

RECEIVED

NOV 6 1979

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Case of the Final and Binding

Mediation-Arbitration

Between

THE WILD ROSE EDUCATION ASSOCIATION

and

THE UNIFIED SCHOOL DISTRICT OF WILD ROSE

Case VI
No. 24913 MED/ARB-480
Dec. No. 17183-A

ARBITRATOR'S AWARD

November 6, 1979

Gordon Haferbecker
Mediator-Arbitrator

BACKGROUND

This is a dispute over contract terms between the Wild Rose Education Association (Association) and the Unified School District of Wild Rose (Employer). The Association is the voluntarily-recognized bargaining representative of employees of the District consisting of all full-time and regular part-time teachers.

The dispute concerns the 1979-80 contract between the parties. The parties exchanged their initial 1979-80 contract proposals on January 17, 1979. Thereafter and prior to July 16, 1979, they met on nine occasions, including a mediation session conducted by Douglas Knudson, a member of the Wisconsin Employment Relations Commission staff, in efforts to reach a new collective bargaining agreement. On July 16, 1979, the Association filed a petition with the Commission requesting the initiation of Mediation-Arbitration pursuant to Section 111.70(4)(cm) of the Municipal Employment Relations Act. The parties waived an investigation of the petition and exchanged their final offers and submitted their final offers, as well as a stipulation of matters agreed upon, to Mr. Knudson, the Mediator. On July 30, 1979, the Mediator notified the parties that the investigation was closed and he advised the Commission that the parties remained at impasse.

The parties selected Gordon Haferbecker of Stevens Point from a list of mediator-arbitrators submitted by the Commission. Mr. Haferbecker was appointed by the Commission on August 14, 1979.

Mediation was scheduled for 4:00 p.m., September 10, 1979, and continued until about 1:30 a.m. Mediation was not successful and a formal arbitration hearing was scheduled for September 21 at 9:00 a.m.

The Association was represented by David Hanneman of the Central Wisconsin Uniserv District. Barbara Sobralski, President of the Association, and Mary Troxel, Chief Negotiator, were witnesses for the Association. The Employer was represented by Mr. Harlowe Long, a member of the Wild Rose School Board and by Mrs. Judy Jensen, another Board member.

The parties presented the issues and entered exhibits. The parties agreed to waive a transcript of the proceedings and to waive the filing of briefs.

The Arbitrator and the parties agreed that they could attempt further negotiations prior to an arbitration decision. It was agreed that each party would report to the Arbitrator by September 28 as to whether any progress was being made. If there was no indication of a likely settlement, the record would be closed on October 5 and the Arbitrator would proceed to render a decision, choosing the final offer of one of the parties. The final offers would be those reported to the Commission prior to the Mediation-Arbitration proceedings.

Negotiators for the parties conferred during the two weeks subsequent to the hearing but were not able to reach a settlement and they notified the Arbitrator of that fact.

As agreed at the hearing, the Association later provided the Arbitrator with exhibits concerning contract terms on dental insurance (Assoc. Exhibits 106, 107) and the Berlin School District contract concerning just cause (Assoc. Exhibit 108). The Association also provided the Arbitrator and the Employer additional exhibits concerning 1979-80 school district salary settlements (Assoc. Exhibits 108 and 110).

Communications from the parties between the date of the hearing (September 21) and October 5 seemed to indicate some desire to change final offers and to narrow the issues to be decided by the Arbitrator. Accordingly, the parties and the Arbitrator agreed to a further meeting with the negotiating teams on Thursday, October 18. The parties were not in agreement on proposed changes in their final offers and it was agreed that the Arbitrator should proceed with his decision, choosing between the final offers of the parties as reported to the WERC. The arbitrator will comment later concerning further communications received from the parties on October 24 and 29.

ISSUES

The unresolved issues in this case include Fair Share, Binding Arbitration of Grievances, Just Cause, In-House Substitution, the Salary Schedule for 1979-80, and Dental Insurance.

EMPLOYER'S LAST OFFER

I. FAIR SHARE -- Board accepts Fair Share concept and offers dues deduction for same.

II. BINDING ARBITRATION -- Board rejects Binding Arbitration as part of the teacher's contract.

The Board's proposal for processing grievances provides for immediate action by Board of Education but stops short of abdication of Board's authority and right to manage the administration of the educational enterprise.

III. JUST CAUSE -- Board of Education rejects the Just Cause terminology, electing to abide by legal opinion and the fairness of the courts without addition of phraseology that could jeopardize its legal position in the event of court action by an employee.

IV. IN-HOUSE SUBSTITUTION -- Board rejects proposal of Wild Rose Education Association in regard to a detailed spelling-out of administrative function. Right of teachers will be respected and equitable policies will be followed by the administration wherever a departure from routine teaching duties is needed. Teachers still have an effective means of redress through the Grievance procedure in the contract.

V. SALARY SCHEDULE -- See Schedule Attached.

In trying to keep within the guidelines the basic salary schedule represents a 7.00% increase. However, additional health benefits were added to the hospitalization policy which when added to the cost package represents an 8.0597% increase.

