STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Arbitration between	:	
RIO COMMUNITY SCHOOL DISTRICT	:	
and	:	Re: Case II, No. 23198 MED/ARB - 145 Decision No. 16539-A
RIO EDUCATION ASSOCIATION	:	

Appearances

For the petitioner, Rio Education Association, Mr. James M. Yoder, Executive Director, South Central United Educators, 207 W. Cook Street, Portage, Wisconsin 53901. Mr. Yoder was accompanied by Mr. Vern Gosdeck, Chairperson, Rio Education Association, 416 Valeria Drive, Apt. 3, De Forest, Wisconsin 53532 and several other members of the Association's committee, as well as Mr. Charles U. Frailey, Research Consultant, Wisconsin Education Association Council, Box 8003, Madison, Wisconsin 53708.

For Rio School District, Mr. William Bracken, Membership Consultant, Wisconsin Association of School Boards, Box 160, Winneconne, Wisconsin 54986. Mr. Bracken was accompanied by Mr. James Ticknor, District Administrator, Rio Board of Education, Rio Community School District, Rio, Wisconsin 53960; Mr. Richard Bubolz, President, Rio School Board, Route #2, Rio, Wisconsin 53960, and several other members of the Board.

Background of the Dispute

The Association represents a bargaining unit of regular full-time and regular part-time certified teachers employed by the Rio School District. At the time of the hearing there were 38 FTE teachers in the unit. Bargaining for a renewal of the parties' 1977-78 agreement had commenced in early 1978. After several meetings the Association filed a petition with the Wisconsin Employment Relations Commission requesting initiation of mediation/arbitration under the provisions of Section 111.70(4) (cm) 6 of the Municipal Employment Relations Act. Following an investigation by Commission staff the parties submitted final offers. On August 31 the investigator notified the parties that the investigation was closed. On September 6 the Commission certified that the conditions precedent to the initiation of mediation/arbitration had been met and transmitted a panel of mediator/arbitrators to the parties from which this mediator/arbitrator was selected. The Commission's order was dated September 21, 1978.

The undersigned met with the parties on the evening of October 24 in an attempt to mediate the dispute. These efforts were unsuccessful and therefore an arbitration hearing was held on November 29 in the Rio High School. Both parties had an opportunity to present written and oral testimony. At the conclusion of the hearing the parties agreed to file briefs for the arbitrator to exchange by February 3. The arbitrator considers that the hearing was closed on that date.

The Issues

The Employer reproduced clean copies of the final offers. Both parties agreed as to their accuracy, and they are reproduced here as Addendum #1 (the Association's final offer) and Addendum #2 (the Board's final offer). In addition, the Association agreed to allow the Employer to amend its final offer as follows:

> The following items shall be re-opened for the 1979-80 School Year:
> 1. Teacher salary schedule
> 2. Extra-curricular salary schedule
> 3. Health Insurance premium
> 4. STRS
> 5. Calendar

The Employer also agreed to allow the Association to amend its final offer as follows:

> Duration
>
> The Agreement shall be in effect July 1, 1978 and shall remain in effect through June 30, 1979.

Both these items had been proposed orally during the final negotiation session but somehow had not been included in the written final offers.

In this report the issues will be treated in the order in which they appear in the Association final offer.

Position of the Association

The Association seeks to compare conditions in the final offer with four groupings of school districts: Twenty-two districts in CESA 12; eighteen districts in the UniServ District of South Central United Educators (with thirteen also being on the CESA 12 list); nine districts in the Dual County Athletic Conference in which Rio is a member (eight of which were also on the CESA 12 and the SCUE Uni-Serv List); and twenty-five districts within a 30 mile radius of Rio (eleven of which were not on any of the three other lists). The Association supports the choice of these comparisons on grounds of geographical proximity and community of interest. The last list of comparables was included in order to have some suburbs of Madison, an area towards which the Association says the Rio Community is oriented.

