STATE OF WISCONSIN

ARBITRATION AWARD

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Mediation/Arbitration between

INDEPENDENCE EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF INDEPENDENCE

Re: Case VI
No. 23021
MED/ARB-105
Decision No. 16546-B

Background

This proceeding arises out of a petition filed by Independence Education Association, hereinafter called the Association, pursuant to the provisions of Section 111.70(4)(cm)6.b. of the Municipal Employment Relations Act. Following negotiations by the parties and an effort by the Wisconsin Employment Relations Commission to settle the dispute, the Commission appointed Arlen C. Christenson as Mediator/Arbitrator on September 19, 1978. After being advised that Mr. Christenson was unavailable, the Commission advised the undersigned on September 28, 1978 that he had been selected by the parties as Mediator/Arbitrator. I met with the parties on the evening of October 27, 1978 and made an effort to settle the dispute by mediation. This effort was unsuccessful. Thereupon a hearing date was set for December 5, 1978. The parties were given an opportunity to amend or withdraw their final offers, which they declined. The hearing was held on December 5. It commenced at 4:15 p.m. and continued until about 2:00 a.m. on December 6. The parties agreed to exchange briefs through the arbitrator. Both briefs were received on January 24, 1979. The Association sent a letter to the arbitrator dated February 2 requesting that certain enclosures to the District's brief be disregarded. The District replied to the arbitrator concerning that letter on February 7, commenting on the Association's assertions and giving the reasons why the District believed that the enclosures should be considered by the arbitrators. On February 12, the Association wrote another letter to the arbitrator indicating that there would be no further response to the District. The arbitrator considers the record to have been closed as of February 14 when he received the latter letter from the Association.

Appearances

The Association was represented by Mr. Charles S. Garnier, Representative, Wisconsin Education Association Council, 105 Twenty-first Street North, Menomonie, Wisconsin 54751.

The School District of Independence, hereinafter called the District or the Board, was represented by Mr. Karl Monson, Consultant, Wisconsin Association of School Boards, 122 West Washington Avenue, Madison, Wisconsin 53703.

The Issues in Dispute

The Association represents a unit of all teachers employed by the District. In the 1977-78 school year there were 38.4 full-time equivalent teachers in the unit. The dispute involves the parties' inability to agree upon various terms of a renewal of their existing agreement which by its terms expired on June 30, 1978. According to the listing in the Association's final offer there are 19 items in dispute. These will be considered in the order they are listed in the Association's final offer.

Proposed Changes in Article V. The Association would retain Article V, Working Conditions, in its present form without change except presumably to conform the dates to the new agreement. Paragraph 5 of that Article reads as follows:

> All full-time high school teachers will be guaranteed the equivalent of two single periods per day preparation time per tri for 1977-78 school year based on an 8 period day. (An average of two per day tri will be acceptable for 1976-77.) If in unusual circumstances, it is impossible to meet this scheduling requirement, the teacher will be compensated $350 per preparation period lost.

The District would change that paragraph to read as follows:

> All full-time teachers normally will have scheduled an average of one hour per student day of preparation time per trimester. If in unusual circumstances a teacher has no scheduled preparation time, that teacher will be compensated $350 per trimester.

In addition, the District would delete Paragraph 6, which reads as follows:

> All full-time elementary teachers K-8 (not exceptional education or specialists) will be guaranteed an average of one hour per day of preparation time in addition to any scheduled recess time. (Occasionally a class may be scheduled during recess.)

The Association would not only retain Paragraph 6 but would add a new paragraph 7 (renumbering Paragraphs 7,8,9, and 10):

> All full-time specialists who teach at both the elementary and secondary level (art, music, phy. ed. and special education) will be guaranteed an average of one hour per day or the equivalency of five hours per week of preparation time.

The District would add a new paragraph to read as follows:

> A joint committee composed of equal representatives of faculty and administration shall be established to study and research innovation means and methods of instruction (including utilization of Cable TV) that enhance the educational process. This committee shall be

> charged with the responsibility of making recommendations for such programs deemed advisable for Independence and its cooperating districts. Included in such recommendations shall be those that have impact on wages, hours and conditions of employment.

The Association would add a new Paragraph 11 which would read as follows:

> A joint committee composed of equal representatives of faculty (chosen by the IEA) and administration shall be established to study and research innovative means and methods of instruction (including utilization of Cable TV) that enhance the educational process. This committee shall be charged with the responsibility of making recommendations for such programs for the school district of Independence.

The Association would also add a new Paragraph 12 to Article V, as follows:

> Teachers will be compensated at the rate of $6.50 per class period for substituting for another teacher.

The District's proposal on the issue of preparation time is designed, it says, to remove an inequity and an ambiguity in the wording of the old agreement. The District argues that since high school teachers have on the average only 1.6 more students per teacher than elementary school teachers, it is inequitable for them to have two hours per day of preparation time while the elementary school teachers have only one. The District proposal would have the effect of adding exceptional education and specialist teachers to those who would have one hour of preparation time, since the new paragraph, unlike the one it would replace, would apply to all full-time teachers. The Board also supports its position on replacing Paragraphs 5 and 6 by arguing that the new wording would remove an ambiguity that exists in the old wording, where it says that ". . .the teacher will be compensated $350 per preparation period lost." If this wording were taken literally, the District says, it would constitute a misstatement of intent since it was intended to apply to teachers who had no scheduled preparation periods for a complete trimester. In addition, the new paragraph would incorporate the elementary, exceptional education and specialist teachers into the $350 compensation requirement, a benefit they have not had previously.

On this issue the District argues that the Association's evidence regarding comparable school districts is misleading inasmuch as it indicates whether these districts have time provided in their agreements for preparation. Although the Association's comparables indicate a fairly even split (slightly in favor of no provision), the actual provisions provide for smaller amounts of time than two hours. Therefore, the District asserts, the comparables support its position on this issue.

On the issue of adding a provision for paying $6.50 per class period for substituting for another teacher the Board states that the matter was never discussed at the bargaining table before it appeared in the Association's

final offer. Although the District agrees that a majority of the schools among the comparable school districts provide some form of substitute pay, in only two cases does the amount equal or exceed the amount proposed by the Association. In any case the District argues that substitution occurs infrequently and that when it does, the District attempts to distribute the work evenly among the teachers.

On this issue the Association argues that the District has not produced any persuasive reason why an existing benefit should be eliminated. The Association cites previous mediation/arbitration awards where arbitrators have held that unless "persuasive reason" is shown or that the existence of the clause has "hampered efficiency," there is a presumption that it should not be changed. The Association asserts that the District originally proposed the clause in 1972 and that in the interim the benefits from it (in terms of the $350 payments for preparation periods lost) have been eroded until in 1977-78 school year no overload amounts were paid. Furthermore, the Association argues that the District has not made any provisions to "buy out" the reduction in benefits, which means that the Association would be giving up a fairly long-standing condition of employment for high school teachers for nothing in exchange.

