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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of HARTFORD EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between Said Petitioner and HARTFORD UNION HIGH SCHOOL DISTRICT	Case XII No. 23751 MED/ARB-263 Decision No. 16923-A

Appearances:

Mr. Dennis G. Eisenberg, Executive Director, Cedar Lake United Educators, appearing on behalf of the Association.

Lindner, Honzik, Marsack, Hayman & Walsh, Attorneys at Law, by Mr. Roger E. Walsh, appearing on behalf of the District.

ARBITRATION AWARD:

On April 9, 1979, 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 Hartford Education Association, hereinafter the Association, and Hartford Union High School District, hereinafter the District. A mediation meeting, as contemplated by the statutory requirements, was conducted by the undersigned on May 9, 1979. Mediation failed to produce voluntary settlement, and on May 15, 1979, the undersigned notified the parties in writing of her intention to convene an arbitration hearing in the matter on June 25, 1979. An evidentiary hearing was conducted on said date at Hartford, Wisconsin. Both parties were given full opportunity to present oral and written evidence and to make relevant argument. The hearing was not transcribed pursuant to the stipulation of the parties. Briefs were exchanged by the undersigned on August 3, 1979.

THE ISSUES:

There are five areas in dispute between the parties:

1. Fair Share
2. Discipline and Discharge
3. Layoff
4. Summer School Pay
5. Salary Schedule

FINAL OFFERS:

The final offers of the District and the Association are reproduced on the following pages.

Article XIV

Fair Discipline Policy

Article XIV is amended in its entirety by substitution as follows (delete the last sentence of Section 3.01 (b) and change the title to "Fair Discipline Policy"):

14.01 Effective September 1, 1979 , no teacher who has become permanently employed may be nonrenewed, discharged, suspended, demoted, reduced in compensation or otherwise disciplined except for just cause. Teachers shall serve a probationary period as provided in section 14.02; during this probationary period the teacher may be nonrenewed as provided in section 14.04.

14.02 Employment of a teacher shall become permanent upon completion of a probationary period of three (3) consecutive years in the District and granting and acceptance of the fourth (4th) year contract.

14.03 Just cause in matters of professional incompetency shall include, but not be limited to, deficiencies in actual instructional or teaching abilities. Reasonable deficiencies are to be observed and reduced to writing regarding classroom management, instructional skill, professional preparation or other professional duties under the following policy:

Step 1. Identification of teacher deficiencies by administrators or qualified supervisors. Informal meeting between administrator, qualified supervisor and instructor to discuss the problem and seek solutions. If the solutions have not proved satisfactory, Step 2 will be implemented.

Step 2. Formal notification by the building principal that instruction is substandard. Deficiencies will be stated in writing and submitted to the instructor.

Step 3. Formal notice of dismissal or non-renewal of contract as required by state law. (State law permits the teacher to request a formal hearing with the Board at this time.)

14.04 Teachers who have not become permanently employed as provided in Section 14.02 may be nonrenewed if the District's action is not arbitrary or capricious.

ARTICLE XII Association Final Offer

A new paragraph, Section 12.02, entitled "Fair Share" shall become effective September 1, 1979 or as soon as administratively feasible following the issuance of a binding award, whichever is later:

"12.02 Fair Share

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

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

1. For purposes of this Article, exempt employes are those employes who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to Article XII, 12.02,(Dues Deduction) or paid to the Association in some other manner authorized by the Association. The Association shall notify the District of those employes who are exempt from the provisions of this Article by the 23rd day of September of each year, and shall notify the District of any changes in its membership affecting the operation of the provisions of this Article thirty (30) days before the effective date of such change.

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

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

   The Association shall provide employes who are not members of the Association with an internal mechanism within the Association which will allow those employes to challenge

the fair share amount certified by the Association as the cost of representation and to receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association.

The Association and the Wisconsin Education Association Council do 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 (fair share agreement), 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 (fair share agreement) through representatives of its own choosing and at its own expense."

Referendum required. 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.

ARTICLE X

Compensation

Section 10.08 is amended by addition as follows:

10.08 "For the 1979-80 school year teachers shall be reimbursed at the rate of $700 for a full summer session course and $400 for a half summer session course."

ARTICLE XI

Layoff

Section 11.08 is amended in its entirety as follows:

11.08 "Any teacher selected for lay off under this procedure shall be given preliminary notice of such selection no later than May 1 of the current school year. Following such preliminary notice the Board will continue to review the necessity for the lay off; and, if the Board determines by June 1 of the current school year to proceed with such teacher's lay off, the teacher shall then be notified that his or her teaching contract for the forthcoming school year is revoked."

