In the Matter of the Mediation-Arbitration	OPINION and AWARD
Between	Case IV No. 23674 MED/ARB-246 Dec. No. 16770-A
COLEMAN SCHOOL DISTRICT	
and	
COLEMAN EDUCATION ASSOCIATION	

APPEARANCES:

Dennis W. Rader, Esquire, Mulcahy & Wherry, S.C., Green Bay, for the School District
Lawrence J. Gerue, Executive Director, UNE, Green Bay, for the Association

On October 25, 1978, the Coleman Education Association (referred to herein as the Association) and the Coleman School District (referred to herein as the School District or Employer) jointly filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Sec. 111.70(4)(cm)(6) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate medication-arbitration. The parties had begun negotiations in March 1978 for a successor to their 1977-78 collective bargaining agreement which was to expire on August 15, 1978 but failed to reach agreement on all issues in dispute covering this unit of approximately sixty-one (61) regular certified teachers. On January 17, 1979, following an investigation by a WERC staff member, the WERC determined that an impasse existed within the meaning of Sec. 111.70(4)(cm)(6)(a) and that medication-arbitration should be initiated. On February 5, 1979, the undersigned, after having been selected by the parties, was appointed by the WERC as mediator-arbitrator to resolve the impasse. She met with the parties initially on May 14, 1979 in Coleman, Wisconsin, to mediate the dispute. (No citizens' petition pursuant to Sec. 111.70(4)(cm)(6)(b) had been filed with the WERC and, therefore, no public hearing pursuant to that section was scheduled.) When these mediation efforts proved unsuccessful, the undersigned notified the parties of her intent to resolve the dispute by final and binding arbitration and provided the parties with the opportunity to withdraw their final offers. The final offers were not withdrawn and an arbitration meeting (hearing) open to the public was held by the mediator-arbitrator on May 29, 1979 in Coleman, Wisconsin. At that time the parties were given a full opportunity to present evidence through exhibits and testimony and to make oral arguments. Thereafter briefs, revised exhibits and reply briefs were submitted and exchanged through the arbitrator.

ISSUES AT IMPASSE

Although the parties were able to reach agreement on a number of matters through collective bargaining, including a fair share agreement, two issues remained unresolved and are the subject matter of this arbitration proceeding: salary schedule and class size. The salary schedules contained in the parties' final offers contain two differences: base salary amount and step increments. The final salary offer of the Assocation is annexed hereto as Appendix A; the final salary offer of the Employer is annexed hereto as Appendix B. In summary, the Association proposes to change the 1977-78

base from $9,200 to $9,850 with step increments being increased from $360 to $410; the Employer proposes to change the base to $9,800 and the step increments to $400. As to the second issue, class size, the language (relating to impact) contained in the Association's final offer is annexed hereto as Appendix C. The Employer makes no affirmative proposal. It has notified the Association and the WERC that since the previous language relating to class size contained in the parties' collective bargaining agreement dealt with a permissive subject of bargaining, it is the Employer's position that the previous contractual provision on class size expired with the 1977-78 contract and the School District did not choose to have any language in the contract relating to class size. The class size provision contained in the 1977-78 collective bargaining agreement is annexed hereto as Appendix D.

Since there is no voluntary impasse procedures agreement between the parties, the undersigned is required under MERA to choose either the entire final offer of the Association or the entire final offer of the Employer.

STATUTORY CRITERIA

Under Sec. 111.70(4)(cm)(7) the mediator-arbitrator is required to give weight to the following factors:

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 the same community and in comparable communities and in private employment in the same community and 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 employ-

key to a determination of the reasonableness of the parties' offers. It argues that the UNE UniServ Unit composed of Coleman and sixteen (16) constituent school districts (see map annexed hereto as Appendix E) is the proper comparable in view of the close working relationship of the member teachers' associations of this geographical unit and the particularly active participation and leadership role taken within this UniServ Unit by members of the Coleman Education Association. The Association objects to the School District's selection of comparables because many school districts have been included by the Employer which have a smaller teacher size and correspondingly lower wages. Also, the Association notes that some of the Employer's comparables are geographically distant from Coleman (i.e. Niagara). Based upon its UniServ Unit comparables, the Association concludes that its salary offer is more reasonable since the UniServ 1978-79 average is higher than either the Board or the Association's offers.

