STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of	
NORTHWEST UNITED EDUCATORS	Case VII No. 22542
To Initiate Mediation-Arbitration between Said Petitioner and	MED/ARB-24 Decision No. 16536-A
SCHOOL DISTRICT OF TURTLE LAKE	

Appearances:

Mr. Alan Manson, Executive Director, Northwest United Educators, appearing on behalf of Northwest United Educators.

Melli, Shiels, Walker & Pease, S. C., Attorneys at Law, by Mr. James K. Ruhly, appearing on behalf of School District of Turtle Lake.

ARBITRATION AWARD:

On September 11, 1978, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator, pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Northwest United Educators, referred to herein as the Union, and School District of Turtle Lake, referred to herein as the Employer. Pursuant to the statutory responsibilities, and upon the receipt of a timely filed petition filed by a sufficient number of citizens within the jurisdiction served by the Employer, the undersigned on November 21, 1978, conducted public hearing at the County Courthouse in Barron, Wisconsin, during which the Employer and the Union explained their final offers and presented supporting arguments for their respective positions to the public. Subsequent to the foregoing presentations of the parties, members of the public who were in attendance at the public hearing were afforded an opportunity to present their comments and suggestions with respect to said dispute. However, no members of the public expressed an interest in offering comments or suggestions to the parties, and the public hearing was closed without any interested member of the public speaking. At the conclusion of the public hearing on November 21, 1978, the undersigned conducted a mediation meeting between the Union and the Employer, which resolved several of the issues that had previously been in dispute, however, mediation on November 21, 1978, failed to resolve all disputed matters. Mediation was continued on December 14, 1978, at Barron County Courthouse in Barron, Wisconsin. No further progress in resolving the remaining issues was made in mediation on December 14th, and after the Union and the Employer executed a written statement of waiver of the statutory provisions of 111.70 (4)(cm) 6.c. with respect to the requirement that the mediator provide a written notice of intent to arbitrate, and with respect to the requirement that the parties be afforded the opportunity to withdraw their final offers; the undersigned on December 14, 1978, proceeded to take evidence in arbitration hearing over the matters remaining in dispute at Turtle Lake, Wisconsin. At hearing the parties were present and given full opportunity to present oral and written evidence, and to make relevant argument. No transcript of the proceedings was made, however, briefs and reply briefs were filed in the matter, which were exchanged by the Arbitrator on February 5, 1979, and February 16, 1979.

THE ISSUES:

Six issues had been certified to impasse to the Wisconsin Employment Relations Commission. Three of the issues, Board's Rights, Calendar, and Prep Time, were resolved in the mediation phase of these proceedings, and the parties agreed to modifications of their final offers so as to dispose of the foregoing three issues which previously had been disputed. Remaining before the Arbitrator, then, are an additional three issues as follows:

1. Lay Off
2. Payment for health insurance
3. Salaries, including the basic salary schedule, as well as the extra-curricular schedule.

The final offers of the parties with respect to the remaining issues in dispute are as follows:

I. LAY OFF

UNION FINAL OFFER:

I. When a reduction in staff, by a full or partial layoff, is necessary by reason of a substantial decrease of pupil population within the school district, a decline in course registration, educational program changes, financial and budgetary considerations, or other good reasons, the following shall be the procedure:

1. Teachers shall be laid off in the inverse order of hire within the following categories providing the remaining category teachers are fully licensed to cover the remaining positions: K-6; 2-8; 7-12.

2. The date of hire shall be the day the Board approved the individual contract of the teacher; in the event two teachers had their individual contracts approved on the same day, the order of their approval will determine their respective seniority.

3. In the event no teacher within the category is fully licensed to teach the grades and/or classes of the least senior teacher considered for layoff, the Board shall lay off the next least senior teacher; this provision shall not be interpreted to exclude a reasonable scheduling of a combination of teachers to teach the grades and/or classes of the least senior teacher.

4. In category 7-12, the least senior teacher in a given teaching field shall not bump a less senior teacher in another field, unless such teacher is licensed in that field and has taught (at least one course for at least one semester) in that field in the last five years.

