

**RECEIVED**

**JUL 30 1979**

**WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION**

IN THE MATTER OF ARBITRATION

BETWEEN

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1

AND

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL NO. 168

AWARD OF ARBITRATION

**Decision No. 16909-A**

A hearing on the issue involved in the above case as stated below was held in Kenosha, Wisconsin on May 1, 1979 before the undersigned arbitrator.

Appearances for the parties were as follows:

Clifford B. Buelow, Esquire  
1800 First Savings Plaza  
250 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202

FOR THE DISTRICT

Bruce E. Schroeder, Esquire  
5500 Eight Avenue  
Kenosha, Wisconsin 53140

FOR THE UNION

All parties were afforded full opportunity to examine and cross examine witnesses and adduce relevant evidence. Post hearing briefs were received from the parties.

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

Kenosha Unified School District No. 1, (hereinafter referred to as the District) and Service Employees International Union, Local No. 168 (hereinafter referred to as the Union) are parties to a collective bargaining contract effective from July 1, 1975 to June 30, 1978. This contract covers the following employees:

Custodial Employees, Utility Men, Firemen, Maintenance Men, Mechanics, Truck Drivers, Warehouse Employees, Matrons, Food Service Employees and Head Custodial Engineers.

Beginning on April 12, 1978 the parties met on five occasions, including a mediation session conducted by the WERC on July 26, 1978. On August 18, 1978 the parties requested the initiation of Mediation-Arbitration pursuant to Section 111.70 (4) (cm) 6 of the Municipal Employment Relations Act, (hereinafter called the Act). On October 26, 1978 a member of the WERC's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. Following this investigation the parties exchanged their final offers and submitted them, as well as a stipulation on matters agreed upon, to said investigator who on January 23, 1979 notified the parties that the investigation was closed and also advised the WERC

that the parties remained at impasse.

On March 15, 1979 the Commission ordered that Mediation-Arbitration be initiated for the purpose of resolving the impasse.

On April 4, 1979 the Commission was advised that the parties had selected the undersigned from a panel of five names and the Commission on April 4, 1979 appointed the undersigned to mediate-arbitrate the issue in dispute between the parties pursuant to Section 111.70 (4) (cm) 6b of the Act, and should such endeavor not result in a resolution of the impasse between the parties to issue a final and binding award, pursuant to Section 111.70 (4) (cm) 6c through h. of the Act.

Notice of this appointment was made public by the District but no petition requesting a public hearing on the matters in dispute was filed by anyone with the WERC.

As a result thereof and by agreement of the parties mediation was scheduled for April 30, 1979 in Kenosha, Wisconsin. On that date the parties and the arbitrator met and after being unable to resolve the impasse in mediation the parties agreed to meet and did meet the next day, May 1, 1979 and presented their positions and evidence during the arbitration hearing.

#### THE FINAL OFFERS

The parties at the beginning of the Arbitration hearing submitted their final offers which had been previously submitted to the WERC which were as follows:

A. The Districts Final Offer

January 3, 1979

Kenosha Unified School District's  
Final Offer For  
Service Employee Salary and Welfare Agreement

Except for the following provisions and the items that have been stipulated by the parties, all other provisions of the Agreement will remain as currently provided in the 1975-78 Service Employees Salary and Welfare Agreement.

14.05, c. Present employes that have served their initial probation and who transfer to another position shall be restricted to the new position for a period of six (6) months of the six (6) months probationary period before applying for another transfer, except in special cases which can be considered for approval by the Department Head. If at the completion of the six (6) months probationary period, the employe's performance is considered unsatisfactory, that position will be re-posted and that employe will be reassigned to the last position that was opened as the result of transfers.

16.01 The Board shall pay up to \$373.68 for the single premium or up to \$1004.16 for family premium for hospital, surgical and major medical insurance provided by the Board for each employe who is regularly scheduled to work at least twenty (20) hours per week. The Board will assume the full amount of the premium costs for the 1979-80 school year. Recommendations from the Union Insurance Committee regarding alternative coverages will be considered and may be presented at a meeting of representatives from various employe groups held with the Administrator of Business Services prior to compilation of specifications for bidding.

Salary: The Board proposes the following wage increases which are reflected in the attached salary schedules.