Appendix A
79-80 Schedule

Step	BA	BA+8	BA+16	BA+24	BA+30 MA(NIF)	MA	MA+8	MA+16	MA+24
1	10,650	10,916	11,182	11,448	11,714	11,980	12,246	12,512	12,778
2	11,183	11,449	11,715	11,981	12,247	12,513	12,779	13,045	13,311
3	11,716	11,982	12,248	12,514	12,780	13,046	13,312	13,578	13,844
4	12,249	12,515	12,781	13,047	13,313	13,579	13,845	14,111	14,377
5	12,782	13,048	13,314	13,580	13,846	14,112	14,378	14,644	14,910
6	13,315	13,581	13,847	14,113	14,379	14,645	14,911	15,177	15,443
7	13,848	14,114	14,380	14,646	14,912	15,178	15,444	15,710	15,976
8	14,381	14,647	14,913	15,179	15,445	15,711	15,977	16,243	16,509
9	14,914	15,180	15,446	15,712	15,978	16,244	16,510	16,776	17,042
10		15,713	15,979	16,245	16,511	16,777	17,043	17,309	17,575
11			16,512	16,778	17,044	17,310	17,576	17,842	18,108
12				17,311	17,577	17,843	18,109	18,375	18,641
13					18,110	18,376	18,642	18,908	19,174
14					18,643	18,909	19,175	19,441	19,707
15					19,176	19,442	19,708	19,974	20,240

BOARD OF EDUCATION

HARTFORD UNION HIGH SCHOOL

FINAL OFFER

FIRST YEAR

ARTICLE XI - LAYOFF: Board proposes no change in contractual layoff language (contract remains the same).

SECOND YEAR

ARTICLE X - COMPENSATION:

Section 10.01: Salary schedule, 1979-80 school year. (See Exhibit A attached hereto and incorporated.)

Section 10.08: Summer school, no change in summer session rates

ARTICLE XII - DUES DEDUCATION:

Section 12.02: See Exhibit C.

ARTICLE XIV: Standard for Discharge and Non-Renewal (See Exhibit B attached hereto and incorporated herein.)

Board Final Offer

EXHIBIT "A"

1979-80

STEP	B.A.	B.A.+8	B.A.+16	B.A.+24	B.A.+30 (M.A.-NIF)	M.A.-IF	M.A.+8	M.A.+16	M.A.+24
1	10,700	10,900	11,100	11,300	11,500	11,700	11,900	12,100	12,300
2	11,200	11,400	11,600	11,800	12,000	12,200	12,400	12,600	12,800
3	11,700	11,900	12,100	12,300	12,500	12,700	12,900	13,100	13,300
4	12,200	12,400	12,600	12,800	13,000	13,200	13,400	13,600	13,800
5	12,700	12,900	13,100	13,300	13,500	13,700	13,900	14,100	14,300
6	13,200	13,400	13,600	13,800	14,000	14,200	14,400	14,600	14,800
7	13,700	13,900	14,100	14,300	14,500	14,700	14,900	15,100	15,300
8	14,200	14,400	14,600	14,800	15,000	15,200	15,400	15,600	15,800
9	14,700	14,900	15,100	15,300	15,700	15,950	16,200	16,450	16,700
10		15,400	15,600	15,800	16,400	16,700	17,000	17,300	17,600
11 - 12			16,100	16,300	17,100	17,450	17,800	18,150	18,500
13 - 14					17,800	18,200	18,600	19,000	19,400
15					18,550	19,050	19,500	20,050	20,300

EXHIBIT "B"

1. Article XIV - Standard for Discharge and Non-Renewal

Revise Article XIV to read:

"14.01 - No teacher who has become permanently employed as provided in Section 14.02 shall be refused employment, dismissed, removed, non-renewed or discharged except for just cause.

14.02 - Employment of a full-time teacher shall become permanent upon completion of a probationary period of three (3) full consecutive years in this District and granting and acceptance of the fourth (4th) full year contract.

14.03 - Just cause shall include professional incompetency, i.e., deficiencies in actual instructional or teaching abilities, provided however, that in such situations no permanently employed teacher shall be refused employment, dismissed, removed, non-renewed or discharged unless reasonable deficiencies are observed and reduced to writing regarding classroom management, instructional skill, professional preparation or other professional duties under the following policy:

Step 1. Identification of teacher deficiencies by administrators or qualified supervisors. Informal meeting between administrator, qualified supervisor and instructor to discuss the problem and seek solutions. If the solutions have not proved satisfactory, Step 2 will be implemented.

Step 2. Formal notification by the building principal that instruction is substandard. Deficiencies will be stated in writing and submitted to the instructor.

Step 3. Formal notice of dismissal or non-renewal of contract as required by state law. (State law permits the teacher to request a formal hearing with the Board at this time.)

14.04 - Teachers who have not become permanently employed as provided in Section 14.02 may be refused employment, dismissed, removed, non-renewed or discharged at the discretion of the Board without regard to cause and without recourse to the grievance procedure provided for in Article VI."

2. Delete the last sentence of Section 3.01(b).

3. Revise the introductory paragraph of Article XI to read:

"Whenever, in the discretion of the Board, it becomes necessary to reduce the number of permanently employed teachers (as defined in Section 14.02 herein) in a grade or subject area due to a decrease in enrollment, elimination or modification of an educational program or budgetary or financial limitations, the procedure set forth below shall be followed:"

EXHIBIT "C"

ARTICLE XII - A new paragraph, Section 12.02, entitled "Fair Share" shall become effective September 1, 1979, or as soon as administratively feasible following the issuance of a binding award, whichever is later:

"12.02 - Fair Share

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

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

1. For purposes of this Article, exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to Article XII, 12.02 (Dues Deduction) or paid to the Association in some other manner authorized by the Association. The Association shall notify the District of those employees who are exempt from the provisions of this Article by the 23rd day of September of each year, and shall notify the District of any changes in its membership affecting the operation of the provisions of this Article thirty (30) days before the effective date of such change.

