

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Mediation-
Arbitration of a Dispute Between
UNITED LAKEWOOD EDUCATORS
and
SCHOOL DISTRICT OF MUKWONAGO

:
:
:
:
:
:

AWARD
Decision No. 16363-A

Appearances: MR. LARRY L. KELLEY, Chief Negotiator, on behalf
of United Lakewood Educators.

Mulcahy and Wherry, S.C., by MR. MICHAEL L. ROSHAR,
Attorney, for the School District of Mudwonago.

BACKGROUND

The above parties were found to have reached an impasse in their negotiations on a two-year agreement covering the years 1977-78 and 1978-79 by a representative of the Wisconsin Employment Relations Commission on or about May 10, 1978. A Certification of Impasse was issued by the WERC on May 12, 1978. On May 23, 1978, the WERC appointed the undersigned to serve as mediator-arbitrator to endeavor to mediate and/or arbitrate the dispute pursuant to the Wisconsin Statutes.

By mutual agreement of the parties, and no petitions having been filed by the public requesting a public hearing, the matter was set for an initial mediation session for August 21, 1978. Mediation efforts were engaged in on such date which resulted in no mutual negotiated settlement of the issues in dispute as contained in the final offers previously submitted by the parties.

At approximately 8:00 P.M. on August 21, 1978, by previous mutual agreement of the parties, the mediator-arbitrator determined that further mediation efforts would not result in a mutual voluntary negotiated agreement and served written notice on both parties at that time of intent to engage in arbitration for the purpose of resolving the issues. The matter thereupon proceeded to be heard in arbitration wherein both parties were given full opportunity to present such evidence, submit such documents, and enter such testimony and arguments as they deemed relevant to the unresolved issues.

Subsequent to such hearing, each party filed briefs with the mediator-arbitrator which were exchanged with the parties on September 12, 1978. Both parties thereafter filed reply briefs with the mediator-arbitrator which were exchanged and mailed to the respective parties on September 21, 1978.

THE FINAL OFFERS

The parties had reached tentative agreement, which tentative agreements were filed with the Wisconsin Employment Relations Commission and with the mediator-arbitrator prior to the subject hearing. The final offers of the parties involved three unresolved areas of dispute. The unresolved issues were:

1. Non-recrimination provision;
2. Salary schedule for 1977-78;
3. Salary schedule for 1978-79.

The specific proposals of each party are as follows:

No. 1 Non-discrimination provision.

District Proposal.

1. All letters of reprimand issued to high school teachers for refusal to properly submit required reports are to remain in the individual teacher's files unchanged subject to the periodic review procedures already set forth at Article 10(F) of the Agreement.
2. The execution of the suspensions imposed upon the Clarendon elementary teachers will be held in abeyance for the term of this Agreement provided that the teachers involved do not engage in comparable conduct during the remainder of this Agreement. If, at the end of this Agreement, said teachers have not engaged in comparable conduct, the suspensions will never be imposed but the letters of reprimand will remain in the teachers' files subject to the Article 10(F) review procedures.

ULE Proposal.

The District agrees to withdraw letters of reprimand from teachers' personnel files per the 2/11/76 letter attached to the 1975-77 Agreement. Will accept same letter with dates changed to reflect the current school year.

(The February 11, 1976 letter referred to states as follows:

" TO: MEA
FROM: Mukwonago Board of Education
SUBJECT: Letters of Reprimand

"The Board will not take reprisals against any teacher for activities arising from the bargaining climate or related to effecting a settlement of this Agreement except that:

1. Letters of reprimand contained in teacher files will be collected and held in a central file only until the last day of the 1975-76 school year, at which time they will be rescinded and destroyed; and,
2. Any other disciplinary action pending will be hereby revoked as of this 11th day of February, 1976."

No. 2 Salary Schedule for 1977-78.

District Proposal.

(Attached and marked "District Offer."

ULE Proposal.

(Attached and marked "ULE Offer."

No. 3 Salary Schedule for 1978-79.

District Proposal

(Attached and marked "District Offer."

ULE Proposal.

(Attached and marked "ULE Offer."