As to its class size proposal, the Association first notes that restrictive class size language has been contained in the parties' collective bargaining agreements since at least 1970 (for 1977-78 language, see Appendix D). Moreover, even during negotiations for the 1978-79 agreement, there had been no discussion of deleting or substantially eliminating the class size language until after impasse. After the Employer's objection to negotiating class size policy, a permissive subject of bargaining, became clear, the Association submitted its final offer to the WERC investigator which contained new language on class size, changing policy language, a permissive subject of bargaining, to impact language, a mandatory subject of bargaining. Given this history, the Association stresses that the Board's present position of no contractual language relating to class size represents a severe break with past contracts and long established work standards and emphasizes that such a break has not been justified by the School District with any persuasive reason. Accordingly, the Association concludes that it is not in the best interests of either party to eliminate all contractual language relating to class size since a class size section is highly desireable, as the parties' past history has demonstrated.

As to comparability, the Association acknowledges that no other UNE UniServ Unit school district has impact language. It notes, however, that eight of the seventeen UNE UniServ Unit contracts and seven of the eleven School District comparables have some type of class size language. Therefore, the Association concludes that for a combination of all these reasons, despite strong comparability data on class size, fairness and equity require the selection of the Association's final offer. (The Association notes that an error was made when the current impact language was drawn up by the Association's negotiating team. The class size language contained in the 1977-78 agreement excluded band and physical education classes while the Association's impact class size language contained in its final offer does not. This was unintentional, the Association states. While there is no financial impact due to this Association error in regard to physical education classes, the error as to band classes is important because of its substnatial financial effect. The Association estimates that for 1978-79 its proposal would cost the School District $18,000 excluding band classes and $44,100 including band classes. It, therefore, stated at the arbitration meeting that if the arbitrator rules in favor of the Association's final offer, it will immediately enter into an agreement with the School District excluding band classes from the application of its class size proposal. (See Appendix C)

The School District

The Employer's main arguments to support its final offer on salary are based upon its comparability data from surrounding comparable school districts, salary increases received by other Coleman School District employees and consumer price index data. The Employer rejects the Association's choice of comparables, the constituent school districts comprising the UniServ Unit, and affirmatively argues in

favor of its choice of ten other comparable school districts in the northeastern portion of Wisconsin. (See map annexed hereto as Appendix F). Each of its ten selected districts, it notes, are in close geographical proximity to Coleman (a majority being contiguous), there is similarity in daily pupil membership and staff size, and a majority are in the same athletic conference as is Coleman. The Employer notes that the UniServ comparables lack geographical proximity, several are distinguishable due to the influence of Green Bay, and there is a great disparity within the UniServ Unit as to teacher population in the various school districts. Pointing to its own comparability data, the School District believes that the evidence demonstrates that the School District's salary offer is more reasonable, because it is competitive with districts significantly larger than Coleman, it is superior to teacher salaries in the smaller districts, it maintains equity with other Coleman school employees and, finally, it treats Coleman teachers favorably in their ability to keep pace with the rising cost of living (CPI).

In regard to the class size issue, the Employer argues against the Association's proposal based upon its high cost (Association cost estimate: $44,100) and the absence of similar type clauses elsewhere in comparable school districts. Even in the few school districts where some type of class size impact language may be found, the Employer presents evidence to show that the cost of the Association's proposal is far in excess of these comparables. The School District further believes there is no need for such a clause since a pattern of declining student enrollment is evident over the past four years in Coleman, thus making the Association's fears of a future, generalized class size increase baseless. It argues that the existing class size information presented at the arbitration meeting (hearing) by the Association demonstrates that Coleman class sizes have not burdened teachers since they rarely exceed thirty. Therefore, in the judgment of the School District, there is no evidence at all to justify the onerous economic burden which is required by the Association's class size impact language. Finally, the Employer vigorously objects to the Association's position that the Association's failure to exclude band classes may be "corrected" by a post arbitration agreement between the parties. The Employer argues that since the Association's offer relating to class size impact is clear and unambiguous and since the Employer has not consented to any Association modification, the Association is "stuck" with its final offer as submitted, including its error. The School District indeed argues that this Association omission constitutes a sufficient ground for rejection of the Association's final offer.