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

   The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees

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

The Association shall provide employees with an internal mechanism within the Association which will allow those employees to challenge the fair share amount certified by the Association as the cost of representation and to receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association.

The Association and the Wisconsin Education Association Council do 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 in reliance on any lists or certificates which have been furnished to the District pursuant to this Article by the Association, 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 (fair share agreement) through representatives of its own choosing and at its own expense."

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

Any employee in the bargaining unit, who was not a member of the Association as of the effective date of the master agreement, shall be exempt from this provision, unless the said employees shall elect to come under the provision, which election shall be communicated to the District in writing.

STATUTORY CRITERIA:

The criteria to be applied by the Arbitrator is found at 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.

The evidence adduced at the hearing and the arguments of the parties as set forth in the post-hearing briefs have been examined by the undersigned on the basis of the foregoing criteria. Each of the issues will be discussed separately below. The undersigned is required to select without modification the final offer of either the Employer or the Association relative to the terms of conditions of employment to be set forth in the parties 1978-80 collective bargaining agreement. The evidence and argument offered by the parties was primarily directed to the criterion of 7d. The parties have not agreed as to which jurisdictions constitute appropriate comparables.

COMPARABLES OFFERED BY THE ASSOCIATION:

The Association contended that the District's proximity to the Milwaukee metropolitan area warrants consideration of the Milwaukee area CPI. The Association contended that the majority of the staff lives within the SMSA and that 91% of the goods and services purchased by Hartford teachers are purchased in

the SMSA. The Association offered the following school districts including those within the four county Standard Metropolitan Statistical Area as appropriate comparables:

	78 ADM		78 ADM
Waukesha	12,862	Cudahy	4,269
West Allis	10,509	Greenfield	4,113
Elmbrook	9,597	Greendale	4,037
Wauwatosa	7,945	South Milwaukee	4,018
West Bend	6,662	Mequon	4,003
New Berlin	6,200	Mukwonago	3,919
Menomonee Falls	5,922	Hamilton	3,843
Nicolet	5,026	Watertown	3,577
Oconomowoc	5,001	Beaver Dam	3,428
Hartford	4,893	Cedarburg	3,405
Oak Creek	4,628	Kettle Moraine	3,214
Muskego	4,386	Germantown	3,083
Hartland	4,303		

The majority of the comparables offered by the Association are in CESA #16. Hartford is the 10th largest school district in the 25 districts cited, and the 5th largest high school in that grouping. Hartford competes in athletic programs with five public schools and one private school in its WIAA conference and with 42 other high schools in various athletic areas. Fourteen of those districts are included in the Association's comparables. In addition, Hartford participates in academic competitions with 28 schools the same size or larger throughout Wisconsin and in Illinois. Eighteen of those districts are included in the Association's comparables. The Association also notes that Hartford's swimming program includes competition against 10 of the comparables selected.

The District submits the following school districts as relevant comparables:

Elementary Feeder Schools to Hartford High School	Full-time Teachers 1978-79
Hartford Union High School	93.50
Hartford Common School Joint 1	94.63
Richfield #11	10.30
Erin #2	11.34
Herman #22	9.90
Neosho #3	17.40
Richfield #7	8.08
Richfield #2	31.30
Rubicon Joint 6	8.70

Little 10 Athletic Conference	
Beaver Dam	188.15
Oconomowoc	292.76
Watertown	195.50
Waupun	144.25
West Bend	414.54

Surrounding Districts in Washington, Dodge and Fond du Lac Counties within 20 miles of Hartford:

Campbellsport	79.24
Lomira	48.10
Mayville	71.18
Horicon	60.73
Dodgeland	58.50
Hustisford	27.97
Germantown	197.05
Kewaskum	109.50
Slinger	116.65

The District argued that the districts it offers are appropriate for comparisons because they include feeder schools to the District, schools from the District's athletic conference and surrounding districts of similar size. The District contended that the elementary feeder schools are the most comparable.

The District noted that schools in the District's athletic conference, with one exception (Waupun), are either located in larger urban communities than Hartford or are more heavily influenced by Milwaukee and that the districts included within 20 miles are generally located in less populated areas, again with one exception (Germantown).

The District averred that Washington County, in which Hartford is located, is the most rural county of the four counties bordering metropolitan Milwaukee County and has a relatively low population density. Therefore the District reasons that it is inappropriate to compare Hartford to districts located in the Milwaukee Metropolitan area. The District cited previous Mediation/Arbitration awards relative to outlying districts of the four county Milwaukee area in support of its position [Mukwonago School District, Dec. No. 16363; Fox Point - Maple Dale Schools, Dec. No. 16352; Greendale School District, 9-14-78; Elmbrook School District, Dec. No. 16617]

The Association offers 25 districts while the District submits 22 districts as comparable to Hartford. The undersigned has reviewed the evidence and arguments relative to comparables and finds limitations in the sets of comparables offered by both parties. While all of the districts cited by the parties have some relevance to Hartford, this arbitrator takes exception to the Association's emphasis upon Milwaukee metropolitan districts and the District's emphasis upon feeder schools. The undersigned joins in Arbitrator Mueller's reasoning (Mukwonago School District, Dec. 16363-A) that as distance of a district increases from the Milwaukee area, the influence of the metropolitan area upon that district diminishes. Therefore, this arbitrator does not consider Hartford to be substantially comparable to districts such as West Allis, Elmbrook, or Wauwatosa. Similarly, the undersigned finds comparison of Hartford to area feeder schools to be of limited comparative value. The feeder schools, with the exception of the Hartford Common School District, are significantly smaller than the Hartford Union High School system.