5. Recall shall be in the inverse order of layoff within the categories designated under #1 above, and, if applicable, the field in #4 above.

6. No teacher may be prevented from securing other employment during the period laid off under this section.

7. A teacher on layoff status shall accrue no benefits while on such status, but if recalled while on layoff shall retain benefits accrued at the time of being laid off.

8. Any teachers who have been laid off for more than three school years shall lose their recall rights under this Article.

9. Any laid-off teacher offered reinstatement must within 15 days of such offer agree in writing to accept such reinstatement. Failure to either accept reinstatement or return to employment shall be deemed a waiver of any recall rights under this Article.

10. No new or substitute appointments may be made while there are laid-off teachers available from the Turtle Lake System who are qualified to fill the vacancies.

11. Laid-off teachers must keep the Board informed of their current address in order to qualify for their recall rights under this Article.

12. The provisions of Section 118.22, Wisconsin Statute[1] shall govern and apply to the layoff of any teacher pursuant to this section.

EMPLOYER FINAL OFFER:

1. When the Board in its discretion determines that it is necessary to decrease the number of teachers for any reason other than the teaching performance of a particular teacher or teachers, the Board may lay off the necessary number of teachers according to the following criteria:

   a. The criteria to be used are "qualifications," and "seniority."

   b. The following standards, ranked in the order of their importance, shall be applied by the Board in making comparative evaluation of "qualifications":

      (1) Certification in remaining teaching assignments.

      (2) Current written evaluations by appropriate supervisory personnel. "Current" shall mean within five years of the layoff decision.

      (3) Current experience in remaining teaching assignments.

      (4) Current academic training in remaining teaching assignments.

      (5) Compatability with co-curricular assignment or activities.

      (6) Prior experience in remaining teaching assignments. "Prior" shall mean more than five years before the lay-off decision.

      (7) Prior academic training in remaining teaching assignments.

      (8) Prior written evaluations by appropriate supervisory personnel.

      (9) Academic level attained.

   c. In the event two or more teachers are found to be equally qualified upon application of the above standards, "seniority", which shall commence with the teacher's first day of student contact in the School District, shall prevail. In the event seniority is equal, a coin flip shall determine the teacher to be laid off.

2. The Board shall follow the procedure set forth in Sec. 118.22, Wisconsin Statutes, or any succeeding statute in notifying an affected teacher of the layoff decision.

3. 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 Section A, 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 seniority shall be recalled. Regardless of relative qualifications, no new teacher shall be hired to fill such teaching position until all teachers having recall rights and the

1) Amended statutory reference with District consent at hearing.

desired qualifications have been given the opportunity to fill the position.

4. No teacher may be prevented from securing other employment during the period laid off under this section.

5. A teacher on layoff status shall accrue no benefits while on such status, but if recalled while on layoff shall retain benefits accrued at the time of being laid off.

6. Any teacher that has not been contractually employed by the district for more than 3 school years shall not be entitled to be recalled pursuant to Section C, but the Board shall favor all former laid off teachers over new applicants, qualifications being relatively equal.

7. Any teacher on layoff offered reinstatement after a staff reduction must within 15 days of such offer agree in writing to accept such reinstatement. Failure to either accept reinstatement or return to employment shall be deemed to waive any right to employment.

II. INSURANCE

UNION FINAL OFFER:

A. Health insurance shall be provided for each teacher by the Turtle Lake School District. The insurance is solely for the purpose of providing protection rather than an extra monetary remittance. This means that should both a husband and wife be employed, two family policies (or the equivalent sum of money) would not be furnished by the district. Only one family policy shall be provided by the district for these (two) people.

B. Beginning July 1, 1977, the Board shall pay the cost of premiums up to a maximum of $21.00 per month for a single plan and up to $60.00 per month for a family plan. Beginning December 1, 1977, the Board shall pay the cost of premiums up to a maximum of $80.00 per month. Beginning December 1, 1978, the Board shall pay the cost of premiums up to a maximum of $85.94 per month.

