STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 To Initiate Mediation-Arbitration Between Said Petitioner and KENOSHA EDUCATION ASSOCIATION	Case LXVIII No. 24848 MED/ARB-464 Decision No. 17368-A

Appearances:

For Kenosha Unified School District No. 1:

Davis, Kuelthau, Vergeront, Stover & Leichtfuss, S. C., Attorneys at Law, by Mr. Clifford Buelow.

For the Kenosha Education Association:

Mr. Delmar Simmons, Executive Director, Kenosha Education Association.
Perry, First, Reiher & Lerner, S. C., Attorneys at Law, by Mr. Richard Perry.
Mr. Carl H. Walter, Chairman of the Negotiations Team, Kenosha Education Association.

ARBITRATION AWARD:

On November 29, 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 the Kenosha Unified School District No. 1, referred to herein as the Employer, and the Kenosha Education Association, referred to herein as the Association. Pursuant to the statutory responsibilities the undersigned conducted mediation proceedings between the Employer and the Association on January 22, 1980, at Kenosha, 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 evidence was taken in arbitration hearing on January 29, 1980, at Kenosha, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. At the commencement of the proceedings of January 29, 1980, the parties 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 either party may withdraw its final offer. The proceedings were transcribed, and the transcript was provided to the parties and to the arbitrator on February 6, 1980. Thereafter the parties filed briefs and reply briefs. The final brief was received on April 4, 1980.

THE ISSUES:

The issues in dispute can be summarized as follows:

1. SALARY - First Year

ASSOCIATION: $11,200 Base

EMPLOYER: $11,185 Base

2. SALARY - Second Year

ASSOCIATION: $12,000 Base + 2% longevity on salary for everyone at top of the lanes.

EMPLOYER: $11,975 Base - no longevity

3. INSURANCES - First Year

ASSOCIATION - HEALTH INSURANCE

The Association makes the following proposal:

The board shall provide without cost to the Employee, complete family or single health care protection. The plan shall be the WEAIT Health Plan 690 ($50.00 major medical deductible with a $250,000 maximum or equivalent. Equivalent shall mean equal to or better in benefits and equal to or less in cost.

Equivalent shall be determined by a joint committee made up of three (3) KEA members and three (3) members of the Kenosha Board of Education or its agents. In the event the committee does not decide within 20 days the matter will go to the grievance procedure at Step 2; thru and including step 4 (arbitration).

The grievance arbitrator will base his decision on the disputed plans as they existed when first submitted by the carrier or carriers.

For the purpose of clarification the increased benefits over the current plan are attached.

The employer shall implement the benefits of this provision within 45 days of the interest arbitration award provided there is no penalty or duplication of premiums.

Additionally, the Association proposes long term disability insurance as follows:

The board shall provide without cost to the Employee the WEA Trust Long Term Income Protection Plan No. 684 or equivalent. The plan will provide for 67% of salary after a 90 day qualifying period. Additionally the plan will provide a Social Security Freeze, a primary Social Security Offset and a 25% minimum benefit. The LTD shall be effective within 45 days of the interest arbitration award.

Equivalent shall mean equal to or better in benefits and equal to or less in cost.

Equivalent shall be determined in the same manner provided in the health and dental proposals.

The grievance arbitrator will base his decision on the disputed plans as they existed when first submitted by the carrier or carriers.

EMPLOYER - HEALTH INSURANCE

The Employer proposes the following language:

The District shall continue to provide on a fully paid basis hospital and surgical insurance, a major medical endorsement, to all personnel subject to this Agreement on a basis equivalent to our present coverage. Effective January 1, 1980, the health insurance coverage shall be increased to pay for all hospital charges for outpatient diagnostic x-ray and laboratory examinations for each covered participant, but with present exclusions from coverage.

The Employer makes no offer for L.T.D.

4. INSURANCES - Second Year

ASSOCIATION:

Dental Insurance - 100% Board paid. The Association proposes the following language:

Effective July 1, 1980, the board shall provide without cost to the employee family or single dental care protection.

