STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of JANESVILLE EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between Said Petitioner and SCHOOL DISTRICT OF JANESVILLE	Case XXII No. 24516 MED/ARB-371 Decision No. 17169-A

Appearances:

For the Janesville Education Association:
Ms. Lysabeth N. Wilson, UniServ Director, Rock Valley United Teachers.
Mr. Thomas H. Moore, Chief Negotiator, Janesville Education Association.
For the School District of Janesville:
Melli, Shiels, Walker & Pease, S. C., Attorneys at Law, by Mr. Joseph A. Melli, and Mr. William A. Young, Director of Business Affairs, School District of Janesville.

ARBITRATION AWARD:

On August 7, 1979, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator, pursuant to Section 111.70 (4)(cm) 6.b. of the Municipal Employment Relations Act, in the matter of a dispute existing between Janesville Education Association, referred to herein as the Association, and the School District of Janesville, referred to herein as the Employer. Pursuant to the statutory responsibilities, the undersigned conducted mediation proceedings between the Association and the Employer on October 8, 1979, at Janesville, Wisconsin, over the matters which were in dispute between the parties as they were set forth in their final offers filed with the Wisconsin Employment Relations Commission. The dispute remained unresolved at the conclusion of the mediation phase of the proceedings, and consistent with prior notice that arbitration would be conducted on October 9, 1979, in the event the parties were unable to resolve the dispute in mediation, the Association and the Employer waived the statutory provisions of Section 111.70 (4)(cm) 6.c. which require the mediator-arbitrator to provide written notification to the parties and the Commission of his intent to arbitrate, and to establish a time limit within which each party may withdraw its final offer. Arbitration proceedings were conducted on October 9, 1979, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed and were provided to the parties and the Arbitrator on October 24, 1979. Briefs were also filed which were exchanged by the Arbitrator on November 23, 1979.

THE ISSUES:

Seven issues remain disputed between the parties, which will be determined by this Award. The subject matter of the disputed issues contained within the parties' final offers can be summarized as follows:

1. Snow day make up.
2. Posting of vacancies.
3. Insurances, drug and long term disability.
4. Personal leave days
5. School calendar
6. Salary schedule
7. Cost of living provisions

The final offers of each party are lengthy, totalling 52 pages between them. Consequently, the full final offers of the parties will not be set forth in this Award, however, the issues that are raised with respect to the final offers will be discussed serially.

DISCUSSION:

The statute at Section 111.70 (4)(cm) 7, paragraphs a through h, furnishes the criteria or factors which the Arbitrator is to consider in rendering his Award. All of the following discussion, then, will be based on applying the foregoing criteria to the evidence of record in the arbitration proceedings, and to information over which it is proper for the undersigned to take notice.

In addition to an analysis, discussion and decision with respect to each of the seven issues, there are two issues in this matter which bear on several of the issues contained within the final offers of the parties and, therefore, will be discussed separately from the issues and prior to an analysis of the seven issues which are disputed in the final offers. They are a determination of the comparables and the alternative provisions contained within the final offer of the Employer.

THE COMPARABLES

The Association proposes that the comparables should include private sector employers within the City of Janesville; school districts comprising the Big Eight Conference; districts of the same approximate size as that of this Employer statewide, i.e., Kenosha, Appleton, Green Bay, Waukesha, West Allis, Eau Claire and Oshkosh.

The Employer agrees that schools within the conference are comparable. Additionally, the Employer would propose that schools within CESA District 17 and schools within a fifty mile radius who have average daily admissions of 2500 and up constitute comparability. Lastly, the Employer urges that other employees of this same Employer constitute a comparability grouping.

Except for the conference schools each party opposes the inclusion of the comparables urged by the opposing party. The Employer opposes the inclusion of the selected school districts from various localities in the state proposed by the Association because there is no evidence that these comparisons have ever been considered in the bargaining process by the parties themselves in the past; and because the inclusion of these districts disregards geographic labor markets; and further argues that even if one were to accept the validity of the size comparisons urged by the Association that the size variation between the smallest (Oshkosh 9576 ADM and Green Bay 18,773 ADM) fails even to establish that there is comparability based on size alone. The Employer argument is persuasive and, therefore, the comparables statewide proposed by the Association will not be considered in this matter, except for the school district of Waukesha, which also falls within the geographic distribution urged by the Employer.