POSITION TEACHERS WOULD FIND THEMSELVES ON 1979-80 SCHEDULE

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1. BS	10050	10325	10600	10875	11150	11450	11750	12050	12350	12675	13000	13325	13650	14000	14350	14700	15050	15400
		6	2	4	2	3½	3½	2	2	1	3	1	2		2½	4		
2. BS + 6	10150	10425	10700	10975	11250	11550	11850	12150	12450	12775	13100	13425	13750	14100	14450	14800	15150	15500
			1		1		1											
3. BS + 12	10250	10525	10800	11075	11350	11650	11950	12250	12550	12875	13200	13525	13850	14200	14550	14900	15250	15600
		1																
4. BS + 18	10350	10625	10900	11175	11450	11750	12050	12350	12650	12975	13300	13625	13950	14300	14650	15000	15350	15700
5. MS	10550	10825	11100	11375	11650	11950	12250	12550	12850	13175	13500	13825	14150	14500	14850	15200	15550	15900
					1	1												1

1. BS	38½
2. BS + 6	3
3. BS + 12	2
4. BS + 18	0
5. MS	3
TOTALS	46½

- VI. DENTAL PLAN -- Board rejects Wild Rose Education Association proposal to include dental insurance in the contract.

ASSOCIATION'S LAST OFFER

II. FAIR SHARE

The Association, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, Association and non-Association, fairly and equally, and all employees in the unit will 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 made available to all employees who apply consistent with the Association constitution and by-laws.

The employer agrees that effective thirty (30) days after the date of initial employment or thirty (30) days after the opening of school it will deduct from the monthly earnings of all employees in the collective bargaining unit an amount of money equivalent to the monthly dues certified by the Association as the current dues uniformly required of all members, 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.

Changes in the amount of dues to be deducted shall be certified by the Association 15 days before the effective date of the change. The employer will provide the Association with a list of employees from whom deductions are made with each monthly remittance to the Association.

SAVE HARMLESS CLAUSE

The Wild Rose Education Association and the WEAC do hereby indemnify and shall save the Wild Rose Board of Education 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 Board, which Board action or non-action is in compliance with the provisions of this Agreement, and in reliance on any list or certificates which have been furnished to the Board pursuant to this article, provided that any such claims, demands, suits, or other forms of liability shall be under the exclusive control of the WEAC and its attorneys.

III. BINDING ARBITRATION

STEP IV

If the grievant is not satisfied with the disposition of the grievance or no decision has been rendered, the Association may submit the grievance to the Wisconsin Employment Relations Commission (WERC) for arbitration under its rules. The decision of the arbitrator shall be final and binding on the parties.

2. Procedures for Arbitration.

- a) Written notice of a request for such arbitration must be given to the Board of Education within fifteen (15) days of the receipt of the Board's decision as specified in Step III of the Grievance Procedure.
- b) It is agreed by the representatives of the Association and the Board that the issue involves the interpretation or application of a specific issue of this agreement.
- c) The arbitrator shall meet with the representatives of both parties, hear evidence, and give an opinion within thirty days of the close of the hearing. This article does not preclude the right of the Association, teacher, or Board, to use the appellate procedures outlined by law.

IV. JUST CAUSE

No teacher shall be disciplined, suspended, reduced in rank or compensation, non-renewed or discharged without just cause.

V. INTERNAL SUBSTITUTION

During the term of this agreement, the Board will hire substitute teachers to replace absent teachers whenever possible. If no substitute teachers are available or if the duration of substitution is very short, (i.e. one period) the Board may on a rotational basis assign teachers to substitute during their preparation period. If teachers are assigned to substitute during their preparation period, they shall be reimbursed as follows: \$6.00 per high school period, \$4.50 per elementary assignment.

	BA	BA+6	BA+12	BA+18	MA
0	10,200	10,350	10,500	10,650	10,800
1	10,500	10,650	10,800	10,950	11,100
2	10,800	10,950	11,100	11,250	11,400
3	11,100	11,250	11,400	11,550	11,700
4	11,400	11,550	11,700	11,850	12,000
5	11,725	11,875	12,025	12,175	12,325
6	12,050	12,200	12,350	12,500	12,650
7	12,375	12,525	12,675	12,825	12,975
8	12,700	12,850	13,000	13,150	13,300
9	13,050	13,200	13,350	13,500	13,650
10	13,400	13,550	13,700	13,850	14,000
11	13,750	13,900	14,050	14,200	14,350
12	14,100	14,250	14,400	14,550	14,700
13	14,475	14,625	14,775	14,925	15,075
14	14,850	15,000	15,150	15,300	15,450
15	15,225	15,375	15,525	15,675	15,825
16	15,600	15,750	15,900	16,050	16,200
17	15,975	16,125	16,275	16,425	16,575

VII. DENTAL INSURANCE

The Board shall provide, without cost to the employee, the WEA Insurance Trust dental plan 701-HIA. This plan shall remain in force for a minimum of one year for each individual in the definable group.

The parties reviewed the issues involved in their last offers and there was cross-examination concerning each other's exhibits. The parties did not enter into any stipulations of facts at the hearing. The issues will be reviewed separately.

FAIR SHARE

A reading of the final offers makes it appear that the parties are in agreement that there should be a fair share plan in the contract. The Association proposes specific language for the contract while the Employer says that it "accepts the fair share concept and offers dues deduction for the same."

Employer Position. In Employer Exhibit 1, presented at the hearing, the Employer presents his own concept of "Fair Share." The Employer's position is as follows: "In the matter of Fair Share, the Board sees its duty to protect the right of an employee to remain outside of the WREA Union. If he/she wishes to contribute to the union to help pay the expenses of arbitration he/she may do so. The board would even agree that perhaps he/she should share in these expenses. However, the Board balks

at the interpretation that has been applied to fair share--namely, that it means the whole amount of the Association dues, in effect forcing the teacher to support and perpetuate the union without being part of it. In our protective role as employer we do not acquiesce in this coercive caper. We do, however, agree to check off such amounts as the teacher agrees to have removed from his/her pay and turn it over to the WREA. Such an arrangement is presently in force" (Employer Exhibit 1, p. 3).