The parties mutually cited five districts in the Little 10 Athletic Conference as relevant comparison to varying degrees: West Bend, Germantown, Oconomowoc, Beaver Dam, and Watertown. Waupun, cited by the District, is the sixth school in the Little 10 Athletic Conference which includes Hartford. The undersigned does not consider it necessary to specifically single out additional districts from the parties' respective lists as relevant for com-

parison for the following reasons. This arbitrator has analyzed each of the issues contained in the parties' final offers in terms of all the comparables cited by the parties. Particular weight has been given to the districts mutually cited for comparison by the parties. Waupun has also been included by the arbitrator. At the time of this award, those mutually cited five districts had arrived at settlements for 1979-80.

Although Hartford has the smallest teaching staff and pupil population of the districts selected for particular comparison by the undersigned, and while these districts are geographically dispersed, comparison among those districts has the advantages noted above over those districts offered in the Milwaukee metropolitan area or the feeder schools. The nature of the instant employer, as a union high school district, distinguishes it from contiguous districts which operate on a K-12 basis. Absent data on similar union high schools, this arbitrator is of the opinion that K-12 schools in Hartford's athletic conference provide some measure of the District's level of programs and requirements of staff.

FAIR SHARE

The 1977-78 contract provided a dues deduction clause but did not contain a fair share provision. Both parties' final offers include fair share provisions for the 1978-80 agreement upon the conduct of a referendum by the Wisconsin Employment Relations Commission wherein 50% plus one of the eligible voters vote in favor of fair share provision. The District, contrary to the Association, further proposes that employees who are not members of the Association on the effective date of the contract (September 1, 1978, according to the District at the hearing) be exempt (grandfathered) from the fair share provision unless electing for coverage. The parties stipulated that 93 of the District's 94 teachers are members of the Association. The Association's proposal would grandfather the one employee for 1978-79 and require full fair share in 1979-80.

The District argued that mediation/arbitration awards issued between other parties have held fair share provisions containing referendum, grandfather or optional charitable deduction to be more reasonable than full fair share on the basis that they approximate a negotiated, gradual transition to full union security or permit the exercise of individual choice. The District contended that among the 22 districts it cites as comparables, 12 do not have fair share, 4 have grandfathered fair share, and only 6 have full fair share.

The Association averred that the maintenance of membership provision proposed by the District is not a satisfactory form of union security in the teaching profession in view of declining enrollments and a contracting labor market. The Association argued that the national labor relations trend has been away from maintenance of membership clauses. Of the districts offered for comparison by the Association, 10 contain full fair share, 4 provide a grandfather clause, and 2 have no fair share provision.

In view of the fact that only one employee is not a member of the Association, the Association's proposal which converts from a grandfather clause to full fair share over the two year contract is not unreasonable. Both parties have proposed the conduct of a referendum on their respective provisions. Virtually

the entire bargaining unit has voluntarily supported the bargaining representative in the past. The Association's proposal phases in the full fair share proposal in the second year of the contract. Such conversion to full fair share would not have been an unrealistic expectation had the parties negotiated for consecutive one year contracts rather than a two year agreement.

While the undersigned does not find the issue of fair share particularly suceptible to analysis based exclusively on comparibles, she notes that of the 6 districts in the athletic conference, 2 have no fair share, two have full fair share and 2 provide grandfather provisions. The mutually cited comparables do not clearly support either party's position. The arbitrator is satisfied that the Association's offer concerning fair share is more reasonable in view of the facts that only one employee is not a member of the Association, that said employee will be phased into the fair share provision under the Association's offer and that the provision is subject to referendum.

DISCIPLINE AND DISCHARGE

The 1977-78 contract provided no dismissal or non-renewal unless reasonable deficiencies were observed and reduced to writing regarding classroom management, instructional skill, professional preparation or other professional duties. For the 1978-80 contract both parties propose a "just cause" standard applicable to discharge and non-renewal and offer a three year probationary period.

The Association's final offer includes suspension and other discipline under the just cause standard. The Association's offer provides an "arbitrary and capricious" standard for non-renewal of probationary employees with rights to arbitral appeal.

The District's final offer is modeled after the teacher tenure provisions in Section 118.23(3), Wis. Stats., which cover teachers in Milwaukee County. The District proposes application of the just cause standard when a teacher is "non-renewed, discharged, suspended, demoted, reduced in compensation or otherwise disciplined." Probationary employees are employed at the discretion of the Board without recourse to the grievance procedure.

The Association argued that the District is proposing the Milwaukee statutes language while denying the relevance of Milwaukee area comparables to the instant dispute. The Association asserted that virtually all the districts cited for comparison, including a majority of the districts offered by the Board, provide contract coverage for discipline and suspension, provide some standard for probationary employees and a right to arbitral review.