The Association opposes the inclusion of CESA 17 and schools within a fifty mile radius as being comparable, because of the size variations of the districts; and because many of the districts contained within these comparables are urban rather than rural in character; and because to include these schools urged by the Employer would be to disregard the wage leadership position which Janesville has assumed with respect to these proposed comparables. In support of its position urging CESA 17 and schools within a fifty mile radius, the Employer points to evidence of record showing that 76% of new teachers who were hired without any teaching experience were hired from this geographic area, and that 68% of new teachers hired with prior teaching experience were hired from this geographic area. Given the evidence which the undersigned concludes to establish that the CESA District and the fifty mile radius proposed by the Employer constitutes a labor market area from which the Employer recruits; the undersigned concludes that the inclusion of these employers as comparables is proper. In so concluding, the undersigned will continue to recognize the

the leadership position that this Employer has with respect to other schools in the CESA District and within the fifty mile radius.

With respect to other employees of this same Employer constituting comparability, the undersigned rejects their inclusion. Arbitral authority has consistently held that in comparing occupational groups for salary purposes where the occupations being compared are unique, the comparisons should be limited to other employees of other employers holding the same position. While it might be argued that the patterns of settlement as established with nonteaching employees of this Employer should be considered, in view of the complexities and methodology used in costing teacher proposals compared to nonteaching employees of districts, the patterns of settlement are unpersuasive.

THE ALTERNATIVE FINAL OFFER OF THE EMPLOYER

In his final offer the Employer proposes the following alternatives:

OPTION 1

1. Modify the present two days of unrestricted personal leave to personal business transaction leave/emergency act of God leave, only one of which may be act of God.
2. Add prescription drug insurance July, 1979, and long term disability insurance July, 1980, and eliminating the Employer paid sick leave coordinated plan effective July, 1980, and increasing group life insurance from 38% to 41%.
3. No make up of first snow day.

OPTION 2

1. Retain the language of the predecessor Agreement for two unrestricted personal days.
2. Maintain the insurance benefits contained in the predecessor Agreement.
3. Make up all snow days.

The options described above in the Employer's final offer reside with the Association and not with the Arbitrator. Thus, if the Employer's final offer is awarded, by the terms of the offer, the Association must choose either option 1 or option 2 within fifteen days after this Award is issued.

The alternative offer of the Employer presents analytical problems in evaluating the respective position of the parties. The Association in its brief argues that optional offers should be rejected because awarding for an optional offer fails to bring finality to the bargaining process which arbitration is intended to do; and because acceptance of an optional offer would set dangerous precedent "open the floodgates to allowing or condoning both parties to offering options instead of simple proposals to resolve".

It should be noted initially that the final offers in this matter were certified to impasse by the Commission on July 31, 1979. Subsequent to the certification to impasse, the Wisconsin Employment Relations Commission was confronted with the issue of alternative offers in Milwaukee Area Board of Vocational, Technical & Adult Education District No. 9, LXXIX, No. 24935, Decision No. 17131-A (August 21, 1979). In its decision, the Commission issued an order to the Employer to submit a single final offer where he had previously submitted three alternative salary proposals to be adopted at the option of the Union or the Arbitrator. In its memorandum accompanying the order to amend final offer, the Commission held:

> We do not agree, as argued by MATC, that "single final offer" as it is used in MERA, contemplates use of alternative proposals on any one or more of the issues in dispute at the time of the final offer. An offer containing such alternative proposals is not "one" or a "single" offer, but rather multiple offers. Thus, depending upon how many issues are in dispute and, of those, how many have been dealt with through alternative proposals, there could be a myriad of combinations, packages or alternative "final offers" resulting. Each such "final offer" would

require comparison by the arbitrator regarding its relative merits under the statutory criteria. The implications of this are obvious and clearly not what the legislature intended as evidenced by its reference to "single final offer".

While we do not disagree that the use of alternative proposals can be an effective technique to achieve voluntary settlements in negotiation or mediation, we do not agree it was the intent of the legislature that it also be available in arbitration, unless the parties agree that it should be. The reference to "single final offer" clearly prohibits its use pursuant to the mandated procedures. However, MERA, at subdivision (cm)5, does make allowance for parties to agree to "voluntary impasse resolution procedures", and thus the parties could voluntarily agree to a process allowing for proposals in the alternative.

