

IN THE MATTER OF MEDIATION/ARBITRATION

BETWEEN

ELMBROOK EDUCATION ASSOCIATION

AND

ELMBROOK SCHOOL DISTRICT BOARD OF EDUCATION

CASE IX No. 23220 MED/ARB-149
Decision No. 16617-A

AWARD OF ARBITRATION

A hearing on the issue involved in the above case as stated below was held on January 15, 1978 in Brookfield, Wisconsin before the undersigned arbitrator.

Appearances for the parties were:

Walter S. Davis, Esquire
250 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

FOR THE BOARD

David Pfisterer
Exec. Div. Tri-Wauk Uni Serve Council
10201 W. Lincoln Avenue
West Allis, Wisconsin 53227

FOR THE ASSOCIATION

All parties were afforded full opportunity to examine and cross examine witnesses and to adduce relevant evidence.

Upon the entire record and with due consideration being given to the arguments advanced by the parties I find as follows:

THE ISSUE

Which final offer of the parties shall the Arbitrator select?

BACKGROUND

Starting on April 4, 1978 the Elmbrook School District Board of Education (hereinafter referred to as the Board) and the Elmbrook Education Association (hereinafter referred to as the Association) met on 7 occasions to reach an accord on a new collective bargaining agreement covering the following employees:

All regular full-time and all regular part-time certified teaching personnel, including guidance counselors, librarians, department heads, teaching vice principals, and teaching nurses, excluding per diem substitute teachers, office and clerical employees, maintenance employees, dieticians, kitchen employees, all supervisors and all other employees.

The Association and the Board have been parties to a collective bargaining agreement covering the above employees which expired on June 30, 1978.

The Elmbrook School District serves the City of Brookfield, the Village of Elm Grove and parts of the town of Brookfield and the City of New Berlin which lie immediately to the west of the City of Milwaukee. The District operates two high schools, three junior high schools and nine elementary schools plus one special education building. During the 1978-79 school year the district serves approximately 9000 students and employs approximately 600 teachers and 38 administrators.

On June 29, 1978 the Association filed a petition with the W.E.R.C. requesting the initiation of Mediation-Arbitration pursuant to Section 111.70(4) (cm) of the Municipal Employment Relations Act (hereinafter referred to as the Act). On October 9, 1978 a member of the W.E.R.C.'s staff, conducted an investigation which reflected that the parties were deadlocked in their negotiations. During the investigation the parties exchanged their final offers as well as a stipulation on matters agreed upon to said investigator who, on October 11, 1978 notified the parties that the investigation was closed and also advised the Commission that the parties remained at impasse.

On October 19, 1978 the Commission ordered that Mediation-Arbitration be initiated for the purpose of resolving said impasse.

On November 3, 1978 the parties advised the Commission that they had selected the undersigned from a panel of 5 names and the Commission on November 6, 1978 appointed the undersigned to mediate-arbitrate the issues in dispute between the parties pursuant to Section 111.70(4) (cm) 6b. of the Act. Notice of this appointment was made public by the Board and thereafter a petition was filed by in excess of 5 citizens of the jurisdiction requesting a public hearing on the matters in dispute.

As a result thereof and by agreement of the parties a public hearing was held in the Administration Offices of the Board in Brookfield, Wisconsin on December 20, 1978 between the hours of 3:00 P.M. and 7:30 P.M. At this meeting representatives of the parties spoke, giving their respective positions regarding the issues remaining in dispute. At this meeting approximately 18 persons spoke and/or submitted written memoranda setting forth their views regarding some of the issues in dispute. Most of them spoke about the Fair Share issue.

The parties submitted a stipulation setting forth the agreements reached prior to impasse which are set forth herein: (See pages 3 through 17)

EVIDENCE

The Board submitted at the hearing a "Memorandum with Exhibits in Support of Elmbrook School Board's Proposals". The Association also submitted a document "Brief and Exhibits of the Association". The Board's "Memorandum" consisted of proposals and positions regarding Layoff, Salaries, Extra Pay and Fair Share and included 39 Exhibits, the total document consisting of approximately 310 pages. The Association "Brief" consisted of 40 pages and attached thereto were 41 Exhibits and an appendices totaling in all approximately 200 pages plus 6 arbitrators awards.