1. Effective July 1, 1978, the head custodial positions at Lincoln Junior High School, McKinley Junior High School, and Washington Junior High School will be upgraded from grade 9 to grade 11.
2. Effective July 1, 1978, a 41¢ per hour increase plus these additional increases for food service employes - Grade H2, G1, and G2: +7¢ per hour and Grade 3: +12¢ per hour.
3. Effective July 1, 1979, a 7.5% increase per hour plus these additional increases for food service employes - Grade H2, G1, and G2: +7¢ per hour and Grade 3: +12¢ per hour.

APPENDIX A-1

SALARY SCHEDULE

OPERATION SERVICES

Effective July 1, 1978

Salary Grade	WEEKLY SALARY			HOURLY RATE		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	206.00	211.60	216.40	5.15	5.29	5.41
2	218.40	222.80	228.00	5.46	5.57	5.70
3	227.60	232.40	237.60	5.69	5.81	5.94
4	231.60	236.40	241.20	5.79	5.91	6.03
5	235.20	240.40	245.60	5.88	6.01	6.14
6	239.60	244.40	249.60	5.99	6.11	6.24
7	242.80	248.40	252.80	6.07	6.21	6.32
8	247.60	252.00	256.80	6.19	6.30	6.42
9 -	251.20	256.00	260.80	6.28	6.40	6.52
10	254.80	260.00	265.60	6.37	6.50	6.64
11	258.40	264.40	268.80	6.46	6.61	6.72
12	262.40	268.00	272.40	6.56	6.70	6.81
13	266.40	272.00	276.40	6.66	6.80	6.91
H2	Cleaner			5.15	5.29	5.41
H3	Matron			5.46	5.57	5.70
<p>NOTE: Student Janitors and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.</p>						
<p>Cleaners beginning his/her shift after 1:30 P.M. shall receive a shift differential of seven cents (7¢) per hour for all hours worked on that shift.</p>						

APPENDIX A-2

SALARY SCHEDULE

FOOD SERVICE EMPLOYEES

Effective July 1, 1978

Salary Grade	WEEKLY SALARY			HOURLY RATE		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	195.60	201.20	205.20	4.89	5.03	5.13
2	207.60	212.40	217.60	5.19	5.31	5.44
3	223.20	227.60	232.80	5.58	5.69	5.82
H1	Food Service Helper			4.19	4.32	4.45
H2	Food Service Helper			4.89	5.03	5.13
<p>NOTE: Domestic Workers and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.</p>						
<p>All Food Service employes and a member of the bargaining unit working on the second shift shall receive an additional seven cents (7¢) per hour shift differential.</p>						

APPENDIX A-3

SALARY SCHEDULE

MAINTENANCE DEPARTMENT

Effective July 1, 1978

POSITION	HOURLY RATE	WEEKLY SALARY
Apprentice I	5.97	238.80
Apprentice II	6.07	242.80
Apprentice III	6.18	247.20
Shop Person	6.44	257.60
General Maintenance	6.44	257.60
Field Assistant	6.66	266.40
Mecnanic	6.77	270.80
Assistant Foreman	6.99	279.60
Assistant Electronic Technician	7.10	284.00
Field Foreman	7.10	284.00
Foreman I	7.20	288.00
Foreman II	7.42	296.80
Electronic Technician	7.80	312.00

All full-time employes covered by APPENDICES A-1, A-2, and A-3, having attained the required length of service on their anniversary date, shall receive in addition to their regular salary the following longevity pay:

- A. \$ 5.00 per month after five (5) years of service.
- B. \$10.00 per month after ten (10) years of service.
- C. \$15.00 per month after fifteen (15) years of service.
- D. \$20.00 per month after twenty (20) years of service.
- E. \$25.00 per month after twenty-five (25) years of service.