It is obvious to the undersigned that the foregoing decision of the Commission was rendered after final offers were certified in this matter. It is equally obvious that neither party raised objections to the alternative form of the offer prior to certification to impasse. Thus, it cannot be said, nor does the Association argue, that the offer of the Employer must be rejected because it contains the alternative proposal. Rather, it is concluded that when the Association failed to object to the alternative offer of the Employer prior to the final offers being certified by the Commission, it waived any opposition it might have raised with respect to the legality of the final offer of the Employer. The undersigned concludes, then, that the alternative offer of the Employer is now lawfully before him as a departure from the statute and permitted under the voluntary impasse resolution proceedings found at (cm)5 of MERA. This conclusion squares with the Commission holding in Decision No. 17131-A (supra) that the parties could voluntarily agree to a process allowing for proposals in the alternative.

While the undersigned has concluded that the alternative offer is properly before him, the problems of analyzing which final offer should be adopted, which the Commission anticipated in its MATC decision, now become real for the undersigned. The analysis of which final offer should be adopted where, as in this case the Arbitrator has no visibility as to which alternative will be accepted by the Association, puts the Arbitrator in the position of the poker player who cannot look at his hole cards while betting into the high showing hand on the board in a stud poker game. Consequently, the existence of the alternatives in the Employer offer, though not unlawful, does detract from the acceptability of the Employer offer.

<u>ISSUES</u>: <u>SNOW DAYS</u>, <u>INSURANCES</u>, <u>PERSONAL LEAVE DAYS</u>

The undersigned has elected to discuss the issue of snow days, insurances and personal leave days as a group because it is this grouping addressed by the alternative offer of the Employer. At hearing significant evidence was presented with respect to the personal leave issue, and the parties in their argument addressed the issue at some length. The Employer evidence and argument focuses on the proposition that the unrestricted leave days as negotiated in the prior round of bargaining have been abused, and that the bargaining history in the prior round of bargaining supports a conclusion that the unrestricted personal leave days were intended to be "experimental" in nature. While the evidence could well support the Employer position on this issue, in view of the Employer's dual final offer which clearly shows the Employer is willing to live with the unrestricted personal leave day provision of the predecessor Agreement, the undersigned can only conclude that since the Employer can live with it, the personal leave days should not be restricted in the successor Agreement. Furthermore, the undersigned has analyzed the exhibits with respect to the potential cost of the personal leave days vis a vis the costs of the insurances offered for what the Employer describes as a buy out of the unrestricted personal leave day provisions. From a review of the evidence, the undersigned concludes that the "quid pro quo" offered by the Employer is insufficient.

With respect to the long term disability, the drug insurance and the snow day makeup, the undersigned is satisfied that these issues are supportable by comparables and, therefore, would find for the Association on these issues.

ISSUE: POSTING OF VACANCIES

The terms of the predecessor Collective Bargaining Agreement provide that all vacancies will be posted, and teachers may apply for those vacancies without restriction as to frequency or time of year. The Association proposes to maintain the provision of the predecessor Agreement. The Employer proposes that vacancies created by reason of transfers initiated by teacher applications to posted vacancies be limited to two postings for any one vacancy (the original and one additional). The undersigned has reviewed the evidence and is satisfied that the comparables do not support the Association position. Based on the comparables, then, the Employer position on this issue is supported.

The Association has made additional argument that the Employer has not been able to demonstrate that the unrestricted postings have created any administrative problems for him to date. While the record does not show that the unrestricted posting provisions presently create administrative problems, the potential problems created by unrestricted posting must necessarily be addressed. The very existence of the limitations or restrictions contained in collective bargaining agreements among comparable employers point to the recognition that unrestricted posting can create real problems in the minds of those comparable employers and associations. To conclude that anticipated problems, when those anticipations based on experience can reasonably be anticipated, should not be addressed until after the problem is created, would be erroneous. In fact, on issues espoused by associations such as just cause, such a conclusion would lead to the result that just cause provisions should not be included until after employees have been terminated without cause. Certainly the Association would not make this type of argument with respect to a just cause issue and, therefore, the fact that the Employer proposal on posting of vacancies is anticipatory rather than actual will not cause a rejection of this proposal.

It follows, then, that the issue of posting of vacancies is determined in favor of the Employer.

