STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of	
COLUMBUS EDUCATION ASSOCIATION	Case II No. 23181
To Initiate Mediation-Arbitration Between Said Petitioner and	MED/ARB-137 Decision No. 16644-A
COLUMBUS SCHOOL DISTRICT	

Appearances:

Mr. A. Phillip Borkenhagen, UniServ Director, Capital Area UniServ-North, appearing on behalf of Columbus Education Association.

Callahan, Arnold and Stoltz, by Mr. E. Clarke Arnold and Mr. David R. Friedman, Special Consultant, Wisconsin Association of School Boards, Inc., appearing on behalf of Columbus School District.

ARBITRATION AWARD:

On November 8, 1978, the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Columbus Education Association, referred to herein as the Association, and Columbus School District, referred to herein as the Employer. Pursuant to the statutory responsibilities, the undersigned, on January 3, 1979, conducted a mediation meeting between the Association and the Employer, which failed to resolve all matters in dispute between the parties. On January 22, 1979, the undersigned provided written notice to the Association and the Employer of his intent to proceed to arbitration in this matter. In the notice of January 22, 1979, the parties were advised that they had until Friday, January 26, 1979, to withdraw their final offers, if they desired to do so. Neither party withdrew their final offer, and pursuant to prior notice arbitration proceedings were conducted on January 30, 1979, at 10:00 a.m. at Columbus, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed; however, briefs were filed in the matter. The final briefs were exchanged by the undersigned on March 12, 1979. Subsequent to filing of briefs, on March 15, 1979, counsel for the Employer filed a written motion to strike the Association reply brief; and on March 29, 1979, the undersigned denied the motion to strike the reply brief.

THE ISSUES:

The final offers of the parties which were certified to impasse by the Wisconsin Employment Relations Commission contained seven disputed issues as follows:

1. Base Salary
2. Change of structure of salary schedule
3. Premium participation for health insurance premium
4. Long term disability insurance coverage
5. Fair Share
6. Calendar
7. Duration of Agreement

In the mediation session of January 3, 1979, the parties were able to resolve their dispute with respect to all of the issues except for salary and fair share, and further agreed that the resolution of the previously disputed items would be removed from the disputed matters before the Arbitrator, and additionally agreed that all tentative agreements between the parties would be implemented. After the differences between the parties had been narrowed to fair share and salary, both parties contracted a severe case of "rigiditis", and at hearing on January 30, 1979, placed the following modified positions before the Arbitrator for decision:

FAIR SHARE

ASSOCIATION PROPOSAL:

This fair share agreement shall become effective only after a referendum vote has been conducted by the Wisconsin Employment Relations Commission. Only employes covered by the terms of the Professional Agreement are eligible to vote; and unless a simple majority of the eligible bargaining unit employees vote in favor of the fair share agreement, the fair share agreement shall be null and void and the fair share agreement shall not be implemented during the terms of this collective bargaining agreement.

EMPLOYER PROPOSAL:

This fair share agreement shall become effective only after a referendum vote has been conducted by the Wisconsin Employment Relations Commission. Only employees covered by the terms of the Professional Agreement are eligible to vote; and unless a two-thirds (2/3rds) majority of the eligible bargaining unit employes vote in favor of the fair share agreement, the fair share agreement shall be null and void and the fair share agreement shall not be implemented during the terms of this collective bargaining agreement.

SALARY

ASSOCIATION PROPOSAL:

The Association proposes a $9,700 base and the deletion of the BA + 12 lane which would be replaced by BA + 8 and BA + 16 lanes. Joint Exhibit #6 is attached to this Award, which sets forth the entire salary schedule proposed by the Association.

EMPLOYER PROPOSAL:

The Employer proposes a $9725 base with no modification of lanes as they are contained in the salary schedule of the 1977-78 Collective Bargaining Agreement. Joint Exhibit #7 is attached to this Award, which sets forth the entire salary schedule proposed by the Employer.