DISCUSSION

As the parties themselves note, their final offers on the salary issue are very close indeed. The difference in cost between the two proposals which affect all members of the bargaining unit is slightly over $9,000 (including STRS). Implementation of either salary offer will not produce a dramatic result in the School District's relative position. In any case, choosing between the two salary proposals in this situation, as in many others, depends primarily upon a determination as to what constitutes appropriate comparables. The Association has put forth the constituent school districts of its UNE UniServ Unit as the most appropriate set of comparables. It does so primarily on the basis of the existing administrative structure for services supplied to local teachers associations by its state-wide parent organization, WEAC, and a history of active participation by Coleman teachers in this organization.

It is difficult to support the Association's exclusive, albeit understandable, reliance upon UNE UniServ Unit school districts for comparability data in view of the disparity in teacher size among the constituent school districts, the necessary exclusion of comparability data from school districts north of Coleman (including one contiguous district) which are not part of this UniServ Unit, and the special influence of Green Bay upon several of the constituent

districts. Although the Association is critical of the School District in its selection of comparables, particularly the selection of many smaller school districts which pay lower teacher salaries, and calls this a self-serving strategy, yet it appears that the Employer's comparables which support the School District's offer provide a more reasonable basis for a sound judgment than do the Association's comparables.

If the salary issue were the sole issue to be determined in this dispute, the undersigned believes that the most appropriate way to proceed would be for her to make a detailed analysis of available comparability data thus permitting her to make independent findings as to the most comparable districts and not restrict herself to the parties' use of comparables. In view of her conclusions on the second issue in dispute, however, she believes it is sufficient for her to determine herein that, based upon the comparability data and other evidence presented by the parties, the Employer's salary offer is preferable.

In the judgment of the undersigned, the class size dispute represents a more critical issue than the salary issue in this arbitration proceeding because the parties are widely separated on this issue on economics and policy grounds. On behalf of its class size impact proposal, the Association argues that much weight should be given to the history of the parties, noting that a class size policy clause has been in their collective bargaining agreements since at least 1970 and, moreover, the School District actively negotiated with the Association about its initial 1978-79 class size policy proposal until WERC mediation. The arbitrator recognizes that the Association's present class size impact offer is the Association's response during statutory impasse procedures to the abrupt change in position of the School District on class size policy negotiations. Thus, the Association's final offer on this issue was never subjected to the normal process of collective bargaining and does not reflect the Association's preferred position (presented in its original 1978-79 bargaining demands enlarging the 1977-78 language). Moreover, the Association's proposal contains an admitted error resulting in serious financial consequences because of a drafting failure to exclude band classes. The School District has consistently refused to consent to correction of this unintended error by the Association.

Despite these strong arguments, the Association's final position on class size impact language is difficult to support as the more reasonable offer in this proceeding. First, there is the serious and acknowledged problem that the Association has in producing comparables. There are no substantially similar clauses in any comparable district. Even where examples may be found, the differences between negotiated clauses elsewhere and the Association's proposal before the arbitrator are enormous. This last point is also directly related to a second difficulty with the Association's class size impact position: cost. Even if band classes are excluded, the cost of the Association's proposal has been estimated to be in excess of $20,000 for extra pay for eight teachers, over twice the difference between the parties' salary proposals which affect all teachers in the unit. When band classes are considered, the cost of the Association's proposal is $44,100 (excluding STRS) for ten teachers. Since the Employer has refused to permit the Association to amend its final class size impact offer, the Association and its proposal are placed in an impossible position to defend. Under all these circumstances, particularly lack of comparables and cost, the arbitrator believes that she is precluded from selecting the Association's final offer on class size impact. (The arbitrator would like to note a point made during the arbitration meeting. At that time, the Employer stated that if it were to change its class size policy at any future time (and it has no plans for doing so at this time), it acknowledged that it had a statutory duty to bargain over the impact of such a policy change with the Association. Thus, the Association is not completely without protection if such a class size policy change were to be implemented by the School District in the future.)

AWARD

Based upon full consideration of the exhibits, testimony, and oral and written arguments presented of the parties and due weight having been given to the statutory facts set forth in Sec. 111.70(4)(cm)(7) of MERA, the mediator-arbitrator selects the final offer of the Employer and orders that the Employer's final offer be incorporated into a written collective bargaining agreement as required by statute.