ISSUE: SCHOOL CALENDAR

The school calendar issue presented in this dispute goes to the method as to how the calendar will be established rather than an issue of which days are to be included in the calendar. Both parties to the dispute propose a departure from the language contained in the predecessor Agreement at Article 17. The language of the predecessor Agreement reads:

ARTICLE XVII. SCHOOL CALENDAR

It is agreed that various alternatives for a school calendar will be reviewed by a joint committee of three from the Association, three from the Board and administration, and three parents, for a total of nine, to recommend a calendar for the following school year, consistent with Wisconsin Statutory requirements and regulations of the Department of Public Instruction. The three parents will be selected jointly by the President of the Board and the President of the Association.

The school year calendar shall contain two (2) alternative calendar dates outside of the regular 190 contract days which will be used as make-up days for lost days within the school year. The make-up days shall be used in chronological order with at least one (1) week (7 days) notice.

The recommendations shall be made to the Board no later than January 1 prior to the fall opening of school. The Board shall pass or veto the calendar as recommended no later than its regular January meeting. If the recommendation is vetoed, it shall be returned to the joint committee and a new recommendation issued. When the Board passes the recommendation, the school calendar shall be a part of this Agreement.

The Association final offer with respect to school calendar reads:

ARTICLE XVII SCHOOL CALENDAR

A calendar will be negotiated. To expedite this matter, the Joint Liaison Committee will prepare a calendar and present it to the negotiating teams by November 15th. The negotiated calendar shall become part of the Master Agreement.

The Employer final offer reads:

ARTICLE XVII SCHOOL CALENDAR

It is agreed that various alternatives for a school calendar will be reviewed by a joint committee of three from the Association, three from the Board and administration, and three parents, for a total of nine, to recommend a calendar for the following school year, consistent with Wisconsin Statutory requirements and regulations of the Department of Public Instruction. The three parents will be selected jointly by the President of the Board and the President of the Association.

The Calendar Committee shall submit its recommended school calendar for the next school year by November 15 of the preceding year. The negotiating teams shall meet for the purpose of reviewing this recommendation and submitting it to the School Board for adoption at its regular January Board meeting. If the two negotiating teams do not agree to one calendar by January 1, the School Board shall select the calendar to be adopted at its regular January Board meeting. The School Board adopted calendar shall become a part of the negotiated agreement.

The Employer opposes the Association calendar final offer principally because of his contention that the terms of the provision proposed by the Association require that the calendar be negotiated to final agreement between the parties, and argues that, in the absence of an Agreement between the parties, litigation may ensue as to whether the Employer would have the right to open schools absent an Agreement. Additionally, the Employer opposes the Association proposal because it would exclude the inclusion of parents from the calendar deliberations, which had been part of the process in the predecessor Agreement and would be included in the Employer's final offer.

With respect to the exclusion of the parents from the contractual provisions set up to establish the calendar, the undersigned concludes that the Employer opposition is without merit. This is not to say that parental concern should not be considered in the negotiations leading up to the calendar. However, these concerns can be ascertained by other means by the Employer, and the parental or public interest in the calendar can properly be represented by the Employer in negotiations over the calendar. The foregoing is in recognition of the state of the law that makes the calendar a mandatory provision for bargaining. It is the parties, i.e., the Employer and the Association, who have the bargaining responsibility and, therefore, the undersigned concludes that the negotiations over the calendar should be limited to the parties.

The Employer objection to the Association calendar proposal by reason of the requirement that the proposal requires agreement on the calendar is a legitimate concern. When the Association proposes "a calendar will be negotiated.... The negotiated calendar shall become part of the Master Agreement", adoption of that proposal appears to require that agreement be reached before a calendar can be implemented. Thus, a strict reading of the Association proposal requires the parties to come to an agreement, and as the Employer suggests, he could be faced with the dilemma of either agreeing to an unacceptable calendar or face the possibility of defending a legal action if he were to open school while the opening date of school was still in dispute between the parties.

The Association at hearing and in its brief presented testimony and argument to the effect that implicit in the words of their proposal with respect to calendar is the right of the Board to unilaterally implement, as the need arises,

its last calendar proposal rejected in bargaining by the Union. Additionally, the Association contends that the obligation to produce a school calendar through negotiation continues with respect to the balance of the calendar until agreement is reached, or the Employer is justified by compelling circumstances to implement its proposals at impasse.

Because of the way the Association has framed its proposal over the calendar language, the undersigned would find for the Employer on the calendar issue, if this issue were standing alone. The problems which are created by the words of the Association calendar proposal, however, are not sufficient so as to cause the undersigned to find for the Employer's total final offer on all disputed issues. The Association, by its testimony at hearing, and in the arguments presented in its brief, has in the opinion of the undersigned created the equivalent of "bargaining history" which clearly manifests the intent of their language proposal on calendar which creates an interpretation of the language of the Association proposal by which both parties would be bound in the event this Arbitrator finds for the Association final offer.