I have attempted to carefully read these documents with emphasis being placed upon those portions emphasized by the parties in their briefs and have arrived at findings and conclusions as follows:

SALARIES AND EXTRA PAY

It is the Board's position that its proposal regarding salaries represents an increased wage cost for the continuing staff of 8.2% above the cost for the 1977-78 school year while the Association's proposal represents a 9.32% increase on a comparable basis. In support of its position the Board refers to the existing Wage and Price Standards which became effective October 2, 1978 and that although the Board's total monetary proposal does exceed the suggested 7% pay standard the Arbitrator's affirmation of the Board's proposal would not cause the Board to be in violation thereof. The Board further contends that to hold otherwise would force the Board to violate the spirit and intent of these Standards. Since the fringe benefits herein have been settled these Standards, the Board contends, should not be stretched any further. In support of its contention the Board submitted graphs, charts and other documents to show that its salary proposal is very competitive with salary levels of the adjacent school districts.

It is the contention of the Association which submitted supporting evidence that Elmbrook is not an average community and that it is the fourth wealthiest suburban district in terms of equalized property values in the Milwaukee area and

STIPULATION OF AGREEMENTS
 BETWEEN
 ELMBROOK BOARD OF EDUCATION
 AND
 ELMBROOK EDUCATION ASSOCIATION

October 9, 1978

The parties stipulate that the following agreements were reached in collective bargaining between them for the 1978-79 successor agreement. All provisions of the 1977-78 Agreement which are not modified by these agreements or by an arbitrator's award shall remain in full force and effect for the term of the 1978-79 Agreement.

1. The Board of Education and the Elmbrook Education Association agree to work out a program on a uniform procedure, regarding time for I.E.P.'s. Such agreement will be a side letter and not part of the contract.
2. Line 196 - Increase the maximum of the present monthly disability income from \$1200 to \$1800.
3. 6.6.2 - Change lines 360-362 to substitute the following:
 Teachers at all levels shall be given 3 two-hour departmental/grade level planning sessions as part of the existing in-service/ work day program.
4. 6.11.4 - Transfers in Minor Area of Certification:
 A teacher who must be transferred to a minor area of certification in order to prevent lay-off must, in order to teach in that minor area of certification, either have taught in that area in the last five years or must have obtained at least six credits in the last five years in that area of certification. If neither of these conditions exist, the teacher shall have one year from the commencement of teaching in that area to complete six credits in the minor area.
5. Remove the reference to Appendix M, found on line 830 of the 1977-78 contract.
6. Appendix BI-Calendar and Appendix BII-Inclement Weather Make-Up Days (attached).
7. Appendix D-VI - Chairpersons and Grade Level Leaders

<u>SENIOR HIGH</u>	<u>JUNIOR HIGH</u>	<u>GRADE LEVEL LEADERS</u>
One Member Dept. - \$200	One Member Dept. - \$200	1-3 Members - \$350
2-5 Members - \$660	2-5 Members - \$560	4+ Members - \$400
6-9 Members - \$830	6-9 Members - \$730	
10+ Members - \$1000	10+ Members - \$900	

APPENDIX B I

1978-79 SCHOOL CALENDAR
SCHOOL DISTRICT OF ELMBROOK

			School	Holi- Day	In Atten- dance	TOTAL
M,T	8/28,8/29	In Service - Work Day			2	
W-F	8/30-9/1	School	3			
M	9/4	Labor Day		1		
T-F	9/5-9/8	School	4			
M-F's	9/11-10/20	School	30			
M-W	10/23-10/25	School	3			
TH,F	10/26,10/27	Teachers' Convention				
M-TH	10/30-11/2	School	4			
F	11/3	Work Day			1	
M,T	11/6,11/7	*School	2			
*Elementary and Special Education: Conferences; Secondary: School						
FIRST QUARTER TOTALS			46	1	3	50
W-F	11/8-11/10	School	3			
M-F	11/13-11/17	School	5			
M-W	11/20-11/22	School	3			
TH,F	11/23,11/24	Thanksgiving		1		
M-F's	11/27-12-22	School	20			
	12/23-1/1/79	Winter Recess				
T-F	1/2-1/5	School	4			
M-F	1/8-1/12	School	5			
M-TH	1/15-1/18	School	4			
F	1/19	Work Day			1	
SECOND QUARTER TOTALS			44	1	1	46
M-F's	1/22-2/23	School	25			
M-TH	2/26-3/1	School	4			
F	3/2	½ Work Day, ½ In Service			1	
M-F's	3/5-3/16	School	10			
M-TH	3/19-3/22	School	4			
F	3/23	Work Day			1	
M	3/26	*School	1			
*Elementary and Special Education: Conferences; Secondary: School						
THIRD QUARTER TOTALS			44	0	2	46
T-F	3/27-3/30	School	4			
M-F	4/2-4/6	School	5			
M-TH	4/9-4/12	School	4			
	4/13-4/20	Spring Recess				
M-F's	4/23-5/25	School	25			
M	5/28	Memorial Day Observance		1		
T-F	5/29-6/1	School	4			
M-TH	6/4-6/7	School	4			
F	6/8	Work Day			1	
FOURTH QUARTER TOTALS			46	1	1	48
FIRST QUARTER			46	1	3	50
SECOND QUARTER			44	1	1	46
THIRD QUARTER			44	0	2	46
FOURTH QUARTER			46	1	1	48
TOTAL			180	3	7	190

Note: 1½ days, at the discretion of the principal and faculty of the junior high schools may be used for parent conferences.

