party's offer in its entirety and not on an issue by issue basis. Having explored each issue above, the arbitrator must make a judgment about which entire offer to support. That choice is a clear one. The arbitrator has found in favor of the Union on the issues of salary and salary increments, layoffs, and teaching load. The arbitrator endorses the District's position on fair share and extra pay, although less strongly on these issues than he endorses the Union's position on the other issues. Having considered all of the issues in light of the evidence presented, the arguments, and the statutory criteria for decision, the arbitrator has concluded that the Union's position is more meritorious and should be supported. Based on all of these factors the arbitrator hereby makes the following AWARD

The final offer of the Union is selected and must be implemented by the District.

Dated this 9th day of November, 1978.

Edward B. Krinsky /s/

Edward B. Krinsky, Mediator-Arbitrator