APPENDIX A-4

SALARY SCHEDULE

OPERATION SERVICES

Effective July 1, 1979

Salary Grade	WEEKLY SALARY			HOURLY RATE		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	221.60	227.60	232.80	5.54	5.69	5.82
2	234.80	239.60	245.20	5.87	5.99	6.13
3	244.80	250.00	255.60	6.12	6.25	6.39
4	248.80	254.00	259.20	6.22	6.35	6.48
5	252.80	258.40	264.00	6.32	6.46	6.60
6	257.60	262.80	268.40	6.44	6.57	6.71
7	261.20	267.20	271.60	6.53	6.68	6.79
8	266.00	270.80	276.00	6.65	6.77	6.90
9	270.00	275.20	280.40	6.75	6.88	7.01
10	274.00	279.60	285.60	6.85	6.99	7.14
11	277.60	284.40	288.80	6.94	7.11	7.22
12	282.00	288.00	292.80	7.05	7.20	7.32
13	286.40	292.40	297.20	7.16	7.31	7.43
H2	Cleaner			5.54	5.69	5.82
H3	Matron			5.87	5.99	6.13
<p>NOTE: Student Janitors and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.</p>						
<p>Cleaners beginning his/her shift after 1:30 P.M. shall receive a shift differential of seven cents (7¢) per hour for all hours worked on that shift.</p>						



APPENDIX A-5

SALARY SCHEDULE

FOOD SERVICE EMPLOYEES

Effective July 1, 1979

Salary Grade	WEEKLY SALARY			HOURLY RATE		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	213.20	219.20	223.20	5.33	5.48	5.58
2	226.00	231.20	236.80	5.65	5.78	5.92
3	244.80	249.60	255.20	6.12	6.24	6.38
H1	Food Service Helper			4.50	4.64	4.78
H2	Food Service Helper			5.33	5.48	5.58
	NOTE: Domestic Workers and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.					

All Food Service employes and a member of the bargaining unit working on the second shift shall receive an additional seven cents (7¢) per hour shift differential.

APPENDIX A-6

SALARY SCHEDULE

MAINTENANCE DEPARTMENT

Effective July 1, 1979

POSITION	HOURLY RATE	WEEKLY SALARY
Apprentice I	6.42	256.80
Apprentice II	6.53	261.20
Apprentice III	6.64	265.60
Shop Person	6.92	276.80
General Maintenance	6.92	276.80
Field Assistant	7.16	286.40
Mechanic	7.28	291.20
Assistant Foreman	7.51	300.40
Assistant Electronic Technician	7.63	305.20
Field Foreman	7.63	305.20
Foreman I	7.74	309.60
Foreman II	7.98	319.20
Electronic Technician	8.39	335.60

All full-time employees covered by APPENDICES A-4, A-5, and A-6, having attained the required length of service on their anniversary date, shall receive in addition to their regular salary the following longevity pay:

- A. \$ 5.00 per month after five (5) years of service.
- B. \$10.00 per month after ten (10) years of service.
- C. \$15.00 per month after fifteen (15) years of service.
- D. \$20.00 per month after twenty (20) years of service.
- E. \$25.00 per month after twenty-five (25) years of service.

B. The Unions Final Offer:

*FINAL OFFER*

December 5, 1978

TO: Mr. Douglas V. Knudson  
Mediator  
Wisconsin Employment Relations Commission

Mr. Gary L. Covelli  
Coordinator of Staff Relations  
Kenosha Unified School District No. 1

The following is the final offer of the Service Employees International Union Local No. 168, AFL-CIO on the pending contract negotiations with the Kenosha Unified School District. The positions are based upon current contract language and agreed stipulation agreed herein and in any case where there is no proposed or stipulated change in language, the current contract language constitutes the position of the Union. Unless otherwise stated, all changes are retroactive to July 1, 1978.

- 12.03 Any employee whose injury is job related and covered under the Worker's Compensation Act shall receive his or her regular Board check and the benefits of this agreement without loss of sick leave for a period of twelve months from the date of injury, provided that the employee reimburse the Board for the amount received from Worker's Compensation.
- 12.08 Any member of the bargaining unit who retires from the Board's employment under the provisions of the Wisconsin Retirement Act or the designated beneficiary of any working member who dies shall receive an amount calculated by multiplying the employee's accumulated sick leave by his final daily rate of pay and dividing the sum thereof by two. A retiring employee may, at his option, decline immediate payment of this sum upon retirement and instead have it set aside for use in the purchase of group health insurance coverage; provided, however, that should any employee exercising this option die before the entire amount due him is so utilized, any remaining balance due him shall be paid to his designated beneficiary.