On the issue of just cause for disciplinary actions, nonrenewal or dismissal, the Association cites the so-called Daugherty tests and asserts that if used by the District, they would "require a reasonable, logical and widely accepted standard against which disciplinary actions may be evaluated for fairness." (Association brief, p. 4). The Association does not view the District's proposal that reasons for dismissal, nonrenewal or discipline may not be arbitrary, capricious, or discriminatory as affording sufficient fairness or objectivity in any subsequent review of such actions.

The Association asserts that two long term teachers in the unit had been persuaded by the District Administrator to resign during the 1977-78 school year and that it had not been satisfactorily explained to them why they would have been nonrenewed if they had not resigned. The Association believes that a just cause standard of the kind being proposed here would have guaranteed due process to these individuals.

The Association presented exhibits that purported to show that a majority of the districts with which it seeks to compare itself have just cause provisions covering either dismissal or nonrenewal or both. The Association asserts that 64 per cent of CESA 12, 68 per cent of SCUE UniServ, 50 per cent of Dual County Conference, and 62 per cent of the districts within a 30 mile radius had a just cause standard of this kind. The Association also presented tables purporting to show that only a minority of the comparable districts in the four groups of comparisons had "due process, fair dismissal" standards for nonrenewal. It was never explained in the testimony what was meant by these latter comparisons. The Association introduced tables purporting to show that an even smaller percentage of districts in the four groupings had "arbitrary, capricious, discriminatory" provisions of the kind proposed by the District.

The Association argues that it included the one year probationary period in an effort to obtain a compromise settlement from the District. Although the District has argued that when coupled with the December 15 notice requirement already in the agreement, the one year probation really involves only three months, the Association responds that the District's proposal contains no probationary period at all. And despite the District's assertion that a recent U.S. Federal Court decision guarantees due process where an arbitrary and capricious standard is in effect, that case is subject to higher court review. Even if it is upheld, the court process is lengthy and expensive.

On the subject of the grievance procedure and arbitration both parties would add binding arbitration to the existing procedure which now ends with a decision by the School Board. The Association, however, would use the free arbitration services of the Wisconsin Employment Relations Commission instead of selection from a panel of paid arbitrators and would have the losing party pay the expense of the arbitration rather than splitting the costs.

The Association wants the services of WERC arbitrators, it says, because in a small school district the expense of paying private arbitrators would be hard to bear. The policy of having the loser pay the arbitration expenses is proposed as a means of limiting either party from making frivolous or captious demands for arbitration hearings. Since such expenses may include the cost of a stenographic reporter and a transcript, the Association argues that such costs are not

insignificant.

The Association showed tables purporting to show that among those districts where there were existing binding arbitration clauses in agreements, a majority of 57 per cent in CESA 12, 67 per cent in SCUE UniServ, 60 per cent in the Dual County Conference, and 60 per cent of districts within a 30 mile radius had provisions for free arbitration by WERC staff. The Association did not present evidence to support its position on the subject of payment of the arbitrator's expenses.

On fair share the Association argues that since the union has been designated exclusive bargaining agent and is obliged to represent all employees in the unit, it is only fair that all members of the unit support the Association by paying dues. The Association argues further that a fair share agreement places no burden on the Employer, that there is no evidence, as the District suggests, of community resistance, and that despite the Browne decision, (Browne et al v. Milwaukee Board of School Directors et al, 83 Wis. 2d 316 (1978)), cited by the District as an obstacle to its adoption, fair share is not illegal. And although the District depicted the Association as not knowing how it would return funds to members of the unit which were not to be spent in support of collective bargaining, there is no reason for the Association to outline specifics on that subject until some guidelines are expressed by WERC in accordance with the restrictions of the Browne decision.