The plan shall be the WEAlT Dental Plan 704H-1A (See attachment) or equivalent. Equivalent shall mean equal or better in benefits and equal to or less in cost.

Equivalent shall be determined by a joint committee made up of three (3) KEA members and three (3) members of the Kenosha Board of Education or its agents. In the event the committee cannot decide within 20 days the matter will go to the grievance procedure starting at step 2, thru and including step 4 (arbitration).

The grievance arbitrator will base his decision on the disputed plans as they existed when first submitted by the carrier or carriers.

EMPLOYER:

The Employer makes no offer for dental insurance.

5. ELEMENTARY BREAK TIME - First Year

ASSOCIATION:

The Association makes the following proposal with respect to elementary break time:

A. The present policy of the district is to provide release time for elementary school teachers during the day when physical education, music, and art speciality teachers have the teacher's class. During any such period when any speciality teacher is working with the teacher's class, and the teacher is not released, but is required to provide assigned duties, the elementary class teacher shall be compensated for any such duties. The compensation for any such duties shall be at the rate of $8 per speciality class period.

B. All bargaining unit personnel assigned to elementary schools shall be guaranteed a one half hour block of duty free break time during the student's school day. Time released from class when speciality teachers have the elementary teacher's class can be counted toward the one half hour block.

EMPLOYER:

The Employer makes no offer for elementary break time which would leave in place the language of the predecessor Agreement which reads at Section I, A, 2 a the following provision:

2. Teaching load

a. Elementary level. Elementary teachers shall be released from classroom responsibility during the time when an art, music or physical education teacher is instructing the class. The release time for the elementary teacher is to be used for instructional preparation only. Reasonable effort shall be made by the District to supply qualified substitutes for the special teachers when they are absent. If a qualified substitute instructor is not available, then the elementary teacher is expected to be responsible for the class without additional compensation. If the instruction takes place in an area other than the immediate classroom, the classroom teacher will escort the class to and from the instructional area. Elementary teachers are expected to have meetings with the art, music and physical education instructors in order to be able to carry on the instructional program.

6. ARTICLE XXVI CONCLUSION OF BARGAINING - First Year

ASSOCIATION:

The Association proposes to delete the terms of the predecessor Agreement found at Article XXVI entitled Conclusion of Bargaining in its entirety, and substitute the following provision:

When any policy or practice of the board or any change in such policy or practice is in conflict with any provision of this contract, the contract shall govern. Any change in any Board policy or practice which is a permissive subject of collective bargaining, including, but not limited to, those listed in Article XXVI, B of the 1977-1979 contract, shall be subject to good faith negotiations with the respect to the impact of such change upon the wages, hours, and conditions of employment of the members of the bargaining unit. Any decision to change any employment policy or practice which is a mandatory subject of collective bargaining shall be subject to good faith negotiations. Where used in this agreement, "negotiations" shall be conducted under the provisions of sec. 111.70 (4)(cm), stats. including mediation-arbitration.

EMPLOYER:

The Employer proposes to delete the provisions of the predecessor Agreement found at Article XXVI, B as permissive subjects of bargaining. The proposed deleted provision of the predecessor Agreement at Article XXVI, B reads:

B. The School Board Policies #6151 (Class Size), #6152 (Teaching Load), #6161 (Equipment, Books and Materials), and #6162 (Instructional Resources for Teachers), as adopted by the School Board on May 24, 1977, will not be modified for the duration of the 1977-79 Teacher Salary and Welfare Agreement. Alleged violations of this contract provision - meaning modifications in the above numbered policies or changes in the application of them - shall be processed in accordance with the provisions of the grievance procedure including arbitration.

The Employer would leave intact the provisions of Article XXVI, A of the predecessor Agreement which read:

A. The District and the Association do each unqualifiedly waive the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of both of the parties at the time they negotiated or signed this Agreement, except as otherwise specifically provided herein.