The Union proposes a salary increase of \$0.43 across the board in the first year of the contract and a 7.5% increase across the board in the second year of the contract.

APPENDIX A-1

SALARY SCHEDULE

OPERATION SERVICES

Effective July 1, 1978

Salary Grade	WEEKLY SALARY			HOURLY RATE		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	206.80	212.40	217.20	5.17	5.31	5.43
2	219.20	223.60	228.80	5.48	5.59	5.72
3	228.40	233.20	238.40	5.71	5.83	5.96
4	232.40	237.20	242.00	5.81	5.93	6.05
5	236.00	241.20	246.40	5.90	6.03	6.16
6	240.40	245.20	250.40	6.01	6.13	6.26
7	243.60	249.20	253.60	6.09	6.23	6.34
8	248.40	252.80	257.60	6.21	6.32	6.44
9	252.00	256.80	261.60	6.30	6.42	6.54
10	255.60	260.80	266.40	6.39	6.52	6.66
11	259.20	265.20	269.60	6.48	6.63	6.74
12	263.20	268.80	273.20	6.58	6.72	6.83
13	267.20	272.80	277.20	6.68	6.82	6.93
H2	Cleaner			5.17	5.31	5.43
H3	Matron			5.48	5.59	5.72

NOTE: Student Janitors and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.

Cleaners beginning his/her shift after 1:30 P.M. shall receive a shift differential of seven cents (7¢) per hour for all hours worked on that shift.

APPENDIX A-2

SALARY SCHEDULE

FOOD SERVICE EMPLOYEES

Effective July 1, 1978

Salary Grade	WEEKLY SALARY			HOURLY RATE		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	196.40	202.00	206.00	4.91	5.05	5.15
2	208.40	213.20	218.40	5.21	5.33	5.46
3	224.00	228.40	233.60	5.60	5.71	5.84
H1	Food Service Helper			4.21	4.34	4.47
H2	Food Service Helper			4.91	5.05	5.15
	NOTE: Domestic Workers and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.					

All Food Service employees and a member of the bargaining unit working on the second shift shall receive an additional seven cents (7¢) per hour shift differential.

APPENDIX A-3

SALARY SCHEDULE

MAINTENANCE DEPARTMENT

Effective July 1, 1978

POSITION	HOURLY RATE	WEEKLY SALARY
Apprentice I	5.99	239.60
Apprentice II	6.09	243.60
Apprentice III.	6.20	248.00
Shop Person	6.46	258.40
General Maintenance	6.46	258.40
Field Assistant	6.68	267.20
Mechanic	6.79	271.60
Assistant Foreman	7.01	280.40
Assistant Electronic Technician	7.12	284.80
Field Foreman	7.12	284.80
Foreman I	7.22	288.80
Foreman II	7.44	297.60
Electronic Technician	7.82	312.80

All full-time employees covered by APPENDICES A-1, A-2, and A-3, having attained the required length of service on their anniversary date, shall receive in addition to their regular salary the following longevity pay:

- A. \$ 5.00 per month after five (5) years of service.
- B. \$10.00 per month after ten (10) years of service.
- C. \$15.00 per month after fifteen (15) years of service.
- D. \$20.00 per month after twenty (20) years of service.
- E. \$25.00 per month after twenty-five (25) years of service.

APPENDIX A-4

SALARY SCHEDULE

OPERATION SERVICES

Effective July 1, 1979

Salary Grade	WEEKLY SALARY			HOURLY SALARY		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	222.40	228.40	233.60	5.56	5.71	5.84
2	235.60	240.40	246.00	5.89	6.01	6.15
3	245.60	250.80	256.40	6.14	6.27	6.41
4	250.00	254.80	260.00	6.25	6.37	6.50
5	253.60	259.20	264.80	6.34	6.48	6.62
6	258.40	263.60	269.20	6.46	6.59	6.73
7	262.00	268.00	272.80	6.55	6.70	6.82
8	267.20	271.60	276.80	6.68	6.79	6.92
9	270.80	276.00	281.20	6.77	6.90	7.03
10	274.80	280.40	286.40	6.87	7.01	7.16
11	278.80	285.20	290.00	6.97	7.13	7.25
12	282.80	288.80	293.60	7.07	7.22	7.34
13	287.20	293.20	298.00	7.18	7.33	7.45
H2	Cleaner			5.56	5.71	5.84
H3	Matron			5.89	6.01	6.15

NOTE: Student Janitors and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.