DISCUSSION:

The two issues which are disputed between the parties are salary and the standard of voting for implementation of the fair share provision. While there are two disputed items contained within the salary issue, the question of the additional lanes proposed by the Association and the proper base salary will be discussed in conjunction with each other. The fair share issue will be discussed separately, and subsequent to the individual discussions on the two issues a determination will be made as to which final offer in its entirety is to be adopted. In evaluating the final offers of the parties, the undersigned will base his evaluations on the criteria set forth in Wisconsin Statutes 111.70 (4)(cm) 7 as follows:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

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

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

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

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

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

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

Before setting forth the discussion on the issues separately, the undersigned will comment briefly with respect to the attitudes manifested by the parties with respect to the Association's choice of words in its brief and the subsequent motion by the Employer to strike the Association reply brief. As noted in the communications from the Arbitrator to the parties on March 29, 1979, the Employer's motion to strike the Association's reply brief was denied on that date, with the comment that: "the parties can be assured that my decision in this matter will be based solely on evidence adduced at hearing and on information which is publicly available, and which it would be proper to take notice of. Further, arguments advanced by either party which are not based on evidence in the record of the hearing itself, will not be considered." The attitudes which the parties manifested in their exchange of correspondence to the undersigned after briefs were filed reminds this Arbitrator of the comments which the late Philip Marshall made in a fact-finding proceeding involving AFSCME and Fond du Lac County in 1971.[1] In his fact-finding report, fact-finder Marshall at page 2 described that dispute as follows:

> Unfortunately, as to all of the issues involved in each of the separate units, the amount of collective bargaining done by the parties was negligible. Each accuses the other of bad faith. However, it appears to me that both were so busy arranging the chip on their shoulder that little time was left for down to earth bargaining. Epithets were exchanged, most of which are reminiscent of that childish phrase "so's your old man." Under these circumstances, it is difficult for any fact finder to fully and meaningfully evaluate such evidence as was presented and to make recommendations which would be cogent and persuasive. It is my opinion that fact finding can only be truly effective as an extension of the collective bargaining process and not as a substitute for it.

The words of the late Philip Marshall as cited above could well apply to the parties here in the opinion of the undersigned.

FAIR SHARE ISSUE

The dispute over the fair share provision is limited to the standard which the Association must meet to carry the referendum prior to the implementation of the fair share agreement. The Association proposes that the

1) WERC Case XVI, No. 14457, FF-424, Decision No. 10196 (Philip G. Marshall, Factfinder, August 6, 1971

standard should be a majority of the employees eligible to vote, while the Employer proposes that the standard should be two-thirds of the employees eligible to vote. The Employer principally relies on statutory criteria g to support his offer which requires a referendum of two-thirds of those eligible before fair share can be implemented. The Employer argues that the testimony of the president of the School Board establishes that the Board made efforts to come to terms with the Association on the fair share issue by modifying its negotiating position on numerous occasions, and that said modifications represent changes of the foregoing circumstances during the pendency of the arbitration proceedings as contained in criteria g. The undersigned concludes that the Employer's reliance on criteria g of the statute is misplaced. While the testimony of School Board President Poser clearly establishes that the Employer throughout the course of negotiations and mediation continued to move toward the Association position with respect to fair share, the undersigned is of the opinion that movement in negotiations or mediation does not constitute changes in the foregoing circumstances during the pendency of the arbitration proceedings. While the modifications of the Employer position with respect to fair share could well be indicative of a good faith effort on the part of the Employer to resolve the disputed issue, said changes cannot be said to represent changes of circumstances that bear on any of the criteria of the statute found at a through f. Criteria g which speaks to changes in any of the foregoing circumstances, clearly relates to changes that have a bearing on the previously listed criteria at a through f. Since the movement of the Employer in bargaining is not a change in the foregoing circumstance which affect criteria a through f, the Employer argument is rejected.

Additionally, the Employer argues that a two-thirds vote concept is recognized in certain circumstances in the United States and Wisconsin Constitutions, Section 111.81 (13) Wis. Stats., and in Robert's Rules of Order. The Employer contends that based on the foregoing the two-thirds standard is justifiable in and of itself. The undersigned has reviewed the two-thirds voting provisions of the United States and Wisconsin Constitutions, as well as the two-thirds voting criteria provided for in Roberts Rules of Order, and concludes that the two-thirds vote provided for in the foregoing does not deal with circumstances akin to the vote for fair share which is disputed in the instant matter. It follows, then, that the Employer argument with respect to the United States and Wisconsin Constiutions, as well as Roberts Rules of Order is unpersuasive. With respect to Wis. Stats. 111.81 (13), the undersigned agrees that said statutory provision deals with implementation of fair share. However, 111.81 (13) establishes a two-thirds voting standard to implement fair share for employees of the State of Wisconsin who are covered under a separate and distinct sub-chapter of Chapter 111 of the Statutes from the Chapter which governs the municipal employees involved in the instant dispute. There are marked differences with respect to implementation of a fair share agreement for state employees and municipal employees. Fair share for state employees is not bargained and fair share agreements can be implemented only by referendum vote. In contrast, under the provisions of 111.70, municipal employees may be covered by a fair share agreement without any referendum, if the union and the employer enter into such an agreement in their collective bargaining. It is obvious to the undersigned that the legislative intent for implementation of fair share for state employees is not transferrable to municipal employees, given the foregoing distinction. Furthermore, the undersigned is persuaded by reason of the provisions found at Wis. Stats. 111.70 (2) that the proper standard for voting, if the parties agree to a referendum for implementation, is a majority of the eligible employees. At Wis. Stats. 111.70 (2) the Legislature provided that the standard for terminating fair share agreements by referendum vote is a majority of those eligible voting against a fair share agreement. Since the Legislature determined that the standard to terminate a fair share agreement is a majority of the eligible voters, the undersigned can only conclude that if the parties agree to a referendum to implement fair share, the same majority standard should apply which the Legislature deemed appropriate in a referendum for termination purposes.