Dated: August 4, 1979

Chilmark, Massachusetts

June Miller Weisberger
Mediator-Arbitrator

SCHOOL DISTRICT OF COLEMAN

SALARY SCHEDULE
1978-79
ASSOCIATION'S FINAL OFFER

9850 BASE
410 INCREMENT
150 BETWEEN LANES

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Step	BA	BA+6	BA+12	BA+18	BA+24	BA+30	MA	MA+6	MA+12
0	9850	10000	10150	10300	10450	10600	10750	10900	11050
1	10260	10410	10560	10710	10860	11010	11160	11310	11460
2	10670	10820	10970	11120	11270	11420	11570	11720	11870
3	11080	11230	11380	11530	11680	11830	11980	12130	12280
4	11490	11640	11790	11940	12090	12240	12390	12540	12690
5	11900	12050	12200	12350	12500	12650	12800	12950	13100
6	12310	12460	12610	12760	12910	13060	13210	13360	13510
7	12720	12870	13020	13170	13320	13470	13620	13770	13920
8	13130	13280	13430	13580	13730	13880	14030	14180	14330
9	13540	13690	13840	13990	14140	14290	14440	14590	14740
10	13950	14100	14250	14400	14550	14700	14850	15000	15150
11	14360	14510	14660	14810	14960	15110	15260	15410	15560
12	14770	14920	15070	15220	15370	15520	15670	15820	15970
13				15630	15780	15930	16080	16230	16380
14					16190	16340	16490	16640	16790
15						16750	16900	17050	17200
16							17310	17460	17610

Appendix A

Co-Emm' Proposal 1978-79

9300 i
400 i
150 I.

SALARY SCHEDULE

1978 - 79

STEP	(1) BA	(2) BA+6	(3) BA+12	(4) BA+18	(5) BA+24	(6) BA+30	(7) MA	(8) MA+6	(9) MA+12
0	9800	9950	10100	10250	10400	10550	10700	10850	11000
1	10200	10350	10500	10650	10800	10950	11100	11250	11400
2	10600	10750	10900	11050	11200	11350	11500	11650	11800
3	11000	11150	11300	11450	11600	11750	11900	12050	12200
4	11400	11550	11700	11850	12000	12150	12300	12450	12600
5	11800	11950	12100	12250	12400	12550	12700	12850	13000
6	12200	12350	12500	12650	12800	12950	13100	13250	13400
7	12600	12750	12900	13050	13200	13350	13500	13650	13800
8	13000	13150	13300	13450	13600	13750	13900	14050	14200
9	13400	13550	13700	13850	14000	14150	14300	14450	14600
10	13800	13950	14100	14250	14400	14550	14700	14850	15000
11	14200	14350	14500	14650	14800	14950	15100	15250	15400
12	14600	14750	14900	15050	15200	15350	15500	15650	15800
13				15450	15600	15750	15900	16050	16200
14					16000	16150	16300	16450	16600
15						16550	16700	16850	17000
16							17100	17250	17400

Appendix B

~~Board Exhibit 4-b~~

Association Final Offer:

1. The parties recognize that the size of a class is a matter of basic educational policy and that the District may assign any number of students it so desires to a class. The parties also recognize that optimum teaching and learning conditions are affected by class size and that size of the class affects the conditions of employment and workload of teachers.

2.(a) Teachers at the elementary level who are assigned 30 or fewer students per class shall receive wage compensation in accordance with provisions of the Salary Schedule.

(b) Teachers at the secondary level who are assigned 30 or fewer students per class shall receive wage compensation in accordance with the provisions of the Salary Schedule.

3.(a) Should the District choose to assign more than 30 students per teacher per class at the elementary level, elementary level teachers shall receive, as work overload compensation in addition to their schedule salary the amount of $5.00 per additional student per period per day.

(b) Should the District choose to assign more than 30 students per teacher per class at the secondary level, secondary level teachers shall receive, as work overload compensation in addition to their schedule salary $5.00 per additional student per period per day.

4.(a) During the first ten (10) school days of each school year/semester, class size overloads will be allowed without compensation to the teacher (while administrative changes are being attempted).

(b) If class size overloads persist beyond the first ten (10) school days, the teacher shall receive additional compensation from the first day of the overload, including the first ten (10) days of the school semester, in accordance with the provisions of Section 3 of this article.

5. The parties acknowledge that class size overloads negatively impact on a teacher's job performance and preparation for instruction. A teacher who is assigned a class size overload shall have such overload noted on his/her evaluation. The parties acknowledge that the existence of a class size overload in a teacher's assignment must be considered in any teacher performance evaluation involved in any non-renewal proceeding, or disciplinary proceeding, wherein the charges concerned of failure to meet the work performance standards of the District.

