RECEIVED

MAY 27 1980

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* *

In the Matter of an Arbitration between

THE BOARD OF EDUCATION, JOINT CITY SCHOOL DISTRICT NO. 1, WEST ALLIS, WEST MILWAUKEE, et al

and

THE WEST ALLIS-WEST MILWAUKEE EDUCATION ASSOCIATION

Case XXVIII No. 23860
MED/ARB-276
Decision No. 17580-A

Appearances:

Mr. Herbert P. Wiedemann, Attorney, Foley & Lardner; Mr. Dale Aleckson, Director of Business Services; Mr. Ervin Yanke, Negotiating Team; for the District.

Ms. Donna Ullman, Southeast Regional Coordinator , WEAC; Ms. Karen Kindel, Negotiations Chairperson; Mr. Rick Oglesby, Former Exec. Dir., West Suburban Council; Mr. Robert Peck, Negotiating Team; Ms. Sue Thierfelder, Negotiating Team; Ms. Debbie Inman, Negotiating Team; for the Association.

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The Board of Education, Joint City School District No. 1, West Allis, West Milwaukee et al, hereinafter referred to as the District, and the West Allis-West Milwaukee Education Association, hereinafter referred to as the Association, reached an impasse in negotiations for a contract covering the period January 1, 1979 through June 30, 1980. On December 11, 1979 the Association filed a petition with the Wisconsin Employment Relations Commission pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. Following an investigation conducted by a member of the Commission staff, it was determined that an impasse continued to exist. The parties selected the undersigned as the mediator-arbitrator, and on February 12, 1980 the Commission issued an order appointing the undersigned the mediator-arbitrator in the dispute.

On March 14, 1980, the undersigned met with the parties in an attempt to mediate the issues at impasse. When such efforts proved unsuccessful, an arbitration hearing was convened the following day, March 15, 1980. A transcript of the arbitration proceedings was kept, and the parties filed briefs and reply briefs.

ISSUES:

There are essentially two issues in the instant dispute--one involves the salary schedule and the other involves summer fringe benefits.

FINAL OFFERS OF THE PARTIES:

Association's Final Offer

Article XII., Salaries

A. Teacher salaries for the period January 1, 1979 through December 31, 1979, based upon approved educational attainment and teaching experience, shall be set forth on Schedule B1 attached hereto and made a part of this Agreement. Each teacher, upon signing his/her contract, shall elect to have his/her salary paid in 21 or 26 pay periods according to the pay days set forth on Schedule D1 attached hereto and made a part of this agreement. No changes shall be permitted in the number of pay periods following the teacher's initial election for the school year.

1. Index
The Association index proposal shall be implemented retroactive to January 1, 1979.

2. Schedule
Salary Schedule B1 (Appendix B1 Attached) shall be implemented retroactive to January 1, 1979. The amount of retroactive pay shall be paid on one check as soon as practicable and in no event more than six weeks after ratification of a voluntary settlement of the issuance of the award by the arbitrator. Any teacher hired on or after January 1, 1979 with less than four years experience credit shall be placed at the applicable Hiring Step of Salary Schedule B-1 and shall remain at that step throughout calendar year 1979.

G. Salary Schedule Adjustments

1. Salary Schedule B1 is established based on an adjustment resulting from the increase in the Consumer Price Index, "All Items" United States Average for Urban Wage Earners and Clerical Workers (1967-100) published by the Bureau of Labor Statistics, U. S. Department of Labor, and referred to herein as the C.P.I. for the period of October 1977 through October 1978. Teachers salaries shall be paid in accordance with Salary Schedule B1 on the step which was applicable to such teacher on September 1, 1978.

The cost of living adjustment shall be established by first determining the CPI figure for October, 1978. The CPI figure for October, 1978, will be compared with the CPI figure for October, 1977. The difference will be divided by the October, 1977, figure to determine the percent change in the CPI to the nearest (1/10) one-tenth of 1%. Multiply the percent change by the total salary paid by the Board for all teachers employed on December 31, 1978, (including teacher's payment for H/M and roll-up).

Add 81% of this amount to the previous year's salary (including teacher's payment for H/M and rollup) and establish Salary Schedule B1, based on Index Schedule B, with MA+30, Step 12 as the base salary of $23,000.