EMPLOYER FINAL OFFER:

Beginning October 1, 1977 the School District of Turtle Lake shall pay the cost of premiums up to a maximum of $24.00 per month for a single plan and up to $70.00 per month for a family plan. Beginning October 1, 1978 the School District of Turtle Lake shall pay the cost of premiums up to a maximum of $27.00 per month for a single plan and up to $80.00 per month for a family plan.

III. SALARIES

UNION FINAL OFFER:

A. 1977-78 / 1978-79

	1977-78 BA	1977-78 MA		1978-79 BA	1978-79 MA
0	$ 9,196.00	$ 10,136.50	0	$ 9,655.80	$ 10,643.33
1	9,563.84	10,541.96	1	10,042.03	11,069.06
2	9,936.91	10,952.54	2	10,433.76	11,500.28
3	10,315.20	11,368.56	3	10,830.96	11,936.99
4	10,698.71	11,789.69	4	11,233.65	12,379.17
5	11,087.45	12,216.05	5	11,641.82	12,826.85
6	11,481.42	12,647.64	6	12,055.49	13,280.02
7	11,880.61	13,084.45	7	12,474.64	13,738.67
8	12,285.02	13,526.48	8	12,899.27	14,202.80
9	12,694.66	13,973.74	9	13,329.30	14,672.43
10	13,109.53	14,426.23	10	13,765.01	15,147.54
11	13,529.62	14,883.94	11	14,206.10	15,628.14
12	13,954.93	15,346.87	12	14,652.68	16,114.21
13	14,385.47	15,815.03	13	15,104.74	16,605.78

B. Compensation for credits earned shall be at the rate of $30 per credit beyond the BA and MA, subject to the following conditions:

1. A maximum of 30 credits will be paid for unless a Masters Degree is attained. Credits beyond the MA must be earned after the MA is attained.

2. Credits must be computed on a semester plan.

3. Courses must be related to the teacher's assignment unless taken at the Board's request.

4. A grade acceptable for credit in the institution at which the teacher is studying must be achieved.

5. Credits for which a teacher has been paid prior to July 1, 1977 will be recognized.

6. Upon validation of credits by grade reports or transcript from the respective university or college, the teacher shall receive the appropriate salary adjustment on the first pay period of the following month.

7. Credits for advancement beyond the MA must be graduate credits.

EMPLOYER FINAL OFFER:

A.

77-78	BA	MA	78-79	BA	MA
0	9350	10350	0	9900	10900
1	9725	10750	1	10275	11300
2	10100	11150	2	10650	11700
3	10475	11550	3	11025	12100
4	10850	11950	4	11400	12500
5	11225	12350	5	11775	12900
6	11600	12750	6	12150	13300
7	11975	13150	7	12525	13700
8	12350	13550	8	12900	14100
9	12725	13950	9	13275	14500
10	13100	14350	10	13650	14900
11	13475	14750	11	14025	15300
12	13850	15150	12	14400	15700
13		15550	13		16100

B. Provision for Graduate Study

An incentive of $30.00 per credit will be paid for all graduate work beyond a B.A. Degree subject to the following conditions:

1. A maximum of 30 grad credits will be paid for unless a Masters Degree is attained.

2. A maximum of 30 grad credits will be paid for after a Masters degree is attained.

3. Credits must be computed on a semester plan.

4. Courses must be within the teachers teaching assignment unless taken to fill a definite need in the school curriculum at the Board's request.

5. A grade acceptable for credit in the institution at which the teacher is studying must be achieved.

6. Credits approved and earned prior to August 31, 1977 will be recognized. Credits earned after September 1, 1977 must comply with the above provisions.

7. For payroll purposes, credits earned and validated by grade report or transcript prior to August 25th will be compensated on the current teachers contract.