The Association agrees that only a minority of the districts with which it compares itself in this proceeding have fair share clauses. It is argued that this circumstance flows from the fact that school teacher unions have generally been dominated in the collective bargaining relationship by employers and that the mediation/arbitration statute has provided a chance for these districts to achieve this objective. On this issue the Association aruges that if fair share can be achieved in arbitration only by application of a comparability criterion, it will never be adopted, because employers in communities of the size of Rio are against its adoption.

On the issue of a discrimination clause the Association asserts that it would work no hardship on the District for the reason that it merely restates the provision in existing law.

The apparent reasons for this proposed clause are the circumstances that the Association alleges surrounded the forced resignation in 1977-78 of the two teachers previously referred to. The Association avers that both had been active as negotiators and that there is a justified inference that can be drawn from those incidents that the two employees would have had the protection of the labor agreement if a clause such as the one proposed had existed. To the District's argument that the Municipal Employment Relations Act already contains the protection designed to be provided by the clause the Association responds that since another of its proposals calls for WERC staff arbitrators, the decision of discrimination would be made by WERC in either case. The Association does not say why the two teachers who resigned did not file prohibited practice charges with WERC under the statute.

The Association did not present any comparable data on this issue.

On the subject of layoff by seniority the Association asserts that its proposal of "seniority within the area of certification" would provide a practicable and fair system where reductions of staff become necessary. The Association argues that the application of seniority is the only way of avoiding subjectivity in making judgments about the abilities and performance of teachers. The Association sees no particular problem in the exercise of seniority in the case of dual assignments since there is no reason why partial layoffs should not occur. The Association would not take extracurricular assignments into account in making judgments about retention and believes that the District's position on this issue is inappropriate. The Association makes a particular point of countering the District's argument that although a teacher may be certified for teaching grades 1 through 8, the application of seniority might put an 8th grade teacher in a first grade classroom, an assignment for which the teacher may not be well prepared. The Association position on this point is that "the Department of Public Instruction would not certify teachers to teach a number of different grades unless they felt it was possible to do so even after the lapse of a considerable period of time."

The Association departs from its previously used comparables on this issue and uses only SCUE UniServ districts. Among these, six have layoff clauses that make seniority the first criterion, three have a point system using evaluation, training and experience as well as seniority, and five have systems that make use of qualifications as the first criterion.

The Association is quite concerned that the evaluation process to be used in the District's proposal should be seen to be a subjective process despite all good efforts on the part of the school administrators. In the view of the Association only the application of seniority, as modified by the certification provision, can result in a just and equitable layoff policy.

The Association argues for one year duration of the new agreement on several grounds. First, the parties have always had one year agreements and the Association sees no reason for this condition to change.

Second, in the comparables a majority of one year agreements exist in all four of the groups: 71 per cent for CESA 12, 53 per cent for SCUE UniServ, 60 per cent for Dual County Conference, and 58 per cent for the districts in a 30 mile radius.

The Association is particularly disturbed by the District's argument that this proceeding will have delayed settlement so long that the parties should not be subjected to two more negotiations within the period of about a year from the spring of 1979. They see this argument as implying that the Association should be penalized for using the mediation/arbitration procedure. They are particularly disturbed by the prospect of having to live twice as long under what they consider to be unsatisfactory and inequitable conditions.

The District's Position

The District takes a different view of the comparables to be used in assessing the prevalence of their positions on

the issues in this dispute. The District argues that the CESA 12 Districts are too diverse geographically from Rio, that there is no reasonable basis for the SCUE UniServ listing, and that the districts within a 30 mile radius of Rio contain districts not only much larger than Rio but their proximity to Madison makes them somewhat different from Rio, which is about 40 miles from Madison. The District would use the Dual County Athletic Conference school Districts, but in addition it has selected a group of districts from both CESA 12 and CESA 13 that are geographically close to Rio and somewhat comparable in size. Using these as comparables the District takes the following positions:

On the issue of just cause for dismissal, nonrenewal or discipline the district notes that the parties are in agreement on the date of December 15 for notice of possible nonrenewal and on the conference that follows. The District points out that this date is two and one-half months earlier than the law requires. The District departs from the Association in stating a requirement in such cases that the teacher would have to be given a reason for such termination or discipline that is not "arbitrary, capricious, or discriminatory."