1977-1978 SALARY SCHEDULE

WITH DENTAL INSURANCE
 IMPLEMENTED IN SECOND YEAR

| STEP | BA | BA+9 | BA+18 | BA+27 | MA | MA+9 | MA+18 | MA+27 |
|------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1 | 9850 | 10050 | 10300 | 10600 | 10900 | 11250 | 11600 | 11950 |
| 2 | 10200 | 10400 | 10650 | 10950 | 11400 | 11700 | 12050 | 12400 |
| 3 | 10500 | 10700 | 10950 | 11250 | 11800 | 12100 | 12450 | 12800 |
| 4 | 10850 | 11050 | 11300 | 11600 | 12200 | 12500 | 12850 | 13200 |
| 5 | 11150 | 11400 | 11650 | 11950 | 12600 | 12900 | 13250 | 13600 |
| 6 | 11550 | 11750 | 12000 | 12300 | 13000 | 13300 | 13650 | 14000 |
| 7 | 11950 | 12150 | 12400 | 12700 | 13400 | 13700 | 14050 | 14400 |
| 8 | 12350 | 12550 | 12800 | 13100 | 13850 | 14150 | 14500 | 14850 |
| 9 | 12750 | 12950 | 13200 | 13500 | 14300 | 14600 | 14950 | 15300 |
| 10 | 13250 | 13450 | 13700 | 14000 | 14750 | 15050 | 15400 | 15750 |
| 11 | 13750 | 13950 | 14200 | 14500 | 15250 | 15550 | 15900 | 16250 |
| 12 | 14350 | 14550 | 14800 | 15100 | 15750 | 16050 | 16400 | 16750 |
| 13 | 14950 | 15150 | 15400 | 15700 | 16300 | 16600 | 16950 | 17300 |
| 14 | 15600 | 15800 | 15950 | 16350 | 16850 | 17150 | 17500 | 17850 |
| 15 | | | | | 17450 | 17750 | 18100 | 18450 |
| 16 | | | | | 18050 | 18350 | 18700 | 19050 |

11/16/78
 5/16/78

District Offer

1977-78

JK
4/27/78

Salary Schedule

| STEP | BA | BA+9 | BA+18 | BA+27 | MA | MA+9 | MA+18 | MA+27 |
|------|-------------------------------|---------------------------|---------------------------|---------------------------|-----------------------------|---------------------------|---------------------------|---------------------------|
| 1 | 9850 | 10050 | 10300 | 10600 | 10900 | 11250 | 11600 | 11950 |
| 2 | <i>200,018</i> (19.6)10205 | <i>20,810</i> (2)10405 | <i>10,655</i> (1)10655 | 10955 | <i>22,710</i> (2)11355 | 11705 | 12055 | 12405 |
| 3 | <i>245,817</i> (23.4)10505 | <i>42,820</i> (4)10705 | 10955 | <i>11,255</i> (1)11255 | <i>23,510</i> (2)11755 | 12105 | 12455 | 12805 |
| 4 | <i>104,208</i> (9.6)10855 | <i>33,165</i> (3)11055 | 11305 | 11605 | <i>12,155</i> (1)12155 | 12505 | 12855 | 13205 |
| 5 | <i>134,460</i> (12)11205 | <i>22,810</i> (2)11405 | <i>34,965</i> (3)11655 | <i>11,955</i> (1)11955 | <i>12,555</i> (1)12555 | 12905 | 13255 | 13605 |
| 6 | <i>80,885</i> (7)11555 | <i>11,755</i> (1)11755 | <i>12,005</i> (1)12005 | <i>12,305</i> (1)12305 | <i>38,865</i> (3)12955 | 13305 | 13655 | 14005 |
| 7 | <i>119,550</i> (10)11955 | <i>36,465</i> (3)12155 | <i>24,800</i> (2)12405 | 12705 | <i>53,420</i> (4)13355 | <i>4,112</i> (.3)13705 | 14055 | 14405 |
| 8 | <i>55,597</i> (4.5)12355 | <i>50,220</i> (4)12555 | <i>12,805</i> (1)12805 | <i>13,105</i> (1)13105 | <i>82,830</i> (6)13805 | <i>14,155</i> (1)14155 | <i>14,505</i> (1)14505 | 14855 |
| 9 | <i>51,160</i> (4)12790 | 12990 | 13240 | <i>27,080</i> (2)13540 | <i>14,290</i> (1)14290 | 14640 | 14990 | 15340 |
| 10 | <i>39,870</i> (3)13290 | <i>26,980</i> (2)13490 | 13740 | <i>14,040</i> (1)14040 | <i>14,740</i> (1)14740 | <i>30,180</i> (2)15090 | 15440 | <i>15,790</i> (1)15790 |
| 11 | <i>55,160</i> (4)13790 | 13990 | 14240 | 14540 | 15240 | 15590 | 15940 | 16290 |
| 12 | <i>51,804</i> (3.6)14390 | <i>14,590</i> (1)14590 | <i>14,840</i> (1)14840 | 15140 | 15740 | 16090 | 16440 | 16790 |
| 13 | <i>29,980</i> (2)14990 | 15190 | 15440 | <i>31,480</i> (2)15740 | 16290 | <i>16,640</i> (1)16640 | 16990 | 17340 |
| 14 | <i>171,490</i> (11)15590 | <i>31,580</i> (2)15790 | <i>95,640</i> (6)15940 | <i>65,360</i> (4)16340 | <i>50,520</i> (3)16840 | 17190 | 17540 | <i>17,980</i> (1)17890 |
| 15 | | | | | 17440 | 17790 | 18140 | 18490 |
| 16 | | | | | <i>234,520</i> (13)18040 | <i>55,170</i> (3)18390 | <i>37,480</i> (2)18740 | <i>76,360</i> (4)19090 |
| | \$1,339,999 | \$291,195 | \$205,720 | \$186,580 | \$560,115 | \$120,257 | \$51,985 | \$110,040 |

TOTAL = \$2,865,891

Based on 219 FTE Staff

1977-78 Schedule \$2,865,891 (7.286%)