Appendix C

~~Bd. Exhibit #5~~

~~ISSUE: CLASS SIZE~~

~~Board Final Offer~~:

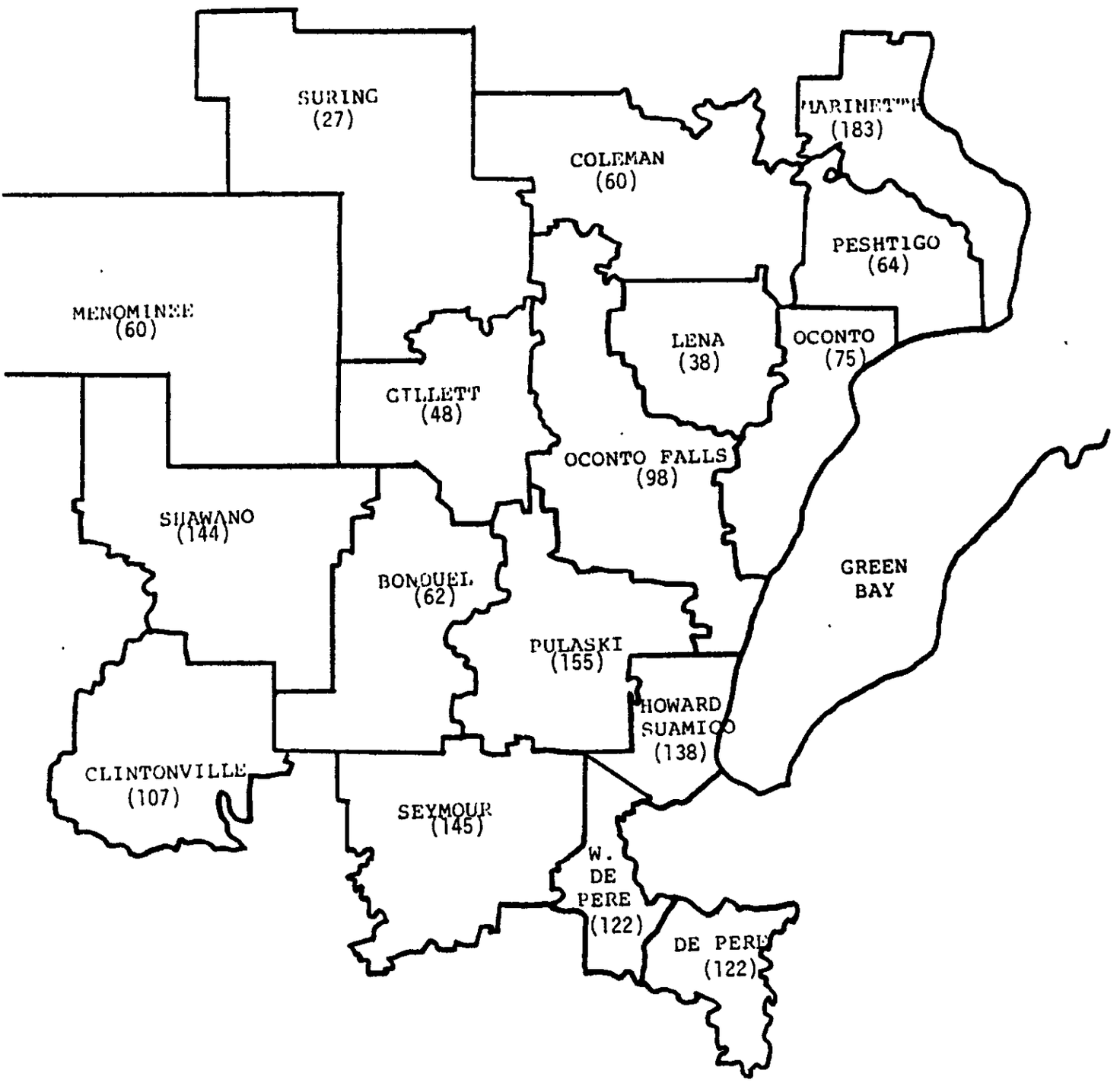
~~Delete.~~ Paragraph B of Teaching Conditions.

"Except in certain activitity type classes such as physical education and music, the total average pupil load per teacher shall not exceed 145 to 155 pupils per day, study halls not included; the daily average pupil load per class period for non-departmentalized grades shall not exceed 31. Any increase shall be by mutual agreement. Where a number of staff members are involved in a co-operative teaching project, the amount of each person's time shall be counted in computing the individual teacher's load. If, due to an emergency situation, the number of students must exceed the above limits, negotiations between the Coleman Education Association and the Board of Education will re-open on that point alone."