The total cost to the Board for wages and benefits for the period January 1, 1979 through December 31, 1979, shall not exceed an amount greater than 98% of that which would be produced by multiplying the percent change in the C.P.I. by the cost to the Board for 190 days of salary and STRS, and health and medical insurance for the period of January 1, 1978 through December 31, 1978. Should the cost of the total increase to the Board exceed 98% of the change in the C.P.I., the increase applied to the base of Salary Schedule B1 shall be reduced to bring the total cost to the Board to the equivalent of the change in the C.P.I.

2. Teacher salaries for the period January 1, 1980, through June, 1980 based upon approved educational attainment and teaching experience, applicable to such teachers for calendar year 1979, shall be as set forth on Schedule B2. Salary Schedule B2 shall be established by the addition of $75.00 to the base of Salary Schedule B1 and by further adjusting Salary Schedule B1 in accordance with the Cost of Living Adjustment (COLA). The COLA shall be determined as provided below on the basis of the C.P.I.

   The COLA shall be established by first determining the C.P.I. figure for May, 1979. The Index figure for May, 1979, will be compared with the C.P.I. figure for October, 1978. The difference will be divided by the October, 1978, figure to determine the percent change in the Index to the nearest one-tenth (1/10) of 1%. Multiply the percent change times the base of Salary Schedule B1. Add this amount to the base of Salary Schedule B1, to establish a new base to generate Salary Schedule B2, based on Index Schedule B, with MA+30, step 12 as the base salary.

   The total cost to the Board for wages and benefits for the period January 1, 1980 through June 30, 1980 shall not exceed an amount greater than 98% of that which would be produced by multiplying the percent change in the C.P.I. by the cost to the Board for 190 days of salary and STRS, health and medical insurance and tax sheltered annuity for the period of January 1, 1979 through December 31, 1979.

K. In the event that it is not practicable to implement the provisions of Article XIII., D. and Article XIII., E., upon the effective dates prescribed, the increased balance of money thereby made available

for the months of delayed implementation shall be applied to increase the salary schedule. Such balance of money shall be applied using the Salary Index Appendix B., with each teacher remaining at the step applicable to him/her for calendar year 1979.

Article XXIII., Insurance

D. Dental

Effective January 1, 1980, the Board shall provide at no cost to the teacher a program equivalent to the WEA Insurance Trust Dental Program, Plan 704F. This plan shall include 100 percent (100%) payment with $25 deductible for basic benefits and Option 1. This includes 100% payment with no deductible on preventive care (Basics 1-4). Orthodontia shall be covered at a rate of fifty percent (50%) of reasonable and customary charges. The maximum benefit shall be $1,000 per person per year except for orthodontia which shall be $1,500 per lifetime per person.

E. Long Term Income Protection (LTD)

Effective January 1, 1980, the Board shall provide at no cost to the teacher a program equivalent to the WEA Insurance Trust Long Term Income Protection Program, Plan 683 with all options. The benefits of this plan shall include a 60-day elimination period after which benefits will be paid at a rate of two-thirds of salary to a maximum of $1,500 per month. Additionally, the plan shall include a social security freeze, primary social security offset, 25 percent minimum benefit, maternity treated as any other illness, and no offset for short-term voluntary income protection plans currently being provided by WEA-Washington National Insurance Company.

F. Payment of Summer Fringe Benefits

If a teacher, who completes a full academic year of service to the District is laid off, nonrenewed, dismissed or retired; or if a teacher plans to resign at the end of the second semester and gives written notification of such resignation to the Superintendent on or before April 15, such teacher shall have Health and Medical, Dental, LTD and TSA insurance premiums continued to be paid by the Board through August. Teachers who are forced through unforeseen circumstances to resign after April 15, shall also be entitled to full insurance premiums to be paid by the Board through August.