An additional ½ day for the kindergarten spring and fall conferences may be added, if needed, at the discretion of the principal

Note: The week of June 11-15 is reserved for possible make-up days.
(See Inclément Weather Days - Appendix BII)

APPENDIX B II

Inclement Weather Make-Up Days

On days where school is closed due to inclement weather, if the first inclement weather day occurs before March 23, 1979, a student contact make-up day will be scheduled on March 23, 1979. Teachers must meet the deadlines in getting their work done to replace the work day.

The second inclement weather day will require no make-up day.

The third inclement weather day will be made up as a contact day on June 8, 1979, and the make-up work day will be Monday, June 11, 1979. If the June 8 day has already been used as a make-up day*, then June 11, 1979 will be used as a contact day and June 12, 1979 will be the make-up work day.

The fourth inclement weather day will require no make-up day.

The fifth inclement weather day will require a make-up contact day on June 11, 1979, if available, or the first day thereafter, with a work day following, but not on a Saturday.

All of the foregoing is subject to State Statute, and if the State amends the statute to increase the number of school days for purposes of State Aid, the district will comply with the State regulation.

Alternative methods of completing necessary close-of-school duties shall be made available to teachers who present compelling and specific personal reasons to the Assistant Superintendent of Personnel, justifying such individual treatment.

* Should all inclement weather days occur after March 23, 1979, all dates would be advanced one day.

Richard C. Kneveler
For the Elmbrook Education Association

Lyndis R. Blum
For the Elmbrook Board of Education

The following is a copy of the Association's final offer:

ASSOCIATION'S FINAL OFFER

Name of Case: School District of Glenside
Case IX Case # 23220
Med/Arb 149

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

Oct 9 1971
(Date)

David C. [Signature]
(Representative)

On Behalf of: Glenside Education Association

S. H. Salary Schedule

	BA A	B	BA+15 A	B	BA+30 A	B	MA A	B	MA+15 A	B	MA+30 A	B	MA+45 A	B
0	10400		10765		11134		11746		12111		12480		12845	
1	10828		11198		11562		12174		12544		12909		13278	
2	11256		11625		11990		12602		12971		13336		13705	
3	11822		12196		12564		13184		13557		13927		14300	
4	12318		12692		13124		13745		14114		14487		14856	
5	12815	12564	13184	12937	13680	13400	14300	14020	14668	14394	15042	14762	15411	15135
6	13306	13062	13680	13435	14236	13961	14856	14575	15229	14949	15598	15323	15972	15692
7	13803	13557	14177	13927	14856	14546	15476	15166	15849	15540	16219	15908	16592	16281
8	14424	14114	14797	14487	15476	15166	16095	15786	16463	16154	16838	16528	17206	16902
9	15042	14733	15411	15101	16095	15786	16714	16406	17084	16773	17458	17147	17825	17516
10	15662	15352	16031	15721	16714	16406	17334	17024	17703	17393	18076	17768	18446	18136
11	16341	16001	16714	16375	17393	17054	18012	17674	18386	18042	18755	18417	19129	18784
12	17085	16739	17455	17115	18076	17732	18697	18352	19065	18726	19438	19095	19807	19469
13					18887	18511	19438	19065	19807	19438	20182	19807	20550	20182
14							20254	19878	20623	20254	20999	20623	21369	20999

Salaries retroactive to July 1, 1978

Steps 0 - 2 5.16% on all figures for 1977-78

~~Steps 3~~
all remaining steps ^{at} maximum - 6.4% on 1977-78 figures
on each lane

Maximums - 6.78% on 1977-78 figures

Step 14 July 1, 1978

EEA PROPOSAL - *lay off*

6117 If necessary to decrease the number of teachers within the school district, part-time teachers shall be laid off first and shall be placed on a separate recall list. Except as specified below, they shall have recall rights to part-time positions only.

If further reductions in the number of teachers are required, the Administration shall lay off the necessary number of full time teachers within subject areas of certification in the inverse order of the teacher's number of years of continuous service within the bargaining unit as determined by the date of signing the initial contract in the most recent period of uninterrupted service.