As to the District's position that the old agreement's provisions on this condition are inequitable, the Association points out that elementary teachers have a lunch hour thirty minutes longer than high school teachers, that they have aides to assist them, whereas high school teachers do not, and that high school teachers have additional tasks not performed by elementary school teachers such as acting as class and club advisors and performing other extracurricular activities. In addition, the Association argues that its own proposal would remove an inequity in the sense that all full-time specialists who teach at the elementary school level would become eligible for one hour of preparation time, a condition of work that they have not previously enjoyed. The Association does not depend upon comparables to support its position in this matter for the reasons stated above. It believes that the District has not been able to show adequate reasons why the existing condition should be reduced in the way the District is proposing.

On the issue of payment to teachers for substituting for absent teachers the Association asserts that often when a teacher is absent for all or part of the school day other regular full-time teachers are asked to perform the duties of the absent teacher. This circumstance appears to apply most often to high school teachers and to specialists at the elementary levels. The result is that the substitute fills in for the absent teacher during periods when that teacher would ordinarily have preparation time. This means that the necessary preparation by high school teachers must be performed after school hours. In the case of elementary school teachers the specialist's activity is likely to be cancelled and not rescheduled, making it necessary for the regular teacher to stay with the students during periods when that teacher would have preparation time or be handling other school business. By adding provision for payment at the rate of $6.50 per class period for this kind of substitution the Association argues that the District would have an incentive to employ substitute teachers instead of using regular teachers. And if the District did not employ substitutes under those circumstances the regular teachers would receive compensation for the extra work performed.

The Association introduced comparable evidence purporting to show that thirteen of the twenty school districts with which it seeks to compare the Independence School District have such compensation in their agreements and that the average compensation in those districts is $5.59 per class period. The rate of $6.50 was chosen presumably to compensate teachers in this district at a somewhat higher rate than the average, which represents last year's rates among the comparable districts.

The two slightly different proposals of the parties concerning formation of a joint committee to study innovative means and methods of instruction, including utilization of Cable TV, stem from an experimental cable television program that was initiated several years ago with the assistance of several of the universities in the University of Wisconsin System. It is not necessary in this report to detail the concerns of the District and the teachers with the implications of this program. Suffice it to say that the District's proposed wording would include a sentence saying that the recommendations of the committee would include "those that have impact on wages, hours and conditions of employment." The Association's position on this issue is that the joint committee should have authority only to make recommendations about such programs and that any impact of such programs on wages, hours, and conditions of employment should be handled by the regular negotiators for the Association.

The District's response on this issue argues that the ability of the joint committee to make recommendations is not synonomous with the ability to bargain, that the District is not reluctant to bargain on the issue, and that if the Association ever considers that the District refuses to bargain on the issue, it has recourse to filing a prohibited practices charge with WERC.

Proposed Changes in Article VI. Both parties would increase the present limit on sick leave accumulation from 90 to 100 days. They differ on what to do with Paragraph 4 of Article VI. That paragraph reads as follows in the old agreement:

> 4. Emergency, Business or Personal Leave
>
> Teachers are eligible for a maximum of three days, per school year, included in the 12 sick leave days, to be deducted from sick leave for matters requiring their presence during school hours. Requests for such leave must be submitted to the administrator in writing at least 24 hours prior to taking leave. Telephone requests may be honored in emergency situations.

To that paragraph the District would add the following sentence:

> The administration or its designee has complete authority in granting or denying such leave subject only to appeal to the School Board.

The Association would substitute the following wording for the present Paragraph 4:

> Teachers are eligible for a maximum of three days per school year included in the 12 sick leave days, to be deducted from sick leave for matters requiring their presence during school hours. Such requests for leave shall be granted if they are made at least 24 hours prior to taking leave, except in the event of an emergency in which case requests for leave shall be granted with no prior notice, providing the teacher states the reason for such request to the administrator. Telephone requests shall be honored when it is not possible for the teacher to request leave in writing. Such leave shall not be used for the purpose of extending holiday or vacation periods. No more than five (5) teachers may use such leave at any one time.

The Association takes the position that the wording of the old clause obligates the District Administrator to grant leave of this kind when requested. At the hearing the Association introduced testimony of several witnesses that purported to indicate that the Administrator had not been even-handed in administering this provision, that in two cases a day of leave had been denied to employees who were unable to return to Independence from out-of-town trips for the reason that a snowstorm did not permit travel. Another teacher testified that on the occasion of the same snowstorm she had been granted a day of leave under the same circumstances. (The District introduced copies of records with its brief indicating that all three teachers had indeed been docked and that they had been uniformly treated by the District Administrator. The inclusion of this material was the cause of the Association's letter of February 2 referred to above in which the arbitrator was asked to disregard certain documents as having been improperly submitted as evidence after the close of the hearing. This matter is discussed further below in the Opinion section of this report.)

The Association's other argument against the District's proposal and in favor of its own is that under the District's wording the Administrator would have what the Association describes as "total veto power over such leave" and "the school board, one of the parties to the master agreement, would be the final judge on such matters." This would exclude the possibility of grievances against alleged violations, a procedure that would be available to teachers under the Association's proposed wording.

In addition, the Association points to the existence of personal leave clauses in the agreements in nearly all of the districts with which the Association seeks to make comparisons. Although many of those listed by the Association have fewer than three days, the Association asserts that only four of twenty provide a veto power to the school administrator.

The Association believes that the wording it proposes to add to the present Paragraph 4 would provide adequate procedures and restrictions against abuse of the leave privilege and would negate any claim by the District that the Association's proposal would place an unreasonable administrative burden on the District.

The Board disputes the Association's interpretation of

the old policy and states that adding its proposed sentence would simply codify existing practice, which gives the Administrator or his designee complete authority in granting or denying such leave, subject only to appeal to the school Board. The District also points out that had the Association's proposed wording been in effect under the circumstances described by the Association's witnesses, they would have been denied a day of personal leave since in those cases it would have extended a holiday period. The District (by introducing the records described above in its brief) believes that there has been no inconsistency in administration of the policy.

The District's comparables indicate that in most cases the number of days allowed is limited to one or two per year rather than three, which would continue to be the number allowed under this agreement, and that in seven of eighteen cases the school administrator retains veto authority in connection with such requests. The District believes, therefore, that the present policy, as reinforced by the addition of another sentence, is appropriate, administratively more practicable, and more in keeping with prevailing practice among comparable districts.

Article VII, Individual Rights. Both parties agree that Paragraph 1 should be deleted from the agreement:

> 1. Individual teachers are guaranteed all the rights and privileges set forth in the Constitution of the United States and the State of Wisconsin and in federal and state statutes.

According to the District's final offer, this deletion was agreed to in exchange for the District's agreement to retain Paragraph 1 of Article III, which is a longer and more complete statement of employee security rights.

The Association proposes to add a new Paragraph 6 to Article VII entitled "Teacher Discipline," which would read as follows:

> a. A teacher shall not be disciplined, suspended, or discharged except for just cause.
>
> b. All teachers new to the district will be placed on probation for one (1) school year of teaching, however, these teachers shall not be non-renewed for arbitrary or capricious reasons. Upon successful completion of the probationary period no teacher will be non-renewed except for just cause.

Although the District does not suggest that it be part of Article VII, the following proposal is treated here because it is the counterpart of the Association's proposal immediately above:

> New Article - Just Cause for Discipline and Disciplinary Discharges to read:
>
> In the event the administration and/or Board deems it necessary to discipline a teacher, such action shall only be done for just cause.
>
> In the event the Board deems it necessary to

> effect a disciplinary discharge of a teacher, such action shall only be done for just cause. Non-renewal is not to be considered as a disciplinary discharge or discipline.