SALARIES - EXTRA CURRICULAR

The final offers of the parties for extracurricular salaries are set forth below:

POSITION	BOARD OFFER 1977-78	BOARD OFFER 1978-79	NUE OFFER 1977-78	NUE OFFER 1978-79
Football Coach-Head	945	1,000	1,020	1,100
Assistants	630 (3)	675 (3)	680 (3)	735 (3)
Boys Basketball Coach-Head	945	1,000	1,020	1,100
Assistant	---*	675	---*	735
Boys Basketball-Jr. Hi	300	350	500	540
Basketball-Saturday Programs (10)	200	225	275	300
Wrestling Coach-Head	945	945	1,020	1,100
Assistant	630	630	680	735
Wrestling Coach-Jr. Hi	---*	300	---*	540
Baseball Coach	525	575	680	735
Track Coach-Head	525	575	680	735
Assistant	---	425	---	---
Volleyball Coach-Head	525	575	840	910
Assistant	---*	400	---*	650
Track-Girls	**	**	680	735
Basketball-Girls	750	900	950	1,030
Assistant	---*	600	---*	685
Basketball-Jr. Hi Girls	300	350	500	540
Instrumental Music	735	750	800	860
Assistant	---	---	---	---
Annual	300	350	720	780
Prom Advisor	---Z	---Z	210*	225
Perm. Class Advisor (4)	---	---	---	---
Class Advisor (4)	---	---	240	260
Freshman Advisor	75	100	---	---
Sophomore Advisor	100	125	---	---
Junior Advisor	300	325	---	---
Senior Advisor	200	225	---	---
Play (3 act)	300	350	480	520
Assistant (1)	175	200	240	260
Forensics (Speech & Drama)	300	350	---	---
Assistant (1)	175	200	---	---
Forensics-Drama Contest	---	---	240	260
Forensics Speech Contest	---	---	360	390
Ski Club	210	210	240	260
Student Council-H.S.	125	150	240	260
Student Council-Jr. Hi	75	100	120	130
Visual Aids	***	***	240	260
Cheerleaders-H.S.	600	650	1,020	1,100
Cheerleaders-Jr. Hi	200	225	275	300
FHA	100	125	360	390
FFA	100	125	480	520
Pom Pons	300	350	680	735

* No unit member assigned to position
** Board's proposal for track would have head track coach responsible for boys' and girls' programs.
*** Duties delegated to librarians when District went from one librarian to two; Board's authority to do so currently in arbitration.
Z Duties included in job description for Junior Class Advisor.

DISCUSSION:

Each of the issues will be discussed separately prior to considering which final offer in its entirety is to be incorporated into the Collective Bargaining Agreement. In determining each issue, as well as in determining which final offer in its entirety is to be selected for inclusion in the parties' Collective

Bargaining Agreement, the undersigned will evaluate the offers based on the criteria set forth in Wisconsin Statutes 111.70 (4)(cm) 7. The criteria are as follows:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in comparable communities and in private employment in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost-of-living.

f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

LAY OFF ISSUE

Both parties have made proposals with respect to lay off language which would modify the lay off provision of the predecessor Collective Bargaining Agreement. Both parties have been at least partially motivated to make proposals, because the lay off language of the predecessor agreement has caused interpretation problems as to its meaning and application. In addition to attempting to provide clarity to the lay off provision, the Union proposal for lay off language restructures the criteria upon which lay offs would be implemented. In the predecessor agreement a procedure was set forth wherein the Employer was required to consider certain factors in determining which teachers would be selected for lay off, if one were necessary. Included in the factors of the predecessor agreement were academic training and the educational level attained, ability and performance as a teacher in the district as previously and currently evaluated by appropriate supervisory personnel, experience in directing extracurricular and other special activities, and length of teaching service in the district and in other schools. The teaching experience factor was defined in three categories: primary grades K-3; intermediate grades 4-6; and upper grades 7-8. The Union proposal in the instant matter would remove any discretionary consideration from the Employer with respect to evaluations and extracurricular assignments, and would provide for lay offs in inverse order of hire (by seniority) within the categories of K-6; 2-8; 7-12. Seniority, then, would apply pursuant to the Union proposal, providing the teacher remaining in the district would be fully licensed to cover the remaining position.[1]

The Employer proposal with respect to lay off language establishes nine standards upon which a determination as to who will be laid off is to be determined.

1) While there are other substantive provisions which differ from the predecessor agreement with respect to lay off, the undersigned considers the question of seniority based lay offs to be the salient question before the Arbitrator.