Red Circle 2,840

Longevity 12,452 (attached)

1977-78 2,881,183

1976-77 2,683,712

\$ 197,471 (7.358%)

ULE Offer

5/9/78

CONTINGENT SALARY OFFER - 1978-79

| <u>Steps on Schedule</u> | <u>BA</u> | <u>BA+9</u> | <u>BA+18</u> | <u>BA+27</u> | <u>MA</u> | <u>MA+9</u> | <u>MA+18</u> | <u>MA+27</u> |
|--------------------------|-----------|-------------|--------------|--------------|-----------|-------------|--------------|--------------|
| 1 | 10300 | 10500 | 10750 | 11050 | 11350 | 11750 | 12150 | 12550 |
| 2 | 10600 | 10800 | 11050 | 11350 | 11750 | 12150 | 12550 | 12950 |
| 3 | 10900 | 11100 | 11350 | 11650 | 12150 | 12550 | 12950 | 13350 |
| 4 | 11250 | 11450 | 11700 | 12000 | 12550 | 12950 | 13350 | 13750 |
| 5 | 11600 | 11800 | 12050 | 12350 | 12950 | 13350 | 13750 | 14150 |
| 6 | 11950 | 12150 | 12400 | 12700 | 13350 | 13750 | 14150 | 14550 |
| 7 | 12350 | 12550 | 12800 | 13100 | 13850 | 14250 | 14650 | 15050 |
| 8 | 12750 | 12950 | 13200 | 13500 | 14350 | 14750 | 15150 | 15550 |
| 9 | 13150 | 13350 | 13600 | 13900 | 14850 | 15250 | 15650 | 16050 |
| 10 | 13650 | 13850 | 14100 | 14400 | 15350 | 15750 | 16150 | 16550 |
| 11 | 14150 | 14350 | 14600 | 14900 | 15850 | 16250 | 16650 | 17050 |
| 12 | 14750 | 14950 | 15200 | 15500 | 16450 | 16850 | 17250 | 17650 |
| 13 | 15350 | 15550 | 15800 | 16100 | 17050 | 17450 | 17850 | 18250 |
| 14 | 15950 | 16150 | 16400 | 16700 | 17650 | 18050 | 18450 | 18850 |
| 15 | | | | | 18250 | 18650 | 19050 | 19450 |
| 16 | | | | | 18850 | 19250 | 19650 | 20050 |

\$400.00 will be paid to each teacher who has achieved the maximum step in a salary lane for one (1) or more years.

*MLR
5/9/78*

District Offer

MUKWONAGO

1978-79

Salary Schedule

JK
4/27/78

| STEP | BA | BA+9 | BA+18 | BA+27 | MA | MA+9 | MA+18 | MA+27 |
|------|------------------------------------|--------------------------------|---------------------------------|---------------------------------|----------------------------------|----------------------------------|--------------------------------|--------------------------------|
| 1 | 10350 | 10575 | 10825 | 11100 | 11400 | 11725 | 12075 | 12450 |
| 2 | 10675 | 10900 | 11150 | 11425 | 11825 | 12150 | 12500 | 12875 |
| 3 | ^{215,600} (19.6) 11000 | ^{22,450} (2) 11225 | ^{11,475} (1) 11475 | 11750 | ^{24,500} (2) 12250 | 12575 | 12925 | 13300 |
| 4 | ^{266,175} (23.4) 11375 | ^{46,400} (4) 11600 | 11850 | ^{12,125} (1) 12125 | ^{25,400} (2) 12700 | 13025 | 13375 | 13750 |
| 5 | ^{112,800} (9.6) 11750 | ^{35,925} (3) 11975 | 12225 | 12500 | ^{15,150} (1) 13150 | 13475 | 13825 | 14200 |
| 6 | ^{146,100} (12) 12175 | ^{24,800} (2) 12400 | ^{37,950} (3) 12650 | ^{12,925} (1) 12925 | ^{13,600} (1) 13600 | 13925 | 14275 | 14650 |
| 7 | ^{88,200} (7) 12600 | ^{12,825} (1) 12825 | ^{13,075} (1) 13075 | ^{13,350} (1) 13350 | ^{42,300} (3) 14100 | 14425 | 14775 | 15150 |
| 8 | ^{130,750} (10) 13075 | ^{39,900} (3) 13300 | ^{27,100} (2) 13550 | 13825 | ^{58,400} (4) 14600 | ^{4,477.5} (.3) 14925 | 15275 | 15650 |
| 9 | ^{60,975} (4.5) 13550 | ^{55,100} (4) 13775 | ^{14,025} (1) 14025 | ^{14,300} (1) 14300 | ^{90,600} (6) 15100 | ^{15,425} (1) 15425 | ^{15,775} (1) 15775 | 16150 |
| 10 | ^{56,300} (4) 14075 | 14300 | 14550 | ^{29,650} (2) 14825 | ^{15,650} (1) 15650 | 15975 | 16325 | 16700 |
| 11 | ^{43,800} (3) 14600 | ^{29,650} (2) 14825 | 15075 | ^{15,350} (1) 15350 | ^{16,200} (1) 16200 | ^{33,050} (2) 16525 | 16875 | ^{17,250} (1) 17250 |
| 12 | ^{60,700} (4) 15175 | 15400 | 15650 | 15925 | 16750 | 17075 | 17425 | 17800 |
| 13 | ^{56,700} (3.6) 15750 | ^{15,975} (1) 15975 | ^{16,225} (1) 16225 | 16500 | 17350 | 17675 | 18025 | 18400 |
| 14 | ^{212,875} (13) 16375 | ^{33,200} (2) 16600 | ^{101,100} (6) 16850 | ^{102,750} (6) 17125 | 17950 | ^{18,275} (1) 18275 | 18625 | 19000 |
| 15 | | | | | ^{55,800} (3) 18600 | 18925 | 19275 | ^{19,650} (1) 19650 |
| 16 | | | | | ^{250,250} (13) 19250 | ^{58,725} (3) 19575 | ^{39,850} (2) 19925 | ^{81,200} (4) 20300 |