BACKGROUND:

The Employer and the Association have engaged in collective bargaining for many years and have negotiated a series of predecessor agreements between them. The Agreement last in force between the parties was effective from July 1, 1977, to June 30, 1979. The parties met in negotiations for a successor Agreement over a series of meetings, and were unsuccessful in their attempts to reach agreement. On July 2, 1979, the Employer petitioned for mediation-arbitration, and pursuant to the petition, Stephen Schoenfeld, a member of the staff of the Wisconsin Employment Relations Commission, conducted an investigation in the matter. During the course of the investigation Schoenfeld successfully mediated the issues in dispute between the parties, and a tentative agreement between the Employer and Association committees was entered into on or about August 23, 1979, subject to the ratification of the membership of the Association and the full Board of Education of the Employer. Subsequent to the tentative agreements reached by the respective committees on or about August 23, 1979, the membership of the Association rejected the tentative agreement.

Included in the tentative agreement rejected by the membership were:

1. A base salary agreement at $11,072 for the first year, and a base salary of $11,975 for the second year. No provision for longevity in the second year was included in the tentative agreement.

2. The provisions of Article XXVI entitled Conclusion of Bargaining would remain as set forth in the predecessor agreement.

3. The provisions of the predecessor Agreement at Section I, A 2, a entitled Teaching Load - Elementary Level, remained as set forth in the predecessor Agreement.

4. The fringe benefit provisions at Section V, A entitled Group Health Insurance remained unchanged. No provision was made for either modified health insurance language or for the inclusion of L.T.D. or dental coverage; nor was there any agreement to provide for increased out patient diagnostic x-ray and laboratory examinations under the health insurance coverage.

Subsequent to the rejection of the tentative agreement by the membership of the Association, the parties met again on October 30 and 31, 1979, with Schoenfeld present. At the commencement of the meeting held on October 30, 1979, the Association presented the Employer with a proposal entitled Settlment Issues. The proposal included the following relevant modifications to the tentative agreement of August 23, which had been rejected by the membership:

1st Year
Money -

1. $11,200 Base
2. Health Insurance

WEA Insurance Trust Plan #690

Elementary Prep Time - Release for elementary teachers during time when children in library.

Snow Days — 1 day on, 1 day off - negotiate remainder of days

Summer Work Voluntary — Language making all summer work voluntary placed in contract or side bar letter

Individual Education Programs (IEP) — Release time for elementary teachers to write IEP's

2nd Year
Money -

1. $12,000 Base
2. Longevity - 2% of each person's salary at the top of each lane added to salary of person's located at those steps. Money to be folded into salary schedule at the top.
3. Dental - 100% paid WEA Insurance Trust Plan #704H-1A

The dispute remained unresolved through the meetings of October 30 and 31 and at the conclusion of the meeting on October 31, Schoenfeld called for and received the final offers of the parties as they are set forth in the previous section of this Award, and notified the parties that the investigation was closed. Pursuant to the findings of Schoenfeld the Commission on November 9, 1979, certified the impasse and ordered that mediation-arbitration proceedings commence.

DISCUSSION:

By statutory direction the undersigned is directed to consider the disputed issues in light of the criteria set forth in the statute at 111.70 (4)(cm) 7, subparagraphs a through h. At hearing evidentiary submissions were admitted into the record, which were directed toward certain of the statutory criteria. Normally the undersigned would proceed to evaluate the evidence in light of the criteria at this point. However, in the instant matter, the Employer has raised threshold arguments which necessarily must be resolved prior to weighing

the more traditional matters in interest arbitration, i.e., the comparables, etc. The threshold arguments raised by the Employer are: 1) the Association final offer must be rejected because it contains several major proposals not bargained by the parties; and 2) the tentative agreement entered into between the respective committees on August 23, 1979, must carry with it a heavy presumption of reasonableness and, therefore, absent evidence in the record showing the reasons for the rejection of the tentative agreement the Employer's offer should be adopted. The undersigned will, therefore, initially consider the two arguments advanced by the Employer as set forth above.