APPENDIX B

WEST ALLIS-WEST MILWAUKEE EDUCATION ASSOCIATION

Base Salary Index Schedule

	B.A.	B.A.+15	M.A.	M.A.+15	M.A.+30
1	.532	.537	.563	.568	.574
1½	.532	.537	.563	.572	.593
2	.543	.559	.570	.591	.612
2½	.543	.559	.589	.610	.631
3	.552	.571	.608	.629	.650
3½	.572	.591	.627	.648	.669
4	.593	.612	.646	.667	.688
4½	.613	.632	.665	.686	.707
5	.634	.653	.684	.705	.726
5½	.654	.673	.703	.724	.745
6	.675	.694	.722	.743	.764
6½	.695	.714	.741	.762	.783
7	.716	.735	.760	.781	.802
7½	.736	.755	.779	.800	.821
8	.757	.776	.798	.819	.840
8½	.777	.796	.817	.838	.859
9	.798	.817	.836	.857	.878
9½	.818	.837	.855	.876	.897
10	.839	.858	.874	.895	.916
10½			.893	.914	.935
11			.912	.933	.954
11½			.931	.952	.973
12			.950	.971	1.00

B.A. + 30 = .911

HIRING STEPS

1	.466	.483	.527	.548	.570
1½	.4835	.502	.544	.5655	.587
2	.501	.521	.561	.583	.604
2½	.5185	.539	.577	.595	.620
3	.536	.556	.593	.607	.636
3½	.564	.584	.6195	.637	.662

APPENDIX B1

WEST ALLIS-WEST MILWAUKEE EDUCATION ASSOCIATION

1979 Salary Schedule

SALARY SCHEDULE B1

	B.A.	B.A. + 15	M.A.	M.A. + 15	M.A. +30
1	12,236	12,351	12,949	13,064	13,202
1-1/2	12,236	12,351	12,949	13,156	13,639
2	12,489	12,857	13,110	13,593	14,076
2-1/2	12,489	12,857	13,547	14,030	14,513
3	12,696	13,133	13,984	14,467	14,950
3-1/2	13,156	13,593	14,421	14,904	15,387
4	13,639	14,076	14,858	15,341	15,824
4-1/2	14,099	14,536	15,295	15,778	16,261
5	14,582	15,019	15,732	16,215	16,698
5-1/2	15,042	15,479	16,169	16,652	17,135
6	15,525	15,962	16,606	17,089	17,572
6-1/2	15,985	16,422	17,043	17,526	18,009
7	16,468	16,905	17,480	17,963	18,446
7-1/2	16,928	17,365	17,917	18,400	18,883
8	17,411	17,848	18,354	18,837	19,320
8-1/2	17,871	18,308	18,791	19,274	19,757
9	18,354	18,791	19,228	19,711	20,194
9-1/2	18,814	19,251	19,665	20,148	20,631
10	19,297	19,734	20,102	20,585	21,068
10-1/2			20,539	21,022	21,505
11			20,976	21,459	21,942
11-1/2			21,413	21,896	22,379
12			21,850	22,333	23,000

B.A. + 30 = 20,953

HIRING STEPS

	10,718	11,109	12,121	12,604	13,110
1-1/2	11,121	11,546	12,512	13,007	13,501
2	11,523	11,983	12,903	13,409	13,892
2-1/2	11,926	12,386	13,271	13,685	14,260
3	12,328	12,788	13,639	13,961	14,628
3-1/2	12,983	13,432	14,249	14,651	15,226

The Board shall pay the portion of the teacher's contribution to the State Teachers Retirement System in accordance with Article XXIII, Section C.

Longevity in addition to the above schedule:

After 15 years of continuous local experience - $150.00

After 20 years of continuous local experience - $200.00

After 25 years of continuous local experience - $250.00

APPENDIX B2

1/1/80 through 6/30/80 Salary Schedule

WEST ALLIS-WEST MILWAUKEE EDUCATION ASSOCIATION

	B.A.	B.A.+15	M.A.	M.A.+15	M.A.+30
1	13,108	13,231	13,872	13,995	14,143
	13,108	13,231	13,872	14,094	14,611
2	13,379	13,773	14,044	14,562	15,079
	13,379	13,773	14,512	15,030	15,547
3	13,601	14,069	14,981	15,498	16,015
	14,094	14,562	15,449	15,966	16,483
4	14,611	15,079	15,917	16,434	16,952
	15,104	15,572	16,385	16,902	17,420
5	15,621	16,089	16,853	17,370	17,888
	16,114	16,582	17,321	17,839	18,356
6	16,631	17,099	17,789	18,307	18,824
	17,124	17,592	18,257	18,775	19,292
7	17,642	18,110	18,726	19,243	19,760
	18,134	18,602	19,194	19,711	20,229
8	18,652	19,120	19,662	20,179	20,697
	19,145	19,613	20,130	20,647	21,165
9	19,662	20,130	20,598	21,116	21,633
	20,155	20,623	21,066	21,584	22,101
10	20,672	21,140	21,534	22,052	22,569
			22,003	22,520	23,037
11			22,471	22,988	23,506
			22,939	23,456	23,974
12			23,407	23,924	24,639