The two principal differences between the Association and the District proposals are that (1) the Association would apply a just cause standard to discipline, suspension, discharge, and non-renewal of teachers while the District would limit the just cause standard to discipline and discharge; and (2) the Association would provide for a one year probationary period during which an "arbitrary and capricious" standard would be applied to non-renewals, while the District would not provide for a probationary period.

The Association provided testimony from one of its UniServ Directors concerning instances where teachers in Independence had either been threatened with non-renewal or had actually been non-renewed. The Association argues that such cases have been governed by what it describes as only the minimal procedural protections of Section 118.22 of the State Statutes, that these procedures require only that the school Board provide for a hearing and that it is not necessary to give the teacher who is non-renewed any reasons for the action. The Association provides a number of arguments to support what it declares are necessary due process elements in its own proposals. The Association also notes that the District's final offer on the subject of layoff suggests that there is an evaluation system that would be useful in determining just cause for non-renewal and that use of a just cause standard would not hamper the District's ability to administer its program. In addition, the existence of a one year probationary period would allow the District to terminate a new teacher for any good reason during the first year, as long as the action was not arbitrary or capricious.

The Association introduced comparables purporting to show that a majority of the districts with which the Association seeks to compare conditions in this case have just cause standards for non-renewals. The Association also points out in its brief that eleven of the eighteen districts with which the Board seeks to make comparisons also have a just cause standard (although one does not cover non-renewal.)

Although the District agrees that a majority of districts with which it compares this one has a just cause standard, it argues that there was no evidence introduced to show why a just cause standard should be adopted. It is the District's view that providing a just cause standard for non-renewal would open up the possibility of grievance arbitration proceedings on this issue, which might then be followed in the case of an award adverse to the teacher by court review. The District believes that the current statutory protection of Section 118.22 is adequate.

Proposed Changes in Article VIII. The Association would change Paragraph 2 of Article VIII so as to change the dates of the old two year contract to new dates for a two year contract as proposed by the Association. Although the District does not make a specific proposal concerning Paragraph 2 of Article VIII, it does propose a one year agreement, which implies that Paragraph 2 would have to be changed accordingly.

The Association would make certain changes in Paragraph 9

of Article VIII, which now reads as follows:

9. Insurance
   a. The school district shall pay 100% of the single health insurance premium and $55.00 per month toward the family health premium for the health premium for the health insurance program selected by mutual agreement between the Board and the Association.

   b. The School District shall pay $2.00 per month of the $13,000 group life policy premium provided by a company selected by mutual agreement between Board and Association.

   c. The School District will not contribute toward the summer (July, August, September) insurance coverage for teachers not intending to return to Independence. (Such teachers have the option to stay with the group coverage at their own expense.)

   d. If a teacher takes no health insurance, (illegible) may choose a guaranteed income or disability insurance policy already subscribed to by other faculty members. In such cases, the District will pay up to the amount of the single health insurance cost.

   e. All new teachers will be informed as to when all insurance goes into effect. (October of current year)

The Association would change a. to put the actual cost of the premium for family coverage in the labor agreement. It would change b. to state: "The school district shall pay 100% of the $13,000 group life policy premium." It would change c. to read:

   c. The school district shall continue to pay its share of the insurance premiums for teachers not returning to the school system during the months of July, August and September if such payments are necessary to continue such teacher's coverages up to the start of said ensuing school year.

Since the Association's proposal in Article VIII, Paragraph 9.c. relate to its proposal for changes in Article IX, that proposal will be set forth here. The present Article IX, Breach of Contract, reads as follows:

1. Teachers terminating services or requesting release of contract shall be assessed a reasonable amount for liquidated damages. Following are reasonable sums for such breach of contract:
   a. After July 1 - $150.00
   b. After August 1 - $250.00
   c. After the school term begins - $350.00

2. If it is agreed that a breach of contract

> is in the best interest of the district and its young people, as determined by the Board, the liquidation damage sums may be reduced or waived by the Board.

The Association would change the dollar amounts in Paragraph 1 of Article IX in the order they appear to $200, $300, and $500 respectively.

The District does not agree to the changes proposed by the Association in Articles VIII and IX except that it would change Paragraph 9.a. of Article VIII to substitute the figure "$65.00" where "$55.00" occurs in the old agreement. The District would make no other changes in Articles VIII and IX.

On the issue of amount to be contributed by the employer for the family health premium in Article VIII, 9.a., the Association states that the actual family premium is $70.70 per month. The Association asserts that its own proposal would cost the District $2286 more per year that the District's own proposal. Comparable data were introduced by the Association at the hearing which purported to show that thirteen of twenty school districts among the comparables paid all of the family premium under their collective bargaining agreements.

The record does not indicate any testimony or argument concerning the proposed change in Article VIII, 9.b. from a figure of $2.00 per month premium for a $13,000 life insurance premium to 100% of the premium on that same amount of life insurance.

As to the Association's proposed change to require payment by the District of three months of health insurance premium for teachers not returning to the school system in the fall, the Association argues that in early negotiations this proposal was part of a package understanding the Association thought that it had with the District to continue these payments in the summer in exchange for raising the penalties for teachers who terminate their contracts or ask for release of their services after having signed their contracts. The Association had therefore proposed to increase the old penalties by $50 for termination before July or August 1 and by $150 for termination after the school term begins. The District then did not make such a proposal in its final offer. The Association believes that the increased penalties will discourage late terminations. It also argues that since the District has been willing all along to have the terminating teachers pay their own premiums under the plan for the period after termination and before the school year begins, that it agrees that coverage should be continued. Under these circumstances the Association argues that it is appropriate for the District to make those payments.

On the family health insurance premium the District argues that it has never paid the full amount and that an increase of $10.00 on a family premium is adequate and reasonable. The comparisons used by both the Board and the Association do not indicate whether the dollar amounts indicated constitute 100% of the family premium or not. The Board believes that it is desirable that employees make some contribution to the premium in order to maintain a stake in the costs of the insurance.

As to the employer contribution to life insurance the District notes that the Association produced no evidence to

justify its position of having the employer pay 100% of the premium. On the other hand comparable evidence introduced by the District at the hearing indicated that ten comparable districts have no paid life insurance programs at all and that six districts offer optional participation in programs wherein those districts pay thirty-eight per cent of the premium. In this case the District pays about fifty per cent of the $4.03 monthly premium under its own optional program. The District, therefore, sees no justification in the Association's proposal that the District pay the entire premium.

On the issue of payment of summer premium for terminating teachers as a quid pro quo for an increase in the amount of liquidated damages, the Board says that since the added expense of court action to recover the penalties makes such actions impracticable, the increase in the penalty figures is not a reasonable trade-off. Therefore, the Board position of allowing the terminated teachers to make the payments themselves, which has been a provision of the agreement since 1972, is preferred.