Teachers who have left the bargaining unit and returned prior to the effective date of this contract shall not lose seniority because of this clause.

Wherever possible, part-time positions will be combined to form full-time positions. A teacher in an affected area shall have the right to be transferred into a different area within the district in which he is also certified. A teacher who must be transferred to a minor area of certification in order to prevent lay-off must, in order to teach in that minor area of certification, either have taught in that area in the last five years or must have obtained at least six credits in the last five years in that area of certification. If neither of these conditions exist, the teacher shall have one year from the commencement of teaching in that area to complete six credits in the minor area.

No teacher shall be prevented from securing other employment during the lay-off under this subsection.

Volunteers for lay-off will be taken first. Volunteers will be treated in accordance with the lay-off procedure as it relates to re-call rights and benefits while on lay-off status.

Teachers shall be reinstated in inverse order of their being laid off if certified to fill the vacancies. It shall be the responsibility of the laid-off teacher to keep the Administration informed at all times of his or her current address and telephone number.

The administration shall recall teachers by written notification (certified mail, return receipt requested). Such teacher or teachers shall have fifteen (15) days from receipt of the notice in which to reply (certified mail, return receipt requested). Teachers who refuse a recall offer in two separate school years shall immediately be dropped from the list of recall candidates and forfeit all further rights to recall. A teacher need not be given more than one recall offer per school year. Teachers shall be dropped from the list of recall candidates after three years on such a list.

The reinstatement of a teacher shall not result in a loss of credit for previous years of service. No new or substitute appointments may be made while there are laid off teachers available who are certified to fill the vacancies in the district.

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ESP Layoff contd.

Teachers who are on layoff status will be given preference for substitute positions. In addition, they will be entitled to participate in the District group health plan at their own expense with payment 30 days in advance. Such participation will be allowed until the earlier of two conditions occurs: either the laid off teacher has a permanent position or the time limit established by the insurance company is exhausted.

Full time teachers who have involuntarily been issued reduced contracts shall retain seniority on the full time list and shall be subject to recall under this section of the master agreement.

Full time teachers requesting reduction to part time status, after the effective date of this contract, shall forfeit any seniority rights to full time jobs.

All layoff and recall rights of full time teachers shall apply to part-time teachers except:

a. The seniority of a part-time teacher who once had full time status shall be applied as follows:

1. Years of full time teaching shall apply to the full time layoff/recall list. The refusal of one offer of full time employment shall result in forfeiture of any future rights to full time employment.

2. The years of full time plus part time teaching shall apply to the part time layoff/recall list.

b. No new or substitute appointments may be made for part-time positions while there are part-time laid off teachers available who are certified to fill such vacancies in the district.

The District shall forward to the Association by September 30 of each year, a seniority list of all employees and a list of those persons on either the full-time or part-time layoff lists and their relative rank.

ESP
4.14.78

E E H

MINOR MONETARY ITEMS

All figures on the Extra Duty schedule shall be increased 5.5%

Summer School - Increase figures by 5.5%

\$1313.76	\$218.97	\$43.78
\$1367.33	\$227.88	\$45.58

6th Teaching Assignment - Increase figures by 5.5%

\$1674.29	\$837.14
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Staff Substitute - Increase figures by 5.5%

\$3.35	\$10.06
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• Ph.D. Stipend - Increase by 5.5% or \$558

Minor Monetary Items shall be retroactive to July 1, 1978

*OB
Out 9 14 78*

ELMBROOK EDUCATION ASSOCIATION PROPOSAL

Final

5.7 Insert Fair Share and renumber the following.

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 of the costs of representation 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 bylaws. No employee shall be denied Association membership because of race, creed, color, sex, handicap or age.

The employer agrees that effective the last paycheck in September or thirty days after the date of initial employment if after the opening of school, it will deduct from the paychecks of all employees in the collective bargaining unit who are not members of the Association subject to Section 5.6, or whose membership dues have not been paid to the Association in some other manner, the amount certified by the Association to be the cost of representation. Such amounts shall be paid to the treasurer in the same manner and at the same time as those dues voluntarily deducted in 5.6 above. The Association agrees to certify only such costs as are allowed by law and to inform the employer of any change in the certified costs of representation of non-association employees required by law.

Changes in the amount of dues to be deducted shall be certified by the Association ten (10) days before the effective date of the change.

The employer will provide the Association with a list of employees from whom deductions are made with each monthly remittance to the Association.

Save Harmless Clause

The EEA 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 lists 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 control of the Association and its attorneys. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this Article through representatives of its own choosing and at its own expense.

*6-1-78
15-1-78
11-1-78
9/14/78*

Fair Share, cont'd.