It is the District's expressed opinion that this standard gives the teacher "a constitutionally protected expectation of continued employment." A recent Federal District Court case is cited to support this opinion. In that case the agreement had identical wording and the judge was specific in stating that it called for "procedural and substantive due process."

The District asserts that the clause not only reinforces all the teachers' rights under Sec. 118.22 of the Wisconsin Statutes but also provides an opportunity for challenging nonrenewals, dismissals, and discipline under the grievance and arbitration provisions.

The District introduced copies of three bills calling for modification of Section 118.22 to provide for a "just cuase" standard on nonrenewal and pointed out that the Wisconsin Legislature had failed to act on any of them.

On this issue the District also points out that the evaluation instrument used by school administrators to arrive at judgments on nonrenewal was developed "with input from the Union."

Also, the Board argues that there is no demonstrated need for a just cuase standard for the reasons that: 1. There has been only one nonrenewal in the Rio School District in the past ten years. 2. The Association's one year probationary period is too short to be useful, that it would be unfair to the teacher, the administrators and the pupils for the reason that it would result in hasty judgments. 3. Since just cause cannot be precisely defined, nonrenewal cases would expose the District to extensive litigation for breach of contract. 4. A reversal of an administrator's judgment in one of these cases would diminish that person's ability to discipline or work with teachers in the future.

Among the districts chosen as comparables the District finds about half with a just cause standard for dismissal and nonrenewal and only a minor proportion have it for discipline and suspension. The District does not show any evidence of districts where its own proposed clause has been adopted.

On the issue of grievance procedure and arbitration, the District favors the selection of an arbitrator by having the parties alternately strike names from a panel of private arbitrators furnished by WERC. The District favors an even split of arbitration expense between the parties.

The District makes several points to support its position but the most important is the feeling that the WERC staff is now overburdened and that awards might be inordinately delayed. The District also prefers to be able to make a judgment about the particular arbitrator it would like to choose and also avers that sharing the expense will tend to make the parties more selective and restrained about taking grievances to arbitration.

Also, the District argues that a sentence it proposes to add is important. This sentence would say: "The arbitrator shall have no power to advise on salary adjustments, except as to the proper application thereof, nor to add to, subtract from, modify or amend any terms of this agreement." Without this restriction the District fears that an arbitrator may impose conditions on the parties that go beyond "the four corners of the agreement." The District views the Association's proposal that the loser pay all costs as vindictive and counter-productive. The District sees no logical purpose in the Association's proposal on this point and asserts that it would be injurious to the parties and would undermine the purpose of the grievance procedure.

Among its comparables the District finds that 8 districts provide no final and binding arbitration, 5 districts select the arbitrator from a five person panel submitted by WERC, 2 districts provide for mutual agreement on the arbitrator, 3 utilize WERC staff and 2 districts are in mediation/arbitration on the issue.

As to the Association's fair share clause proposal the District argues that such a provision should come into effect through agreement between the parties, not as a result of arbitration. Although the District describes many other reasons for resisting the Association's fair share proposal, perhaps its most important argument is that among its comparables only 3 of 19 districts now have fair share, 11 have only dues deduction (which these parties currently have and which the District would continue), while 5 districts have no union security provision of any kind.

The District objects to the rebate procedure called for in the Association's proposal on grounds that the Association could not describe how it would operate, and to the same harmless clause on grounds that it would deprive the District of the right to defend itself should someone challenge the clause if it were adopted.