\$1,450,975 \$316,225 \$220,950 \$200,450 \$605,850 \$129,952 \$55,625 \$118,100

\$400 Longevity

\$600 Longevity

Based on 219 FTE Staff

TOTAL = \$3,098,127

1978-79 Schedule \$3,098,127

Red Circle 2,840

Longevity 22,400

ULE Offer

\$3,123,367 (8.0405%)

ARGUMENTS AND DISCUSSION

The District entered as Board Exhibit No. 28 a comparative computation of the two offers for the 1977-78 school year based upon a teacher staff of 219 teachers. The Board's computation is as follows:

" SCHOOL DISTRICT OF MUKWONAGO

Mukwonago, Wisconsin

5/9/78

Negotiations Computation

9 Teachers

| | <u>Actual for 1976-77</u> | <u>Board Offer 1977-78</u> | <u>Union Request for 1977-78</u> |
|--------------------------|-------------------------------|--------------------------------|--------------------------------------|
| Salaries | \$2,671,272.00 | \$2,864,375.00 | \$2,865,891.00 |
| Top of Schedule Payment | \$ 9,600.00 | \$ 13,763.00 | \$ 12,452.00 |
| Mid Circle Payment | \$ 2,840.00 | \$ 2,775.00 | \$ 2,840.00 |
| Extra Duties-Add.Assign. | \$ 52,388.00 | \$ 54,898.00 | \$ 54,641.00 |
| TOTAL SALARIES | \$2,736,100.00 | \$2,935,811.00 | \$2,935,824.00 |
| DOLLAR INCREASE | | \$ 199,711.00 | \$ 199,724.00 |
| PERCENT OF INCREASE | | 7.3% | 7.3% |
| <u>FRINGE BENEFITS</u> | | | |
| Retirement | \$ 325,596.00 | \$ 349,361.00 | \$ 349,363.00 |
| Social Security | \$ 154,904.00 | \$ 176,202.00 | \$ 176,149.00 |
| Health Insurance | \$ 105,780.00 | \$ 139,808.00 | \$ 139,808.00 |
| Life Insurance | \$ 16,912.00 | \$ 17,120.00 | \$ 17,120.00 |
| Disability Insurance | \$ 13,711.00 | \$ 20,844.00 | \$ 20,924.00 |
| TOTAL FRINGE BENEFITS | \$ 616,903.00 | \$ 703,335.00 | \$ 703,364.00 |
| TOTAL SALARIES & FRINGES | \$3,353,003.00 | \$3,639,146.00 | \$3,639,188.00 |
| DOLLAR INCREASE | | \$ 286,143.00 | \$ 286,185.00 |
| PERCENT OF INCREASE | | 8.53% | 8.54% |

The Union submitted its calculation based upon the same format as that utilized by the District. Aside from a slight difference in the total salary figure and the top of salary payment figure, both parties utilized the same figures. The differential between the figures used in those categories are minimal and do not substantially affect the computation. The Union did, however, work into their computation a sum representing a physical education grievance settlement that presumably was settled subsequent to the 1976-77 contract and was paid by virtue of such settlement. Their computation of the Board's offer and the ULE offer in arriving at a percentage increase is as follows:

UNITED LAKEWOOD EDUCATORS
ANALYSIS OF
FINAL ECONOMIC OFFER WITH 219 TEACHERS

| | <u>Board Offer</u> | <u>ULE OFFER</u> |
|-----------------------------------|----------------------|----------------------|
| Salaries | \$2,863,825 | \$2,865,891 |
| Red Circle Payments | 2,775 | 2,775 |
| Longevity | 12,452 | 12,452 |
| Extra Duty - Added Assignments | 54,898 | 54,641 |
| Phy. Ed. Grievance Settlement | <u>16,062</u> | <u>16,062</u> |
| Total Salaries | \$2,950,012 | \$2,951,821 |
| | Difference-\$213,912 | Difference-\$215,721 |
| | = 7.82% | = 7.88% |