B.A.+30 22,446

Hiring Steps

1	11,482	11,901	12,985	13,502	14,044
1½	11,913	12,369	13,404	13,933	14,044
2	12,344	12,837	13,822	14,305	14,882
2½	12,775	13,280	14,217	14,660	15,276
3	13,207	13,699	14,611	14,956	15,670
3½	13,896	14,389	15,264	15,695	16,311

The Board shall pay five percent (5%) of the teacher's contribution to the WRS in accordance with Article XXIII, Section C.

Longevity in addition to above Schedule:

After 15 years continuous local experience --- $150.00
After 20 years continuous local experience --- $200.00
After 25 years continuous local experience --- $250.00

District's Final Offer

Article XXII

A. Teacher salaries for the period January 1, 1979, through December 31, 1979, shall be as set forth in Salary Schedule B-1 attached hereto and made a part of this Agreement, which schedule is constructed pursuant to the Salary Index also attached hereto. Each teacher hired prior to January 1, 1979 shall at the same step of such schedule as he was placed on September 1, 1978 on Salary Schedule B-3 of the agreement which terminated December 31, 1978, and shall remain at that step throughout calendar year 1979. Any teacher hired on or after January 1, 1979 with less than four years experience credit shall be placed at the applicable Hiring Step of Salary Schedule B-1 and shall remain at that step throughout calendar year 1979. Each teacher upon signing his contract, shall elect to have his salary paid in 21 or 26 pay periods according to the schedule set forth in Schedule D-1 attached hereto and made a part of this Agreement. No changes shall be permitted in the number of pay periods following the teacher's initial election for the school year. Any amount payable to a teacher for the period January 1, 1979 to date of implementation of the salaries herein provided shall be paid by single check issued as soon as practicable and in no event more than six weeks after ratification of voluntary settlement or issuance of MED/ARB award, as the case may be.

Delete Article XXII, G.

Article XXIII, B

1. The Board will continue to provide the same basic hospital-medical coverage and major medical coverage as was in effect immediately prior to this Agreement; provided, however, that for coverage on and after September, 1979, the Board shall have the right, after notice to the Association in advance of the decision and after an opportunity for discussion with the Association, to change the carrier or carriers. Until September 1, 1979, each teacher who elects coverage will pay a portion of the monthly premium cost equal to the amount deducted from his cost-of-living allowance for such purpose immediately prior to this Agreement. Beginning with September, 1979, the Board will pay the full monthly premium cost for such insurance for each teacher who elects coverage, individual or family, whichever shall apply, after such teacher has worked for the Board for six (6) months continuously; for any such teacher who does not elect coverage, the Board will pay an amount equal to the monthly premium cost for individual coverage (not family coverage) to an insurance carrier selected by the teacher (from among those carriers

which are from time to time approved by the Board pursuant to rules for approval in effect on December 31, 1978) to be applied to the cost of a tax sheltered annuity. A newly hired teacher will be eligible to elect such insurance beginning the first day worked, provided he has authorized deduction of the full monthly premiums from pay checks for the first six (6) months of employment at the rates then prevailing for the individual or family plans.

Article XXIII, B

4. Except as otherwise expressly provided in this Agreement, upon termination of a teacher's employment with the District, for reason other than death or retirement, the Board will no longer make premium payments for coverage of any kind.

Article XXXIII

C. Retirement. Effective January 1, 1979, the Board shall pay that portion of a teacher's contribution to the State Teachers' Retirement System which is equivalent to four percent (4%) of the compensation upon which such teacher's contribution is based. Beginning with the start of the 1979-80 school year, the Board shall pay that portion of a teacher's contribution to the State Teachers' Retirement System which is equivalent to five percent (5%) of the compensation upon which such teacher's contribution is based.