The District sees no reason for including the Association's proposed discrimination clause. Since the Municipal Employment Relations Act already contains this wording as one of the employer prohibited practices, it would duplicate protection that already exists. Furthermore, the District argues that WERC staff is more expert on this issue than an arbitrator would be and WERC decisions are reviewable in the courts whereas arbitration awards generally are not. Only one of the eighteen comparable school districts used by the District had such a clause. The District also objected to what it described as "innuendo" concerning the Association's apparent belief that discriminations played a part in the nonrenewal

in 1977-78 of the two teachers whose circumstances were described earlier in this report.

On the issue of layoff the District has several arguments. One of the most important has to do with administrative problems that would stem from a system of layoff where seniority is the main criterion. In grades 1 through 8 for instance, the District argues that the reassignments that would follow a layoff based on seniority would not necessarily result in the most qualified teacher being in any particular assignment. Reference was made above to an eighth grade teacher being reassigned to a lower grade. Although the person may be certified in the entire area, he or she might not have performed in the area for several years (or never). The District believes that following seniority would result in some misassignments. Further, the District does not agree with the Association that partial layoffs are practicable. It has been the District experience that most teachers assigned to part-time work are on the lookout for other jobs. The District found only one other school district among its 18 comparables that had the same clause that the Association has proposed.

The District favors a two year agreement partly because the Board members and the administrators both feel that bargaining has taken too much time. Since bargaining on the 1978-79 agreement began in February or March, 1978, there is some feeling that since it has gone on in one way or another for the past twelve months, they should be given a respite and that bargaining pursuant to the reopener should be confined to specified economic items. The District asserts that multi-year agreements are becoming increasingly common in public employment and that if districts where duration is in dispute are eliminated, there are 9 districts among its comparables that have 2 and 3 year agreements and only 7 with one year agreements.

Opinion

Since both parties appear to give substantial importance to conditions in comparable districts in supporting their proposals, it is necessary to make some judgment about what districts are appropriate in such comparisons. In making that judgment it seems to me to be important to try to include in a list of comparable districts those that both parties find acceptable. It is noteworthy that both parties have used the districts in the Dual County Athletic Conference. In addition to the ten districts in that group, there are five others that both parties view as appropriate for comparison. If those fifteen school districts are combined in one list they include the following:

School District	1977-78 Number of Teachers (FTE)	1977-78 Number of Students
Cambria	37.7	551
Fall River	38.2	487
Green Lake	38.7	467
Markesan	73.6	1223
Montello	52.4	829

School District (cont.)	1977-78 Number of Teachers (FTE)	1977-78 Number of Students
Necedah	37.1	618
New Lisbon	53.3	826
Pardeeville	56.2	1031
Poynette	80.4	1264
Princeton	28.2	420
Randolph	40.1	587
Rio	40.9	639
Westfield	78.4	1394
Wild Rose	47.0	816
Wonewoc	34.5	572
Averages (excluding Rio)	49.7	792

The averages of numbers of teachers and students came out slightly higher than the figures for Rio, but they have the virtue of having been used by both parties. Although they are not as cohesive geographically as the Dual County Conference districts, they are less disparate in terms of size than some of the districts used by the Association and in terms of community of interest than some of the districts used by the District.

There are some discrepancies in the testimony concerning some of the conditions in effect in these school districts but generally the comparisons seem to be about as follows:

On the "cause" standard for dismissal, discipline or nonrenewal the results are subject to different interpretations. In six districts there is no "cause" standard. Seven do have such a standard, but in one case it is not subject to the grievance procedure and in either three or four of the seven cases it covers dismissal only, not nonrenewal. There is one case in the mediation/arbitration process. Although the comparables on this issue do not give strong support to the Association's position, there appears to be less support for the District's position among the comparable districts.

On the subject of the grievance procedure and arbitration seven of the comparable districts have no arbitration clause at all. Two use the free arbitration services of the WERC staff while three select arbitrators from a panel of names submitted by WERC. One district (New Lisbon) is in mediation/arbitration where the specific issue being considered here is in dispute, and in one district (Westfield) the parties provided conflicting information at the hearing in this case.