ELMBROOK EDUCATION ASSOCIATION PROPOSAL

Internal Rebate Procedure

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

This Fair Share clause shall become effective 30 days after approval by 50% plus one (1) of the eligible voters in a referendum conducted by the WERC.

6/19/78

The following is a copy of the Board's final offer:

DISTRICT'S FINAL OFFER

Name of Case: School District of Elmhurst, Case TX No. 23270 Med-Rel-149

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party: Each page of the attachment hereto has been initialed by me.

10/9/78
(Date)

Walter J. Davis Atty
(Representative)

On Behalf of: Elmhurst Schools

Board Proposal

Extra duty pay: 5% increase on all listed extra duty pay stipends in Appendix D (excluding Section VI) and 5% increase for Summer School, Staff Substitute, Sixth Assignment and PhD Stipends.

Retrospective to 7/1/78

WSD

10/9/78

	B.A.+00		B.A.+15		B.A.+30		M.A.+00		M.A.+15		M.A.+30		M.A.+45	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B
0	10400		10765		11134		11746	11	12111		12480		12845	
1	10828		11190		11562		12174		12544		12909		13270	
2	11256		11625		11990		12602		12971		13336		13705	
3	11684		12053		12417		13030		13399		13764		14133	
4	12174		12544		12971		13504		13949		14318		14682	
5	12665		13030		13520		14133		14497		14866		15231	
6	13151	12909	13520	13270	14070	13798	14602	14404	15051	14775	15416	15144	15705	15509
7	13642	13399	14011	13764	14682	14376	15295	14989	15664	15358	16029	15722	16390	16091
8	14255	13949	14624	14318	15295	14989	15907	15601	16271	15965	16641	16335	17005	16704
9	14866	14561	15231	14925	15907	15601	16519	16214	16884	16577	17254	16947	17617	17311
10	15479	15173	15844	15537	16519	16214	17131	16825	17496	17190	17865	17560	18230	17924
11	16150	15815	16519	16184	17190	16855	17802	17468	18171	17831	18536	18202	18905	18564
12	16916	16573	17283	16945	17865	17524	18478	18137	18842	18508	19211	18871	19576	19242
13					18700	18328	19211	18842	19576	19211	19946	19576	20310	19946
14							20054	19681	20419	20054	20792	20419	21157	20792

Retroactive to 7/1/78

*NSJ
10/9/78*

~~BOARD~~
PROPOSAL

6.11.7 If necessary to decrease the number of teachers within the school district, part-time teachers shall be laid off first and shall be placed on a separate recall list. Except as specified below, they shall have recall rights to part-time positions only.

If further reductions in the number of teachers are required, the Administration shall lay off the necessary number of full time teachers within subject areas of certification in the inverse order of the teacher's number of years of ~~continuous~~ service within the bargaining unit as determined by the date of signing the initial contract, ~~in the most recent period of uninterrupted service.~~

~~Teachers who have left the bargaining unit and returned prior to the effective date of this contract shall not lose seniority because of this clause.~~

~~When necessary, part-time positions will be combined to form full-time positions.~~ A teacher in an affected area shall have the right to be transferred into a different area within the district in which he is also certified. A teacher who must be transferred to a minor area of certification in order to prevent lay-off must, in order to teach in that minor area of certification, either have taught in that area in the last five years or must have obtained at least six credits in the last five years in that area of certification. If neither of these conditions exist, the teacher shall have one year from the commencement of teaching in that area to complete six credits in the minor area.

No teacher shall be prevented from securing other employment during the lay-off under this subsection.

~~Voluntary part-time teachers will be treated in accordance with the law as it relates to recall rights and benefits while on recall.~~

Teachers shall be reinstated in inverse order of their being laid off if certified to fill the vacancies. It shall be the responsibility of the laid-off teacher to keep the Administration informed at all times of his or her current address and telephone number.

The administration shall recall teachers by written notification (certified mail, return receipt requested). Such teacher or teachers shall have fifteen (15) days from receipt of the notice in which to reply (certified mail, return receipt requested). Teachers who refuse a recall offer in two separate school years shall immediately be dropped from the list of recall candidates and forfeit all further rights to recall. A teacher need not be given more than one recall offer per school year. Teachers shall be dropped from the list of recall candidates after three years on such a list.

The reinstatement of a teacher shall not result in a loss of credit for previous years of service. No new or substitute appointments may be made while there are laid off teachers available who are certified to fill the vacancies in the district.

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Teachers who are on layoff status will be given preference for substitute positions. In addition, they will be entitled to participate in the District group health plan at their own expense with payment 30 days in advance. Such participation will be allowed until the earlier of two conditions occurs: either the laid off teacher has a permanent position or the time limit established by the insurance company is exhausted.