The District asserted that of the 22 districts it offered for comparison, 9 do not provide a just cause standard. Of those 9, 8 specify a standard other than just cause, including arbitrary or capricious, legal cause, etc. Of those 8, 4 apply this respective standard to suspension, 2 to demotion, 1 to reduction in compensation and 4 to discipline. The remaining 13 districts cited by the District, operate under just cause standards. Seven apply just cause to suspension, 4 to demotion, 2 to reduction in compensation, 10 to discipline and 3 to termination only.

The District argued that the language it proposes wherein employees shall be "refused employment" only for just cause might well be interpreted by a grievance arbitrator to embrace "suspension."

The Board avers that its proposal of a just cause standard itself constitutes substantial bargaining movement and that additional language should not be imposed through the arbitration process.

With respect to the non-renewal of probationary employees limited to an "arbitrary and capricious" standard, the District noted that in half of the districts it offers for comparison, there is no probationary teacher concept. Furthermore, the District contended that the Association has neither substantiated nor even claimed that that the Board has been anything but exceedingly fair with all of its employees with respect to discharge, non-renewal, disciplinary matters.

The undersigned finds that of the comparables cited by the District, 15 provide that discipline and/or suspension are pursuant to a specified standard (13 of those contain a just cause standard). In addition, of the 9 districts offered by the District which speak to the non-renewal of probationary teachers, 2 provide an "arbitrary and capricious" standard and 2 provide access to arbitral review. Among the Association's comparables, this arbitrator discerns that 18 provide suspension for just cause. Twenty of the districts cited by the Association afford probationary employees access to grievance machinery.

Of the five districts mutually offered by the parties, West Bend, Oconomowoc, Beaver Dam and Watertown specify discipline for just cause while Germantown provides suspension for good and sufficient reason. Waupun mandates no discipline for arbitrary or capricious reasons.

The record is clear that the preponderance of the districts cited by both parties include forms of discipline in addition to discharge and non-renewal under their particular standard. Whereas the District notes the possibility of a grievance arbitrator interpreting the words "refusal of employment" to include suspension, the majority of all the districts cited appear to spell out additional forms of discipline subject to the negotiated standard. The undersigned concludes that the comparables support the Association's position and further that the inclusion of suspension and other discipline in the just cause provision eliminates the possible waiver upon which the District's offer appears indefinite.

With respect to the probationary employees, it appears that 20 of the districts cited by the Association and 2 of the districts offered by the District provide probationary employees with access to the contractual grievance procedure. The undersigned is unable to evaluate the status of probationary employees in the 6 districts particularly used for comparison as data on such issue was not provided by the parties. Accordingly, this arbitrator concludes that the Association's position is most reasonable on the basis of comparables relative to inclusion of other forms of discipline under the cause standard.

SUMMER SCHOOL PAY

The 1977-78 contract provided that teachers employed to teach summer school receive $550 for a full summer session course and $300 for a half summer session course. The District calculates that employees who work the full summer session of 29 days earn $7.59 per hour, while those working a half session (14 or 15 days) earn $8.57 and $8.00 respectively.

the entire bargaining unit has voluntarily supported the bargaining representative in the past. The Association's proposal phases in the full fair share proposal in the second year of the contract. Such conversion to full fair share would not have been an unrealistic expectation had the parties negotiated for consecutive one year contracts rather than a two year agreement.

While the undersigned does not find the issue of fair share particularly suceptible to analysis based exclusively on compari-bles, she notes that of the 6 districts in the athletic conference, 2 have no fair share, two have full fair share and 2 provide grand-father provisions. The mutually cited comparables do not clearly support either party's position. The arbitrator is satisfied that the Association's offer concerning fair share is more reasonable in view of the facts that only one employee is not a member of the Association, that said employee will be phased into the fair share provision under the Association's offer and that the pro-vision is subject to referendum.

DISCIPLINE AND DISCHARGE

The 1977-78 contract provided no dismissal or non-renewal unless reasonable deficiencies were observed and reduced to writing regarding classroom management, instructional skill, professional preparation or other professional duties. For the 1978-80 contract both parties propose a "just cause" standard applicable to discharge and non-renewal and offer a three year probationary period.

The Association's final offer includes suspension and other discipline under the just cause standard. The Association's offer provides an "arbitrary and capricious" standard for non-renewal of probationary employees with rights to arbitral appeal.

The District's final offer is modeled after the teacher tenure provisions in Section 118.23(3), Wis. Stats., which cover teachers in Milwaukee County. The District proposes application of the just cause standard when a teacher is "non-renewed, discharged, suspended, demoted, reduced in compensation or otherwise disciplined." Probationary employees are employed at the discretion of the Board without recourse to the grievance procedure.

The Association argued that the District is proposing the Milwaukee statutes language while denying the relevance of Milwaukee area comparables to the instant dispute. The Association asserted that virtually all the districts cited for comparison, including a majority of the districts offered by the Board, provide contract coverage for discipline and suspension, provide some standard for probationary employees and a right to arbitral review.

The District asserted that of the 22 districts it offered for comparison, 9 do not provide a just cause standard. Of those 9, 8 specify a standard other than just cause, including arbitrary or capricious, legal cause, etc. Of those 8, 4 apply this respec-tive standard to suspension, 2 to demotion, 1 to reduction in compensation and 4 to discipline. The remaining 13 districts cited by the District, operate under just cause standards. Seven apply just cause to suspension, 4 to demotion, 2 to reduction in compensation, 10 to discipline and 3 to termination only.