On this issue it is a toss-up as to whether the comparisons support the District's or the Association's position. Since there was no evidence presented to show that any of the districts that have an arbitration clause specifies that the losing party pays the expenses of the arbitration, there appears to be no support for this part of the Association's proposal. But since these costs would be minimal anyway if the Association's position were adopted, I consider the entire

arbitration issue to be a toss-up on the basis of comparables.

On fair share, as the Association admits, the District's position is strongly supported. In the fourteen districts only two have fair share. Although six have dues deduction (which Rio already has), five have no provision of any kind on union security and one is in mediation/arbitration.

There appears to be no support in the comparisons for the Association's position on the discrimination clause.

The layoff provisions in the fourteen comparable school districts support the District quite strongly. Only four use seniority as the principal criterion in layoff while five list some other factor, such as qualifications or training, first, while four have no layoff provision and one is unknown.

On duration the Association's position is supported in the comparisons. Nine have one year agreements and only five have agreements of two or more years.

Since the parties both stress comparables, my award must of necessity be based very heavily upon practices in effect in school districts that are comparable to the Rio Community School District. Both parties have chosen to make their comparisons in ways that tend to support their respective positions. I believe, therefore, that the fourteen districts that I have used, and which appear among the comparable districts by both parties, are an appropriate group for this purpose. Using those comparisons I find support for the District's final offer on the issues of layoff, discrimination, and fair share and support for the Association's final offer on the issues of just cause and duration. The results of the arbitration comparisons are indeterminate.

I would like to make these additional comments: Although I have said that the comparables support the Association's final offer on just cause, I am only able to indicate this when that position is compared with the position of the District. There are relatively few just cause provisions applying to nonrenewal, which appears to be the principal objective of the Association's proposal. On this issue I am somewhat troubled by what I consider to be a simplistic expression of the issue by the Association. While the Daugherty tests are useful to arbitrators in discipline cases, there is no presumption that any particular arbitrator would use them in a grievance arbitration. There is even less reason to think that they would be used by an arbitrator in a nonrenewal grievance. Nonrenewal decisions are very likely to be based on some judgment about a teacher's competence. The Daugherty tests were not designed for that kind of application. While they might be useful in a nonrenewal grievance arbitration, it almost seems that the Association is telling us in this dispute that if its clause is adopted, the Daugherty tests <u>will</u> be used.

And while there is less support among the comparables for the District's proposal on this issue, its proposal does provide some protection to the teacher who is nonrenewed, disciplined or dismissed in the sense that the application and interpretation of the clause is subject to the grievance procedure and arbitration in the event that the grievant and the Association believe that the action taken by the District is arbitrary, capricious, or discriminatory. Although I think that I would be inclined to accept the Association's proposal if this were the only issue, I am not uncomfortable with the District's offer.

In my opinion there are no very important disadvantages to either proposal on the subject of arbitration. Since there have been few grievances filed in the past when the Board decision was the final step, it seems unlikely that the expense of arbitration will be very burdensome for the Association. On the other hand, I find the District's arguments on this issue to be rather labored. WERC staff arbitrators are very competent, and although the process may be somewhat slower that using private arbitrators, WERC free arbitration is widely used even in the private sector. If the Association's position were adopted on this issue, there would be little expense involved, so I do not consider that the loser-pays issue is significant. The restriction on the arbitrator's discretion is useful, but in this case the Association has said that it would be willing to add such a sentence to its own proposal. In my opinion, either of the proposals is acceptable and there is not strong support in the comparables for one over the other.