The Board will grant additional improvements equal in cost (for the period January 1, 1980 through June 30, 1980) to 5.92% of the base dollars (salary, H/M, annuity option and Article XIII, C, STRS) for all teachers under regular contract as of October 1, 1979 after deduction for the balance of the annualized cost of H/M and STRS improvements made effective September, 1979. Such improvements shall be as follows:

(i) The Board shall provide at no cost to the teacher a program equivalent to the WEA Insurance Trust Dental Program, Plan 704F. This plan shall include 100 percent (100%) payment with $25 deductible for basic benefits and Option 1. This includes 100% payment with no deductible on preventive care (Basics 1-4). Orthodontia shall be covered at a rate of fifty percent (50%) of reasonable and customary charges. The maximum benefit shall be $1,000 per person per year except for orthodontia which shall be $1,500 per lifetime per person. Such program shall be effective as of the first of the month which is at least 21 days following ratification of voluntary settlement or issuance of a MED/ARB award, as the case may be.

(ii) The Board shall provide at no cost to the teacher a program equivalent to the WEA Insurance Trust Long Term Income Protection Program, Plan 683 with all options. The benefits of this plan shall include a 60-day elimination period after which benefits will be paid at a rate of two-thirds of salary to a maximum of $1,500 per month. Additionally, the plan shall include a social security freeze, primary social security offset, 25 percent minimum benefit, maternity treated as any other illness, and offset for short-term voluntary income protection plans currently being provided by WEA-Washington National Insurance Company. Such program shall be effective as of the first of the month which is at least 21 days following ratification of voluntary settlement or issuance of MED/ARB award, as the case may be.

(iii) The balance of the money available shall be applied to increase the salary schedule, effective January 1, 1980, using the Salary Index attached hereto, with each teacher remaining at the step applicable to him for calendar year 1979.

Prior to the implementation of the foregoing, the Association may elect to forego (i) and or (ii) and, if so, the increased balance of money thereby made available also shall be applied to increase the salary schedule in the manner provided in (iii). If notification of voluntary settlement or issuance of MED/ARB award, as the case may be, does not come in time to permit placing (i) and (ii) in effect on or before June 1, 1980, such programs shall not be implemented and the entire 5.92% shall be applied to increase the salary schedule in the manner provided in (iii).

SALARY SCHEDULE B1 - Same as Association's

SALARY INDEX - Same as Association's

ASSOCIATION'S POSITION:

It is the Association's position that the issues in the instant dispute may be divided into the following sub-issues:

"1. A. How shall the agreed upon specifics of the 1979 calendar year salary and fringe benefit package be described in the collective bargaining agreement?

OR

B. Shall the collective bargaining agreement continue to identify cost of living as the basis used in determining salary increases?

"2. What shall be the salary and fringe benefits paid to WA-WM teachers from January through June of 1980?

3. Should the District provide fringe benefits during the summer for employees who leave the District after completing their full year of service?"

The Association contends that the seventeen school districts in Milwaukee County, exclusive of the City of Milwaukee, are the comparability base which should serve as the basis for the findings in the instant case. The impactor in the area affecting the District is the City of Milwaukee, and all other communities are impacted by what is done in that city. Thus the athletic conference, CESA Region, schools of similar size or within a specified distance of the District, would not be the appropriate area from which to draw comparabilities. The uniqueness of Milwaukee County schools has been recognized by the State Legislature, as it has developed specific legislation governing only Milwaukee County schools. Additionally, other arbitrators have recognized the uniqueness of Milwaukee County, including Arbitrator Kerkman in Ozaukee County Law Enforcement Employees and Ozaukee County, Case VI, No. 23769, MIA-394. In that award Arbitrator Kerkman stated the following:

> "While Milwaukee County and the municipalities contained within its boundaries fit within the definition of SMSA (Standard Metropolital Statistical Area of Milwaukee, Ozaukee, Washington and Waukesha Counties), it is, nevertheless, true that consistent arbitral opinion in interest arbitration matters have distinguished Milwaukee County from its surrounding counties, based upon the holding that Milwaukee County and its municipalities are unique unto themselves. This Arbitrator shares the view that Milwaukee County and its municipalities are distinguishable and not comparable to surrounding counties. While Milwaukee County and the municipalities contained therein are part of the SMSA as the Union contends, Milwaukee is simply not comparable."

Thus, according to the Association, the area of comparabilities must be Milwaukee County schools.