The Employer pointed out that of the seven districts surrounding Wild Rose, Fair Share is found in only two--Plainfield and Wautoma--and is not found in Amherst, Berlin, Almond, Waupaca, and Weyauwega.

Association Position. The Association's Exhibit 68 shows that Fair Share is found in three conference schools, Plainfield, Shawano-Gresham, and Shiocton. There are seven conference schools that do not have it. Among schools within a 40-mile radius, 14 have fair share and 23 do not (Assoc. Exhibit 43). The Association pointed out that the Employer's Final Offer accepts the concept of Fair Share.

Arbitrator's Comments. The Employer's Exhibit 1 seems to contradict what is proposed in the Employer's Final Offer. The Employer did not mean to accept Fair Share as commonly understood and practiced in Wisconsin public employee contracts. Such contracts do require the non-Union employee to pay the equivalent of Union dues. The Employer seems to be opposed to this but he did not provide appropriate wording in his Final Offer. During mediation it was pointed out to the parties that either party could change its final offer with the consent of the other party but the Employer did not propose a change in its fair share offer.

As far as common practice is concerned the parties are in agreement that Fair Share is found in some area schools but not in a majority of them.

The Wisconsin Statutes do provide "that employees may be required to pay dues in the manner provided in a fair share agreement" (111.70,(2)).

BINDING ARBITRATION

Employer Position. The Employer rejects the Association's proposal for binding arbitration of grievances. The Employer states, "the District does not agree to bargain away its right and duty to determine the character and scope of the educational enterprise and to prescribe the amount and distribution of its tax dollars over the management process. This process we consider to mean final determination of policy at all levels and particularly as to grievance procedures in view of the present protection of teachers' rights that is built into the Wisconsin Statutes. The courts have traditionally not refused to adjudicate teachers' petitions for such recourse" (Employer Exhibit 1, p. 1).

The Employer contends that it has revised the grievance procedure recently, and that the new procedure should be allowed to operate as a preferred remedy to that of binding arbitration by a person from outside the district. The Employer feels that binding arbitration imposed on the district would be humiliating to the Board and would be detrimental to good will and cooperation between the Board and its professional staff.

Among surrounding schools, the Employer noted that Waupaca and Wautoma provided for binding arbitration, Plainfield had advisory arbitration, Almond, local arbitration, and Amherst and Weyauwega did not have such a provision.

Association Position. The Association pointed out that binding arbitration is a very common contract provision in both public and private labor contracts and that it is less costly and faster than court actions. Most grievances can be resolved without going to the arbitration step but that possibility causes both parties to consider their positions carefully.

Association Exhibit 42 shows that 24 school districts within a 40-mile radius of Wild Rose have accepted binding arbitration and 13 have not. Among conference schools 5 have accepted binding arbitration and 3 have not. In two others it is a 1979-80 contract issue (Assoc. Exhibit 69). Among contiguous districts three have accepted binding arbitration and three have not (Assoc. Exhibit 88).

Arbitrator's Comments. It is clear that binding arbitration is widely accepted as an appropriate means of resolving grievances in a majority of schools within a 40-mile radius of Wild Rose and in several of the contiguous school districts. Binding arbitration has long been accepted in the private sector as an alternative to strikes and to court actions. It is becoming increasingly common in the public sector. It does mean as the Employer points out that the Board of Education would no longer be able to make the final decision in grievance cases if the steps leading up to arbitration were not successful in resolving the dispute.

JUST CAUSE

The Association is requesting that the 1979-80 contract include the application of the just cause standard for discipline, supervision, reduction in rank or compensation, non-renewal, and discharge. The Employer rejects inclusion of just cause in the agreement.

Employer Position. The Employer contends that teachers' rights "are a matter for the Legislature and the courts, and that teachers are taken care of thereby" (Employer Exhibit 1, p. 5). The teachers have not shown that there have been a series of incidents of abuse involving the school district as employer. Therefore, no need for a just cause standard has been demonstrated. Four neighboring school districts do not have just cause in their contracts as opposed to three districts which do (Employer Exhibit 1, p. 5 and p. 7).

Association Position. The Association argues that just cause is very common in private sector contracts and is increasingly common in the public sector. It provides a reasonable standard which can be applied to such matters as discipline, non-renewal, and discharge. It eliminates the need to go to court in many instances and provides a faster and less costly method of resolving grievances.

Association Exhibit 41 shows that 27 school districts within a 40-mile radius of Wild Rose have a just cause clause in their contract; an additional two have a clause similar to cause in their contract. Seven schools do not have such a provision.

Among conference schools, 7 have just cause in their contracts, and 2 do not. For one additional district, Amherst, information was not available and for Wild Rose and Rosholt the issue is involved in their final offers (Assoc. Exhibit 67).

Among contiguous locals, three have just cause (Plainfield, Berlin, and Almond). Two have a contract clause similar to just cause (Waupaca and Wautoma) and only one (Weyauwega) does not have such a clause.

Arbitrator's Comments. It is apparent that the just cause concept is accepted by a substantial majority of school districts within a 40-mile radius including contiguous districts and conference schools.