ISSUE: SALARY SCHEDULE

The basic form of the salary schedule is not in dispute between the parties since neither party proposes a change in the incremental structure of the schedule. In the first year the Association proposes a base of $11,200 and the Employer proposes a base of $11,000. In the second year the Association proposes a base of $11,760 and the Employer proposes a base of $11,300.

In addition to the dispute over base salary the parties have failed to agree with respect to the amount of longevity payments and with respect to additional stipends at the end of the salary schedule proposed by the Employer, which are opposed by the Association. In the first year the Association proposes that longevity be increased by $15 and $50, and the Employer proposes that longevity be increased by $10 and $30. In the second year the Association proposes an additional $10 and $40 longevity increase, and the Employer proposes an additional $10 and $30 longevity increase.

The Employer's stipend proposal in the first year would pay an additional $350 to those employees who are at the end of the lane for all lanes from BA + 18 and up. In the second year, the Employer would propose that the stipend for those not entitled to an increment for lanes BA + 18 and BA + 24 and MA + 0 be $800; lanes MA + 6, MA + 12, MA + 18 be $825, and lanes MA + 24, MA + 30 and ED be $850.

The stipend proposal of the Employer, which would pay additional monies to those not entitled to an increment from lanes BA + 18 on the schedule and up, is unprecedented in prior negotiated schedules between these parties. Thus, the Employer proposes a modification to the salary structure which the Association opposes, and it then becomes incumbent upon the Employer to justify its proposed salary structure change. Evidence discloses that 42.7% of the staff would benefit from the stipend proposal of the Employer in the first year, and 44.8% of the staff would benefit from the Employer's stipend proposal in the second year. The evidence further discloses that the stipend proposal of the Employer carries a cost of $100,450 the first year and $246,450 the second year. The Employer, in continuing to press for inclusion of the stipend over the opposition of the Association, assumes the paternalistic posture of telling the Association that this Contract should provide monetary benefits that are good for the employees whether they want those benefits or not. While the evidence with respect to the numbers affected by the stipend is impressive, the 42.7% of the staff affected in the first year and 44.8% of the staff affected in the second year are all represented by the Association, and it is the Association's responsibility at the bargaining table to represent the wishes of their constituency. Thus, it must be assumed that the Association opposition to the stipend offer of the Employer is grounded upon the feeling of those who are represented, including the 42 to 44% of those who would benefit additionally by the Employer proposal. In view of the opposition of the Association, which the undersigned can only conclude represents the wishes of those represented, the undersigned concludes that the basic salary structure should not be altered in this round of bargaining by the inclusion of the stipend which has been proposed by the Employer.

The dispute with respect to longevity is minimal with comparatively minor cost significance attached to it. In view of the relatively minor cost differences involved, the undersigned considers longevity to be noncontrolling in analyzing and determining which salary schedule proposal should be adopted.

The undersigned has reviewed all of the evidence with respect to comparables as it applies to each of the party's salary proposals. The Employer argues that his salary proposal would maintain the wage leadership position among the comparables. The undersigned agrees. Merely determining that the Employer offer maintains its relative position with respect to the comparables does not totally dispose of the analysis. It must also be considered what effect the Association proposal has among the comparables. Association Exhibit 15A and 15B set forth selected comparisons among conference schools. The rank order among conference schools, including COLA shows the following position:

	BA Base	MA Base	Schedule Maximum
1978-79	First by $42	First by $360	Second by $1,703
1979-80 (Association)	First by $200	First by $600	Second by $1,796

The foregoing analysis does not consider the second year of the Agreement because of the conference schools. Only Beloit data is available for comparison, therefore, it is impossible to determine the comparables for that year. In all cases in the foregoing table the relative ranking compares to the Madison School District as the next closest in rank. The Madison salary schedule for 1979-80 is a staggered schedule, with an additional increase which became effective January, 1980. In the foregoing ranking the comparisons used were the salaries in effect in Madison in January, 1980. Additionally, it should be noted that maximum COLA was included in all salaries for this comparison. Conclusions from the foregoing data show that the Association proposal on salary does not affect relative ranking from the prior year. While the Janesville leadership position under the Association proposal improves its position at the BA base by $158, and at the MA base by $240 over Madison, its second position at the top of the schedule is widened by $93. From all of the foregoing, then, the undersigned concludes that when using the athletic conference for comparability purposes neither party's offer so distorts the relationship among the comparables as to establish a preference for either party's offer.