Cleaners beginning his/her shift after 1:30 P.M. shall receive a shift differential of seven cents (7¢) per hour for all hours worked on that shift.

APPENDIX A-5

SALARY SCHEDULE

FOOD SERVICE EMPLOYEES

Effective July 1, 1979

Salary Grade	WEEKLY SALARY			HOURLY SALARY		
	Minimum	Intermediate	Maximum	Minimum	Intermediate	Maximum
1	214.00	220.00	224.40	5.35	5.50	5.61
2	226.80	232.00	237.60	5.67	5.80	5.94
3	245.60	250.40	256.00	6.14	6.26	6.40
H1	Food Service Helper			4.53	4.67	4.81
H2	Food Service Helper			5.35	5.50	5.61
	NOTE: Domestic Workers and Substitutes are not members of the bargaining unit, therefore, are subject to change at any time by the Board.					

All Food Service employees and a member of the bargaining unit working on the second shift shall receive an additional seven cents (7¢) per hour shift differential.



APPENDIX A-6

SALARY SCHEDULE

MAINTENANCE DEPARTMENT

Effective July 1, 1979

POSITION	HOURLY RATE	WEEKLY SALARY
Apprentice I	6.44	257.60
Apprentice II	6.55	262.00
Apprentice III	6.67	266.80
Shop Person	6.94	277.60
General Maintenance	6.94	277.60
Field Assistant	7.18	287.20
Mechanic	7.30	292.00
Assistant Foreman	7.54	301.60
Assistant Electronic Technician	7.65	306.00
Field Foreman	7.65	306.00
Foreman I	7.76	310.40
Foreman II	8.00	320.00
Electronic Technician	8.41	336.40

All full-time employees covered by APPENDICES A-4, A-5, and A-6, having attained the required length of service on their anniversary date, shall receive in addition to their regular salary the following longevity pay:

- A. \$ 5.00 per month after five (5) years of service.
- B. \$10.00 per month after ten (10) years of service.
- C. \$15.00 per month after fifteen (15) years of service.
- D. \$25.00 per month after twenty-five (25) years of service.

## EVIDENCE

At the hearing the parties submitted into evidence economic data, statistics and other documents in support of their positions regarding their final offers. At the time of their offer the representative of the parties described and explained each exhibit. The District's exhibits consisted of approximately 95 pages, divided into 8 separate categories. The Union submitted 33 exhibits, 17 of which were labor agreements, 8 between the County of Kenosha and various labor organizations, 2 between the City of Kenosha and AFSCME and the Amalgamated Transit Union, 3 between the Gateway Vocational Technical and Adult Education District Board and 3 separate unions, and 3 between the Kenosha Unified School District No. 1 and 3 separate unions. Two other exhibits were contracts between Piggly Wiggly of Kenosha and the Retail Clerks and American Motors and the U.A.W.-Local 72. The other exhibits consisted of statistics pertaining to the C.P.I. and others such as data from the L.R.R., etc.

I have attempted to carefully read and analyze this evidence with emphasis being placed upon those portions pointed out by the parties in their briefs and have arrived at the following findings and conclusions.

The Act provides guidelines for the arbitrator in making his decision. These guidelines state that he shall give weight to the lawful authority of the employer, stipulations of the parties, ability to pay, cost of living, comparisons with other employees in the public and private sector doing similar work, comparisons with other employees generally in comparable communities, and other factors that are normally and traditionally taken into consideration in determining the wages, hours and conditions of employment in the public and private sectors. In his decision the arbitrator has considered all the above factors wherein evidence was presented by the parties which the arbitrator could consider and weigh as to value.

### I. Sick Leave and Absence Pay (Articles 12.03 and 12.08)

The Union proposes to modify the language of Article 12.03 of the contract to provide that in cases covered by the Worker's Compensation Act, the employee shall receive full pay for 12 months without loss of sick leave.