At the hearing, the parties disagreed concerning just cause in the Berlin School District. The Association has since provided the Arbitrator and the Employer with the Berlin contract. Article 7 of the 1977-80 contract states "No non-probationary teacher shall be discharged or non-renewed without just cause" (Assoc. Exhibit 108). The Arbitrator notes that there is therefore a just cause clause in the Berlin contract but he also notes that the Wild Rose Education Association proposal is broader in scope than that of the Berlin District. The Association proposal here would apply not only to discharge and non-renewal but also to discipline, suspension and reduction in rank or compensation.

IN-HOUSE SUBSTITUTION

The present policy in the Wild Rose School District provides that teachers may be required to substitute for an absent teacher during the substitute's normal preparation period. The Association wants additional pay for such substitution periods. The Employer rejects this approach.

Employer Position. The Employer rejects the spelling-out of additional hourly remuneration during the same hours for which the teacher is being paid. The Employer feels that the Association concept here of hourly wages is not proper for professionally-oriented teachers. The Employer "reiterates his intent to acquire the services of qualified substitutes in the absence of any teachers, where practicable, in the view of the principal, whose duty it is to make such decisions and judgments" (Employer Exhibit 1, pp. 3-4).

The Association contends "that there has been flagrant abuse of the assignment implications in the contract, but such abuse is not possible under the grievance procedure as proposed by the board. . . . The policy in part states that any assignment deemed unfair, unneeded or grievable, should be grieved in triplicate, to the principal, the administrator and the board, thus insuring awareness on the part of all three superiors. Thus, neither party may plead innocence and allow such grievance to fail by default. The board feels that it should be allowed to act responsibly and fairly for the good of the whole enterprise rather than have this function displaced by regulation. An adverse ruling by the arbitrator will in effect impose such rule by regulation and divest the enterprise of its bond of cooperation between faculty and board of education" (Employer Exhibit 1, p. 4).

Association Position. The Association presented Exhibits 15 and 16 showing 1978-79 school year substitutions by teachers for other teachers who were absent for illness or other reasons. High school teachers spent 65 periods substituting. Two individuals substituted ten times.

Elementary teachers substituted 55 times; a few individuals substituted for as many as seven periods, and one for as many as ten periods.

The Association presented Exhibit 55 which listed 18 school districts within a 40-mile radius of Wild Rose which provide contract language which guarantees preparation time for elementary teachers. Twenty-one such districts guarantee such preparation time to secondary teachers. The effect of such contract clauses is to minimize or eliminate the practice of in-house substitution. Wild Rose does not have such a contract clause.

The Association also presented Exhibit 45 showing the compensation policy in 12 area schools which provide some dollar compensation for in-house substitution.

The Association indicated that its concern on this issue was not primarily to get additional dollars for the teachers but was aimed at assuring more preparation time for teachers and reducing what it considered to be the Employer's excessive use of in-house substitution.

Arbitrator's Comments. The Employer does seem to concede that there may have been excessive use of in-house substitution in the past but it feels that the matter can be taken care of in the future by closer scrutiny by the Board of what is occurring and that abuses of the policy can be remedied through the grievance procedure.

DENTAL INSURANCE

This is a new fringe benefit which the Association is requesting. The Association proposes that the WEA Insurance Trust Dental Plan 701-H1A be included in the contract and that it be fully paid for by the Employer. The cost of this insurance would be \$5.62 for single employees and \$17.16 for the family rate.

Employer Position. The Employer rejects the Association proposal. There has not been a preponderance of neighboring comparable schools providing for dental insurance in their contract and the Wild Rose District does not wish to be a front-runner in this area.

The Employer states that while dental insurance is a mandated item for negotiation, the Association proposal identifies the carrier which is a permissive item, the prerogative for which lies with the Employer.

Association Position. The Association in its Exhibit 58, points out that dental insurance is rapidly growing as an accepted fringe benefit. In September 1973, only three plans were in effect for Wisconsin teachers; in September 1979, 93 plans were in effect.

Plainfield, a contiguous school district provides dental insurance to its employees. Within a forty-mile radius of Wild Rose, 16 schools are listed as having dental insurance. Wautoma and Weyauwega are discussing this for their 1979-80 labor agreement.

Since the Employer had raised the question of the legality of the Association's naming of the insurance carrier in its proposal, the Association, in Mr. Hanneman's letter of September 26, pointed out that the WERC had certified the final offers of the parties. The letter noted that the NLRB has held that the matter of the insurance carrier is a mandatory subject of bargaining.

The Association provided copies of various area agreements wherein the insurance carrier is named in the collective bargaining contract.

Arbitrator's Comments. In a letter to the Arbitrator, October 8, 1979, Mr. Long, in behalf of the Employer, questioned whether it was proper, after the formal hearing, for Mr. Hanneman to insert an argument concerning the WERC's understanding of the final offer as it pertains to the dental plan.

The Arbitrator responded in a letter to Mr. Long on October 11, 1979, and indicated that on this question, the Arbitrator would need to be guided by the Wisconsin Statute (111.70, 6a) which states:

"Prior to the close of the investigation each party shall submit in writing its final proposals on all subjects in dispute to the Commission. Such final offers may include only mandatory subjects of bargaining. Permissive subjects of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject."

In view of the statute as quoted, this Arbitrator does not need to rule on whether the naming of the insurance carrier is permissive or mandatory. The Association's proposal is legal. If the Employer wanted to question its inclusion in the Association's offer, this would have had to be done before the submission of the final offer to the Commission.