The District argued that the language it proposes wherein employees shall be "refused employment" only for just cause might well be interpreted by a grievance arbitrator to embrace "suspension."

The Board avers that its proposal of a just cause standard itself constitutes substantial bargaining movement and that additional language should not be imposed through the arbitration process.

With respect to the non-renewal of probationary employees limited to an "arbitrary and capricious" standard, the District noted that in half of the districts it offers for comparison, there is no probationary teacher concept. Furthermore, the District contended that the Association has neither substantiated nor even claimed that that the Board has been anything but exceedingly fair with all of its employees with respect to discharge, non-renewal, disciplinary matters.

The undersigned finds that of the comparables cited by the District, 15 provide that discipline and/or suspension are pursuant to a specified standard (13 of those contain a just cause standard). In addition, of the 9 districts offered by the District which speak to the non-renewal of probationary teachers, 2 provide an "arbitrary and capricious" standard and 2 provide access to arbitral review. Among the Association's comparables, this arbitrator discerns that 18 provide suspension for just cause. Twenty of the districts cited by the Association afford probationary employees access to grievance machinery.

Of the five districts mutually offered by the parties, West Bend, Oconomowoc, Beaver Dam and Watertown specify discipline for just cause while Germantown provides suspension for good and sufficient reason. Waupun mandates no discipline for arbitrary or capricious reasons.

The record is clear that the preponderance of the districts cited by both parties include forms of discipline in addition to discharge and non-renewal under their particular standard. Whereas the District notes the possibility of a grievance arbitrator interpreting the words "refusal of employment" to include suspension, the majority of all the districts cited appear to spell out additional forms of discipline subject to the negotiated standard. The undersigned concludes that the comparables support the Association's position and further that the inclusion of suspension and other discipline in the just cause provision eliminates the possible waiver upon which the District's offer appears indefinite.

With respect to the probationary employees, it appears that 20 of the districts cited by the Association and 2 of the districts offered by the District provide probationary employees with access to the contractual grievance procedure. The undersigned is unable to evaluate the status of probationary employees in the 6 districts particularly used for comparison as data on such issue was not provided by the parties. Accordingly, this arbitrator concludes that the Association's position is most reasonable on the basis of comparables relative to inclusion of other forms of discipline under the cause standard.

SUMMER SCHOOL PAY

The 1977-78 contract provided that teachers employed to teach summer school receive $550 for a full summer session course and $300 for a half summer session course. The District calculates that employees who work the full summer session of 29 days earn $7.59 per hour, while those working a half session (14 or 15 days) earn $8.57 and $8.00 respectively.

The District, for the 1978-80 contract, proposes no change in the aforementioned rates. The Association's final offer raises the summer school rates to $700 for the full session and $400 for the half session. The Association stated that the average rate per hour under its summer school proposal would be $9.33. The District costs the Association's proposal as $8.66 per hour for the full session and $11.43 and $10.67 per hour for the 14 and 15 day, half session respectively.

The District argued that the current summer school pay proposed for inclusion in the 1978-80 contract is supported by the rates paid in comparable districts. The Association contended that the District's offer is untenable in that summer school rates have not been increased in 3 years. The Association noted that the hourly 1979-80 contract rate at the base salary amounts to $11.53 per hour, while the average summer school rate it proposes amounts to $9.33 per hour and the District proposes an average hourly figure of $7.33.

Of the comparables offered on behalf of the District, 11 districts have no summer school session. Of the remaining districts, hourly summer rates ranged from $5.00 to $14.65. From the data supplied by the District, the undersigned computes that the minimum and maximum summer rates average $6.59 to $8.75 per hour. Among the comparables cited by the Association, 3 have no summer session. The remainder of the districts compensate summer session at hourly rates ranging from $5.20 to $15.68. From the Association's data, this arbitrator calculates that the minimum and maximum rates average $7.90 to $9.26.

With respect to the 6 districts selected for particular comparison by the arbitrator, the parties disagree over the summer session rates in three instances.

	District data	Association data
West Bend	$7.12 to $14.65	$7.76 to $15.51
Germantown	$7.33 to $14.65	$7.76 to $15.51
Oconomowoc	$6.91 to $11.10	
Beaver Dam	$4.88 to $6.38	$5.20 to $6.80
Watertown	$6.00 to $8.00	$6.50 to $8.00
Waupun	$6.75	

Based upon an extensive review of those comparables the undersigned concludes that on the issue of summer session pay the District's offer is most reasonable.

LAYOFF

The 1977-80 contract provided that notice of layoff to take effect the next year had to be made by March 1 or at the earliest practical date thereafter. For layoffs to take effect at other times, 30 day notice was required. The District's final offer proposes a continuation of the foregoing. However, the District proposes language, relative to its proposals on discharge, which would exclude probationary teachers from coverage of the layoff provisions. The Association's final offer seeks to modify the present layoff language to require preliminary layoff notice for the forth coming year by May 1 with final notice by June 1. The proposal provides that the June 1 notice revokes a teacher's contract for the forthcoming school year.