SHOULD THE ASSOCIATION OFFER BE REJECTED BECAUSE IT CONTAINS SEVERAL MAJOR PROPOSALS NOT BARGAINED BY THE PARTIES?

The Employer contends that there are five proposals in the Association final offer which were not previously bargained. The Employer identifies those proposals as:

1. 30 minute duty free break time for elementary teachers
2. Arbitration concerning health insurance benefits and carrier
3. Arbitration concerning dental insurance benefits and carrier
4. Arbitration concerning L.T.D. insurance benefits and carrier
5. Deletion of the zipper clause and incorporation of a new Article XXVI

In support of his position the Employer cites Milwaukee County Deputy Sheriff's Ass'n. v. Milwaukee County, 64 Wis. 2d 651, 221 N.W. 2d 673 (1974), and Village of Greendale, Decision No. 15481-A (Kerkman 12/18/77). In Milwaukee County Deputy Sheriff's Ass'n. the Supreme Court held that under the interest arbitration provisions found at Section 111.77 of the Wisconsin Statutes, an arbitrator's award which included an issue not previously bargained by the parties prior to the final offers being filed, was to be and was set aside. In Greendale, the undersigned concluded that he was without jurisdiction after finding that there was a provision in the Union final offer which had not previously been bargained pursuant to the holdings of the Supreme Court in Milwaukee County Deputy Sheriff's Ass'n. The undersigned then is presented with two questions. Were the five provisions of the Association, which the Employer challenges, previously bargained? If they have not previously been bargained do the holdings of the Supreme Court as they apply to Section 111.77 apply with equal force to Section 111.70 (4)(cm)?

Addressing first the question of whether there had been bargaining on the five issues which the Employer asserts that no bargaining had occurred, the undersigned concludes this record supports a finding that bargaining has occurred. The Association proposals for settlement submitted to the Board on October 30, 1979, include provisions for elementary preparation time. The record amply demonstrates that the proposal in the final offer of the Association for a thirty minute block of duty free time is a proposal intended to cover the subject matter of preparation time for elementary teachers. Since the final offer proposal on duty free break time relates to the issue of elementary prep time, the undersigned concludes that bargaining has occurred. Whether the form of the Association proposal is supported by comparables or other criteria is a question which will be addressed later in this Award.

The Association has further proposed a deletion of the zipper clause and new language to replace it. In view of the Employer's evaporation of Article XXVI, B in its final offer, the undersigned concludes that the Association proposal for a new Article XXVI is a response designed to bargain over the impact of the evaporation, and since the issue was raised by the Employer's evaporation of Article XXVI, B, a response on impact cannot be said to be a new proposal over which no previous bargaining had taken place.

With respect to the other three issues over which the Employer asserts no bargaining has occurred, the undersigned notes that all of them center around arbitration of whether the insurance benefits proposed by the Association would conform to the contract terms, when a carrier is selected. It is clear that there was bargaining over insurance benefits, and it is equally clear that the

Association's prior proposal carried with it a designated health insurance carrier. The undersigned concludes that the current proposals with respect to arbitration of health insurance benefits are an attempt to reach the impact of the Employer's decision to select a carrier which is a non mandatory subject of bargaining. Therefore, since health insurance benefits have previously been discussed in negotiations, the attempt of the Association to anticipate objections by the Employer to the naming of a carrier and bargaining the impact of the Employer's right to designate the carrier, cannot be said to establish a subject which had not previously been bargained over.

From the foregoing discussion, the undersigned has concluded that bargaining over the five subjects which the Employer argues that bargaining had never taken place, has in fact occurred and, therefore, the Employer's argument that the Association offer should be rejected is without merit. Having concluded that bargaining occurred, it is unnecessary to address the question of whether Milwaukee County Deputy Sheriff's Ass'n. decision of the Supreme Court applies with equal force to matters of interest arbitration arising under Section 111.70(4)(cm).