It is evident also from the Association's Exhibits that at least some public employee labor contracts do name the insurance carrier. In some contracts the Employer selects the insurance carrier.

On the question of comparability dental insurance is growing as a fringe benefit in teacher contracts but it is not yet found in a majority of area schools.

SALARY SCHEDULE FOR 1979-80

The Association is proposing a base salary of \$10,200 at the B.A. level and increment sizes of \$300, \$325, \$350, and \$375. The Employer is offering a base salary of \$10,050 and increments of \$275, \$300, \$325, and \$350.

There was some disagreement between the parties concerning what increments had been agreed to for the 1978-79 contract but the Arbitrator has been informed that the agreement to have increments of \$300, \$325, \$350, and \$375 has been implemented for 1978-79.

Employer Position. The Employer states that its salary offer reflects an 8 percent increase in total compensation for the teaching faculty. The Employer wants to abide by President Carter's guideline to keep the salary increase within the 7 percent guideline. The Employer estimates that it has provided a basic salary schedule change of 7.001 percent but that additional health benefits bring the cost of the package to an 8.0597 percent increase.

The Employer points out that the Wisconsin Legislature has provided a seven percent increase to the organized employees of the State.

The Employer concedes that inflation is proceeding at a rate in excess of its offer but points out that nearly everyone in the population is being hurt by the high rate of inflation that we are currently experiencing.

The Employer did not challenge the Association's salary comparisons except to note that comparisons with communities in which the high wage paper industry predominates were not appropriate in relation to wages in a small rural community like Wild Rose.

Association Position. The Association provided 105 exhibits at the hearing, a majority of them related to salary comparisons. Districts used for comparisons included (1) contiguous local districts; Weyauwega, Plainfield, Waupaca, Wautoma, Almond, and Berlin, (2) athletic conference school districts; Port Edwards, Shawano-Gresham, Shiocton, Plainfield, Necedah, Tigerton, Rosholt, Bowler, Almond, Iola-Scandinavia, and Amherst, (3) school districts within a 40-mile radius of Wild Rose. There are 41 such districts including Wild Rose. (4) Forty-three school districts throughout the State that are similar in size (651 to 1030 in student enrollment; Wild Rose has 793).

Most of the exhibits were concerned with 1978-79 salaries and these will be reviewed first. Exhibit 9 showed Wild Rose ranking 43 of 43 Wisconsin school districts in its B.A. level starting salary. In most of the B.A. salary steps it ranked from 30 to 34 out of 43. At the M.A. level it ranked 43 out of 43 and 38 out of 43 at most of the M.A. steps.

When a composite salary schedule is used, based on the schools within a 40-mile radius of Wild Rose, Wild Rose was found to rank lowest in each salary lane and in the lower one-fourth in most other steps. It ranked 37 or 38 out of 38 on most M.A. steps (Assoc. Exhibit 46).

Using the same schools, Wild Rose had the lowest B.A. base in 1978-79 (Assoc. Exhibit 48). At the B.A. maximum it ranked in the middle, \$13,925. The average was \$14,027 (Assoc. Exhibit 49). The Wild Rose M.A. minimum was the lowest of the schools compared (Assoc. Exhibit 42). The M.A. maximum ranked 28 out of 38 districts (Assoc. Exhibit 53).

Among conference schools, Wild Rose ranked lowest in its B.A. minimum for 1978-79 (Assoc. Exhibit 70). Its B.A. maximum was 5th out of 11 conference schools (Assoc. Exhibit 71). In M.A. minimum it ranked 11th out of 11 conference schools (Assoc. Exhibit 74). In M.A. maximum it ranked 5th out of 11 schools (Assoc. Exhibit 75). In the ratio of the M.A. base to the B.A. base it ranked 9th out of the 11 schools (Assoc. Exhibit 78).

When a composite salary schedule for the conference schools is compared with the Wild Rose schedule, Wild Rose ranks lowest in most of the education and experience steps (Assoc. Exhibit 82).

Among the seven contiguous school districts, Wild Rose had the lowest 1978-79 B.A. base (Assoc. Exhibit 90). Its B.A. maximum was 3rd out of 7 (Assoc. Exhibit 91). Its M.A. base was the lowest of the 7 schools (Assoc. Exhibit 94). It ranked 5th out of the 7 in its M.A. maximum (Assoc. Exhibit 95). In the ratio of M.A. to the B.A., it ranked last among the seven schools, along with Weyauwega (Assoc. Exhibit 98). In comparing Wild Rose with a composite of the contiguous school district salaries, it ranked lowest or next to the lowest in most of the experience and education steps (Assoc. Exhibits 100 and 102).

1979-80 Salary Comparisons. In school districts with 30-49 teachers, based on settlements by August 31, 1979, the average B.A. minimum was \$10,182, compared with \$10,200 requested by the Wild Rose Association and \$10,050 offered by the Employer (Assoc. Exhibit 6). The Association's offer was above the average B.A. maximum, below at the M.A. average minimum, and within a few dollars of the M.A. maximum.

Among contiguous locals that have settled 1979-80 contracts, the Association's proposed B.A. base ranks 6th of the 7 that have settled. The range is from \$10,000 (Plainfield) to \$10,400. The Association's offer is \$10,200 and the Employer's offer is \$10,050. Plainfield has included vision insurance in its 1979-80 contract (Assoc. Exhibit 109).

Among conference schools that have settled for 1979-80, the Wild Rose Association proposal would rank the B.A. base 9th out of 11 schools, with Plainfield and Necedah lower at \$10,000. The range is from \$10,000 to \$10,800 (Assoc. Exhibit 110).