The Association submits that the language describing the 1979 salary and fringe benefit package proposal is consistent with the history of bargaining in the District. The cost-of-living concept was first introduced by the District in 1972, and the cost-of-living proposal made by the District was eventually incorporated into the 1973-1975 agreement. When the District was bargaining for a successor agreement it proposed to alter the initial approach to cost of living, and a new formula was incorporated in the successor agreement which dealt with a cost-of-living formula as a maximum of all new monies paid to a teacher by the District. Fringe benefit improvements, increment adjustments, salary increases and rollups were deducted from this maximum amount of money. As the teachers

lived under this agreement the negative factor of the cost-of-living adjustments (COLA) became apparent. That cost-of-living provision essentially resulted in two classes of people--the haves (who for various reasons had few deductions), and the have-nots (who had numerous deductions and had deductions compounded every year under the formula, thus producing minimal salary increases). An additional result of the COLA was that there was no longer a salary schedule, as teachers with the same experience and education, teaching the same subjects, were earning salaries that differed by substantial amounts of money. Consequently, when it came time to bargain a successor agreement, it was the Association's turn to propose a change in approach to COLA.

The COLA approach devised by the Association is the result of a year and a half of collective bargaining. It represents an understanding on the part of the Association that to correct the major inequities of the past agreement and implement a model COLA in one year would be too costly for the District. Therefore, the COLA formula submitted by the Association is a transition formula. It retains the concept of COLA as a maximum from which new salaries and fringes are developed, but allows for the redevelopment of a salary schedule that would bring some equity to salaries and abolish the past system developed under the prior COLA system. The transition is completed in the Association's 1980 formula whereby the newly created index base is increased by COLA from October of 1978 to May of 1979, and the District is guaranteed that all new monies from salaries and fringes will not exceed 98 percent of the cost of living.

The District has not established reasons to eliminate the COLA concept from the collective bargaining agreement. The Association contends it is a fundamental principle of bargaining that the party who wishes to modify the status quo has the burden of proof to justify that change. In the instant case the District has not met that burden of proof. The only reasons given by the District for eliminating COLA were: (1) a short-term contract, and (2) the unprecedented rate of CPI. Regarding the District's second position, the Association notes that the rate of increase in the CPI is no more of a problem for this District than for any other district. The problems generated from a standard COLA formula during highly inflationary times is the result of the open-ended nature of a standard formula. The Association emphasizes that the COLA formulas it has proposed in both 1979 and 1980 are not open-ended; they can be and have been now costed. Those costs will not change regardless of what the CPI does or does not do.

The other purported reason for the District wishing to eliminate cost of living is the short-term contract. A similar

> "of persuasiveness; in the instant matter where the cost of living provision is atypical; and where the undersigned has concluded that the Employer's monetary offer is insufficient to buy out the disputed provision; the undersigned determines that the Employer has failed to establish a sufficiently persuasive reason for the removal of the disputed provision."

The Association contends this District is in a similar situation in that the cost-of-living provision is atypical, and the District has not provided a sufficient monetary offer to "buy out" COLA.

The Association further asserts that the maintenance of the COLA concept does not produce a settlement out of line with those in comparable districts. The District has long been a leader in salaries paid to public employes. Community employes, in almost any category of public employe, are paid at or very close to the top salary in the County. Teachers have been no exception to this rule as can be seen in exhibits introduced by the Association. However, according to the Association, this fact alone does not present a totally accurate picture. Fringes, a significant factor in total compensation, are not considered. According to the Association the community has long lagged behind its neighbors in the realm of fringe benefits. In 1972-73 the District's fringe package was mediocre compared to that of other employers. By 1978-79 it was by far the worst in the County, and arguably worse than its own 1972-73 offering. Thus the Association proposal produces leading but not top salaries in combination with the worst fringe benefit package in the County. When a compensation package resulting from the Association's proposal for 1979-80 is compared with other County districts, it can be seen that the package generates salary and fringes consistent with the County standards. While the actual average salary increase is low, that is understandable because of the cost of fringe benefit improvements that are finally being made. Therefore, the Association's proposal produces a settlement totally in keeping with the pattern already established in the County.

An additional argument is advanced by the Association that the concept of COLA is familiar to area residents. COLA is not a new concept to this area or to the parties' agreements. The bargaining history establishes that the parties have had a COLA provision in their contract since 1973. The economic impact of a continuation of the concept is a known quantity that will generate a settlement in keeping with comparable district settlements. Finally, the Association submits the District has provided no persuasive reason to delete the concept of COLA from the agreement.