On fair share I sympathize with the Association when it declares that in rural areas the provision will never be adopted if it must be found to be prevailing in comparable districts. In this area, however, it is so far from being a prevailing practice that I would be uncomfortable in making such an award. This is an issue that generates more emotion than reason, and I agree with the Association that much of the material introduced by the District to support its position at the hearing was not relevant to this dispute. Although on its face the Association's reservation of the right to defend attacks against a fair share agreement is "troubling," in Frank Zeidler's words in the Two Rivers School District case, the Association also states that it would be willing to have the District defend itself against such attacks as long as it would agree to release the Association from liability.

On the issue of a discrimination clause both reason and practice are on the side of the District. Had there been some evidence introduced to support the Association's inference that the District had discriminated against two teachers in nonrenewal actions during the 1977-78 school year, or if the individuals or the Association had brought prohibited practice charges against the District as a result of the incidents, there might be more reason to consider adoption of this added protection against discrimination for union activity.

In my view the issue of layoff by seniority is similar to fair share. There is very little precedent for it among the comparable districts. Although layoff by seniority is conventional in the private sector, there are administrative problems involved in its adoption in a small school district like this one. In view of the fact that the Association is able to state in its brief that the District does "an extraordinary job of evaluating teachers which we find to be admirable," I am not uncomfortable with a clause that provides for first year teachers to be laid off first, then Bachelor degree holders next, based on evaluations of performance.

I find the District's proposal on duration more troubling than anything else in this dispute. By coupling an argument that mediation/arbitration has caused inordinate delays in the bargaining with a proposal that the new agreement have a two year duration, the District's position amounts to a self-fullfilling prophecy. If the other issues were closer, I would be inclined to award this proceeding to the Association on grounds that the District's position on this issue makes the award doubly burdensome to the teachers who are represented by the Association.

Those effects are tempered, of course, by the reopener on economic issues and the calendar.

I have considered the other factors besides comparability that I am expected to give weight to under the statute. In my opinion none is applicable to this award except the comparability criterion.

AWARD

The District's final proposal is chosen as the award in this case.

Dated: March 14, 1979
Madison, Wisconsin

Signed: David B. Johnson
David B. Johnson
Mediator/Arbitrator

ADDENDUM #1 OFFICIAL

RIO EDUCATION ASSOCIATION

FINAL OFFER

Following is the final offer of the Rio Education Association in contract negotiations for the 1978-79 school year.

The Rio Education Association proposes the existing master agreement with the following amendments:

1. Teacher Non-Renewal - Add:

   Teachers shall be subject to disciplinary action, non-renewal, or dismissal for just cause only. This provision shall not apply to teachers during their first year in the district.

2. Grievance Procedure - Add:

   If the grievant is not satisfied with the result of the Board's decision, or if no decision has been rendered within fifteen (15) days after the grievant has met with the Board, the grievant may request in writing that the Chairman of the Grievance Committee submit his grievance to arbitration. In the event that the grievance is submitted to arbitration the two parties shall meet within ten (10) days of the notice of arbitration to select an arbitrator by mutual agreement. If the two parties are unable to agree upon the selection of the arbitrator then the WERC shall be asked to appoint a member from the Commission or its staff to arbitrate the dispute. The decision of the arbitrator shall be final and binding. The expenses of the arbitrator shall be paid by the party ruled against.

FAIR SHARE

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 all employees who apply consistent with the Association constitution and by-laws. 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 thirty days of such deductions.

The employer will provide the Assoiation 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.

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

Article IV Paragraph B

Add: The Board agrees not to discriminate against any teacher in regard to hours, wages, or any conditions of employment by reason of his membership in REA, his participation in negotiations with the Board, or his institution of a grievance.

LAYOFF

When a reduction in staff is necessary because of a decrease in student enrollment, a decline in course registration, educational program changes, financial and budgetary consideration or other good reason as determined by the Board, the following procedure will be followed: Layoffs shall be based on seniority within the area of certification, with the teacher having the least seniority being the first to be laid off.