Size of increment. The Association and the Employer differ in their salary offers in the proposed increments, with the Association increments being \$25 higher than those of the Employer.

In comparing B.A. increments for 1978-79 among schools within a 40-mile radius, Wild Rose ranked 23 out of 39. The average B.A. increment was \$375; Wild Rose was \$352. Under the Association proposal for 1979-80, it would be \$340, and it would be \$315 under the Employer's offer (Assoc. Exhibit 50). In average M.A. increment, Wild Rose ranked 31 out of 39 schools (Assoc. Exhibit 54).

Among contiguous locals, Wild Rose ranked 6th out of 7 districts in the average M.A. increment for 1978-79 (Assoc. Exhibit 96). It ranked 4th out of 7 in its B.A. average increment (Assoc. Exhibit 92).

Inflation and salaries. The Association compares base salaries at the B.A. and M.A. level in Wild Rose from 1975-76 to 1979-80. It compares these with changes in the Consumer Price Index over the period and assumes a slightly smaller C.P.I. 1979-80 increase than occurred for 1978-79. Comparing the Association's 1979-80 salary proposal with changes in the C.P.I., the B.A. minimum would need to be \$10,916 to keep pace with inflation (above the \$10,200 proposed) (Assoc. Exhibit 27). At the B.A. maximum, the salary needed would be \$14,871 and the Association's proposal is \$15,225 (Assoc. Exhibit 28). At the M.A. minimum the salary needed would be \$11,589, and the Association proposal is \$10,800 (Assoc. Exhibit 29). At the M.A. maximum the Association proposes \$16,200 and the amount needed to meet inflation is \$16,292 (Assoc. Exhibit 30).

The Employer's offer for 1979-80 would leave the B.A. base \$866 behind the C.P.I. increase since 1975-76. The B.A. maximum would be \$521 behind. The M.A. minimum would be low by \$1039 and the M.A. maximum low by \$742 (Assoc. Exhibits 36, 37, 38, 39).

The Association presented estimates of the percentage increases to teachers under the Employer's offer and the Association offer (Assoc. Exhibits 18 through 24). At the B.A. level the median percentage increase would be 9.09% and the average would be 10.24%. The Employer's median would be 6.17% and the average 6.78%.

At the M.A. level, the Association's average percentage increase would be 10.135% and the median 9.56%. The Employer's average would be 6.39% and the median 4.82%.

The Association's salary offer provides average salary increases for teachers that are below the 11.3 increase in the C.P.I. which occurred from July, 1978 to July, 1979 (Assoc. Exhibit 12).

The State of Wisconsin granted 7% increases as the Employer notes but there were also step increases of about 2% which raised the total settlement. The Association's percentage increases also include step increases.

STATUTORY STANDARDS

The statutes state that the mediator-arbitrator shall give weight to certain criteria set forth in the Wisconsin Statutes 111.70 (4) (cm) 7, which read:

- 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.

In this case, neither party raised ability to pay as an issue. Most of the wage and fringe benefit comparisons were with other teacher bargaining units which is not unusual in teacher cases. The parties did provide data on the cost of living. Concerning the lawful authority of the employer, there was a question raised concerning the legality of naming an insurance carrier in the contract. This has been discussed under the issue of dental insurance.

ARBITRATOR'S ANALYSIS

This has been a difficult case for the arbitrator because of the number of issues involved, four primarily non-economic, and two primarily economic. It would have been better if the number of issues could have been reduced prior to the formal hearing but efforts to achieve this were not successful.

The Non-economic Issues. These are fair share, in-house substitution, just cause and binding arbitration of grievances. Both parties included fair share in their final offers but the Association proposal provides a clearer explanation of how the proposal should be implemented and the language is similar to that found in many teacher contracts.

If the Employer offer were accepted on this issue, the parties would need to bargain on the details of implementing the plan.

A just cause clause in the contract concerning Employer action in discipline, non-renewal, and discharge is very common in collective bargaining contracts as is provision for binding arbitration of grievances.

They are usual and customary objectives of unions in an effort to assure fair treatment of employee grievances. In the private sector they have been helpful in eliminating wildcat strikes and they have helped assure that employers will administer discipline in a fair and unbiased manner. They are widely accepted with public sector. As the Association has shown, about two-thirds of the districts within a 40-mile radius of Wild Rose have accepted binding arbitration for grievances. Among conference schools five have accepted it, three have not, and in two others it is a 1979-80 contract issue. Among contiguous schools, three have accepted it and three have not.

Just cause is found in a substantial majority of districts within a 40-mile radius, in a majority of conference schools, and in three of the contiguous districts. Granting just cause and binding arbitration would give the Wild Rose teachers a right that most area teachers already have.

The Arbitrator does not find much merit in the Employer's argument that teachers' rights "are a matter for the Legislature and the courts, and that teachers are taken care of thereby." One purpose of just cause and binding arbitration is to make court actions unnecessary and to provide an orderly and reasonable means of resolving grievances without as much delay and cost as is often the case in court actions. It is understandable that most teacher unions are dissatisfied with the Board of Education as the final judge in grievance matters and prefer a procedure in which a neutral will issue the final decision if internal procedures do not resolve a grievance. The Employer noted that the teachers in their case presentation did not give examples of unfair treatment by the Employer. If such instances had been presented, there would still probably have been a difference of opinion between the parties as to whether the treatment was fair and equitable.