Appendix D

UNITED NORTHEAST EDUCATORS
LOCAL ASSOCIATIONS AND MEMBERSHIP

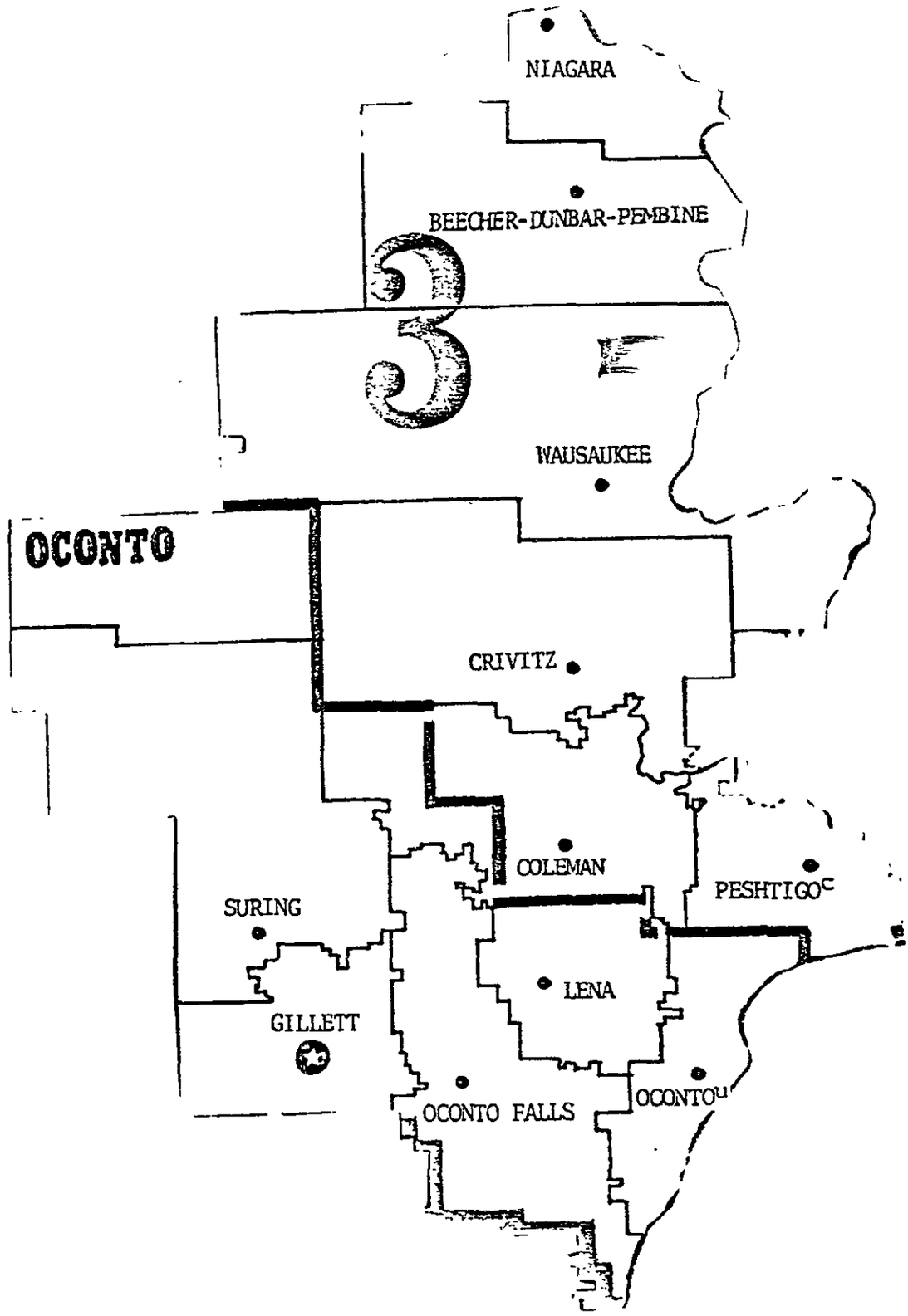
ASSOCIATION EXHIBIT #1
Revised



Appendix E

Bd. Exhibit #3

COMPARABLE SCHOOL DISTRICTS



Appendix F