Teachers affected by a staff reduction will be notified of vacant positions within the district and area of certification from which they were laid off when they occur and offered employment in those positions in reverse order of their lay-off. They will be re-employed only if they accept the offer of employment during the school year within 5 days after receifing the offer, or within 15 days if the offer is made for employment at the beginning of a school term. The notice will be sent to the last known address of the employee on file in the district records. Teachers shall be eligible for this re-employment consideration for a period of two years from the day the teacher last worked for the Rio Community School District.

ADDENDUM #2

OFFICIAL

FINAL OFFER - Board of Education
Rio Community Schools

Preamble

C.) Language items in this agreement shall be effective as of July 1, 1978, and shall remain in full force and effect through June 30, 1980.

ARTICLE VI - LAYOFFS

When a reduction in staff is necessary because of a decrease in student enrollment, a decline in course registration, educational program changes, financial and budgetary consideration or other good reason as determined by the BOARD, this reduction will be based on academic preparation, teaching experience and length of service in the district.

1. The following staff reduction procedure shall be applied so that the teacher(s) whose employment is to be discontinued will be determined as follows with (a) being the first laid off and (c) being the last.

   a. First year teachers (Bachelors or Masters)

   b. Bachelor degree holders, based upon a composite evaluation of the teacher's annual written evaluations. However, where such composite evaluations of two or more teachers are relatively equal, the teacher(s) with greater seniority within the district shall be retained.

   c. Master degree holders, based upon a composite evaluation of the teacher's annual written evaluations. However, where such composite evaluations of two or more teachers are relatively equal, the teacher(s) with greater seniority within the district shall be retained,

2. Teachers may be considered for use in more than their present position provided that they are qualified, but no obligation to so employ them is assumed by the district unless they were hired to perform initially in those departments or unless they have satisfactorily performed in those departments during their employment by the district.

3. Teachers affected by a staff reduction will be notified of vacant positions within the district and area of certification from which they were laid off when they occur and offered employment in those positions in reverse order of their lay-off. They will be re-employed only if they accept the offer of employment during the school year within 5 days after receiving the offer, or within 15 days if the offer is made for employment at the beginning of a school term. The notice will be sent to the last known address of the employee on file in the district records. Teachers shall be eligible for this re-employment consideration for a period of two years from the day the teacher last worked for the Rio Community School District.

ARTICLE IV - GRIEVANCE PROCEDURE

4. The Board shall submit their decision to the grievant within fifteen (15) days of their meeting.

5. If the grievance is not resolved, it may be appealed for arbitration within 10 days of the board's answer. When a timely request for arbitration has been made, the parties or their designated representatives shall attempt to select an impartial arbitrator. Failing to do so, they shall within ten (10) days of the appeal, jointly request the Wisconsin Employment Relations Commission to submit a panel of five (5) arbitrators. As soon as the list has been received, the parties or their designated representatives shall determine by lot the order of elimination and thereafter each shall, in that order, alternately strike a name from the list and the fifth and remaining shall act as the arbitrator.

The arbitrator shall schedule a hearing on the grievance and, after hearing such evidence as the parties desire to present, shall render a written recommendation. The arbitrator shall have no power to advise on salary adjustments, except as to the improper application thereof, nor to add to, subtract from, modify or amend any terms of this agreement. A decision of the arbitrator shall, within the scope of his authority, be binding upon the parties.

The Board & Association will share equally the costs of the arbitration procedure, such as the fee and expense of the arbitrator and the cost of the hearing room. The arbitrator shall issue his decision within thirty (30) days from the close of the hearing.

ARTICLE V - TEACHER NON-RENEWAL

D. Provision of this section shall not be construed to limit the ability of the Board of Education to initiate non-renewal proceedings, for causes not in evidence in time to allow for processing in Steps 1 through 2 of this section.

E. No teacher shall be terminated by dismissal or non-renewal, or disciplined in any manner unless said teacher is first given the reason for such termination or discipline, provided said reasons may not be arbitrary, capricious, or discriminatory.