| | | |
|--|----------------|----------------|
| Fringe Benefits | \$ 351,051 | \$ 351,267 |
| Retirement (.119) | 176,411 | 176,519 |
| Social Security (.0598) | 139,808 | 139,808 |
| Health Insurance **(1977-78: F=76.90x137 S=27.92.74 | | |
| Life Insurance | 17,120 | *17,120 |
| Disability Insurance | 20,844 | *20,844 |
| Dental Insurance | <u>--</u> | <u>--</u> |
| Total Fringes | \$ 705,234 | \$ 705,558 |

| | | |
|------------------------|----------------------|----------------------|
| TOTAL SALARY & FRINGES | \$3,655,246 | \$3,657,379 |
| | Difference-\$302,243 | Difference-\$304,376 |
| | or 9.01% | =9.08% increase |

** Source: WEA Insurance Trust James Utrie, Representative
* District figures per implementation of irretrievable protection."

It would seem that to then be consistent one should properly add the sum of \$16,062.00 to the total salary cost for 1976-77 in order to be accurate as to the proper amount of total salaries applicable to 1976-77. In doing so, the percentage computation of the proposals for 1977-78 would then be charged as follows:

| | 1976-77 | District Offer | ULE Offer |
|-----------------------------------|-----------------|-------------------|-------------------|
| Salaries | \$2,671,272 | \$2,864,375* | \$2,865,891 |
| Top of Schedule payments | 9,600 | 13,763** | 12,452 |
| Red Circle payments | 2,840 | 2,775 | 2,775 |
| Extra Duty - Added assignments | 52,388 | 54,898 | 54,641 |
| Grievance settlement | <u>16,062</u> | <u> </u> | <u> </u> |
| Total Salaries | \$2,752,762 | \$2,935,811 | \$2,935,824 |
| | | Difference= | Difference= |
| | | \$183,049= | \$183,062= |
| | | 6.65% | 6.665% |

* The District's computation appears to be correct. The Union's computation of \$2,863,825 appears to have computed one teacher erroneously at MA plus 9 on step 12 rather than at step 13.

** Neither party submitted work sheet data from which the arbitrator can determine the correct amount. The Union used the figure of 12,452 in the above computation, however, in later computations involving the 1978-79 offer the Union utilizes the District's figure.

The computations of the District, as shown by their computations, hereinabove set forth, shows that the roll-up percentage costs for 1977-78 would be approximately (8.53% less 7.3%) 1.23 percent. If one then adds the above computed 6.65% thereto one arrives at a total percentage increase of 7.88% (District offer) or 7.895% (ULE offer).

As can readily be seen from the above comparative analysis, the difference between the two offers for 1977-78 is not significant. The more important feature of the above computations is that of arriving at what would seem to be the most accurate and appropriate total 1977-78 compensation figure against which the 1978-79 offers are to be computed.

The record reveals that for the 1978-79 school year the teaching staff was increased to 229, ten more than the level for 1977-78. It was therefore necessary that the total salary figure be recomputed so as to have a base total salary denominator from which percentages can be computed.

The Board reconstructed such base figure at \$3,030,461.00. The Union's computation, less the grievance settlement figure, was \$3,032,656.00. Such difference is not significant. The arbitrator reconstructed the District offer against the list of staff placement as shown on Board Exhibit No. 26 and determined the Union's "Salaries" computation to be accurate. The base that will herein be used to compute percentage on the District's 1978-79 offer will then be the Union's figure.

The arbitrator also finds the parties differing as to the proper amount to use for "Red Circle Payments." The Union's figure of \$2,370 is supported by back-up documents, whereas the District's figure of \$2,775 is not. The arbitrator will therefore use the Union's figure.

With such differences resolved, one then finds the following comparison:

| | <u>District Offer</u> | <u>ULE Offer</u> |
|--------------------------------|-----------------------|-----------------------|
| Salaries | 1978-79 | 1978-79 |
| | \$3,142,320 | \$3,201,321 |
| Top of Schedule payments | 17,200 | 22,600 |
| Red Circle payments | 2,370 | 2,370 |
| Extra Duty - Added assignments | <u>57,650</u> | <u>55,100</u> |
| Total Salaries | \$3,219,540 | \$3,281,391 |
| | less \$3,032,656* | less \$3,046,881* |
| | Difference 186,884 | difference 234,510 or |
| Percentage of increase | or 6.16% | 7.7% |

* Said base represents computing the 1977-78 Union proposal to the staff placement as shown by District Exhibit No. 26, which the arbitrator has checked and finds compares with the Union's computation.

The parties entered differing computations concerning the roll-up costs of fringe benefits. The arbitrator is not able to fully resolve and determine the basis for their differences. In any event, it appears that the roll-up percent would be in the approximate area of 1.75%. The District's computations show a 1.7% roll-up resulting from the District's offer and a 1.77% roll-up as applied to the ULE offer.

If one then applies 1.75% as a roll-up percent to the above 1978-79 computations, one would find that the gross percentage cost of the District offer would be 7.91% and the ULE offer would be 9.45%. The difference between the offers of the two parties thus being approximately 1.5%.