The nine standards set forth in the Employer's final offer (supra) are designated in their order of importance with 1 being of prime importance and factors 2 through 9 to take primacy of importance after the preceding standard has been determined. Additionally, the Employer's proposal would permit seniority to enter into the decision making process only in the event that two or more teachers are found to be equally qualified upon application of the nine standards listed in the Employer offer.

At hearing the Union adduced evidence which shows that of the 32 districts which the Union argues are comparable, 22 districts have lay off provisions and 10 do not. Of the 22 districts containing lay off provisions, which are included in the Union's comparables, 15 districts provide for seniority based consideration when determining which employee is to be laid off, and 7 do not. (From Union Exhibit #26) Thus, of the 32 districts which the Union considers comparable, only 46.8% have seniority based lay off provisions. While 68.2% of the districts which have a lay off provision base their provisions on seniority in one form or another, the undersigned feels that the proper comparison is to all districts which the Union proposes as comparable, and not just the districts which have a lay off clause. Since less than half of the comparable districts provide for seniority based lay offs, it follows that the comparables do not favor the adoption of the Union proposal.

The undersigned is troubled by the proposals of both parties. The Employer proposal permits seniority consideration only in the event that the qualifications of the teacher being considered for lay off is determined to be equal after applying the nine standards in decreasing order of importance. After reviewing the nine standards proposed by the Employer to determine who is to be laid off, the undersigned concludes that it is unlikely that seniority would ever be given consideration when addressing the question of lay offs. It is almost inconceivable that two teachers would be found equally qualified under the nine standards, and that seniority would ever come into play. The Employer's offer dealing with seniority is so unlikely to have any effect with respect to seniority that the undersigned considers it to be deficient.

The Union offer on the other hand perpetuates what the undersigned considers to be ambiguity, specifically when the Union provides in their final offer that the categories of seniority are to be overlapped in grades K-8. In the opinion of the undersigned if there were to be categories in which seniority will apply, those categories should be clearly established and without overlap, unless there is a clear understanding between the parties as to how the overlap of seniority is to function. The undersigned has been unable to find anything in the record which would clarify or establish as to how the overlapping categories are to operate. Thus, the language proposed by the Union with respect to categories appears to be fraught with the potential for dispute by reason of its ambiguities, and the undersigned believes that should be avoided. Additionally, the Union proposal makes no provision with respect to covering extracurricular activities in the event lay off becomes necessary. This district has a total of 45 teachers. (From Union Exhibit #2) The concerns of providing coverage for extracurricular assignments become significantly more important here, than they might be in larger districts where there would be more remaining teachers to assume the remaining extracurricular assignments. The failure to provide for coverage for extracurricular in the event of a lay off also flaws the Union offer with respect to lay off.

Since the Employer offer with respect to lay offs is without the ambiguities which the undersigned has found in the Union offer with respect to lay off, the undersigned would adopt the Employer offer for that reason, particularly in this matter where the Employer offer is closer to the terms of the predecessor agreement than that of the Union. Under the predecessor agreement the Employer had the flexibility to determine who was to be laid off, based on several factors inclusive of teaching experience in the district. The instant Employer offer conceptually is close to that of the predecessor agreement. While the undersigned would prefer that more emphasis be given seniority than is contained in the Employer offer, the Employer offer would be adopted for the reasons stated above, if this were the sole issue in dispute.

HEALTH INSURANCE ISSUE

The terms of the expired agreement provide that the school district will pay the cost of health insurance premiums up to a maximum of $21.00 per month for a single plan, and up to $60.00 per month for a family plan. The Employer proposal on health insurance premium proposes effective 10/1/77 Employer payment of $24.00 and $70.00 for a single and family coverage respectively; and effective 10/1/78 payment of $27.00 and $80.00 for single and family coverage respectively. The Union proposes that effective December 1, 1977, the Employer contribute up to $80.00 per month toward health insurance premium; and effective December 1, 1978, up to $85.94 per month for health insurance premium. The $85.94 which the Union proposes to become effective December 1, 1978, represents the total premium charged for family coverage for health insurance. Additionally, the Union proposal would provide for full payment of single coverage for health insurance beginning December 1, 1977, whereas the Employer proposal would require premium participation on the part of teachers throughout the term of this Agreement for both single and family coverage.