Based upon the foregoing analysis, which shows no preference for the salary offer of the parties when considering comparables, but which favors the Association proposal by reason of the inclusion of the stipend proposal in the Employer's offer; it follows that the salary schedule of the Association should be adopted. The foregoing conclusion, however, is adopted with no consideration as to cost impact of the proposals. Consideration of cost impacts will be dealth with later in this discussion when considering the economic impact of the entire proposals of the parties.

ISSUE: COLA

Historically, the parties have had a cost of living provision in their collective bargaining agreements, so the issue before this Arbitrator is not the classic question of whether a COLA provision should be included in the Contract or not. The principle differences in the offers of the parties with respect to COLA deal with the point at which COLA should be capped. The COLA provisions of predecessor agreements, as well as the provisions proposed by each of the parties over the disputed issue, are unique, and consequently, there are no comparabilities to guide the undersigned, nor is any evidence with respect to comparabilities in this record as it goes to the point at which the COLA cap should be set. As a result of the foregoing, then, the undersigned relies primarily on the history of the COLA provision as the parties had previously negotiated the provision in the predecessor Agreement. The predecessor Agreement contains a COLA provision in a two year agreement, which provided for a cap of $250 the first year, and $550 the second year. The Association COLA proposal provides for a $300 cap the first year, and $650 cap the second. The Employer proposal for the first year provides a $175 cap, and $400 cap for the second year. Thus, from the foregoing, the Association proposes to increase the cap by $50 over the first year cap of the predecessor Agreement, and the Employer proposes to reduce the cap by $75. In the second year, and on the same basis

as above, the Association proposes an increase of $100 to the cap in the second year, and the Employer proposes a $150 reduction of the cap, compared to the cap contained in the predecessor Agreement. In view of the tendencies of the cost of living, the undersigned feels a reduction in the amounts of cap in the first and second year of this Agreement, compared to the amount of the cap in the predecessor Agreement for the first and second year, is unwarranted. From the foregoing, then, it is concluded that the Association proposal with respect to caps is more realistic in these economic times and, therefore, would be adopted when considering the COLA issue standing alone. Again, it should be noted that as with the salary issue, the conclusion that the Association COLA proposal should be adopted is made without consideration as to cost impact, and again, cost impact will be considered in the totality of the final offers in the next section of this Award.

TOTAL ECONOMIC PACKAGE

At hearing both parties entered evidence with respect to the costs of the final offers. The evidence submitted by the Employer and the Association with respect to costs differs. From Employer Exhibit #12 the Employer calculates the value of his proposal at 8.10% for the first year and 6.52% for the second year, for a total of 14.62% for the two years. From Association Exhibits #9 and 10 the Association calculates the cost of the Employer proposal at 7.35% and 6.45% for the second year, for a total of 13.8% for the two years. The Employer calculates the Association proposal as 9.81% the first year and 8.05% the second year, for a total cost of 17.86% for the two years. The Association calculates its proposal at 9.67% for the first year, and 7.85% for the second year, for a total of 17.52% for the two years.[1]

Both parties include rollups in their respective calculations, however, the Association calculations take into account the turnover that has occurred in the 1979-80 school year, whereas the Employer calculation does not. Additionally, the Association calculates for rollup purposes only the 5% STRS payment that the Employer provides for the teachers' share of STRS, while the Employer uses the full 11.7% for rollup purposes which is inclusive of the teachers' share of STRS, as well as the STRS contribution required of the Employer. For rollup purposes it is the opinion of the undersigned that the full 11.7% STRS payment required of the Employer is proper. Further, the turnover factor is not so significant in this matter as to create an unusual skewing effect and, therefore, the undersigned in making these cost comparisons will rely on Employer Exhibit #12.

The question before the Arbitrator, then, is whether the 14.62% reflects a more proper settlement than that of 17.86% for the two years of this Agreement. The Employer argues that in view of the federal guidelines his offer more nearly comports to the 7% federal guidelines established by the Federal Government. The Employer further argues that generally school districts and teacher associations, in their bargaining, have "heeded the call" of the voluntary guidelines and have settled on packages that approximate the guidelines. In support of his position the Employer cites two prior mediation-arbitration decisions: Independence School District, Med/Arb 105, Dec. No. 16546 (March, 1979, D. Johnson, Arb.), and Elmbrook School District, Med/Arb-149, Dec. No. 16617-A (1979, Maslanka, Arb.).