The salary issue to therefore be resolved is that of determining which of the two offers (primarily as it relates to the 1978-79 proposals) is the more reasonable as supported by the criteria and comparative data that is the most relevant. Two basic criteria were presented and argued by the parties, to-wit: (1) cost of living, and; (2) comparisons to other school districts.

The arbitrator will deal first with the comparability consideration.

The District determined, what they contend should be the other school districts to which they should be compared, by utilization of four criteria, namely, (1) geographic proximity, (2) average daily pupil membership and bargaining unit staff, (3) full value taxable property, and (4) state aid. As a result of application of such criteria the District determined that the following twelve districts should be used as the most relevant to which comparisons should be made, namely Menomonee Falls, New Berlin, Oconomowoc, Hamilton, Muskego, Burlington, Kettle Moraine, Whitewater, Elkhorn, East Troy, Waukesha and Waterford. Waterford, however, was not settled as of the date of such selection and it was therefore excluded.

The ULE submitted comparative data involving approximately 36 districts, which included 7 districts used by the Board. The majority of the other districts referred to by the ULE were located in the Milwaukee Metropolitan area.

Because of the fact that the 1977-78 final offers of both parties are so extremely close, the arbitrator has focused consideration and review primarily on the 1978-79 data.

As a general principle, the undersigned agrees with the District's approach in that application of the four criteria which they utilized, are relevant, acceptable and recognized criteria. The arbitrator does not agree with the District's contention that all other districts utilized by the ULE should be disregarded, however.

In the considered judgment of this arbitrator, it would reasonably appear from a detailed analysis of the broad spectrum of school districts in and around the Milwaukee Metropolitan area that the City of Milwaukee exerts an influence into contiguous districts and that such influence further extends beyond such contiguous districts in a diminishing domino type effect that has relationship to distance. Of course, there are numerous localized factors that cause substantial variations as between districts located in equal proximity, but the major principle that must be recognized is that there is an influence that extends from the center of the metropolis to those surrounding.

In practical application thereof it would then follow that Muskego, for instance, would be effected more than would Mukwonago for the reason that it is closer to the metropolitan center. By the same application, it would seem that Elkhorn, Whitewater, East Troy and Burlington, being located more distant from the metropolitan center, would be less influenced thereby.

While such factor is viewed as a definite influence that must receive consideration, the application thereof is not without considerable problems. First, what relative weight should be given to such factor? Secondly, districts located in the same relative circular distance from the metropolitan center vary considerably. To what extent are their individual variances dependent upon the metropolitan influence, or do their differences result from a difference in their tax base, pupil and staff ratio or some other material influence?

For instance, New Berlin has a higher per pupil tax base and is located closer to the metropolitan center, yet their 1978-79 rates would be \$280 higher than Mukwonago at the BA plus 0 maximum and \$140 lower at the MA plus 0 maximum. Menomonee Falls, which would be comparable to New Berlin as to relative distance from the metropolitan center, does appear to show such influence as such district is \$134 higher than Mukwonago at the BA plus 0 maximum and \$450 higher at the MA plus 0 maximum. By the same analysis one finds that Muskego is higher by \$1,158 and \$655 respectively. All of the above dollar comparisons are based on the 1978-79 rates as compared to the District's final offer and includes longevity as a plus or minus factor.

The sole district for which data is available that would be in the same relative circular distance for the metropolitan center, is that of Kettle-Moraine. The pupil tax base ratio is also comparable. In such comparison one finds that Kettle-Moraine is \$1,400 lower than Mukwonago at the BA plus 0 maximum lane and \$1,430 lower at the MA plus 0 maximum lane.

The ULE made a detailed comparison with the Franklin School District, which is located adjacent to Muskego and closer to the metropolitan center. The BA plus 0 maximum rate for 1978-79 at Franklin is \$17,576, which would be \$1,226 higher than the District offer and the MA plus 0 maximum rate of \$19,968, which would be \$718 higher than the District offer. The ULE offer proposes a BA plus 0 maximum rate that is \$425 higher than the District's offer and \$400 higher at the MA plus 0 maximum.

The District used as part of their comparison, East Troy School District which provides a BA plus 0 maximum rate of \$12,850 (including longevity) and an MA plus 0 maximum rate of \$17,400 (including longevity). In comparison the District's offer would be \$3,500 higher at the BA plus 0 maximum and \$1,850 higher at the MA plus 0 maximum. Additionally, the District of East Troy is adjacent to that of Mukwonago and conceivably should be more relevant for comparative purposes than Franklin which is not adjacent. The wide differences between the rates provided in both of such districts are such that no obvious basis exists upon which one can determine a relevant relationship. Evidently each district is subject to some unidentifiable influences that have had bearing upon their rate structure. In the judgment of the arbitrator, such two districts in essence cancel each other out for comparative purposes in this case.

On the basis of a detailed study and evaluation of the vast amount of evidentiary material submitted in this case by both parties, the undersigned is of the judgment that on a comparative basis, the District's final offer is, by the narrowest of margins, the more comparatively reasonable.

Cost of Living Analysis.