The undersigned has reviewed the evidence on the health insurance issue and notes that so far as conference schools are concerned 5 of the remaining 12 conference schools pay full health insurance premiums and 7 do not. Additionally, internal comparisons for other employees of the district who are not represented by this Union show that non-supervisory employees are required to participate in the payment of health insurance premiums. Three supervisory employees (two principals and the district administrator) receive 100% health insurance payment in their behalf. Given the evidence showing that less than one-half of the conference schools provide for 100% health insurance premium participation from the employer; and given the internal comparisons which show that other employees of the district also participate in health insurance premiums, the comparables would favor the Employer offer on health insurance.

In addition to the comparisons the bargaining history also supports the Employer position on health insurance. The record clearly establishes that prior to the effective date of the predecessor agreement, the Employer in Turtle Lake had historically paid the full premium for health insurance coverage. In the bargaining leading up to the 1975-77 Agreement, the parties themselves voluntarily agreed for the first time that teachers would participate in health insurance premium payments. The testimony of the district administrator, which was unrefuted, shows that hard bargaining occurred over this issue in the negotiations leading up to the predecessor contract and resulted in the Agreement described in the preceding sentence. Since the comparables do not make a compelling case for 100% premium payment by the Employer of health insurance premiums; and since the parties themselves voluntarily agreed to abandon the full premium payment custom when they arrived at the terms of the predecessor agreement; it follows that the Employer offer is preferred on health insurance.

SALARY SCHEDULE ISSUE

In dispute in these proceedings are both the basic teaching salary schedule, as well as the schedule for payment for co-curricular duties.

BASIC SALARY SCHEDULE:

As seen from the parties' final offer the Employer is offering a higher base than the base contained in the final offer of the Union, and the Union is proposing a schedule which provides for higher salaries at the last vertical step of the schedule than the salary offered by the Employer. Additionally, the parties have agreed to the addition of a 13th step in the MA lanes, however, the Employer offers to continue the prior practice of 12 steps in the BA lanes, while the Union proposes a 13th step in the BA lane as well. Additionally, the terms of the salary proposals of the parties leave in dispute the types of credits which will be recognized for additional salary payments: the effective date that payment will commence once salary credits are attained: a cap on the number of graduate credits after master's degree as proposed by the Employer versus no cap proposed by the Union: and the treatment for compensation considerations of credits earned prior to either July 1 or August 31, 1977.

Obviously, there are a considerable number of sub-issues with respect to the salary schedule at issue between the parties. The undersigned has reviewed the evidence and the argument of the parties with respect to the sub-issues. While the sub-issues are not unimportant, the undersigned has concluded that the considerations which will control the outcome of the salary schedule dispute are the differences between the basic salary schedule proposed by the Employer and the basic salary schedule proposed by the Union. It would follow, therefore, that whichever salary schedule more nearly meets the criteria of the statute will be adopted, and the sub-issues dealing with salary will be decided based on the outcome of which basic salary schedule should be adopted, pursuant to the statutory guidelines.

Both parties have submitted evidence and argument based on comparables. The approaches of the parties in their evidentiary submissions are noticeably different. The Employer evidence makes comparisons of salaries paid in the instant district with those of other districts within the conference. The Union adduces evidence which focuses on the patterns of settlements in other conference schools rather than the dollar comparisons of salaries being paid in other conference schools. There is no question that the evidence shows that historically this Employer has been a "wage leader" when compared to other school districts within the conference. Additionally, there is no question that the evidence shows that if either the Union or the Employer offer is adopted, the Employer will continue to be a wage leader. Thus, it cannot be said that adopting the Employer offer in this matter would run contrary to the statutory criteria found at 111.70 (4)(cm) 7. d., which directs a comparison of wages for employees in comparable communities.