For the reasons described in the discussion above, the Employer's position with respect to the standard of voting for the implementation of a fair share agreement is rejected, and the Association position, which requires a majority of those eligible to vote is adopted when considering this issue standing alone.

SALARY ISSUE

While the Association base salary proposal is less than that of the Employer, $9700 vis a vis $9725, the Association salary proposal is nevertheless more costly than that of the Employer by reason of the Association proposal with respect to lanes. The Association has proposed that the BA + 12 column be deleted from the prior salary schedule and proposes replacing it with a BA + 8 and a BA + 16 column. The record clearly shows that the amount of total monies involved in the dispute is minimal. From Employer exhibits #53 and #55 the undersigned notes that the difference in the Association proposal represents $6,781.00. Additionally, the undersigned notes from Board exhibit #63 C that the difference between the parties' proposal, inclusive of roll ups, is .62%. Considerable evidence was entered into the record of these proceedings at hearing with respect to budget analysis and cost of living. Additionally, the parties in their briefs have argued these points to the undersigned. Given the narrowness of this dispute; and given the Employer position that he is raising no issue with respect to criteria c, the Employer's ability to pay; the undersigned concludes that the evidence with respect to budgetary analysis is not material in the instant dispute. Furthermore, because the differences in the parties' position is .62% the undersigned is satisfied that regardless of whose offer is accepted in the instant matter the cost of living criteria will have no persuasive effect.

Having concluded that budgetary data and cost of living data is not controlling with respect to the salary dispute, the undersigned turns to "industry practice" to determine whose offer is acceptable. The "industry practice" is provided for under criteria d, the comparison of wages, hours and conditions of employment with those of other employees generally in other employment in comparable communities. While the parties have not been able to entirely agree as to what constitutes comparable communities in the instant dispute, both parties in their submissions have relied on the athletic conference as being comparable. A review of the evidence with respect to the proposed lanes of the Association satisfies the undersigned that the lanes sought by the Association are accepted practice within the conference. From Association Exhibit #23, which sets forth a comparison of BA lanes within the conference, the undersigned concludes that the comparables favor the Association position. The Employer offer with respect to lanes would perpetuate a salary schedule which would have 4 lanes for teachers with bachelor's degrees. Of the 7 remaining schools within the conference, Lodi, Verona, Waunakee and Wisconsin Heights have 4 lanes; Lake Mills has 5 lanes, while DeForest and McFarland have 6 lanes. While the 5 lanes proposed by the Association here exceeds the number of lanes in four of the remaining seven conference schools, that fact alone does not dispose of all the comparables which need to be considered. Specifically, while Lodi has only 4 lanes, the undersigned deems it significant that the Lodi schedule contains lanes of BA + 8 and BA + 16 which are precisely the lanes which the Association seeks here. Furthermore, the undersigned considers it significant that Lake Mills, Lodi, McFarland and Verona have more lanes in the MA schedule than that contained in either the final offer of the Employer or the Association. The effect of adding the lanes proposed by the Association brings more money into the schedule in the MA column by reason of the inserted lane. Therefore, it is proper to consider that effect when weighing the comparables, and the MA lanes become significant. From the foregoing, then, the undersigned concludes that the comparable practices within the conference favor the adoption of the Association proposal in this matter, notwithstanding the Employer argument that it is incumbent upon the party proposing the modification to make a true showing that the prior provisions were either unworkable or inequitable. Specifically, with respect to the burden of proof argued by the Employer, the undersigned finds that the comparables demonstrate a sufficient showing to adopt the Association proposal.

