

The instant collective bargaining unit includes all regular full-time and regular part-time certified teaching personnel employed by the Employer. (See the parties' 1976-1977 master contract, at Article I.) The parties stipulated at the instant arbitration meeting that all provisions in said master contract, not previously modified by mutual agreement, and not disputed herein, will continue in the written bargaining agreement determined herein; that said bargaining agreement shall have as its term August 31, 1977 to June 30, 1979; that all salaries and benefits provided by said 1977-1979 agreement shall be effective retroactively as of August 31, 1977; and that despite contrary indications in their final offers they have settled upon their 1978-1979 calendar.

The parties' final offers may be summarized as follows:

Salary. For 1977-1978 both parties would raise the 1976-1977 base of \$9,175 to \$9,600 and maintain the current salary schedule structure. That structure consists of seven educational attainment columns ranging from B.S. to M.S., with increments of \$150 between the columns; and twelve years-of-experience lanes, with increments of \$350 between the years.

For 1978-1979 the Board would raise the base to \$10,000, and maintain the structure. The Association would also raise the base to \$10,000; but it would change the structure to provide for horizontal increments of \$300, instead of \$150; and vertical increments of \$400, instead of \$350.

Both parties would maintain certain contract language which provides \$150 increments for each six credits earned after the M.S. degree, except that no one may earn more than that paid to those placed at M.S. with twelve years of experience.

Longevity. The Association offer includes 1977-1978 longevity pay at the rate of \$100 per year, for years 13 through 16. The Board proposes for 1977-1978: "13-16 years - \$100.00 per year, non-accumulative longevity pay," and for 1978-1979: "17-20 years - \$200.00 per year non-accumulative longevity pay."

Health Insurance. For 1977-1978 the Association proposes "Health insurance paid to the full amount stated as the \$ amount in the agreement for both family and single." For 1978-1979 it proposes "Any increase in health insurance shall be paid by the Board for both family and single and the agreement shall be amended to reflect the increased amount."

The Board's offer for 1977-1978 is as follows: "Pay up to a \$93.78 maximum family plan per month. Pay up to a \$34.50 maximum single plan per month." For 1978-1979 the Board proposes:

Family Plan - pay a maximum of \$93.78 through January 1, 1978; for the last six months of the contract, the board will pay up to an additional \$10.00 per month or a maximum of \$103.78.

Single Plan - pay a maximum of \$34.50 through January 1, 1979; for the last six months of the contract, the board will pay up to an additional \$4.00 per month, or a maximum of \$38.50."

The 1976-1977 contract included this insurance provision:

"W.E.A.C. Health Insurance - The Board will pay a maximum of \$59.30 per month for the family plan (if the premiums

go up on January 1, 1977, the Board agrees to pay an additional amount up to 10% of \$59.30 or \$65.23 for the same coverage) and a maximum of \$21.24 per month for the single plan (if the premiums go up on January 1, 1977, the Board agrees to pay an additional amount up to 10% of \$21.24 or \$23.36 for the same coverage) provided said plan is made available to all . . . personnel."

Just Cause. The Association offer includes the following provision for 1978-1979:

"No teacher shall be disciplined, discharged, or reduced in rank and compensation, and following two years of successful teaching and the gaining of the third contract, no teacher shall be non-renewed without just cause."

The Board would provide the first paragraph below for 1977-1978 and the second two paragraphs for 1978-1979:

"Teachers who are initially hired for the 1977-89 [sic] school year and teachers initially hired thereafter, shall serve a two school year probationary period during which the just cause standard does not apply. After serving the probationary period, a teacher may be nonrenewed for just cause. Those teachers hired prior to 1977-78 school year may be nonrenewed for just cause."

"a. The Board of Education reserves the right to withhold the granting of the yearly experience increment (known as 'step') to a teacher whose performance is deficient."

"b. If the teacher corrects the deficiency to the satisfaction of the Board of Education, the withheld yearly experience increment shall be paid to the teacher at the end of the school year."

The 1976-1977 agreement provided a "discipline procedure," a grievance procedure with binding arbitration, and "teacher evaluation" provisions. It also stated "no teacher will be discharged without good and sufficient cause," and "no teacher will be non-renewed except for a valid reason(s)."