While the Employer offer can be said to meet the statutory criteria of d., Comparison of Wages with Other Districts, that is not the total statutory consideration that needs to be addressed. The Union evidence on comparables dealing with patterns of settlement appropriately fall within the criteria of the statute at criteria h., which directs the Arbitrator to consider such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment. However, after considering the evidence and argument, the undersigned concludes that the patterns of settlement argued by the Union do not favor the Union offer on salary schedule pursuant to criteria h. of the statute. From Union Exhibit #13 it is determined that the average settlement of 32 school districts which the Union considers comparable to the instant employer, the percentage of increases at the steps shown in the following table between 1976-77 and 1978-79 are as follows:

Average of 32 Schools	BA Minimum - 10.3% increase	MA Minimum - 10.3% increa
	BA Maximum - 11.5% increase	MA Maximum - 11.6% increa
Board Offer	BA Minimum - 12.5% increase	MA Minimum - 12.4% increa
	BA Maximum - 7.8% increase	MA Maximum - 9.6% increa
Union Offer	BA Minimum - 9.7% increase	MA Minimum - 9.7% increa
	BA Maximum - 13.1% increase	MA Maximum - 13.1% increa

While the undersigned fully understands the well accepted principle in interest arbitration that where parties have established a wage leadership position there is a presumption that that wage leadership ought to be maintained; here the arbitrator concludes that the 13.1% increase, which exceeds the average pattern of settlement even among the Union comparables by 1.6% at the BA and MA maximum widens the wage leadership position of this district over other comparable districts. If the Union offer had merely retained the respective differences between this Employer and the comparable districts, the undersigned would have concluded otherwise. Since the Union proposal increases its wage leadership position at the maximum of the schedule, where there is no basis for said increase based on the dollar comparables, the Union argument that patterns of settlement favor its position is rejected.

The Employer salary proposal in this dispute modifies the salary schedule from the form in which it has been traditionally known by the parties. While the

Employer argues that the percentage increment pattern of the schedule had previously been negotiated out in the predecessor agreement, the undersigned concludes that the pattern had not been destroyed in the predecessor agreement. At hearing Robert West, who negotiated the predecessor agreement, testified for the Union that the increment was maintained in the predecessor agreement. The undersigned, after studying the form of the salary schedule in the predecessor agreement, credits the testimony of West with respect to the maintenance of the historic schedule in the predecessor agreement. It is clear to this arbitrator that the Union's final offer proposes a salary schedule which calculates to 4% vertical increment plus additional accumulating $5.00 at each vertical step. This is precisely how the 1976-77 salary schedule computes. While in interest matters there is a presumption favoring status quo which would support the Union proposal for a salary schedule, in view of the earlier conclusions regarding dollar comparables and patterns of settlement, this presumption is not valid in the instant matter. The undersigned concludes that the departure from the historical increments is not sufficient reason to find for the Union's salary schedule in view of the favorable dollar comparables the Employer has been able to demonstrate, and in view of the widening of the maximums which the Union offer necessitates when comparing patterns of settlement.

In considering the salary issue the statutory criteria directs the arbitrator to consider criteria e., the average consumer price for goods and services, commonly known as the cost-of-living. The Union relies on criteria e. in support of its position on salaries. The undersigned has considered the cost-of-living issue, and notes that the CPI increase from June, 1977, to June, 1978, amounted to 7.3%. The salary schedule proposed by the Employer for the 1977-78 school year, which runs coincidental with the CPI data stated above, provides for an increase of 7.3% for the year 1977-78, while the Union proposal provides for an 8.5% increase. (From Board Exhibit #50) Thus, the Employer offer for the year 1977-78 precisely matches the cost of living increase for the same period, while the Union offer exceeds the cost of living for that period by 1.2%. For the year 1978-79 the Employer offer calculates to 6.5% increase, and the Union offer calculates to 7.2% increase. While we do not now have the benefit of cost-of-living data for the period June, 1978 to June, 1979, it can reasonably be anticipated that the cost-of-living increase for this period of time will be in the vicinity of 9%. For 1978-79, then, the Employer offer falls 2.5% below the anticipated cost-of-living increase for the same period, whereas the Union offer falls 1.8% below. On its face it would appear that the cost-of-living criteria would favor the Union offer. The undersigned notes, however, that the percentage of salary increase discussed above would place in effect the full percentage of increase at the beginning of the period being compared to the CPI, whereas the 9% estimated cost-of-living increase for the year June, 1978 to June, 1979, shows the amount of cost-of-living increase at the end of said period. Because the 6.5% offer of the Employer advances monies in excess of the cost-of-living increase in the early stages of the year 1978-79 in excess of the cost of living increase, which actually occurred during that period, the undersigned is not persuaded that cost-of-living favors the Union offer.