THE IMPACT OF THE EARLIER TENTATIVE AGREEMENT ON THIS DECISION

The record is undisputed that a tentative agreement between committees was entered into between these parties, and that the Association membership rejected the agreement. The Employer suggests that his offer in this dispute should be accepted because the earlier tentative agreement reached between the negotiating committees carries with it the presumption of the reasonableness of the Employer offer. The undersigned rejects the Employer theory which suggests that the Employer offer in this matter should be adopted because of the heavy presumption that a tentative agreement entered into between the committees of the Association and the Employer suggests reasonableness on its face. The Employer argument might be more persuasive had the Employer left all essential ingredients of the tentative settlement in place. The tentative agreement entered into between the parties on August 23, 1979, maintained the provisions of the predecessor agreement found at Article XXVI, B as part of that tentative agreement. The Employer final offer evaporates the provisions of the predecessor agreement at Article XXVI, B. The provisions found at Article XXVI, B of the predecessor agreement incorporate school board policies with respect to class size, teaching load, equipment, books and material and instructional resources for teachers into the Collective Bargaining Agreement, and make them subject to the arbitration provisions of the Agreement. There is no doubt in the mind of the undersigned that the survival of the provisions of Article XXVI, B in the tentative agreement of the parties reached August 23, 1979, was a provision paramount to that tentative agreement. Had the Employer left in place in his final offer the continuation of the predecessor's provision found at Article XXVI,B the final offer of the Employer would then have mirrored the tentative agreement. Since he has evaporated in his final offer the terms included in the predecessor agreement at Article XXVI, B, he no longer has on the table one of the most essential ingredients contained in the tentative agreement and, therefore, the presumption of reasonableness to which the Employer speaks no longer exists. The undersigned recognizes that the Employer has slightly improved his salary schedule offer over that contained in the tentative agreement. Additionally, the undersigned recognizes that the Employer improved out patient diagnostic x-ray in health insurance coverage over the tentative agreement. Notwithstanding those improvements over the tentative agreement; the evaporation of the terms of Article XXVI, B of the predecessor agreement so drastically alter the Employer's final offer from the tentative agreement, that any presumption of reasonableness created by that agreement can no longer be said to exist.

The Employer has made further argument that tentative agreements should be given great weight in determining matters of this kind, because not to do so would create unfair strategical advantages in bargaining for the Association. The Employer suggests that the Association could enter into a tentative agreement with the Employer as a ploy in order to extricate the very best offer from the Employer, and then have the membership reject the tentative agreement and return to the table for further concessions. If the Association indeed followed

strategy of the type suggested by the Employer, it would raise serious questions as to the good faith efforts to negotiate an agreement on the part of the Association. Those questions, however, are not properly before the undersigned, nor do they block a determination as to whose final offer should be accepted.

In addition to all of the foregoing, the undersigned has serious concerns about finding for either party's offer solely on the basis that a prior tentative agreement had been reached between the parties. If arbitrators accepted the principle that once a tentative agreement were entered into that agreement should be enforced; the result would undoubtedly have a chilling effect on the bargaining process. Parties would be reluctant to enter into tentative agreements to take back either to the membership or the board for ratification, and that result should be avoided because it is the parties' responsibilities to effectuate an agreement voluntarily. Any suggestion that an arbitrator later would enforce a tentative agreement, which was rejected by either party which might reduce the possibilities of entering into tentative agreements, therefore, should be viewed with extreme caution.

THE DISPUTED ISSUES

Having concluded that the threshold arguments raised by the Employer should be and are rejected, the undersigned will proceed to discuss the disputed issues, specifically applying the statutory criteria in light of the evidence adduced at the arbitration hearing. Included in the dispute are issues which carry economic impact and issues which do not. Included in the issues which have economic impact are the Association proposals for a thirty minute duty free break time for elementary teachers; the salary schedule proposals; and the insurance proposals. Additionally, there are questions raised that have no direct economic bearing, which include: the dispute resolution method proposed by the Association for health insurance matters; the revised language proposed by the Association found at Article XXVI entitled Conclusion of Bargaining (the zipper clause); and the non economic considerations involved in the break time language for elementary teachers proposed by the Association. The undersigned will first evaluate the offers of the parties with respect to issues having economic impact.