Fair Share. The Board would not add a fair share provision to the parties' agreement. The Association proposes the following: 2/

"The Association, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees Association and non-Association, fairly and equally, and all employees in the unit will be required to pay, as provided in this article, their fair share costs of the collective bargaining process and contract administration as certified in a sworn statement by the Association. No employee shall be required to join the Association, but membership in the Association shall be made available to

2/ This proposed provision reflects an amendment of the fair share provision in the Association's final offer transmitted to the Mediator-Arbitrator by the WERC. The Employer consented to said amendment.

all employees who apply consistent with the Association constitution and bylaws. No employee shall be denied Association membership because of race, creed, color, sex, handicap or age.

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 earnings of all employees in the collective bargaining unit, in equal installments from each pay check, the amount of money certified by the Association. Such deductions shall be forwarded to the Association within 30 days of such deductions.

The employer will provide the Association with a list of employees from whom deductions are made with each remittance to the Association. The Association and the WEAC do hereby indemnify and shall save the Board harmless against any forms of liability 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 form of liability shall be under the exclusive control of the WEAC and its attorneys.

- C. The Association shall provide employes who are not members of the Association with an internal mechanism within the Association which allows those employes to challenge the fair share amount certified by the Association as the cost of representation and receive, where appropriate, a rebate of any moneys determined to have been improperly collected by the Association pursuant to this section."

At the instant arbitration meeting, which was commenced at 10:00 a.m. and was closed at 10:00 p.m., both parties presented extensive evidence in the forms of testimony and exhibits. There is no attempt by the Arbitrator to describe or evaluate all of said evidence herein. However, it has been studied in detail. Likewise, it should be understood that the representations of the parties' positions set forth herein are not exhaustive, but selective. The Arbitrator has, however, studied all arguments made at the hearing and in the briefs.

Distilled, the "economic" items in dispute are: (1) whether, as the Association proposes, the salary structure should be made more generous in 1978-1979; (2) whether the teachers in years 13-16 should receive longevity payments of \$100-\$400 respectively for 1977-1978, as the Association contends, or that plus \$200-\$800 for teachers in years 17-20 as the Board offers; and (3) whether, as the Association proposes, the teachers should enjoy full health insurance payment by the Board in 1978-1979, rather than the specified amounts indicated in the Board's offer for that school year.

In its brief, the Board states "the Board does not feel that the monetary package for the first year is really an issue as there is approximately a thousand dollars difference between the two packages." Indeed, according to a Board exhibit (#10) the disparity is \$1,230; whereas the 1978-1979 disparity, which includes an estimate of health insurance cost increases, is \$19,617. Further, the Employer asserts that its position herein is not grounded upon its ability to fund the Association's offer, and an analysis of the District's 1978-1979 budget by its Administrator demonstrates how the Association's offer may be implemented within that budget.

On these grounds, the Arbitrator would emphasize the concepts in contention among the disputed economic items rather than their costs. The major such concept is that of the salary schedule structure.

During the school years 1973-1974, 1974-1975, 1975-1976 and 1976-1977 the salary structure that the Board would maintain was in effect, except that in 1976-1977 the twelfth horizontal lane was added. The Association urges that this structure tends to compress the schedule by providing disproportionate increases to teachers with less educational attainment and experience. Most of the approximately twenty teachers in the bargaining unit, in fact, are at the twelfth horizontal lane.

Such compression may be in essential conflict with the presumptive underlying rationale for such a structure. That rationale is that service and educational attainment are to be encouraged and rewarded by correlative compensation. Distortion, i.e., departure from the rationale, occurs where teachers with more years of service or educational attainment find that, in comparison with their colleagues in the district, they are underpaid. This has, in fact, occurred in Twin Lakes. First, since 1973-1974 the disparity between the less experienced and educated and the more experienced and educated has decreased. Second, when compared to other districts in its geographic area, or state-wide, unlike the less educated and experienced teachers, the District's more educated and experienced teachers have increasingly fallen behind. The Association's position herein would address this distortion. The Board's position would aggravate it.

Thus, the Board's position "places" money where there are very few teachers, but fails to conform to the rationale of incentives and rewards for loyalty, experience and educational attainment which it ostensibly accepts. This, where there is no argument of financial constraint, and where the experienced teachers have not realized a gain in real income for a number of years.