The Arbitrator concludes that on the issues of just cause and binding arbitration the Association position is more reasonable. The issue of in-house substitution is included in the non-economic issues because neither party is concerned about the cost. Both anticipate that its effect, if adopted, would be primarily to reduce the use of teachers to substitute for single periods while other teachers are absent. The Employer feels that this is additional compensation while the teachers feel that they are denied necessary preparation time which then must be added to their out-of-school duties. Both parties seemed to feel that too much use had been made of in-house substitutes during the 1978-79 school year but the Employer felt that the matter was now being handled more equitably and that future problems could be handled through the grievance procedure.

The Arbitrator feels that this is a secondary issue, in comparison to major issues like just cause and binding arbitration. I am sympathetic to the Employer position that the new practice, for Wild Rose, of additional pay for in-house substitution be deferred to give the Employer opportunity to reduce the use of such substitutes through changes in assignment practices and through the grievance procedure. The Association position has some merit, in protecting teacher preparation time but in view of the Employer's good faith attempt to reduce abuses in this area, I find the Employer's position more reasonable.

Conclusion. Taking these four issues as a group, I find the Association position, as a whole, more reasonable. On the most important of these--just cause and binding arbitration--the Association has made the better case for their acceptance as part of the contract between the parties.

The Economic Issues. There are two such issues, the salary schedule and dental insurance. The salary question has two parts on which the parties differ--the amount of the increments and the base salary. Of course each of these affects the total schedule and the total dollars.

First, on dental insurance, the Arbitrator believes that this is a secondary issue. The presentations of the parties indicate that they regard it as less important than the salary schedule which is probably the most important of the six issues in this arbitration.

It is understandable that the Employer does not want to be a leader in this relatively new fringe benefit. It is, however, found in a neighboring district, Plainfield, and there are 16 schools within a 40-mile radius that have provided such insurance. It is not a very costly fringe benefit, at least not in comparison to health insurance. It does not, however, have the widespread acceptance that the data indicated was true for just cause and binding arbitration.

In view of the number of issues in this case, the Arbitrator feels that dental insurance could well have been deferred, and he finds the Employer position more reasonable in view of the total number of issues, and in view of the greater importance of other issues.

The salary schedule question is probably the major issue in this last offer arbitration. Most of the Association exhibits dealt with this matter. The Employer placed great importance in staying close to the Carter salary guidelines. The Employer, however, did not attempt to refute most of the Association's data on salary comparisons.

On the whole, the Association's comparisons were reasonable. I think that greater weight should be given to the contiguous schools and to the schools in the athletic conference. Most of these are small rural communities comparable to Wild Rose. The comparisons with all schools in a 40-mile radius have some relevance. They are in the labor market area and they do influence the smaller schools. However, it would be unrealistic to expect Wild Rose to be similar in its teacher salaries to Neenah, Menasha, Oshkosh, Appleton, Stevens Point, and Wisconsin Rapids. They are in the 40-mile radius but they are industrial communities with higher private sector wage levels and a broader tax base. Therefore, we might reasonably expect Wild Rose to rank lower in the 40-mile radius comparisons than in comparisons with contiguous districts or with conference schools. However, its very low rank in many of the 40-mile radius comparisons does have significance.

Data cited earlier does show Wild Rose ranking at or near the bottom in many of the conference and contiguous school salary comparisons.

Would the salary schedule proposed by the Association put Wild Rose out of line with contiguous and conference schools? We do not have complete salary schedules to compare for 1979-80 but as cited earlier the Wild Rose B.A. base for 1979-80 would rank 6th among the 7 contiguous districts that have settled contracts; among conference schools it would rank 9th out of 11 in its 1979-80 B.A. base salary. On the basis of such data it does not appear that the Association request is out of line or unreasonable. The addition of dental insurance as a fringe benefit would further improve the economic position of Wild Rose teachers.

As indicated earlier, one of the differences between the parties is in the salary increments. The data cited by the Association indicates that the current increments for 1978-79 are relatively low among the contiguous districts as well as in comparisons within the 40-mile radius. The Association proposes to leave the increments at their current level for 1979-80 but the Employer proposes to reduce each increment by \$25 below the 1978-79 level. This would certainly worsen Wild Rose in its rank among other schools in the level of the increments. The Employer did not provide a good rationale for this reduction in an important part of the salary schedule.

Concerning the impact of inflation neither the Employer nor the Association proposal would avoid some loss of purchasing power for the Wild Rose teachers if salary levels and C.P.I. changes since 1975 are considered. The losses in purchasing power, however, would be substantially greater under the Employer proposal as indicated earlier.

The Association's proposed salary increases do provide substantial increases for the average or median teacher, in the range of 9% to 10% but this is below the 11.3% increase in the C.P.I. during the year ending in July, 1979.

Total Percentage Increase and Total Cost Impact of the Salary Increase and Dental Insurance. As indicated under Background, page one of this decision, the parties submitted additional data on October 24 and October 29. The Employer, on October 24, sent the Arbitrator additional data on the total percentage increase of the Association offer (Employer Exhibit 2). The Arbitrator felt that the data should have been submitted at the hearing but because of the significance and in the interest of being as fair as possible to both parties, the exhibit was allowed, subject to a response from the Association, which was sent to the Arbitrator on October 29 (Assoc. Exhibit 111).