The present provision of the contract provides as follows:

12.03 Employees whose injury entitles them to benefits under the Workmens Compensation Act may elect to receive Workmens Compensation weekly check, or sick leave as provided herein. When the employee chooses sick leave in lieu of Workmen's Compensation, the employee shall receive his Board check less the amount received from Workmen's Compensation. In this case the employee will be charged one-half (1/2) day of sick leave taken for each full working day that the Board is reimbursed.

The Union proposes the following language:

Any employee whose injury is job related and covered under the Worker's Compensation Act shall receive his or her regular Board check and the benefits of this Agreement without loss of sick leave for a period of twelve months from the date of injury, provided that the employee reimburse the Board for the amount received from Worker's Compensation.

The Union argues in its brief:

The Wisconsin Worker's Compensation Act is contained in Chapter 102 of the Wisconsin Statutes. It provides that where an accident or disease causing injury arises out of a worker's employment, specified benefits are payable through the employer or its insurer. These benefits are defined, where wage loss is total, as 2/3 of the employee's average weekly wage, up to a specified maximum.

To demonstrate the effect of this law under the current language of Section 12.03 of the collective bargaining agreement, let us assume that an employee whose salary is under the operations service schedule currently in effect (Page 29 of current contract) and who is in salary grade 8 at the maximum level. This employee's average weekly wage is \$240.00. In addition, the district pays on his behalf a pension contribution of 10% and a social security premium of \$14.74. The Board's usual contribution then, on a weekly basis, totals \$279.18. Should the worker become injured and temporarily totally disabled, the worker's compensation act would mandate a payment of \$160.27 from the Board's insurer, which would not be subject to additional contributions for pension and social security. Under the current contract provisions, the Board supplements this with the balance of the employees average weekly wage of \$80.14, subject to an additional contribution by the Board of \$4.91 Social Security Tax and \$8.01 Pension contribution. The Board's total weekly contribution for this employee would thus be \$93.05. Subtracting this \$93.05 disability payment which the Board is required to make from its usual contribution of \$279.18, we find that the Board realizes a savings due to the worker's injury of \$186.13. Even were we to subtract the amount which would be paid by the Board's insurer, \$160.27, the Board still realizes a savings due to the worker's injury of \$25.86. In addition to this, the employee is charged with the loss of one-half sick day.

We do not quarrel with the proposition that the Board is left without the worker's services during the period of this disability. What we do quarrel with is the idea that the Board realizes a savings as a result of the work-related injury and nevertheless charges the time against the worker's sick leave. This is not the type of case where a worker's injury is nonwork-related, such as might have occurred during a vacation, holiday, or at home during off time. This is for an injury which "arose out of the worker's employment."

It is submitted that the origins of sick leave and worker's compensation benefits are separate and distinct and that sick leave, which is principally intended to protect an employee against nonjob-related problems should not be utilized to effect a savings to the employer during the period of a job-related injury.

The Union further maintains that all eight of Kenosha County's collective bargaining agreements with its Unions indicates that all of them offer greater worker's compensation relief than what is proposed by the Union in this case.

In regard to the contractual provision pertaining to sick leave the Union proposes the addition of Section 12.08 which would read as follows:

Any member of the bargaining unit who retires from the Board's employment under the provisions of the Wisconsin Retirement Act or the designated beneficiary of any working member who dies shall receive an amount calculated by multiplying the employee's accumulated sick leave by his final daily rate of pay and dividing the sum thereof by two. A retiring employe may, at his option, decline immediate payment of this sum upon retirement and instead have it set aside for use in the purchase of group health insurance coverage; provided, however, that should any employee exercising this option die before the entire amount due him is so utilized, any remaining balance due him shall be paid to his designated beneficiary.

The Union argues that two of the three government employers in Kenosha provide accumulated sick leave upon death or retirement, the State of Wisconsin and University employees, and that the City of Kenosha contracts provide for sick leave benefits equivalent to those proposed by the Union.

It is the position of the Employer that the employees herein are among the most compensated service employees in the State and that the hourly rate paid these employees is generally 15-25% greater than the average rate paid by these other school districts.