Regarding longevity pay, the Association's offer is less generous, and is an apparent attempt to rectify the injustice that the Association perceives in the more experienced teachers' 1977-1978 salaries. The Association seems to prefer to address this structural concept in the schedule rather than by such extraneous payments. The Board, on the other hand, in its brief, "recognizes this problem" and asserts that it "will in the future attempt to alleviate" it.

The Board urges that its position on insurance for 1978-1979 is preferable on the grounds that, by setting a specified limit upon the Board's responsibility, it is consistent with the parties' past arrangements and avoids the budgetary difficulty of an unspecified responsibility. The Association emphasizes that the parties' agreement provides for no other form of insurance, and that fully paid health insurance is common among public employees including teachers, throughout the state and the pertinent geographical area.

The Arbitrator is impressed that the period of January to June, 1979 is the only one for which no dollar amount was available at the instant arbitration hearing; that the Association's proposal is expressed in dollar amounts rather than in terms of full coverage; and that there is no evidence of a likely substantial cost increase.

The "non-economic" items in dispute in this case are the Association's fair share proposal and the parties' offers respecting non-renewal, discharge, discipline, et cetera.

The Association's contentions in favor of fair share include that such provisions are common, if not in the majority, among Wisconsin's unionized municipal employers including school districts; and especially in the Employer's geographic area. It urges that the record indicates that Twin Lakes teachers who have so far chosen not to support the Association have required its services. The Association asserts the classic arguments respecting the basic fairness of its obligation to represent all bargaining unit members in negotiations and contract enforcement, without a corresponding obligation upon all such teachers to share the support of these efforts.

The Board would deny fair share on numerous grounds including the following. There has been no form of union security in the District in the past. "The Association never presented the Board with an opportunity to put into effect a dues deduction clause." The Association's proposal makes no exceptions for "those (present teachers) who have vehement objections to the Association." The Association has apparently overlooked a provision in the 1976-1977 agreement that "nothing in this Agreement shall require any teacher to participate in any Association, labor organization, employe agency or representation plan." This oversight is likely to lead to litigation. A fair share proposal lowers employee earnings by the amounts deducted and transmitted to the Union. "The Board does not believe that it is right to force people to contribute money to an association in which they do not believe." The Association assumed the risk of serving non-members when it organized the bargaining unit. "From the Board's point of view, it can see no benefits going to the children." The Association will have excessive power for "a good harmonious relationship between the two parties," if fair share is provided.

The Arbitrator shares the view of others that fair share provisions are simply arrangements whereby a democratically elected majority representative taxes those whom it must serve, irrespective of whether they prefer another representative or no representative. The Municipal Employment Relations Act specifically allows these arrangements, and the analogy to general governmental powers is obvious. They are indeed common in Wisconsin municipal employment, and growing more so. It is noted that the Board's final offer includes no union security item of a less strong variety.

Respecting the parties' dispute over "just cause," non-renewal, discharge, discipline, et cetera, the Arbitrator has studied both parties' offers, evidence and arguments and finds both of their positions to be meritorious in part and imperfect in part. Neither position, in the view of the undersigned is materially stronger or more persuasive. Furthermore, in this case both parties' offers are in arguable conflict with the 1976-1977 contract's references to the same subject areas.

The apparent conflicts between the parties' non-economic proposals and 1976-1977 provisions are troubling. They are likely to require grievance arbitration or litigation if the parties continue to dispute these matters. On the other hand, as the Association urges, impasse arbitration, as negotiations, includes the inherent possibility of new contract provisions that will later be the subject of grievances. Only very careful collaborative negotiations can minimize that risk. The undersigned notes that these conflicts or

redundancies were apparently not recognized by either party prior to the instant briefs. It seems extremely unlikely that such offers would have been drafted if their potentials for grievances had been discussed. It is the intent of this Arbitrator that the offers should govern in any future conflict as they, and not the former contract's provisions, were apparently intended by their drafters to be fully effective, and are definitely so intended by the undersigned.

AWARD

On the basis of the foregoing, the record as a whole, and all of the factors set forth at Section 111.70(4)(cm)7., the undersigned hereby adopts the final offer of the Association.

Dated at Madison, Wisconsin this 17th day of January, 1979.

By Howard S. Bellman
Howard S. Bellman, Arbitrator