Proposed New Article IX, Layoff Procedure. Each party to this dispute has a proposal on this issue. The Association's proposal follows:

> When it becomes necessary to reduce the number of teachers due to a decrease in student enrollment, or due to program changes resulting from a decline in student enrollment, the Board shall determine the teacher(s) to be laid-off in accordance with the following procedure:
>
> 1. A point system for the purpose of determining order of layoff shall be established. The teacher(s) with the lowest points shall be laid-off, In the event the point totals are equal, length of service in the district shall prevail.
>
> 2. Point System Criteria and Allocation
>   a. length of teaching based on initial placement on the district salary schedule, plus succeeding years of service in the district: one point for each year.
>   b. academic training: BS or BA = 1 point; BS + 10 = 2 points; BS + 20 = 3 points; MS or MA = 4 points; MS + 15 or above = 5 points.
>   c. ability and performance as a teacher in the district as evaluated by appropriate supervisory personnel (evaluations for the year in which the lay-off is being considered shall not be used) 1 to 5 points.
>   d. certification by the DPI; 1 to 5 points.
>   e. qualifications to perform extra duties listed on Appendix "C" as measured by academic training and/or prior experience in such positions; 1 to 5 points.
>
> 3. Any teacher who is identified for lay-off may elect to transfer to a position occupied by a teacher with fewer accumulated points, under the condition that the teacher initially identified for lay-off has certification or

the qualifications to be certified to perform the duties of the position. The teacher with the lowest point accumulation will then be the person identified for lay-off and can utilize the provisions of this section. Any teacher utilizing the provisions of this section must notify the district of their intent to do so at the time of, or immediately following notice of impending lay-off.

4. Lay-offs shall be considered as non-renewals as defined in SS 118-22 and no teacher shall be non-renewed during the term of his/her individual contract.

5. Laid-off teachers shall not have recourse to Article VII, Section #6 "Teacher Discipline".

6. No member of the bargaining unit may be prevented from securing other employment during any period of lay-off. Teachers who are laid-off shall be reinstated in the inverse order of lay-off, providing said teacher(s) is certified or has the necessary qualifications for certification in the duties of the available position. Eligibility for reinstatement shall be for up to two school years following such lay-off. Such reinstatement shall not result in a loss of credit for previous years of service. No appointment of new or substitute employees shall be made in those positions where teachers certified or possessing the qualifications for certification are on lay-off, unless the teacher on lay-off elects to not accept the position available. Failure to accept a position offered during the reinstatement period shall not constitute a waiver of further reinstatement rights.

The District proposes the following new articles, entitled Lay-off:

When it becomes necessary to reduce the number of teachers due to a decrease in student enrollment, budgetary reasons or program changes, including changes caused by participation or lack of participation of cooperating school districts, the Board shall determine the teaching area of immediate impact, teachers involved and shall consider the following factors in determining which teachers are to be laid off, taking into account both on an individual basis and in comparison with other teachers:

1. academic training and certification

2. ability and performance as a teacher in the district as previously and currently evaluated by appropriate supervisory personnel

3. participation in co-curricular and extra-curricular activities

4. total teaching experience based on placement on salary schedule.

If only one teacher is involved, that teacher shall be laid-off. If more than one teacher, a "5-point must" system shall be used whereby the teacher with the "most" of any factor category shall be given 5 points per category. The remaining teachers shall be given points in comparison to the "5-point" teacher. Each factor category carries a maximum of 5 points. The teacher(s) with the lowest number of points shall be laid off. In the event all other factors are equal, total teaching experience based on placement on salary schedule shall prevail. The teacher(s) with the lowest placement shall be laid off.

Timelines of Section 118.22, Stats, 1977, shall apply.

The parties agree that a lay-off shall not be considered a non-renewal or discharge.

Laid-off teachers shall have re-call rights for a period of two (2) school years immediately following the school year during which the final lay-off notice was given. Teachers shall be recalled in inverse order of lay-off provided they are certified to fill the open position and they have at least one (1) year teaching experience in the certification.

Re-call rights shall terminate if:

1. the two (2) school year period has expired.

2. the teacher(s) do not accept an offered position within seven (7) days of notification

3. teacher(s) do not notify the Board of their current mailing address.

Each party submitted a lengthy argument in support of its own proposal in the briefs. The Association argues that its proposal is more appropriate for these reasons: 1. The reasons for layoff are specified as enrollment decreases or program changes. These are said to be clear cut criteria. The District, however, specifies "budgetary reasons" is too vague a term and that in any case the budget, once adopted, is guaranteed for any given year. 2. The Association's point system is an objective method for determining who is to be laid off. The Board point system is not specific on how the range of points would be determined in any particular case. In any event, the Board's proposal not to apply the point system in the case of a layoff of a single individual makes a mockery out of its proposal. 3. The Association's proposed bumping procedure ensures that teachers in specialized areas will not be unfairly singled out for layoff. The Association believes that this balances its own and the District's interests. 4. The Association's proposal would prohibit layoffs during the term of an individual's contract. It is the Association's contention that the Board would retain the right to lay off during the term of an individual's contract. 5. Under the Association's proposal a laid off teacher retains recall rights for two years. The Association argues that the District's proposal that to be recalled a laid off teacher must have at least a year of teaching experience is unduly restrictive.

6. The Association's comparables are said to support its position in that a majority provide for a point system and consider a layoff to be a non-renewal under SS 118.22.

For its part the Board states that its comparables indicate that half have layoff clauses but only one is based on a strict formula. Therefore the Board's proposal is said to be more in conformance with prevailing practice in the area. Other points made by the Board are as follows: 1. The Association's reasons for layoff are too narrow and unrealistic. 2. The Board argues that the Association's assignment of points to all teachers is unreasonable and that when only one teacher is to be laid off, it should be the Board's responsibility to make the determination in keeping with its efforts to maintain the quality of education. 3. The Board cannot accept the Association's definition of layoffs as non-renewals except to the extent that the time limits of SS 118.22 should apply. 4. The Board considers the bumping procedure proposed by the Association to be administratively illogical and unreasonable, as is the Association's recall proposal.

Proposed New Article XI: Fair Share. The Association proposes the following article to become effective 30 days after the signing of the Agreement:

A. All employees in the bargaining unit shall be required to pay, as provided in this Article, their fair share of the costs of representation by the Association. No employee shall be required to join the Association, but membership in the Association shall be available to all employees who apply, consistent with the Association's constitution and by-laws.

B. Effective thirty (30) days after the date of initial employment of a teacher or thirty (30) days after the opening of school in the fall semester, the District shall deduct from the monthly earnings of all employees in the collective bargaining unit, except exempt employees, their fair share of the costs of representation by the Association, as provided in Section 111.70(1)(h), Wis. Stats., and as certified to the District by the Association, and pay said amount to the treasurer of the Association on or before the end of the month following the month in which such deduction was made. The District will provide the Association with a list of employees from whom deductions are made with each monthly remittance to the Association.

1. For purposes of this Article, exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to Article VII or paid to the Association in some other manner authorized by the Association. The Association shall notify the District of those employees who are exempt from the provisions of this Article by the first day of September of each year, and shall notify the

District of any changes in its membership affecting the operation of the provisions of this Article thirty (30) days before the effective date of such change.

2. The Association shall notify the District of the amount certified by the Association to be the fair share of the costs of representation by the Association, referred to above, two weeks prior to any required fair share deduction.

C. The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees to abide by the decisions of the Wisconsin Employment Relations Commission and/or courts of competent jurisdiction in this regard. The Association agrees to inform the District of any change in the amount of such fair share costs thirty (30) days before the effective date of the change.