THE ECONOMIC ISSUES

While the parties have not agreed as to what constitutes comparable employers, a review of the evidence satisfies the undersigned that a determination of the comparables is not essential in this dispute. The evidence shows that the comparables support the Association proposal for salary schedule, inclusive of longevity, regardless of which set of comparables is considered. While the Employer comparables show a specific longevity provision only for three of the eight districts they propose as comparable, the undersigned is satisfied that the longevity as proposed here is nothing more than a fractional step added to the base salary schedule and, therefore, whether it is titled longevity or a fractional step, it is concluded that it properly falls within the scope of base salary comparability.

Additionally, the Employer comparables, as well as those proposed by the Association, support a finding for the inclusion of both L.T.D. and dental insurance. With respect to prescription drugs, the Employer comparables establish that three of the eight comparable districts provide that coverage; while of the Association comparables, seven out of twenty-six districts provide for prescription drug coverage. From the foregoing, neither party's comparables support the inclusion of drug insurance. From the foregoing, the insurance coverage proposed by the Association, exclusive of drugs, as well as the Association salary schedule, including longevity, can be supported by the comparables.

The foregoing conclusions with respect to the comparables have not considered cost impact of the respective proposals of the parties. Additionally, the undersigned has not considered what the comparables show with respect to the Association proposal for duty free break time for elementary teachers. The comparison of the comparables relating to break time will be left for the dis-

cussion of the non-economic considerations involved with that proposal. In addition to discussing the comparabilities, consideration necessarily must be given to the cost impact of the proposals of the parties. The Employer and Association are not in agreement as to the respective costs of the proposals. The Employer has submitted documentary evidence to show that his proposal should be valued at an increase of 18.7% over the two years, and that the Association proposal should be valued at an increase of 23.7% over the two years. The Association on the other hand calculates that the Employer offer should be valued at 18.23% over the two years, and that the Association offer should be valued at 20.57% for the two year period. Additionally, the Association points out that the cost impact to the district would be a 14.1% cost impact.

Dealing first with the 14.1% cost impact to the district asserted by the Association, the undersigned finds that unpersuasive. It is clear that in arriving at the 14.1% the Association has credited the cost of the Employer's decision to eliminate teaching positions in the district in arriving at that cost. While the calculations of the Association with respect to the eliminated positions are arithmetically accurate, the undersigned concludes that it would be improper to consider a reduction in the number of positions as persuasive evidence on which the Association offer would be selected. The creation of positions should not impact on a decision as to whose offer is to be adopted, and neither should the elimination of those positions. Consequently, the cost impact which is lowered by reason of the elimination of teaching positions will not be considered in arriving at a decision in this matter.

The undersigned has evaluated the differences in the calculations which led to the different values placed on the cost of the respective offers, and concludes that the principal difference is the cost attributed to the elementary break time proposal of the Association. The Association has in its exhibits ascribed to their proposal a cost of $37,703.60 for the year 1980-81. The Employer fixes the cost of the Association elementary break time proposal as $492,739.00 for the year 1980-81. Additionally, the Employer assesses a value of $106,010.00 to provide elementary break time for the balance of the 1979-80 year. From the foregoing, it is evident that the principal differences in the percentage increase calculated by the parties results in the difference of the full year costs for elementary break time of $455,035.40. Assuming that the elementary break time would be implemented only in the second year of this agreement, the disparity in the values attributed to that proposal accounts for approximately 2% of the difference. Thus, 2% of the 3.13% disparity is accounted for in this second year calculation alone. An additional .5% of the difference can be ascribed to the Employer's calculation that elementary break time will cost the Employer $106,010.00 the first year. From the foregoing, the undersigned concludes that except for the value of the elementary break time proposal of the Association, the parties' estimates as to the cost of respective packages are very close. After subtracting the difference ascribed to the break time proposals, there is approximately .63% disputed. A review of the evidence satisfies the undersigned that the Employer's calculations are based on the assumption that the 1978-79 staff will return intact and be advanced one year on the schedule, while the Association takes actual teachers for 1979-80 and compares that cost to the salary costs for 1978-79.