The Employer also states that 9 of the 12 largest school districts it maintains are comparable and do not provide for accumulated sick leave upon retirement or death, and that the other three provide only (1) credit toward health insurance premium (Appleton and Madison) payment of 25% of sick leave (Green Bay).

Nine of the twelve southwestern school districts also do not provide for accumulated sick leave upon retirement and that two of the remaining three (Oak Creek and Wauwatosa) make partial payments and no other bargaining unit of the Employer is paid accumulated sick leave upon death or retirement.

The employer also submitted evidence showing that most of the 12 largest school districts, most of the 12 Southeastern Wisconsin school districts, most of the other employers bargaining units receive less absence pay than that proposed by the Union or similar to that proposed by the employer. I am more impressed by the Union's evidence in regard to these two items than that submitted by the Employer, especially since the County of Kenosha and the City of Kenosha both provide for better benefits for sick leave and workers compensation absence. In addition to this the cost of these items as shown by figures provided by the Employer amounts to \$5,656 for "Absence Pay" - Article 12.03 and \$13,605 for "Sick Leave" - Article 12.08. I am convinced that these additional costs would not be burdensome upon the Employer and in any event the Employer has at no time during the proceeding raised the issue of inability to pay. I therefore am strongly persuaded by the Union's contention that the Union's final offer pertaining to Sick Leave and Absence Pay, Articles 12.03 and 12.08, be accepted, however, since the arbitrator is not permitted by statute to decide each issue separately this decision will be decided as part of the total package as set forth hereinafter.

## II. Health Insurance (Article 16.01)

The Employer proposes that Article 16.01 be changed to read:

The Board shall pay up to \$373.68 for the single premium or up to \$1,004.16 for family premium for hospital, surgical and major medical insurance provided by the Board for each employee who is regularly scheduled to work at least twenty (20) hours per week. The Board will assume the increases in the premium costs for the 1979-80 school year. Recommendations from the Union Insurance Committee regarding alternative coverages will be considered and may be presented at a meeting of representatives from various employee groups held with the Administrator of Business Services prior to compilation of specifications for bidding.

It is the contention of the Employer that its proposal does not reduce employee benefits one iota and that its proposed change is merely to identify the dollar amount of the premiums paid by the district. Mr. Gary Covelli, the employer's Coordinator of Staff Relations testified that the major reason for the proposal was to advise the employees of the total premium dollars paid by the Employer in a time of skyrocketing premium increases.

The Union opposes this change stating that since the Board admits that there is no cost saving and that it merely wants to identify in the contract what it is paying for

the health premiums it has an ulterior motive in requesting the change, that is when the present contract expires, and if no new agreement is reached providing for any increase in premiums the Employer will refuse to pay these increases. As an example the Union introduced evidence to show that this is what happened to the Employer's Educational Aides whose contract had a similar provision to that now proposed by the Employer. No assurance was made by the Employer that this would not happen at the expiration of the proposed contract herein.

The Employer's reason for its proposed change are not impressive. Any desire on the part of the Employer to communicate to its employees the cost of the health insurance premiums can easily be made in many ways; by bulletin board, by letter, by meetings, etc. I therefore would reject the Employer's request to change Article 16.01 but shall reserve finding until the finding on the total package is made hereinafter.

### III. Transfer (Articles 14.05c)

The Employer proposes that the restriction on transfers of employees be raised from three months in the present contract to six months.

I find insufficient evidence presented by the Employer to justify its position regarding this proposal. Of the 12 largest school districts only three contain any restrictions regarding transfers during the probationary period. Of the 12 Southeastern Wisconsin school districts, three provide restrictions on transfers. Of the three other employer bargaining units 2 provide restrictions. Of the four government employers in Kenosha 2 out of 3 provide no restriction while the third is still in negotiations. The Employer states that its proposal herein is supported by common sense in that it "would prevent a bad employee from transferring from one school to another without completing his or her probation period." No evidence was presented by the Employer to support this theory. Based on the evidence presented and were this a single issue which the arbitrator was permitted to decide, as such he would reject the Employer's proposal.

#### IV. Salary

The parties are in agreement as to salary increases for the second year of the proposed contract which is to be a 7.5% increase to be applied to all salaries across the board plus an additional increase for food service employees - Grade H2, G1, and G2 of 7¢ per hour and Grade 3 of 12¢ per hour.