An additional issue is the salary and fringe benefits to be paid to the teachers from January through June 1980. The District package does not provide teachers with known salaries and fringe benefits for 1980. Under the District's proposal for 1980, teachers are expected to accept a package whose only known quantity is a percentage figure. The specific elements of that package remain illusive even after the arbitration hearing has been concluded. There is no certainty as to whether dollars will be spent for added fringe benefits, or if they are, what fringe benefits.

The District's proposal for 1980 consists of a formula which generates "X" dollars, however the formula is so vague that the dollar figure is literally left to the District to determine. After the District declares the actual amount of dollars to be spent, an option becomes effective. The employes may choose between one of two alternatives or any combination thereof. However, the employes must exercise such option within twenty-one days prior to June 1, 1980, or any agreement on new benefits is null and void. There is no way of knowing what the salary and fringe benefit package under the District's proposal would be.

The District's approach of offering an option plan must be rejected because it sets a dangerous precedent and puts an inappropriate burden on the arbitrator. The District's option plan provides that should the District's position be awarded, a choice of one or two or no real specific fringe benefits would be made available to the Association provided all this occurs prior to a certain date. The Association contends that the concept of option plans is totally inappropriate in arbitration. While the Association does not dispute the fact that option plans are not unique in the bargaining process, but in fact often serve to facilitate a voluntary settlement, once a voluntary settlement is an impossibility their appropriateness ends.

The legislative intent in altering Chapter 111.70 is clearly to bring peaceful finality to the bargaining process with the lawful authority of the arbitrator being the vehicle for such finality. The arbitrator must adopt, without modification, the final offer of either party, thus concluding the process. The use of options in final offers is the antithesis of the legislative intent. In addressing the very issue of options, Arbitrator Kerkman in Janesville Education Association and School District of Janesville, Case XXII, No. 24516, MED/ARB-371, concluded at page 4:

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

The Association submits the option plan in the instant case is even more onerous because it provides an arbitrary deadline and places the burden of that deadline on the arbitrator. The availability of new fringe benefits becomes dependent, not upon criteria established by the statutes or the employer's final offer, but upon the busy schedule of the arbitrator. This is sufficient reason, in and of itself, to reject the District's final offer.

In contrast to the District's offer for 1980, the Association's offer for 1980 provides a specific salary and fringe package that is in keeping with settlements in comparable districts. The 1980 salary schedule and fringe benefit package is spelled out in the Association's final offer. The only unknown element is the date of implementation of new benefits, and, therefore, the amount of salary dollars that will be paid in lieu of premium payment.

The Association chose to distribute the money in the fashion it did as a result of what had happened under prior cost-of-living provisions. The 1979 proposal provides more dollars to those moving through the schedule who had lost increments than it does to those at the top of the schedule. Distributing the excess dollars merely attempts to make the transition period a little less painful to those people at the top of the schedule. The Association's specific proposal for 1980 compares favorably with settlements in comparable districts. The District's proposal for 1980 is nebulous at best, as it provides no specificity and involves an option plan which places the arbitrator in an untenable position.

The remaining issue is whether the District should provide fringe benefits during the summer for employes who leave the District at the conclusion of a full year of service. Since regular employes, following the completion of a full academic year of employment and the signing of a contract for a subsequent year, do receive benefits during the summer recess, it follows that such summer benefits are earned as a result of that teacher fulfilling his/her contractual obligation to work the days specified in the individual contract. The Association further asserts that it is generally acknowledged by most districts, and arbitrators, that the employer's payment of a full-year's insurance premium is vested upon that teacher's completion of the work for which the individual contracted. Arbitral opinion almost unanimously asserts that insurance benefits are a form of compensation fully earned when a teacher completes a full academic year of employment. In Northeast Wis. Technical Institute (8/15/74), Arbitrator Howard Bellman stated that the "maintenance of insurance benefits . . . is best explained as a form of deferred compensation earned during the school year. Accordingly, inasmuch as the non-returning teachers have also earned such deferred compensation, they should not be denied same, even though they are no longer employed." A similar conclusion was reached by Arbitrator George Jacobs in West Burlington Education Association, (10/12/77), AAA Case No. 51 39 0434 77. Other arbitrators have also accepted the proposition that when the collective bargaining agreement calls for payment of insurance premiums over the summer, it should make no difference whether the employe is returning the following year or not. See North Fond du Lac School District (6/5/74); Scranton (Pa.) School District (1/16/76); Mona Shores Bd. of Ed. (2/6/73); Sheboygan Education Association (hearing 6/26/70).