Having identified the discrepancies which exist in the parties' methods of calculations, it remains to determine which method of calculation should be adopted. With respect to placement on the salary schedule, it is the opinion of the undersigned that the Association method is preferable. While it is common during negotiations for a new collective bargaining agreement to assume that all teachers will return and advance one year on the salary schedule, where accurate information is visible the actual placement should be used. The foregoing conclusion is reached out of recognition that both parties in their calculations have attributed costs of settlement to the step increases which the salary schedule provides. The undersigned has no problem accepting that those increases should be calculated as part of the settlement cost. However, if the step increases are to be calculated as part of the settlement costs, then, to be consistent, any actual turnover which negates part of that cost should not be chargeable when those data are available. Consequently, the .63% discrepancy which the undersigned ascribes to actual salary placement is resolved in the Association favor.

The resolution of the cost impact of the elementary break time proposal differential is more difficult. With respect to the $106,010.00 cost ascribed by the Employer for the year 1979-80 to that proposal, the undersigned concludes that it is overstated. A review of Employer Exhibit #3 shows that the calculations were based on the necessity to staff an additional 31 teachers to provide for break time for three months of the current school year. Given the date of this Award, it is obvious that the elementary break time proposal could not be implemented three months prior to the close of school this year. In fact, at the time that this Award is issued there will be somewhat more than one month of school remaining, and the undersigned concludes that if the Association proposal were adopted, it would be impractical for the Employer to provide the break time for the balance of this year. Consequently, the cost of the break time proposal which the Employer ascribes to the first year of the Contract will be disregarded, and the .5% differential in total cost connected therewith is resolved in the Association favor. With respect to the second year cost, the undersigned has reviewed both party's calculations of costs, and is satisfied that the Association has severely understated the cost of its proposal on break time, because it has assumed, among other things, that all available minutes can be utilized to provide a daily 30 minute break. This assumption is simply fallacious. After considering the testimony of Ann Meyer at hearing, as well as the calculations set forth in Employer Exhibit #8, the undersigned accepts those calculations as a reasonable projection of the potential cost of the Association proposal for break time. Thus, the second year cost of the elementary break time proposal is resolved in favor of the Employer.

From the analysis of cost calculations set forth above, the undersigned then attributes a two year cost of the Association proposal at a 22.57% increase, and the cost of the Employer proposal as an 18.23% increase.

The Association has submitted evidentiary data with respect to patterns of settlement among the districts which it deems comparable for the year 1979-80. Excluding from the Association evidence consideration of the Franklin School District, which represents a second year increase of a two year agreement, the patterns of settlement as submitted by the Association range from a low of 7.9% to a high of 11.5%. The arithmetic average is 9.59% for the districts which are now settled for 1979-80, exclusive of Kenosha. Since the Employer offer is worth approximately 9.12% each year, and since the Association offer is worth an average of 11.29% this year; it follows that the offer of the Employer more nearly approximates the average of the patterns of settlement, even when considering the comparables of the Association. Therefore, the Employer offer would be adopted on the basis of the patterns of settlement.

When considering both the comparables and the patterns of settlement; even though the Association proposal on salary schedule including longevity, long term disability, and dental insurance are supported by the comparables; the total considerations when considering patterns of settlement, and the evidence which shows that the comparables do not support drug insurance, favor the offer of the Employer. Therefore, the economic issues are decided in favor of the Employer.