When the comparison of practices with respect to lanes in the BA columns is extended to schools within a 35 mile radius which employ between 45 to 125 teachers as set forth in Association exhibit #22, ten of the fifteen schools have either BA + 8 - 16 - 24, or BA + 6 - 12 - 18 - 24 lanes. Again, these comparables favor the inclusion of the lane sought by the Association.

The undersigned has reviewed the evidence submitted by both parties which compares the salary generated by the proposal of the Employer and the proposal of the Association in this matter with comparable districts. Neither the proposal of the Employer nor that of the Association will generate monies at the points of comparison which the parties address which would result in conclusions unfavorable to the Association position on the salary issue. It follows, then, that the Association offer with respect to salary would be incorporated into the Agreement, if this issue were standing alone.

SUMMARY AND CONCLUSIONS:

In the foregoing discussion the undersigned has found that each of the issues, when analyzed separately, favor the Association offer, and in view of the findings on the separate issues, it follows that the Association's final offer in its entirety is to be adopted. Therefore, after considering all of the evidence, the final offers of the parties in their entirety, the arguments of counsel, and after applying the statutory criteria which the statutes direct, the undersigned makes the following:

AWARD

The final offer of the Association is to be incorporated into the Collective Bargaining Agreement, along with the stipulations of the parties which reflect prior agreements in bargaining, for the contract year 1978-79.

Dated at Fond du Lac, Wisconsin, this 26th day of April, 1979.

Jos. B. Kerkman,
Mediator-Arbitrator

JBK:rr

Association Exhibit 6

1/31/79

APPENDIX

Association Proposal

Salary Schedule for 1978-79
Columbus Public Schools

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	16	19
3 Years	9300	9635	9970	10304	10639	10974	11309	11644	11978	12313	12648	12983	13318	13652	13952	14252
Bachelor's	9700	10088	10476	10864	11252	11640	12052	12464	12876	13288	13700	14112	14524	14936	15236	15536
BA + 8	9900	10288	10676	11064	11452	11840	12252	12664	13076	13488	13900	14312	14724	15136	15436	15736
BA + 16	10100	10488	10876	11264	11652	12040	12452	12864	13276	13688	14100	14512	14924	15336	15636	15936
BA + 24	10300	10688	11076	11464	11852	12240	12652	13064	13476	13888	14300	14712	15124	15536	15836	16136
BA + 30 or Gen'l MA	10500	10888	11276	11664	12052	12440	12852	13264	13676	14088	14500	14912	15324	15736	16036	16336
MA in Field	10700	11088	11476	11864	12252	12640	13052	13464	13876	14288	14700	15112	15524	15936	16236	16536
MA in Field + 12	10900	11288	11676	12064	12452	12840	13252	13664	14076	14488	14900	15312	15724	16136	16436	16736

Index Applied: 0-5 years, inclusive, at 4% of Base ($9700)
6-13 years, inclusive, at 4½% of Base ($9700)
16th and 19th years at $300
For less than Bachelor's (3 years), at 3.6% of Base ($9300), 3-13 Steps
16th and 19th years at $300

PROPOSED SALARY SCHEDULE FOR 1978-79
$9725 BASE

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	16	19
3 Years	9325	9661	9996	10332	10668	11004	11339	11675	12011	12346	12682	13018	13353	13689	13989	14289
Bachelor's	9725	10114	10503	10892	11281	11670	12083	12497	12910	13323	13737	14150	14563	14976	15276	15576
BA + 12	9925	10314	10703	11092	11481	11870	12283	12697	13110	13523	13937	14350	14763	15176	15476	15776
BA + 24	10125	10514	10903	11292	11681	12070	12483	12897	13310	13723	14137	14550	14963	15376	15676	15976
BA + 30 or Gen. Masters	10325	10714	11103	11492	11881	12270	12683	13097	13510	13923	14337	14750	15163	15576	15876	16176
Master's in Field	10525	10914	11303	11692	12081	12470	12883	13297	13710	14123	14537	14950	15363	15776	16076	16376
Master's in Field + 12	10725	11114	11503	11892	12281	12670	13083	13497	13910	14323	14737	15150	15563	15976	16276	16576

Index Applied:

3 Years .036 on Steps 1 to 13 inclusive on $9325 Base
All Others .040 on Steps 1 to 5 inclusive; .0425 on Steps 6 to 13 inclusive, on $9725 Base