The Association argued that there has been a trend in negotiations, particularly among comparable schools, to prohibit layoff during the term of the individual teacher contract. Such practice, according to the Association, has been to remove layoff waivers from contracts and to substitute Sec. 118.22 language or modified notice time lines as proposed by the Association.

The Association presented lengthy argument to the effect that school boards may not layoff teachers with contracts for the ensuing year during the term of that employment contract. The Association reasoned that Sec. 118.22 is applicable to non-permanent terminations of employment for economic reasons, including layoff. According to the Association, such layoffs must be effectuated consistent with the procedural requirements of Sec. 118.22, or with contractual language which moves the notice time line but does not void an individual's binding contract for the forthcoming year. It is the position of the Association that the layoff of a teacher during the term of the individual employment contract constitutes a breach of that contract. The Association asserted that the Board's position requires the waiving of rights afforded by Sec. 118.22 and thereby authorizes violation of state law.

The District argued that the position of the Association confuses the concept of layoff with that of full termination of employment. The District contended that layoff, as a temporary suspension from employment, is distinguishable from non-renewal, dismissal, or revocation of contract which constitute permanent severance of the employment relationship. The concept of layoff, according to the District, requires that the Board have flexibility to reduce staffing and that the Association's proposal is unreasonably restrictive.

The District further argued that the use of the word "revoke" in the Association's proposal relative to the June 1st notice could be interpreted to mean "non-renew" and thereby cause the Association's proposed language to conflict with Sec. 118.22 which requires notice of non-renewal by March 15.

The District's proposal relative to layoff language would eliminate layoff coverage for probationary employees. The District averred that exclusion of probationary employees from the layoff provision relates to the District's proposal on just cause. The Board contended that in view of the three year probationary period agreed upon by the parties, a probationary employee on layoff (under contract but not working) during a major portion of those first three years could conceivably automatically become a permanent teacher upon acceptance of a fourth contract without the Board's approval. The District asserted that matters of layoff and probationary employees are best resolved by the parties themselves.

The Association objected to the District's proposed exclusion of probationary employees from layoff and recall rights stating that it amounts to a reduction of benefits for employees who clearly need such protection.

Although the parties' respective arguments are insightful, the undersigned does not find it necessary to resolve the layoff issue on the basis of its relationship to Sec. 118.22. Clearly the parties' arguments raise questions of contract interpretation which are speculative at best in the instant proceeding. The thrust of the layoff issue is whether or not there may be layoffs during the term of the school year. Where obtained in negotiations, the prohibition of layoff during the ensuing contract period

constitutes a desirable term of employment for teachers. Such a prohibition enhances the job security of teachers who function in a labor market which is relatively tight in general and which is even tighter during the term of the school year. Accordingly, the issue of layoff language can be resolved on the basis of the prevailing practice in similar districts.

Of the comparables offered by the District, 5 districts specifically limit a board's ability to layoff only at the beginning of the next year, 3 districts authorize layoff any time during the year, 1 district provides layoff effective at the start of each semester, 4 districts have no layoff provision, and 9 districts have layoff provision which contain no restriction on when a layoff may occur. Among the Association's offered comparables, 19 prohibit layoff without notice by June 1, 5 do not contain prohibitive time lines. Of the six districts selected by the arbitrator for comparison, 3 specify a June 1 deadline for layoff notice, 1 incorporates a May 1 notice deadline, 1 permits layoff only at the beginning of semesters, and 1 prohibits layoff during the term. All of the six districts have adopted contract language which limits their respective board's ability to layoff teachers during the school term. No evidence was adduced to comparables on the probationary issue. On the basis of the aforementioned comparables on layoff, this arbitrator is satisfied that the Association's offer is the more reasonable.

SALARY SCHEDULE

The parties have mutually agreed to a salary schedule for 1978-79. That schedule continued the number of horizontal (credit) lanes, 8, and added vertical (experience) steps in the Bachelor degree lanes with 8 steps at BA, 9 steps at BA plus 8 credits and 10 steps at BA plus 16. Both parties have proposed an additional horizontal lane for the 1979-80 salary schedule with the addition of Master's degree plus 24 credits. The final offers of both parties propose additional vertical steps but disagree on the number of such steps. In addition, the parties dispute the amount of difference between the various steps and lanes. The most significant difference between the two offers relative to the 1979-80 salary schedule is that the Association proposes reinstitution of an index system and the Board proposes continuation of a system of various incremental dollar amounts in the cells of the salary structure.

For the 1978-79 salary schedule, the parties have agreed to $200 difference between the lanes and $500 difference between steps for the first 8 steps on all lanes and on all steps from BA through BA +24. The salary differentials at the 9th through 13th steps are as follows:

BA +30	MA	MA +8	MA +16
$700	$750	$800	$850

For the 1979-80 salary schedule the Board proposes continuation of the system contained in the 1978-79 schedule but with various increased dollar amounts on the horizontal and vertical columns. The Association proposes a 5% and 2.5% factor on the base for the 1979-80 salary structure which amounts to $533 on the vertical steps

contracts continued the 5% step increment and specified an amount of $150 between lanes. The 1971-72 agreement maintained the $150 between lanes and eliminated the 5% step (at step 2 increased each lane 4.9%, remaining steps in lanes increased by amount equal to 5%). The 1974-75 contract represented the commencement of the salary structure without an index which has continued through the 1978-79 salary schedule.