The Union has submitted evidence which shows that after taking turnover into account, the cost impact of the Employer's offer for the first year of this Agreement is less than 1%. The undersigned does not consider this evidence to be relevant. At issue here is what is the proper percentage increase, based on the statutory criteria to be adopted into the parties' Collective Bargaining Agreement. The Employer has raised no issue with respect to criteria c. of the statute, which speaks of the financial ability of the unit of government to meet the cost of any proposed settlement. The evidence adduced by the Union with respect to the cost impact of the settlement would be extremely convincing if the Employer were pleading poverty or inability to pay. Since ability to pay is not an issue, the undersigned considers the cost impact to the district not to be material in the instant dispute.

CO-CURRICULAR SCHEDULE:

It is obvious to the undersigned from the evidence submitted, and the arguments advanced, that even though this dispute has been protracted for an extremely long period of time, the parties engaged in little or no bargaining over the co-curricular schedule. The Union proposal maintains the historic co-curricular designations, whereas the Employer proposal has restructured the designated co-curricular classifications pursuant to changes of job descriptions which he unilaterally established. In addition to an "across the board" increase proposed by the Union, the Union also proposes significant dollar increases to the co-curricular schedule at specific job classifications. At hearing the Union adduced evidence with respect to job duties, attempting to justify the additional increases for co-curricular positions such as high school cheer leader adviser, head volleyball coach, girls' track coach, girls' basketball coach, assistant girls' basketball coach, and FHA and FAA positions, among others. The Union evidence was persuasive in these areas, notwithstanding the fact that the comparables in other districts show that this Employer's co-curricular schedule is not out of line. After considering all of the criteria and the evidence and argument, the undersigned would find for the Union co-curricular proposed schedule.

On post-hearing submission, and after final briefs had been filed, the Union submitted a decision rendered after argument was submitted with respect to a finding by Wisconsin Employment Relations Commission examiner Duane McCray. (Turtle Lake School District, Case VI, No. 22336, Decision No. 16030-B, dated March 9, 1979) In his decision examiner McCrary found a refusal to bargain over the impact of the Employer's decision to include visual aids coordinator's duties as part of her regular basic salary as an elementary school librarian. However, in his order examiner McCrary directed that at paragraph 1 the respondent (employer) shall be required to comply with this mediator-arbitrator's award. In as much as the undersigned has considered the co-curricular pay schedule, and determined that the Union's position should be adopted on this issue, standing alone, the undersigned cannot see how the prohibitive practice matter decided by examiner McCrary has any bearing on the instant matter.

SUMMARY AND CONCLUSIONS:

In the foregoing considerations the undersigned has determined that the lay off issue, the health insurance issue, and the basic salary schedule issue is decided in the Employer's favor. The undersigned has further determined that the co-curricular schedule is decided in the Union's favor. It remains now to determine in considering all issues which offer is to be accepted in its entirety. If the undersigned were to conclude that the co-curricular schedule had such great significance that it would carry the Union's position on the other issues, it would be like the tail wagging the dog. After consideration of all the evidence, the argument of the parties, and after applying the criteria directed to be considered in the statute, the undersigned makes the following:

AWARD

The final offer of the Employer is to be incorporated into the Collective Bargaining Agreement, along with the stipulations of the parties which reflect prior agreements, for the contract covering the years 1977-78 and 1978-79.

Dated at Fond du Lac, Wisconsin, this 6th day of April, 1979.

Jos. B. Kerkman,
Mediator-Arbitrator

JBK:rr