Full time teachers who have involuntarily been issued reduced contracts shall retain seniority on the full time list and shall be subject to recall under this section of the master agreement.

Full time teachers requesting reduction to part time status, after the effective date of this contract, shall forfeit any seniority rights to full time jobs.

All layoff and recall rights of full time teachers shall apply to part-time teachers except:

a. The seniority of a part-time teacher who once had full time status shall be applied as follows:

1. Years of full time teaching shall apply to the full time layoff/recall list. The refusal of one offer of full time employment shall result in forfeiture of any future rights to full time employment.

2. The years of full time plus ^{Recall} part time teaching shall apply to the part time layoff/recall list.

b. No new or substitute appointments may be made for part-time positions while there are part-time laid off teachers available who are certified to fill such vacancies in the district.

The District shall forward to the Association by September 30 of each year, a seniority list of all employees and a list of those persons on either the full-time or part-time layoff lists and their relative rank.

A post hearing brief was received from the Board dated January 31, 1979.

MSJ
10/9/78

in addition thereto only 3 districts in the area exceed the average household income of Brookfield and Elmgrove of which 46.2% had incomes in excess of \$25,000 and 80% had incomes in excess of \$15,000.

In support of its claim that its proposal in regard to Salaries and Extra Duty Pay was justified the Association introduced exhibits including but not limited to graphs, charts, articles, scattergrams, etc. showing a comparison of the salaries and extra duty pay of the Elmbrook School District employees involved herein with employees of approximately 24 other nearby school districts. The Association points out that the comparison shows that the salaries of the Elmbrook teachers do not compare favorably with the salaries of other teachers in the area. The Association in addition thereto contends that the salaries of teachers clearly trail those of other Elmbrook district and municipal employees quoting an article in the Milwaukee Sentinel which stated "In Brookfield police salaries have increased about 50% faster than teachers salaries."

The Association further contends the increase offered by the District in the face of a consumer price rise nearly double this offer is unjustified. The Association also states that in the last 4 or 5 years the teachers, although salaries were increased, have actually lost in buying power and this buying power will again be eroded even if the Association's final offer is accepted.

Both the Association and the District point to various other exhibits in support of the above and various other positions.

In its reply brief the District sets forth that the Association contention that its package represents only an increase of 7.11% over the 1977-78 school year is misleading and inaccurate for purposes of comparing salary and wage increases under the guidelines and are actually much higher and closer to 9.32%. This brief also sets forth that the Association's comparison by graphs comparing the average salary levels of the twenty-three schools to Elmbrook is misleading since it fails to show that Elmbrook compares favorably with the salary positions of other schools in suburban Milwaukee, and also that many other necessary factors are left out in the Association's analysis. The District urges that its comparables show that Elmbrook teachers salaries are not only competitive but also higher than most districts.

The figures submitted indicate that the Board's proposal regarding the total package for salaries and extra duty pay is \$787,996 while the Association's proposal equals \$892,596. The Board contends its teacher salary increase amounts to 8.2% while the Association increase amounts to 9.32%. In regard to the extra duty pay the Board's increase would amount to a 5% increase while the Association's increase would be 5.5%. The Board's total package increase including fringe benefits would therefore be 7.83% while the Association's would be 8.87%.

I have made a careful comparison and analysis of the various positions and contentions of the parties and conclude that both have very tenable positions and that a decision either way could easily be justified. I am strongly persuaded by the District's contention that its final offer pertaining to Salaries and Extra Duty Pay is the closest to the suggested Wage Standards and were the arbitrator permitted to decide each issue separately he would order that the Board's final offer regarding Salaries and Extra Duty Pay be accepted. However since such is not permitted by statute decision on this issue will be decided as part of the total package as set forth hereinafter.

LAYOFF

The Association contends that full time teachers seniority should depend upon "continuous service" rather than "date of hire". This would mean that full time teachers would forfeit their seniority rights to full time jobs once service within the bargaining unit has been interrupted such as when a teacher accepts an administrative position.

The Association bases its demands upon the decline in pupil enrollment and predictions that significant layoffs are to be made in teacher positions and other staff positions. The Association further sets forth that previously when teachers left the district for jobs in warmer climates but then decided to return to their former teaching jobs they were rehired and restored their seniority and were placed in a more favorable position to others who had been hired since their departure.

The Association states that the Board proposal provides benefits only for non-bargaining unit personnel at the expense of bargaining unit personnel and builds into the system a need for the loss of more jobs for the people presently under teaching contracts and that the potential exists for all job loss to go to current bargaining unit employees.