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

E. The Association does hereby indemnify and shall save the District harmless against any and all claims, demands, suits, or other forms of liability, including court costs, that shall arise out of or by reason of action taken or not taken by the District, which District action or non-action is in compliance with the provisions of this Article, and in reliance on any list or certificates which have been furnished to the District pursuant to this Article; provided, that the defense of any such claims, demands, suits or other forms of liability shall be under the exclusive control of the Association and its attorneys.

The District does not have a proposal on this issue.

The Association's argument for a fair share clause rests largely on its claim that since the law requires it to represent all teachers as exclusive collective bargaining agent, it is appropriate that all teachers should bear the expense of representation. An Association representative testified that there has been considerable expense involved in servicing the Association by the paid UniServ staff and that also the stability of the Association would be enhanced by the existence of a fair share requirement. Although the Association admits that the districts it has used for comparables have few fair share agreements, a great many governmental units within a forty mile radium of Independence have fair share agreements and that a majority of Wisconsin teachers are covered by fair share agreements.

The Board argues that only two of the eighteen comparable units cited in its testimony have fair share clauses and that between 1973 and 1978 there have been between 8.4 and 12 FTE teachers at Independence who have not voluntarily joined the Association. The Board would not like to be a party to an agreement that would force a quarter to one-third of the teachers into the unit against their desires. And although the Association asserts that a majority of all teachers in the state are covered by fair share agreements, there is a minority of districts which have it. In sum, the Board does not agree that the Association has presented adequate evidence or argument to support its claim for a fair share agreement.

Proposed New Article, XIII, Illegal Strikes. The Association proposes to add the following new clause:

> The Association agrees that it will not authorize, condone, assist or support any illegal strike as defined in SS 111.70, nor will it authorize or encourage its members to do so. Recourse to disciplinary action(s) taken by the Board for alleged violations of this section by members of the bargaining unit shall be through the grievance procedure.

The District would add the same words as Paragraph 3 of Article IX. Since the only difference between the parties on this issue is the place where it is to appear in the new agreement, presumably there is no substantial difference on this issue.

New Article XIV, Term of Agreement (which has been Article X): The Association proposes a duration of two years for the new agreement. Thus Paragraph 1 would read: "This Agreement shall be in effect July 1, 1978 and shall remain in effect through June 30, 1980." Paragraph 2. on severability would remain the same. Paragraph 3., which reads as follows in the old agreement:

> This Agreement reached as a result of collective bargaining represents the full and complete agreement between the parties and supersedes all previous agreements between the parties. It is agreed that any matters relating to this current contract term, whether or not referred to in this Agreement, shall not be open for negotiations except as the parties mutually agree thereto. All terms and conditions of employment not covered by this Agreement shall continue to be the subject to the Board's direction and control.

would be superseded by the following sentence:

> This Agreement reached as a result of collective bargaining represents the full and complete agreement between the parties.

Paragraph 4., which provides for notice of contract renewal negotiations, would remain the same (although presumably the date therein would be changed to January 20, 1980).

The District would retain Article X as it is except that Paragraph 1. would read: "This Agreement shall be in effect July 1, 1978 and shall remain in effect through June 30, 1979." Where appropriate, other dates in the Agreement would be changed accordingly.

The Association supports its proposal for a two year agreement with the argument that the parties have been engaged in year-around negotiations recently and that they will benefit by a cooling off period. Furtherfore, the Association's second year wage increase proposal, discussed below, is for an escalation clause with a ten per cent cap, which would make the costs of a two year agreement predictable. During the past seven years the parties have had two multi-year and only one single year agreement.

The Board argues that even the Association's comparables showed that one year agreements were prevailing. As to the second year, the Board feels that uncertainty about costs and possibly very great costs in a second year would make it unwise to adopt the Association's proposal.

The other issue in this article relates to the Association's proposal to remove the waiver clause in Paragraph 3. Here the Association argues that decisions of the Wisconsin Employment Relations Commission provide the right to bargain the "impact" of certain Board actions even though such actions may involve non-mandatory subjects. Unless the waiver clause, as it has existed in past contracts, is removed, the Association will be denied these opportunities. The subject that precipitated this proposal is the impact of Cable TV. The Association believes that there is a "clear trend" toward elimination of waiver clauses among its comparables, although it is admitted that less than a majority do not have such clauses.

The Board argues that the Association has not shown that the language in the existing agreement constitutes a waiver, that there was no evidence introduced at the hearing to show that the clause had ever been invoked by the Board, and that in any case the WERC is the authority on whether such a clause constitutes a waiver of bargaining and the Association is always free to file a prohibited practice charge so as to get such a determination if the Board violates the agreement.

Proposal for Changes in Appendix A and B: Appendix A in the old agreement contains the salary schedule for 1976-78 and Appendix B contains the schedule for 1977-78.

On this issue the Association would change the old provision of specified dollar contributions by the District for State Teachers Retirement System to substitute the following sentence: "The district shall pay the teachers' required deposit of 5% of gross salary into the state teachers' retirement system on the teachers behalf." The Board's proposal is: "The District will pay 5% of teachers placement on salary schedule up to a maximum of $700 per school year."

The Association argues that placing a cap on the STRS contribution is injurious to the more experienced teachers, that the total cost of its proposal is only $1468 or .293 per cent above the Board's proposal, and that there is a clear trend among the comparables toward payment by employers of amounts based on gross salaries.

The Board argues that its comparables show that payment of 5 per cent of gross salaries is not the prevailing practice and that the Board's proposal does represent the prevailing practice among the comparables.

The 1977-78 BS base is $9,200, BS + 10 is $9,425, BS + 20 is $9,650, MS is $9,875 and MS + 15 is $10,100. The annual increments are $350 with top of scale for BS being $12,350 at 9 years, for BS + 10 being $12,925, at 10 years, BS + 20 being $13,500 for 11 years, MS being $14,075 at 12 years, and MS + 15 being $14,300 at 12 years. The Board would change the BA Base to $9,600, and $400 to the top figure in each lane, and keep the annual increments at the figure of $350. In addition, the Board would add a new paragraph to read: "An additional $200 in salary will be paid those teachers who are placed at the top of a lane for two (2) or more school years."

The Association would add $500 to the BS Base and $25 more incrementally at the top of each lane so that the figures would then be: BS, $9,700; BS + 10, $9,950; BS + 20, $10,200; MS, $10,450; and MS + 15, $10,700. Increments for each year of service would be $375 for BS, $400 for BS + 10, $425 for BS +20, $450 for MS, and $475 for MS + 15. Top of the lane figures would then be as follows: BS after 9 years, $13,075; BS + 10 after ten years, $13,950; BS + 20 after 11 years, $14,875; MS after 12 years $15,850, and MS + 15 after 12 years, $16,400.