With respect to the Employer contention that settlements between school districts and teacher associations reflect that they are "heeding the call" of the federal guidelines at 7%, the undersigned rejects the Employer contention.

1) In his brief the Employer recalculates the value of his proposal, based on the percentage increase over 1978-79 as 15.15% over the two years, and further recalculates the value of the Association proposal on the same basis at 18.65%. In view of the evidence submitted at hearing, where the Employer used the calculation in successive years, the undersigned will do the same, because it is the more customary method of calculating the second year of a two year proposal.

Neither party to these proceedings placed evidence in the record with respect to patterns of settlements, i.e., percentages of increase among comparable school districts. In view of the Employer argument, however, that employers and associations are "heeding the call", the undersigned considers it appropriate to take notice of the patterns of settlement with which he is familiar. In numerous cases in the present round of bargaining, the undersigned is aware of settlements in the eight and nine per cent range, and the undersigned views the eight and nine percent range to be typical for the instant round of bargaining. Having taken notice of these settlements, it would follow that the Association proposal at a value of 17.86% for the two years cannot be viewed to be excessive. Further, the undersigned concludes that in view of the patterns of settlement with which he is familiar, the 14.62% offered by the Employer does not come up to the pattern.

With respect to the impact of the federal guidelines, the Employer reliance on the guidelines is misplaced. In the statutory criteria the Mediator-Arbitrator is directed to take into consideration changes in circumstances during the pendency of the proceedings, and certainly the guidelines currently are in a state of flux. It is clear to the undersigned that the Council on Wage and Price Stability has abandoned the 7% standard they heretofore set as a voluntary guideline, and that they are considering the promulgation of guidelines significantly in excess of the 7% standard. In view of the foregoing, and in view of the increase in the Consumer Price Index which the Mediator-Arbitrator is required to consider under the statutory criteria, the 14.62% offer of the Employer does not appear to be adequate. Furthermore, the 14.62% offer of the Employer includes the cost of an alternative option of prescription drugs and long term disability, which is not included in one of his alternative offers, and which he describes as a buy out of the unrestricted personal leave provision. If one were to consider the prescription drug and long term disability offer of the Employer as payment for restricting personal leave days, then the value of the Employer offer would be further reduced by an amount that the undersigned calculates to be approximately .8% over the two years. If this .8% were subtracted from the total value of the Employer offer, his offer then becomes 13.82% for the two years of the Agreement.

From all of the foregoing, then, the undersigned concludes that when considering the values of the party's offers, the Association offer should be adopted.

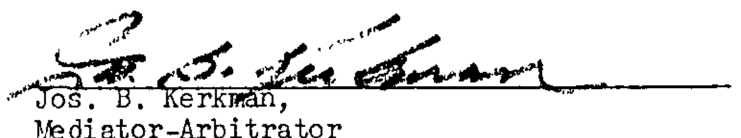
SUMMARY AND CONCLUSIONS:

In the foregoing discussion the undersigned has concluded that the issues of long term disability, drug insurance, snow make-up days, salary schedule, and cost of living are decided in favor of the Association. Additionally, the undersigned has determined that the issue of personal leave days (if it were not included in the form of an alternative offer and if the "quid pro quo" were sufficient), posting of vacancies, and school calendar should be decided in favor of the Employer. After careful consideration of the offers in their totality, and particularly after having concluded that the value of the Employer offer is not sufficient; the undersigned concludes that the final offer of the Association in its entirety should be adopted. Therefore, based on the record in its entirety, and after considering the criteria contained in the statute; and based upon the discussion set forth above, after considering the arguments of the parties, the Arbitrator makes the following:

AWARD

The final offer of the Association, and those prior agreements entered into in bargaining as contained in the stipulations as filed with the Wisconsin Employment Relations Commission, as well as those provisions of the predecessor Collective Bargaining Agreement which remain unchanged during the course of bargaining, are to be incorporated into the parties' Collective Bargaining Agreement for the years 1979-80 and 1980-81.

Dated at Fond du Lac, Wisconsin, this 15th day of February, 1980.



Jos. B. Kerkman,
Mediator-Arbitrator

JBK:rr