The Association introduced into evidence a survey showing that 20 of 23 other districts provide layoff clauses. Nine districts provide seniority either as the controlling factor or one of the major determining factors for deciding the order of layoff and only four contracts provided for administrator rights.

The Board contends that it has follows an unwritten layoff procedure with the Association's concurrence and that no involuntary layoff has been effected under past practice and the Association can point to no abuse or inequity that has occurred in the past.

The Board objects to the inclusion of the words "continuous service within the bargaining unit" since it maintains there are many principals of the District who are also excellent teachers. The Board does not want to preclude them from returning to teaching should they so desire. In addition the Board sets forth, that is its duty to employ the best teachers available to educate the children of the District. Total years service, as opposed to continuous years service, is preferable to that end because total experience with review by Administration results in teaching quality.

The Board in its reply brief asserts that the Association is in error when it states that under its proposal "teachers and administrators alike will be terminated if a layoff occurs, while only teachers will be terminated under the Board's proposal". Nowhere, contends the Board, under its proposal will an administrator as such "bump" a teacher unless the administrator is demoted back into the bargaining unit and resumes his or her role as a teacher before being laid off.

The Association proposal, the Board contends, also favors inexperience over experience and also discourages advancement by the teachers into the administrative field.

As to the Board's position that administrators such as principals should be permitted to return to the bargaining unit because it has a duty to employ the best teachers available I find little merit. No evidence was introduced to indicate that the teachers presently under contract were not well qualified nor was any introduced to show that any of the administrators were more qualified. On the contrary the persons who spoke at the public hearing spoke very highly of the quality of teachers. Over 39 percent of the parents in a survey conducted by the Association stated that the quality of education their children were receiving was "excellent", 47 percent "good", 13 percent "average" and only 1 percent "below average". The present teachers were selected by the Board and I am sure that as set forth above they were considered well qualified or they would not have been hired or retained. I find nothing in the record that would indicate that the quality of teaching would suffer if administrators were not allowed to return to their former teaching positions. If this were so then the Board would owe a duty to its students to urge its administrators to return to their former teaching positions unless their administrative expertise was more important to the district.

I am however impressed with the Association's survey which shows that 19 of the other 23 districts in the nearby area provide for seniority as one of the factors for deciding the order of layoff and recall. Were I to decide this issue separate and apart from the others I would order that the Association's proposal be accepted but as previously stated I must accept one or the other total proposal and I shall defer until the total package issue is decided hereinafter.

FAIR SHARE

It is the conclusion of this arbitrator that after reading and analysing the record and the briefs of the parties that the issue of Fair Share is by far the most important of the four issues herein to each of the parties and but for this issue he is convinced that the other issues would have been resolved with some compromises by each side.

It is the position of the Association that a fair share agreement is authorized by statute and that the language in its proposal is valid on its face. It further contends that the Wisconsin statute authorizing fair share also limits by express terms the expenditure of fair share deductions for legal purposes and the courts have referred the question of what union expenditures are for purposes related to collective bargaining and contract enforcement to the W.E.R.C. The Association further contends that it has already agreed to certify only those amounts allowed by law and the determination of those amounts is now before the W.E.R.C. and it has already proposed an internal rebate procedure for amounts challenged, similar to the method envisioned in the Browne case. A savings clause providing for a method of dealing with an invalid provision is also provided in the proposal should one exist, and arguments that this type of union security language is invalid have been rejected by the courts.

The Association has included in its proposal a clause providing for implementation after approval by referendum of all eligible employees in the bargaining unit.

The Association points out that the City of Brookfield which comprises the greater portion of the size and population of this school district has endorsed fair share in three separate contracts covering its municipal employees.

The Association submitted as an exhibit a map showing the metropolitan area. This exhibit shows that fourteen of the twenty-four school districts have fair share in their contracts and another district has agreed to it. These provisions apply to approximately 4000 of the 6000 teachers. In addition, the Association points out that fair share provisions have been a long standing fact in Milwaukee and Mukwonago, Kettle Moraine, Germantown, Slinger and Hartford, also nearby districts, indicating that the fair share concept has spread beyond the metropolitan area boundaries.

Over two-thirds of Board's evidence and brief is concentrated on the Fair Share issue. The Board raises approximately 14 reasons why Fair Share should not be granted:

1. The "free rider" argument of the union is a sham.
2. A fair share provision is a negotiable item; there is no requirement that the Board must agree to fair share.
3. Fair share introduces compulsion into the relationship between the Board and its teachers.
4. Fair share is not benefit to the Board, in fact it is a detriment.
5. Fair Share gives a union that which it cannot get any other way.
6. The fair share proposal is subject to many uncertainties and will result in unlawful use of funds.
7. The rebate procedure is vague and totally unsatisfactory so as to be defective.
8. The Association's proposal is impractical.
9. The indemnity provision is totally deficient.
10. The Association's proposal is unreasonable because it fails to include a grandfather clause.
11. The presence or absence of fair share agreements in other districts is meaningless.