The Association supports its salary proposals with figures showing that the Consumer Price Index has increased during the two year period of the old agreement at a rate faster than the increase in salaries. In addition, the increases for those two years were made on a dollar amount across-the-board basis which had the tendency to compress the salary structure and to provide smaller percentage increases to those teachers who have more experience and are at or near the top of the lanes. The District's longevity increase of $200 would apply to only nine teachers according to the Association and would not be sufficient help for the most serious problem of erosion of buying power for the entire unit. The Association asserts that the District would adopt a policy of keeping starting salaries competitive but slighting the salaries of those with better academic preparation or more years of service. This policy lowers overall costs and contributes to high turnover rates. The Association asserts that the District acknowledges the tendency of teachers to leave Independence after a few years of teaching and sees no need to provide inducements for them to stay. Association believes that this "swinging door" philosophy is inequitable for those teachers with long service who intend to stay.

The Board supports its own proposals primarily by showing that its increases compare roughly with increases that have already been granted among the districts it uses as comparables. According to the Board's comparisons its $400 increase is $20 below the average increase among comparables. The $9,600 base proposed would be about $63 per year above the average base salary figure for the 18 comparable districts used by the Board. At the BA Maximum (9 years for the Independence schedule and an average of 10.27 among the comparables), the Board proposal is $310 low. At the MA Base the Board proposal would be $23 higher than the average of the 18 comparables. At the MA Maximum the Board proposal is $501 below the average of the comparables at their maximum steps (an average of 12.7 compared with Independence 12 steps). Since the Board believes that its own proposals

compare very well with comparable districts, it finds that the Association's proposals are unnecessarily high.

The Association proposal on salary rates for 1979-80 are as follows:

Appendix B: Salary Guide for 1979-80

The 1979-80 Salary Guide shall be computed in the following manner:

a. The per cent of increase in the cost of living during the period May 1, 1978 to April 30, 1979 shall be computed. The computation shall be made according to the following example:

Consumer Price Index, May 1978*
(_____)

Consumer Price Index, April 1979
(_____)

Index point numerical change =
(_____)

$$\frac{\text{Index point numerical change}}{\text{May 1978 CPI}} \times 100 = \text{CPI \% Increase}$$

*as published by the Bureau of Labor Statistics, U.S. Dept. of Labor for the Minneapolis area.

b. All salary rates contained on the 1978-79 Salary Guide shall be increased by the percentage increase in the CPI for the period May 1, 1978 to April 30, 1979, up to a 10% limit on the increase in total costs to the district including salary guide, health and life insurance, board payment of teachers share of STRS and extra duties.

Since the Board is proposing a one year agreement, it has no proposal for the salary schedule in a second year of the agreement.

The Association supports its proposal by the argument that it would maintain purchasing power of the covered teachers unless the increase in the CPI exceeded ten per cent. It spelled out a procedure for calculating salaries and contributions to STRS and health insurance by the employer under this provision and the way in which the total expenditure for these objects would be limited to 10 per cent in the event that the CPI rose by more than that figure.

The Board argues that costs under the Association's escalation provision are unknown and that therefore the provision is unacceptable. Furthermore, the Board argues that the Minneapolis area Consumer Price Index is inappropriate to use for the Independence area. The Board believes that the two year proposal and the escalation provision embodied in it make for a fatal flaw in the Association proposal for the reason that costs would be unpredictable.

Proposal for Changes in Appendix C: The proposals by the parties on this issue are as follows: All rates for Extra Duty Stipends would remain the same except for the following:

	Association Proposal 78-79	Board Proposal
Drivers Ed	$6.50/hr.	$5.50/hr.
Score Keeper and Timer		
Basketball	15.00	12.50
Wrestling	10.00	10.00
Volleyball	10.00	10.00
Gymnastics	None	10.00
Ticket Takers	8.00	None
Bus Chaperones		
Under 30	12.00	10.00
Over 30	15.00	12.00
All Day Trips	30.00	28.00
Dance Chaperones	8.00	None
Letter Club	150.00	None
Track Starter	10.00	10.00
Worker (Track Meet)	8.00 (Max. 5)	8.00 (Max. 4)

The Association position on these proposed increases is that most have not been raised for several years and are therefore out-of-date. The provision for payment of the Letter Club advisor is proposed for the reason that it is a time-consuming job for the individual who does it, although it has not been compensated in the past. The Association calculates the additional cost of its proposals over those of the Board to be $347 per year, a figure that it asserts is reasonable.

The Board asserts that its proposals would increase payments for the listed duties by 29 per cent, a figure which the Board feels is sufficient. Other increases are being adopted for the 1978-79 school year by agreement of the parties.

Positions of the Parties on Comparable Districts

The Association uses two sets of comparable districts to support its final offer: the Dairyland Athletic Conference, of which Independence is a member, and school districts within a 40 mile radius of Independence having 75 or fewer teachers. The Association believes that these sets of comparables meet the test of community interest, geographic proximity, and similar size.

The Dairyland Athletic Conference includes the following districts:

Alma	Gilmanton
Alma Center	Independence
Augusta	Melrose-Mindoro
Blair	Osseo-Fairchild
Cochrane-Fountain City	Taylor
Eleva-Strum	Whitehall

The second comparable group, those districts within a 40 mile radius of Independence, are the following:

Altoona	Elk Mound
Arcadia	Fall Creek
Arkansaw	Mondovi
Bangor	Plum City
Cadott	West Salem
Durand	

The Board used a list of comparables that included the eleven other schools in the Dairyland Athletic Conference and Arcadia, Arkansaw, Durand, Fall Creek, Mondovi, and Plum City from the Association's second list as well as Galesville-Trempeleau but omitted Altoona, Bangor, Cadott, Elk Mound, and West Salem. The rationale for omitting Altoona and Elk Mound was that they are contiguous to Eau Claire and therefore influenced by that urban community. Bangor and West Salem were omitted for the same reasons because they are contiguous to La Crosse. Cadott was said to be beyond the 40 mile radius.

The Association objects to the inclusion of Galesville-Trempeleau in the Board's list for the reason that it is a larger district than the others used by the Association both in terms of students and number of teachers.

OPINION

It seems appropriate to combine in some fashion the two lists of comparable districts used by the parties. There are some obvious difficulties with this operation for the reason that there are inconsistencies in some cases in the data presented by the parties for the same districts and because in some cases there are gaps in the data. For instance, as indicated below, the Association presented no salary data for the MA bases or Maxima for the districts on its second list. As to most of the comparisons, however, it is possible to make some judgments even though there is conflicting information presented by the parties in many cases. For the purposes of these comparisons the Dairyland Athletic Conference districts have been combined with all other schools (except Galesville-Trempeleau) that appear on both lists; i.e., Arcadia, Arkansaw, Durand, Fall Creek, Mondovi, and Plum City. In this section the issues are treated in the same order as above.

Proposed Changes in Article V: Of the seventeen districts seven have no provision for preparation time. Four that have preparation time provide for only one period, according to the District's testimony, three have preparation time according to the Association but do not have it according to the District. Three appear to have the kind of preparation time that supports the Association's position.

There was no evidence introduced to support either the Association's or the District's position on the formation of a joint committee to study innovative teaching programs. As to substitute payment, there appear to be twelve districts among the comparables that make such payments, five that do not.

Therefore, on the issue of revising Article V, the outcome of the comparables is mixed. The Association position is not supported on the proposal of two hours of preparation

time for secondary school teachers. Although the evidence is not altogether clear on this issue, it would appear that the comparisons give more support to the Board's position that teachers at all levels should have one hour of preparation time.

Since there was no comparable evidence submitted on the subject of formation of a joint committee, this issue wiil be discussed below.