The District, argued that the past bargaining history of the parties indicates a continued path away from an index system and the negotiation of more substantial increases for teachers on the top of the schedule. The District averred that the Association is proposing a major change in the salary structure through the index and addition of steps and that such change should not be imposed through the mediation/arbitration process.

The undersigned is of the opinion that the Association's proposal should not be found unacceptable solely on the basis that an index has been negotiated out of previous contracts. While the practice of the parties is relevant, the proposal of an index or any other method of adjustment must be primarily evaluated in terms of the impact of the dollars generated by such adjustment. In the instant proceeding, the Association claimed that negotiations in recent years have resulted in a compression of the salary schedule which has had an adverse impact upon certain levels within the salary structure. The Association asserted that application of an index would remedy the previous inequities.

The Association claimed that 60% of the districts it has cited as comparables, have index systems. Only a few of the districts offered as comparable by the District incorporate an index into their salary structures. Of the five districts mutually cited by the parties, all of which have completed negotiations for 1979-80, four provide an index (Watertown and Beaver Dam, 4.25% index; Germantown, 4.5 - 5% index; West Bend, 5% index).

In terms of overall package cost, the Board's offer for 1979-80 amounts to 6.8% (without advancement of staff for additional credits earned) and 7.3% (with anticipated credit advancement). The Association's proposal for 1979-80 represents 8.5% (without credit advancement) and 9% (with anticipated advancement). The Association claimed that the adjustment on the schedule itself would amount to 4.8% under the Board offer, and 6.5% under the Association proposal.

From the evidence submitted, this arbitrator finds that neither proposal will affect the relative salary standing of Hartford among the five districts mutually cited. Whereas Hartford will rank on the low end on the BA minimum and schedule maximum columns under both proposals, it will also rank significantly higher than the five comparable districts on the BA maximum.

Both parties stressed that the district has a large percentage of teachers at the top steps of the schedule. The District projected that for 1979-80, 51% of the teachers will be on the top 4 steps in the last 5 lanes. Thirty-three teachers, or 35% of the unit, will be at step 15 experience level for 1979-80. The Association argued that under the Board's proposal, teachers in 13 cells would receive increases of 4.1% or less. The District contended that the wage package must be viewed in the overall context of the financial settlement. The District noted that it provides the full cost of health, dental, life and

long-term disability insurance, and that the parties have bilaterally agreed to significant language changes.

The Association asserted that its final offer is justified on the basis of the rapidly increasing cost of living alone. The Board contended that its proposal is the more reasonable in view of the voluntary wage-price guidelines. The District has not claimed an inability to pay.

The salary schedules proposed by both parties contain significant changes for 1979-80. Whereas the Association proposal provides an index system and additional steps, the District proposal offers a higher base and higher schedule maximum than that proposed by the Association and additional steps. Clearly both parties have recognized a need to modify the salary schedule. Both offers have proposed more substantial increases for those teachers with less experience and education than for those teachers who are on the upper end of the salary schedule. Furthermore, the parties have agreed to additional education lanes and experience steps. The agreements between and the respective offers of the parties indicate that the parties are attempting to reduce the disparity between the lower end of the salary schedule and the higher end while continuing to provide opportunity for advancement on the educational lanes for employees already of the upper end of the salary schedule. In the instant case, the undersigned is of the opinion that the index proposed by the Association will provide an equitable method for realigning the salaries of those teachers with less experience and education with the salaries of those teachers with greater experience and education. Similarly, the index will enable the addition of the new lanes and steps in a uniform manner. Furthermore, from the record before her, this arbitrator finds that an index system is prevalent among the five districts mutually cited for comparison by the parties.

While both parties have addressed the need to revise the salary schedule in order to modify the salary relationship between teachers on the low end of the schedule and teachers on the high end of the schedule, the undersigned believes that it is also important to examine the impact of the respective offers upon those employees who will be at the top of their present education lanes for 1979-80. In view of the fact that one-third of the unit employees will be at step 15 in lanes BA +30 through MA +24, particular attention has been given to the upper end of the schedule. Teachers at the top steps in BA +30 through MA +16 would receive a 3.9% to 4.4% raise under the Board's offer, and a 4% to 7.4% increase under the Association's proposal for 1979-80. Teachers at step 15 in the new MA +24 column would receive an increase of 5.7% under the Board's offer, and 5.4% under the Association's offer for 1979-80. The undersigned concludes that in view of the cost of living the Board's final offer has a more adverse impact upon those teachers on the upper levels of the salary schedule for 1979-80. While the undersigned believes that both parties have well documented the merits of their respective schedules, she finds the Association's proposal preferable on the basis the impact of the respective offers upon the salary schedule and upon unit employees with high educational attainment and teaching experience and comparability.

AWARD

Having fully considered the exhibits and arguments of the parties and the statutory criteria set forth in Section 111.70 (4)(cm)(7), MERA, the undersigned selects the final offer of the Association and directs that the same be incorporated into the 1978-80 collective bargaining agreement in addition to the previous stipulations of the parties.

Dated this 12th day of September, 1979, at Madison, Wisconsin.

Kay B. Hutchison
Mediator/Arbitrator

KBH:se