12. The arbitrator must reject the Association's proposal in deference to the W.E.R.C.'s determination of lawful purposes which are under consideration.
13. School district residents are overwhelmingly against the fair share proposal.
14. The Association has failed to show what dollar amount constitutes a "Fair Share".

It is the opinion of this arbitrator that although items 2, 3, 4 and 5 may be true and in fact are appealing ones they are only indirectly relevant to the issue and do not help the arbitrator in resolving it.

As to item 1 the arbitrator feels that the Board has introduced no evidence to support this statement.

Items 6 through 10, 12 and 14 deal in the most part with the subject of legality and practicality of the fair share proposal.

It is the finding and conclusion of this arbitrator that the arguments raised by the Board in support of these points have been answered by the courts and the W.E.R.C. The courts, as the parties are well unaware, have remanded to the W.E.R.C. the determination of whether any portion of union dues collected under a fair share clause are being expended for non-permissible purposes.

As to item 13 the record supports this statement.

The Board, as to item 11, has produced no evidence or law to support this statement and I must reject it as set forth hereinafter.

From an analysis of the record as a whole and with due respect for the arguments of both parties I have arrived at the final conclusion:

As to the argument that fair share interferes with the individual teachers right to refrain from joining or supporting a union I find that arbitrators in many prior cases have rejected this argument and I find no cases in which an arbitrator has supported it. I find that the payment of a fee by an employee who does not wish to join that duly authorized representative of a majority of the employees may in fact be an infringement on that employees freedom of choice but I find it no more so than the infringement on that employees desire to negotiate his own contract terms. The law does not permit such freedom when a union is selected as the duly authorized representative by a majority of employees. In the eyes of the individual it may seem unfair but the minority no matter how large is bound by the will of the majority both by custom and law. The law in the State of Wisconsin provides that if the employees no longer desire fair share they may by proper procedures vote it out. Furthermore the Association provision herein regarding fair share provides that it shall not become effective until it is voted upon and only then if a majority of the voters approve of this. I find no better way of permitting employees to voice their sentiments than by a secret ballot.

Fair share was made a subject of bargaining by the Wisconsin legislature. I am sure that not all voted for it, yet it is the law which must be followed by all even though it is unpalatable to some or even most.

As to the legality of fair share and the argument that the Board may be compelled to violate the law if it deducts fair share fees from its employee teachers this too has been answered by a number of arbitrators that it has not as yet been held to be illegal by the W.E.R.C. or the courts. The Board has submitted no cases to the contrary and I am therefore compelled to reject this argument. Until the W.E.R.C. decides that the method or amounts collected from or refunded to employees is illegal then the Association proposal on fair share must be presumed to be legal and valid.

In view of the safeguards provided by the courts and the W.E.R.C. I am sure that proposed fair share clause herein can be administered legally.

The Association's presentation that a majority of the districts in the area of Elmbrook have fair share agreements was not refuted in any way by the Board and I am therefore compelled to accept this evidence. In addition thereto the fact that acceptance by the City of Brookfield of fair share in contracts with its employees is a compelling factor in the Associations favor.

I am also impressed by the fact that approximately 80 percent of the teachers have voluntarily joined the Association (479 out of 597). As Arbitrator Krinsky stated in his decision (Northwest United Educators v. Clear Lake Joint School District, Case V, No. 22541, Decision No. 16328) "The arbitrator is much more reluctant to grant fair share where it is not clearly justified by comparison and/or where the support for the bargaining agent is marginal and the award of fair share by the arbitrator might produce a significant change in the balance in the labor-management relationship". I find nothing in the record as a whole to convince me not to follow this rationale.

CONCLUSION

Having considered the record as a whole, the arguments advanced by both sides and in view of the statute requirement that the arbitrator choose one parties offer in its entirety and not on an issue basis it is the conclusion of the arbitrator, albeit not any easy one, that the position of the Association is the more meritorious and must be granted. Based on the above the arbitrator hereby makes the following award:

AWARD

The final offer of the Association is selected and must be implemented by the parties.

Respectfully submitted,

Edward T. Maslanka /s/
Edward T. Maslanka, Arbitrator
7 South Dearborn Street
Chicago, Illinois 60603

DATED: March 7, 1979