As to the payment for substituting for an absent teacher, the Association's position appears to be supported by the comparable data.

Proposed Changes in Article VI: On the issue of personal leave days there appear to be fourteen districts that provide for such days. The number of days varies. Six have only one, five have two, and three have three or more days. One district has no days and the parties are in dispute about whether the other two have personal leave days or not. Therefore, although there appears to be no question about the prevalence of personal leave days among the comparables, there is not good evidence on the issue of whether they are permissive policies or whether authority for granting permission is retained by the school administrations in those districts where they have such policies. This issue is discussed further below.

Proposed Changes in Clause Covering Discipline and Non-renewal: Eleven of the seventeen comparable districts appear to have just cause standards covering discipline and non-renewal; four districts do not have such a standard for discipline and non-renewal; the parties disagree on one (Gilmanton); and in one case the standard for discipline and non-renewal is that the action shall not be arbitrary or capricious. Thus the comparables appear to support the Association on this issue.

Proposals on Employer Payment of Health Insurance Premiums: Although there were some slight discrepancies in the testimony from the two parties, it appeared to the arbitrator that fifteen of the seventeen comparable districts pay the full amount of the individual and family premiums (although in two cases the figure seems to be the previous year's rate). On this issue the Association's position appears to reflect the prevalent policy among the comparables.

As indicated above, the Association made no attempt to support its proposal that the Employer pay the full amount of the life insurance premium. According to the comparable data introduced by the District, a majority of the seventeen districts do not have any provision for paying any life insurance premium. The District's position that the current $2.00 per month contribution for the $13,000 life policy premium should be left unchanged appears not to be refuted by the comparable evidence presented.

On the issue of Employer payment of the insurance premiums during three summer months for teachers not returning during the ensuing year, the evidence presented by the Association purported to show that comparable districts did not prohibit such payments. Since such evidence has no bearing on the issue of whether the amounts should be paid in this case, it has been disregarded. The issue itself is discussed

further below. Neither party presented any comparable evidence on the issue of the amount of liquidated damages for breach of contract.

The Proposed New Layoff Procedure: On this issue the comparable data show that nine of the seventeen districts have layoff procedures, six have none, and the parties disagree on whether the other two have such procedures or not (Eleva-Strum and Fall Creek). The problem with the data, however, is that there is no way of telling whether the provisions in the nine districts that have layoff procedures support the Association's or the Board's position. This issue is discussed further below.

Proposed Fair Share Clause: As the Association readily admits, there is almost no support among the comparables on this issue. Only one of the seventeen districts has a fair share clause (Taylor).

Proposed Duration of Agreement: The evidence presented by the Association on this issue showed that nine of the seventeen districts have one year agreements, five have two year agreements, one has a three year agreement, and data from the other two were listed as not available (Arkansaw and Fall Creek). The Board did not present any data on this issue, but the evidence that was presented appears to support the Board's position.

Proposed Change in the Waiver Clause: The evidence of the prevailing practice on this issue is not clear. The Board presented no evidence. Among the seventeen districts used here for which the Association presented evidence, six had no waiver clause, three had such a clause but it requires the employer to discuss proposed changes with the union before making them, six provide a waiver presumably for the employer to make changes unilaterally if the subject is not covered in the agreement, and two clauses were listed as not available (Arkansaw and Fall Creek). Thus it is not obvious to me that prevailing practice among the seventeen comparable districts supports either party to this dispute.

Proposed Changes in Appendix A and B: It is difficult under the best of circumstances to make judgments about comparable evidence on this item for the reason that the salary matrices of different districts do not conform with one another. In this district a teacher reaches the top of the scale after nine, ten, eleven, or twelve years, depending upon how much extra educational credits he or she has beyond the Bachelor degree. In many other districts, however, the top of the scale is reached after shorter or longer periods. There is also a question of whether it is appropriate to make comparisons of the size of salary adjustments for the current year or to confine the comparisons to the levels reached in settlements in the comparable districts. For purposes of this report I have confined myself to the latter kind of comparisons.

Among the seventeen districts used for comparisons here the average BA Base salary for 1978-79 is $9,539, the average BA Maximum is $13,071, the average MA Base is $10,247, and the average MA Maximum is $15,103. These figures compare with the Association's proposed BA Base of $9,700 a BA Maximum of $13,075, an MA Base of $10,450, and an MA Maximum

of $15,850; and the Board's proposed BA Base of $9,600, a BA Maximum of $12,750, an MA Base of $10,275, and an MA Maximum of $14,475.

The average of the comparables is somewhat lower than both parties' proposals at the BA Base, above the Board's proposal and about the same as the Association's proposal at the BA Maximum, slightly below both parties' proposals at the MA Base, but above the Board's offer at the MA Maximum and below the Association's offer at the MA Maximum. The Board's $200 annual longevity payment for teachers who have been two years at the top of the lane adds something to the Board proposal. The judgment for the arbitrator on this issue, therefore, becomes one of whether to support the Association's argument that the salary schedule is being compressed to the disadvantage of long service employees or to support the Board's position that the starting salary is what needs to be competitive. This matter will be discussed further below, as will the issue of the escalation clause proposed by the Association for the second year of their proposed agreement.

Proposed Employer Payments to State Teachers Retirement System: This is the one remaining issue on which the parties presented comparable data. Although their evidence differed, using the Board's figures it appears that thirteen of the seventeen comparable districts pay five per cent of gross salaries to STRS, which is strong support for the Association's position on this issue.

So far as the comparables are concerned the summation is about as follows: The Board's positions are supported by the comparables on the following issues: 1. preparation time, 2. employer payment for life insurance premiums, 3. the District's position on not paying for summer premiums for health insurance for teachers who have been separated, 4. the District's position on not having a fair share clause, 5. on the one year agreement proposed by the District. The Association's position is supported by the comparables on the following issues: 1. payment for substituting for an absent teacher, 2. just cause standard for discipline and non-renewal, 3. payment by the District of the full amount of health insurance family premiums, 4. the five per cent payment by the employer on the gross salary to STRS.

The other issues, which cannot be judged by referring to the comparables are discussed in the order in which they have been presented earlier in the report.

Proposal of a Joint Committee to Discuss and Research Innovative Means and Methods of Instruction: On this issue the Association appears to me to be on sound ground. Such a committee should not have responsibility for making recommendations concerning the impact of such programs on wages, hours and conditions of employment, a responsibility that should rest with the Association's negotiators, whoever they may be. I have a preference for the Association's proposal.

Proposal on Personal Leave Days: On this issue I am asked to rule on the admissibility of certain evidence presented by the District in its brief, evidence that the Association asserts is improper because the District had an opportunity to introduce it at the hearing and did not do so. The Board argues

that the evidence should be admitted on grounds that its payroll records are kept by a firm under a contract and that the information submitted with the brief had not been available to the Board at the time of the hearing. I am not particularly impressed with this argument on the part of the Board, for the reason that the Board could have indicated during the hearing that the information was not available and would be forthcoming with its brief. On the other hand, it seems to me that whether the information was late or not is of less importance than the substantive merits of the issue. It seems to me that a veto power by the school administrator over the granting of personal leave that comes out of a teacher's sick leave is a contradiction in terms. If the school administrator is going to control whether the teacher takes the leave, it should not be charged to sick leave. In any event, the qualifications in the Association's proposal, i.e., that the request must be made 24 hours prior to taking leave, except in the event of an emergency, that such leave shall not be used for the purpose of extending holiday or vacation periods, and that not more than five teachers may use such leave at any one time are sufficient safeguards against its abuse. In my opinion the Association's proposal on this issue is reasonable and I favor its adoption.