THE NON-ECONOMIC ISSUES

Consideration first will be given to the non-economic aspects of the elementary break time proposal of the Association. Both parties have submitted evidence purporting to support its position with respect to elementary break time. The Employer exhibit based on the Employer comparables shows no provision in any collective bargaining agreement for a duty free break time for elementary teachers. The Association exhibit with respect to their break time proposal shows that elementary prep time is provided for in twelve of the fourteen districts who employ 500 or more teachers in the state. The Association introduced no evidence with respect to elementary prep time for the balance of its originally proposed comparables. Since the Association proposal is for duty free break time for elementary teachers, the evidence submitted by the Association with respect to prep time for elementary teachers must be determined irrelevant. Specifically, the Association has not proposed preparation time of 30 minutes per day for all elementary teachers; rather, they have proposed duty free break

time. While the Association submits that the intent of its proposal is that duty free break time be equated to prep time; the language of their proposal simply does not provide that. The preparation time provided in other collective bargaining agreements anticipates that work will be performed during that time. The instant proposal of the Association can be interpreted only to mean that elementary teachers would not be required to work during the period of time they propose as a duty free break. Given the unprecedented nature of this proposal which is unsupported by any of the comparables, the undersigned can only conclude that duty free break time cannot be awarded.

ARTICLE XXVI PROPOSALS

In response to the Employer's evaporation of the provisions of the predecessor agreement at Article XXVI, B, the Association has proposed that all of Article XXVI be deleted. Article XXVI, A, of the predecessor agreement provides for what is commonly known as a zipper clause. The Employer proposal proposes to maintain the zipper clause. The Association proposal deletes it in its entirety, and would require that changes of Board policy which have impact on wages, hours and conditions of employment, would require negotiations between the parties over that impact, in the event a change of policy were made. The Association proposal further would contractually require mediation-arbitration in the event of impasse in those negotiations. The Association argues that its proposal is necessary in order to protect the membership against unilateral policy changes in such things as class size, which would have impact on wages, hours and conditions of employment. The undersigned understands and could accept the Association proposal to negotiate the impact if it had been provided as an exception to the zipper clause provision. That, however, is not the Association proposal here. The Association proposal goes beyond protecting the membership against unilateral changes which were established by contract under the former Article XXVI, B. Since the parties have lived with a zipper clause in their Agreement in prior years, the total elimination of the zipper clause provision is unwarranted by the evaporation of the provisions of the former Contract at Article XXVI, B. Had the zipper clause been maintained in the Association proposal, with a provision to negotiate impact over those items which the Employer evaporated, the Association proposal would have had more merit.

ARBITRATION OF INSURANCE DISPUTES

The Association proposes the arbitration of disputes over whether an insurance carrier can provide the contracted coverage on an expedited basis. There is no evidence in the record to show that the arbitration proposed for insurance disputes is found in any other agreements in comparable districts. Furthermore, there is nothing in the record to show that the regular grievance arbitration provisions are inadequate to handle this type of question. Since the record does not support this proposal, it will not be awarded.

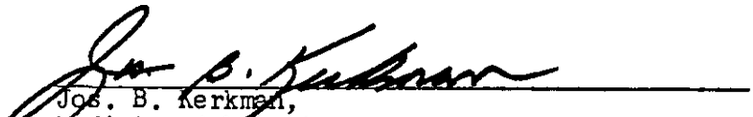
SUMMARY AND CONCLUSIONS:

From all of the foregoing discussion, the undersigned now concludes that the final offer of the Employer should be adopted in this dispute when considering the statutory criteria, the evidence of record, and the arguments of the parties, and makes the following:

AWARD

The final offer of the Employer, along with all tentative agreements previously entered into between the parties, as well as those provisions of the predecessor agreement which remained unchanged in the collective bargaining process, are to be incorporated into the Collective Bargaining Agreement between the parties which becomes effective July 1, 1979, and remains in effect until June 30, 1981.

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



Jos. B. Kerkman,
Mediator-Arbitrator