Each party utilized a different approach to an analysis of cost of living. The District compared the increase in the CPI to the increases applied to the BA and MA base salaries which revealed that the BA and MA rates had increased 49.5% and 47.1% respectively while the CPI had advanced 45.1% over the period 1972 to August, 1978.

The ULE directed itself to the last two years of the CPI and determined that there had been a 15.08% increase in the CPI from August, 1976 to August, 1978. In their computation they also give credit for the lane increase based on experience which they compute at 3.69% per year or 7.38% for the two-year period. Under their theory, the CPI increase of 15.08 should be increased by adding 7.38% so as to indicate that the total increase should be 22.46% for the two years merely to stay even with the cost of living.

The arbitrator has determined that the applicable CPI in this case is properly that of the Milwaukee index and that the applicable increase in CPI from August, 1976 to August, 1977 was 5.6% and for the similar 12-month period 1977-78 it was 9.7% for a total increase over the two-year period of 15.3%.

The District computed the percentage value of the District's offer on wages only as being 7.3% for 1977-78 and with roll-ups at 8.53%. For 1978-79 their computation was 6.34% and 8.04% respectively. The two-year percentage increase on wages only would then be 13.64% and a total dollar increase as being 16.57%.

The percentage increases as computed by the undersigned as shown earlier in this award would be as follows:

| | <u>Wages only</u> | | <u>Total Dollar Cost</u> | |
|---------|-------------------|------------|--------------------------|------------|
| | <u>District</u> | <u>ULE</u> | <u>District</u> | <u>ULE</u> |
| 1977-78 | 6.65 | 5.554 | 7.88 | 7.895 |
| 1978-79 | 6.16 | 7.7 | 7.91 | 9.45 |
| Totals | 12.81% | 14.365% | 15.79% | 17.345% |

If one then applies the two year CPI increase of 15.3% thereto, one finds that the District's final offer is slightly in excess of the CPI as applied to the total dollar cost. The majority of the fringe benefit roll-up costs are clearly expenditures that are direct dollar benefits to employees. Retirement and insurance contributions are clearly a dollar benefit to the employee. Increased Social Security is the only roll-up cost that arguably is not. The Social Security increase, however, if excluded from a CPI consideration, is not so large as to significantly alter the above comparison. The District offer would still be the closest to the CPI rise of 15.3%.

The more critical aspect to determine concerns the contention of the ULE that the salary schedule step increases that are attributable to experience should not be counted as part of the increase as applied against the CPI.

While such argument has merit, it is also a fact that parties differ substantially as to how much of the step increases are related to the factor of increased experience as opposed to the contention that the step increases are merely a form of salary increase similar to vacation benefits that simply provide salary increments in recognition of length of service. Another concept is that it is merely a form of longevity compensation. Additionally, it is distinguished from the shop production type industry where pay increments are predicated on the premise that as a production employee gains skill and experience on a job, his level and quality of production improves. As a result such employee produces less scrap, produces more quality saleable pieces and therefore directly earns more by production efficiency. The same cannot be applied to the education area. While the quality of teaching may improve with experience, there generally is no increased productivity in a sense that reduces any cost (Commensurate with increase in productivity efficiency) to the School District.

From a District's viewpoint, their concern is that of total cost and the source of any increase is basically immaterial. Their concern is that of total cost.

From a strict cost-of-living standpoint, it can also be viewed as being applied to the gross increase of spendable dollars that is represented by a proposed increase. As such, it does not consider where the dollars come from. If the gross increase in spendable dollars is 5% and the CPI increase is 5%, the employee presumably then makes neither a gain or loss with respect to CPI.

It appears to the arbitrator that more persuasive reasons exist to include the step increase amounts as part of the total dollar increase without exception.

It would therefore follow that with respect to the cost-of-living factor, the District's offer is more closely in conformity to the applied CPI.

Non-Recrimination Issue.

The parties have had a fairly long and stormy relationship. Prior to settlement of the 1975-77 Labor Agreement, certain teachers engaged in conduct involving attendance reporting of students for which the School District issued various letters of reprimand. Such matter was made a part of the negotiations and settlement of the 1975-77 contract and the parties reached agreement thereon to resolve such matter as shown by the letter of February 11, 1976, hereinabove set forth.

During the negotiations on the current Labor Agreement, certain teachers again allegedly engaged in certain similar type conduct for which the District again issued various letters of reprimand. Grievances have been filed on each of such letters of reprimand and such grievances are currently pending and being processed to arbitration.

The subject non-recrimination proposals are based on such teacher actions and allegations by the District for which the disciplinary letters have been issued and which matters are currently pending in arbitration. The Union initially desired to have the undersigned mediator-arbitrator resolve the merits of the various disciplinary letters in this mediation-arbitration proceedings along with the proposed issue of non-recrimination language. The merit question of such pending matters was, however, reserved and left to the individual arbitration process of each matter that was pending and the sole issue then presented to the mediator-arbitrator for resolution concerns that of the non-recrimination language.