The Employer's final exhibit stressed the total cost increase of the Association's last offer. It contended that using the projected increases for the same teachers, employed in 1978-79, the increase under the Employer's offer would be 7%. The increased hospital insurance cost would be \$5,580 for a total raise of 8.059%. The Association's salary proposal would result in an increase of 9.9668%. Hospital benefit increases would bring it to 11.024% and dental insurance of \$8,084 would advance the total increase to 12.557%.

The Association in its response (Assoc. Exhibit 111) pointed out that the hospital insurance change has not yet been implemented, pending a final contract, and that its projected cost if effective December 1, 1979, would be \$4,372, not \$5,580. This would be an increase over last year's budget of 0.776% not 1.059%. Since dental insurance cannot be implemented before December 1, its real cost for the ten months would be \$5,071 rather than the Employer's figure of \$8,084. The annual cost would be \$6,085.

Because of a staff turnover of 30% for 1979-80, the Association's proposal would result in the Employer spending 6.72% new money when the District's 1979-80 and 1978-79 budgets are compared. The Employer's offer would require only 3.2% in new money.

Each side rejects the other's approach concerning costs of the offers. The Arbitrator feels that both approaches are significant and should be considered in these proceedings. I understand that the parties did agree to make salary projections on the basis of the 1978-79 staff members and the Employer in good faith has done this. The data do indicate that the Association's request would be calculated in the neighborhood of 12%. The increase may be a little less than that taking into account the late implementation of health insurance and dental insurance. The percentage increase does probably exceed the Carter voluntary wage and fringe guidelines, as do many other settlements. The parties did not provide specific data as to how other school districts are responding to the guidelines or how the cost of step increases is computed in relation to the guidelines. As noted earlier the Wisconsin employee contracts for 1979-81 did allow for both a 7% increase and step increases of about 2%.

The Arbitrator does also find the Association approach of computing actual 1979-80 cost to the District to be of significance. The taxpayers and the community certainly would want to know the actual impact of the new contract on the 1979-80 budget and it appears that this will be about 6.72% under the Association offer.

The Arbitrator has considered the question of whether the inclusion of dental insurance in the Association's offer makes the economic package so large that it should be rejected. I do not conclude that this is the case. Wild Rose teachers' salaries for 1979-80 still are low in comparison to contiguous and conference schools. The addition of dental insurance would improve the overall economic status of Wild Rose teachers. The situation of Wild Rose in contiguous districts would be somewhat like that of Plainfield where the low base B.A. salary is offset in part by dental and vision insurance.

Taking into account, changes in the C.P.I., the low rank of Wild Rose teachers in comparison with other districts, the 1979-80 salary comparisons with other districts, and the Employer's proposed reduction in 1979-80 salary increments, the Arbitrator finds the Association's 1979-80 salary and fringe benefit proposal to be clearly more reasonable than that of the Employer.

ARBITRATOR'S CONCLUSIONS

The Arbitrator finds disadvantages in the final offer of each party.

The Employer's offer of fair share lacks detailed contract language for its implementation. The Employer has rejected just cause and binding arbitration despite their widespread acceptance by large numbers of area school districts and has indicated a preference for court solutions to some disputes which could be better resolved through grievance procedures including just cause and binding arbitration. The Employer's last offer on salary would continue the low ranking of Wild Rose teachers in comparison to others, would leave the teachers further behind in relation to increases in the cost of living, and would reduce salary increments below where they were in 1978-79.

The Association's final offer also has some disadvantages. The Association is seeking through arbitration a number of basic changes in the collective bargaining relationship between the parties--including fair share, just cause, binding arbitration of grievances, and in-house substitute pay. Changes such as these are normally added through collective bargaining over a period of years. In addition to a substantial change in the basic salary schedule, it is also seeking a new fringe benefit, dental insurance, which is found in only one contiguous district. As indicated earlier, it would have been reasonable to defer a few of these items, such as dental insurance and in-house substitute pay for future bargaining.

The Arbitrator would have preferred a more moderate percentage increase in the economic package of the Association but taking into account the very low standing of Wild Rose in salary comparisons, which the Employer did not refute, a relatively large increase is needed as a catch-up increase and to restore lost purchasing power due to inflation. The moderate impact on the actual 1979-80 budget is also significant.

The Arbitrator cannot fashion a compromise but must select the final offer, in total of one of the parties.

The Arbitrator concludes that the major issues in this case are just cause, binding arbitration of grievances, and the salary schedule. I reach this conclusion on the basis of the emphasis given to these issues by the parties in their testimony and in their exhibits. These are also major concerns in most collective bargaining contracts.

Dental insurance and in-house substitute pay are secondary issues and both parties have proposed fair share.

As indicated earlier, the Arbitrator finds the Association position more reasonable and better supported by the facts on each of the three major issues and on the issue of fair share. I found the Employer position more reasonable on in-house substitution and on dental insurance.

On the basis of the above, the Arbitrator concludes that the Association's final offer for 1979-80 should be adopted. The parties will need to confer concerning the implementation of these new provisions in the contract. In the case of dental insurance, since several months have passed in the new contract, the Association proposed at the hearing that the plan could possibly be implemented in December.

After considering all of the evidence, the final offers of the parties in their entirety, the arguments and exhibits of the parties, and after applying the statutory standards, the Arbitrator makes the following:

AWARD

The final offer of the Association is to be incorporated into the 1979-80 Collective Bargaining Agreement, along with the stipulations of the parties which reflect prior agreements in bargaining for the 1979-80 contract.

Dated at Stevens Point, Wisconsin, this 6th day of November, 1979.

Gordon Haferbecker
Gordon Haferbecker, Mediator-Arbitrator