On the issue of whether the District should pay the premiums for the summer months on health insurance for teachers who are terminating, it is hard to see how the Association's position can be supported. The Association has made the argument, of course, that the added benefit was understood to be an exchange for its offer to raise the amounts of liquidated damages that teachers would pay when they break their contracts during the summer or after school starts. Although the Association may have believed that it was making this tradeoff, the District argues that it had never had such an understanding and that in fact the amounts listed as liquidated damages for breaking contracts are not very meaningful in any circumstances for the reason that the District has to go to court to collect these amounts, a process that is usually not worth the expense. I am disposed to believe the District on this issue and to question whether there could ever have been any understanding on the part of the District that it should pay the three months premiums on health insurance after teachers had terminated. In view of the fact that the District is willing to continue the coverage at the teacher's own expense, I find it hard to believe that the District would agree to make such payments in exchange for raising the amount of liquidated damages, figures that are probably uncollectible in most cases. I cannot favor the Association's position on this issue.

The general distinction between the layoff procedures of the two parties is that the Association's proposal is based on a detailed and well defined point system within which length of service is very heavily emphasized while the Board's proposed system also involves assignment of points but in a less specifically defined manner and in which teaching experience is weighted equally with training-certification, an evaluation of performance, and participation in co-curricular activities. In addition, the Association would declare a layoff necessary only in response to a decrease in student enrollment, "budgetary reasons or program changes, including changes caused by participation or lack of participation of cooperating school districts." The Association's clause would apply to any layoff while the District would permit itself unilateral action in the event that only one teacher was to be laid off. And finally, while both the Association and the

District would allow a laid off teacher to retain eligibility for reinstatement for two years following layoff, the District would require recalled teachers to have at least one year teaching experience in the certification required for the position. The Association asserts that this requirement is more stringent than is required of a newly hired teacher.

Although I am a little uneasy about the District's assertion that the bumping procedures called for in the Association's layoff clause would be administratively difficult, I am impressed with the greater specificity and definiteness of the Association's point system as compared to the perhaps more subjective point system proposed by the District. But perhaps most persuasive for me is the non-applicability of the District's layoff policy if only one teacher is to be laid off. It is possible to conceive of a series of layoffs taking place over a period of time without ever using the formal requirements in the labor agreement. I am also troubled by the possibility raised by the assertions of the Association that the District is reserving the right to make layoffs during the term of individual teacher contracts, although the Board denies that this would be its intention. For all the reasons expressed immediately above, if this were the only issue, I believe that I would opt for the Association's proposal.

The principal other issue that is difficult to make a judgment about involves salaries for 1978-79. It is clear from the placement of teachers on the salary matrix that there are concentrations at the beginning years and at the top of the salary schedules, i.e., among teachers who have had many years of teaching experience at Independence. The District's salary proposal would produce entry salaries that are competitive with comparable school districts but would retain the annual increments and lane differentials that are in the 1978-79 schedule. The Association would increase the entry salary by $100 per year more than the District's proposal, but the more important difference would be in its proposed increases in both the annual increments (cumulative $25 annual increases for each lane) and the lane differentials. The principal result of adopting the Association proposal on salaries would be to widen the differential between the bottom and the top of the scale and to provide substantially greater increases to long service employees. As indicated above, the result of adopting the Association's proposal for 1978-79 would make the salary schedule under the agreement between these parties more closely aligned with prevailing practice among the comparables. If only 1978-79 were being considered here, my preference would be to select the Association's proposal.

It is the Association's proposal on salary for 1979-80, however, that overwhelms all other issues in this dispute. Since we already are all but certain that the Consumer Price Index for the period from May 1, 1978 to April 30, 1979 will increase more than 10 per cent, adoption of the Association's proposal would necessarily increase salary rates for 1979-80 (including health and life insurance and STRS payments by the employer and extra duty increases in the package) by the 10 per cent limit specified in the Association's proposal. The Association argues that the President's wage stabilization guidelines should not apply to this award for the reason that the proposal was made before the guidelines were announced. We also know (as of the date this is written) that the guidelines have been "bent" by the Teamster settlement and that in the opinion of many commentators they are now without effect. I would have to agree that the Teamster

settlement, which has been described as about 30 per cent over three years, and the prospective settlements to come in the auto and rubber industries may well establish a pattern for 1979-80 not much different than what the Association has proposed in this proceeding. Nevertheless, I am unable as an arbitrator responsible for a binding award in the public sector to decide that a wage settlement of that magnitude is to be imposed upon the District at this particular time.

As to the issues involving extra pay for extra duties, the Board asserts that its proposal would increase costs of the items affected by 28 per cent. This increase is somewhat more modest than the increases proposed by the Association. In the absence of any compelling evidence that the Board's proposal are inadequate, I am not uncomfortable with adoption of the Board's proposal on this issue.

On the issue of the waiver clause, my inclination would be to favor the Association's position for the reason that I believe it makes for a healthier collective bargaining relationship if subjects not covered in the agreement can be raised and discussed by the parties rather than having them foreclosed from discussion by the terms of the agreement, as they are in the old agreement. But the parties have lived with that clause for some time and it will not impose a new and more onerous condition on the Association if it is allowed to remain.

If it were not for the Association's escalation clause for the year 1979-80, this would be a more difficult decision to make. There are many issues in this dispute where good collective bargaining practice and the desirability of conforming with prevailing practice would suggest that the Association's proposals should be adopted. Although there are also some issues where comparability considerations favor the District, my inclination would be to award in favor of the Association. I believe, however, that my greatest obligation is to give prime consideration to paragraph 111.70 (4)(cm)7.h. of the Statute which includes the words: "Such other factors. . .normally or traditionally taken into consideration in the determination of wages, hours and conditions of employement through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment." In keeping with my obligation to give weight to this factor, I am unable in the present conjuncture to make an award that appears to me to be contrary to the federal government's stabilization policy. It is one thing for parties to bargain a settlement of such magnitude and to defend it in the face of a set of guidelines that are really not enforceable. It is quite another thing for an arbitrator operating under a public statute to make an award of that kind. I am unable to choose the Association's final proposal for that reason.

I regret that the parties did not settle more of the issues in their negotiations and that I was unable to obtain agreement on some of the disputed items in the mediation session held in October. It is my opinion that the Board did not want to accept concessions from the Association at that mediation session for the reason that the Board believed the Association package would be unattractive to the arbitrator at a later stage in the proceeding and that if settlements were made on some issues, it would reduce the chances for the Board's proposal to be selected as the arbitrator's award. This posture on the part of the Board is regrettable. On the other hand, the Association took the same risk as the Board when it made up its final proposals last September.

AWARD

The District's final offer is selected as the award in this proceeding.

Dated: March 18, 1979
at Madison, Wisconsin

Signed: David B. Johnson

David B. Johnson
Mediator/Arbitrator
appointed by WERC