The arbitrator has considered the positions and arguments of both parties in detail with respect to this issue and is of the considered judgment that the District's proposal is to be favored on such issue.

The evidence reveals that grievances have been filed and are presently being processed to arbitration on the merits of each disciplinary letter so grieved. It is normally recognized that where a grievance matter is presented to a grievance arbitrator, that such arbitrator not only has the obligation to determine the merits

of the dispute before him, but that he likewise has the obligation and authority to determine the appropriate remedy. Were a non-recrimination clause such as proposed by the Union granted in this mediation-arbitration procedure, the effect would be to nullify and usurp the normal authority of the grievance arbitrator to fashion an appropriate remedy based on his determination of the merits of the grievances. This arbitrator is of the opinion that such result is neither desirable nor consistent with the process. The undersigned therefore reaches the conclusion that the District offer is the more reasonable and proper under the circumstances of this case.

DISCUSSION OF DISTRICT'S
IMPLEMENTATION OF 1978-79 TENTATIVE
AGREEMENT AND DISTRICT'S SALARY PROPOSAL

The ULE contends that the District's actions are relevant in two respects. First, the District and ULE had specifically agreed in writing that the 1975-77 master agreement was to remain in full force and effect until a successor agreement is executed.

Secondly, the ULE contends that by unilaterally implementing the tentative agreements and the District's salary proposal on or about June 1, 1978, that the District in effect has unilaterally amended their final certified offer to this mediation-arbitration proceedings, to which the ULE did not agree, and that such action therefore is violative of the statutory provisions concerning final offers in the mediation-arbitration process. The ULE contends that the District's implementation of the tentative agreements that the parties had reached for the 1977-79 agreement constitutes a violation by the District for the reason that the 1975-77 master agreement, which was to have remained in effect until execution of the 1977-79 agreement contained a provision which provided for mutual agreement between the parties with respect to teacher assignments. The ULE contends that under the tentative language agreements, the Board would be permitted to make a change in the modular scheduling which would constitute a change in teacher assignments to which mutual agreement was not required. Because, however, the District had agreed to extend the 1975-77 agreement until execution of a new agreement, and because such agreement contained a mutual agreement provision with respect to modular changes, that the District in effect specifically violated the agreement existing between the parties and did, in fact, make modular scheduling changes without negotiation with or reaching mutual agreement with the ULE.

The District contends that the implementation of the provisions of the agreement upon which tentative agreement had been reached along with the District's salary proposal, did not violate the law. They contend that an employer's final offer may properly and legally be implemented after an impasse has been reached in negotiations. The District contends that the Union's contentions in effect allege the commission of a prohibited practice by the District. It is their position that the Wisconsin Employment Relations Commission is the only forum which has authority to determine prohibited practices under the statute. It is their contention that the mediator-arbitrator has no authority to consider or determine such matters.

The District further contends that the implementation of the tentative agreements reached between the parties along with the District's final salary offer, in no way, constituted an amendment to their final offer in the mediation-arbitration process. Such implementation did not modify or change the District's final certified offers on the unresolved issues of salary and non-discrimination issues.

The undersigned recognizes that the facts and circumstances involving the implementation of the tentative agreements and District's salary proposal gives rise to some very interesting legal questions. The undersigned is of the considered judgment that the questions and issues created by such actions are outside the very limited and specific area of determination with which the mediator-arbitrator is charged. The sole duty of the mediator-arbitrator is to determine by application of the statutory criteria expressed in Section 111.70(4)(cm) 7 of the Wisconsin Statutes, between one or the other of the final offers of the parties as to which one is the more reasonable. In the judgment of the undersigned, such very limited duty and obligation placed upon the mediator-arbitrator, does not include the authority to determine prohibited practice allegations. Such area is vested exclusively with the Wisconsin Employment Relations Commission. In the judgment of the undersigned, the facts and circumstances involved with the implementation

matter, are not substantially relevant to a determination of the merits of the final offer as submitted by each party under the statutory mandate placed upon the mediator-arbitrator. Such matter is susceptible of resolution through recourse to other more appropriate proceedings. The mediator-arbitrator therefore declines to express or make any finding or determination with respect thereto.

In addition to consideration of the criteria and factors that have been discussed in the above body of this Award, the undersigned has considered each of the statutory criteria as set forth in Section 111.70(4)(cm) 7, of the Wisconsin Statutes, to the final offers of each of the parties and has evaluated and considered in detail, all documentary evidence and arguments presented into the record and advanced by the parties thereon. On the basis of such full consideration and evaluation thereof, it is the considered judgment and conclusion of the undersigned that the offers of both parties are reasonable, but that the final offer of the District is, by a very narrow margin, the more reasonably supported by the applied criteria as evidenced by the above discussion thereon.

It therefore follows from the above facts and discussion thereon, that the undersigned renders the following decision and

AWARD

That the final offer of the District be implemented along with all tentative agreements and that the same therefore constitute the 1977-79 Collective Bargaining Agreement between the parties.

Dated at Madison, Wisconsin, this 30th day of October, 1978.

Robert J. Mueller /s/

Robert J. Mueller
Mediator-Arbitrator