For the second year of the contract the parties were unable to reach an agreement the Employer proposing an increase of 41 cents per hour while the Union proposed an increase of 43 cents per hour.

The Employer in order to justify its position introduced into evidence a list of the twenty seven largest school districts in Wisconsin excluding Milwaukee and from this list selected the twelve largest excluding Milwaukee and Kenosha which were No. 1 and 4 respectively. Of the 27 largest school districts in Wisconsin the 12 largest in Southeastern Wisconsin were listed. These lists plus the Employer's other bargaining units plus 3 other governmental employers in Kenosha were used as comparables to justify the Employer's proposals regarding salaries as well as the other issues involved. The Employer selected 8 classifications of employees under the contract and compared them with similar classifications under contract with each of the 12 largest school districts, Southeastern Wisconsin school districts, CESA No. 18, K-12 School Districts and in each case pointed out that the Employers final offer was greater than the average hourly rate paid by those school districts, the amount being greater by from 4% to 51%. In its brief the Employer points out that its employees are among the most highly compensated service employees in the State, most of them being first, second or third, and that their average hourly rate was generally 15-25% greater than the average rate paid by these other school districts.

The Employer also points out that its evidence reveals that no other unit of the employer receives the benefits proposed by the Union.

The Employer also argues that its offer of a 7.5% wage increase more nearly complies with the Wage and Price guidelines than does the Union's request for a 7.9% increase.

The Union contends that the 7.9% overall increase suggested by the Union is distorted because of special increases provided for the food service group and that the maintenance service employees increases range from 5.8% to 7.7%.

The Union also pointed out that the average 1978 pay increases were 7.7% compared to 7.8% for 1977 as shown by the Bureau of National Affairs survey and that this percentage will be increased because 23% of the 1344 contracts contained cost of living provisions. The Union contends that its request meets the guidelines particularly in view of the first year increase of the teamsters contract.

The Union points out that the cost of living rose approximately 9.9% in 1978 and is expected to continue to climb more than wiping out any wage increases requested here and that the 43¢ per hour increase requested, only 2¢ per hour more than offered by the Employer, is more than fair.

The Union also points out that from the period of July 1, 1978 to the present time, the Employer by not having paid the 41¢ per hour increase it offered, the Employer has undoubtedly earned enough interest on that money to pay the additional 2¢ requested by the Union without incurring any additional cost beyond that which it would have incurred had it originally agreed to the Union's proposal.

After carefully analysing the evidence presented by both parties pertaining to salaries I am more impressed by the Employers presentation especially as to comparables. I also feel that since the Employer's offer is the closest to the Presidential guidelines were I to select a final offer as to salaries only I would select the Employers final offer but since I cannot do this because of the statute this issue will be decided as part of the total package as set forth hereinafter. It is also the feeling of this arbitrator that the salary issue herein was not so important that standing alone it would have been resolved had not some of the other issues stood in the way of settlement.



CONCLUSION

In arriving at my final conclusion in this matter, having considered the record as a whole and the arguments advanced by both parties and in view of the statutory requirement that the arbitrator choose one party's offer in its entirety and not on an issue by issue basis, it is the conclusion of the arbitrator that the overall position of the Union is the more meritorious and must be granted. As stated above if each issue could be selected on individual basis he would recommend that the Employers salary offer be accepted. It must however be pointed out here that recently the Wisconsin Department of Employment Relations recommended increases of up to 9% in each year of the next biennium for University of Wisconsin faculty and other non-union employees. This arbitrator states that he does not use this in any way as a comparable herein but merely to demonstrate what the State of Wisconsin itself is recommending percentagewise for its employees. Based on the above the arbitrator hereby makes the final award.

AWARD

Having considered all the issues in the light of the evidence presented, the arguments, and the statutory criteria for decision, the arbitrator has concluded that the Union's position is more meritorious and should be supported. Based on all of these factors the final offer of the Union is selected and must be implemented by the District.

Respectfully submitted,

*Edward T. Maslanka*

\_\_\_\_\_  
Edward T. Maslanka, Arbitrator  
7 South Dearborn Street  
Chicago, Illinois 60603

DATED:

*July 27, 1979*