Therefore, it is clear that to treat the nonreturning employe different from others in regard to payment of summer benefits would be, as described by Arbitrator Casselman in Mona Shores Bd. of Ed. "inherently discriminatory and contrary to the contractual provisions of the insurance agreement."

It is further asserted by the Association that the payment of fringe benefit premiums during the summer for employes

who leave the District is a common practice in comparable districts. The Association survey of comparable districts indicates that the provisions sought by the Association are common to the vast majority of comparable districts and in fact there is only one district that limits summer benefits to health insurance alone. The Association submits that arguments of equity, fairness, arbitral authority, and area practice all lead to the conclusion that the District should provide summer benefits to departing employes.

The Association requests the arbitrator to award the Association's final offer.

DISTRICT'S POSITION:

It is emphasized by the District that for 1979 the Association has proposed the same salary schedule and benefit payment increases with the same effective date as the District proposed, but subject to one crucial qualification. The Association seeks the declaration that the salary schedule improvement will be based upon increases in consumer price index (CPI) and then seeks to relate the combined total of salary and benefit payment increases to the percentage of change in the CPI. For January through June 1980, the District proposed additional improvements equal to a cost of 5.92 percent of base dollars, as defined in the proposal, after deductions for the balance of the annual cost of the hospital/medical and STRS changes made effective September, 1979. The specific improvements proposed include:

(i) The initiation of dental insurance with 100% of premium cost paid by the District.

(ii) The initiation of a long-term disability insurance program with 100 percent of the premium paid by the District.

(iii) An increase in the salary schedule to the extent it can be provided by the balance of the money available after deduction of the cost of the dental and long-term disability insurance.

The District has further provided in its final offer that if the award is not issued in sufficient time to permit the implementation of dental insurance and long-term disability prior to June 1, 1980, the District will add the additional monies to the money available for salary increases.

For January through June, 1980, the Association has proposed the same dental and long-term disability programs as the District, but its proposal for an increase in the salary schedule differs from that of the District. Under the Association's proposal, the new salary schedule will be constructed by adding to the base of its 1979 salary schedule $75 plus the additional amount determined by the change in the CPI from October of 1978 to May of 1979. Also, the overall determination of salary and benefit improvement is related to the CPI in the same manner as proposed for 1979. If the dental and long-term disability insurance programs

cannot be implemented by June 1, the Association would have them implemented anyway and would add to the salary schedule the amount that would have been expended for premiums had the programs been in effect from January 1, 1980 and the actual implementation date.

It is asserted by the District that the 1979 proposals of the parties are almost equal in terms of total cost. For 1980 the parties agree that the Association proposal is more costly, but they disagree as to how much more. The District contends the difference is $58,000, while the Association maintains the difference is approximately $32,700.

According to the District, given the amount of difference in cost between the two proposals, it is evident the real dispute is over the Association's intent to insert contractual language tying economic improvement directly to changes in the CPI. The District asserts that since the CPI changes to which the Association proposal refers have already occurred, its insistence on a formula approach serves no purpose for the 1979 and January through June 1980 periods. The District claims that what the Association is seeking is to establish a direct CPI relationship as the format for negotiations of the next collective bargaining agreement.

The District asserts that now that the CPI is increasing dramatically from month to month, to commit the District to the Association's contractual language would have tremendous impact upon the next settlement. That is especially true because in the next MED/ARB procedure the District would be faced with the problem of attempting to change the status quo if it were to seek to remove the cost-of-living provision. There is a proposition that the party seeking to change a provision which has been included in a prior agreement has to overcome by "persuasive reason" a presumption favoring retention of the provision.

While the Association may argue that it is already in the position of merely trying to retain the status quo, that argument has no merit because the CPI relationship which the Association proposes is far different from what was included in the agreement which terminated December 31, 1978. There is no dispute that the cost-of-living concept was first introduced in 1973 as part of a three-year collective bargaining agreement. Indeed, the District initiated the proposal. The concept was retained, with modifications, in 1976; however, again this was done as part of a three-year contract. The proposal now made by the Association is significantly different from the proposal contained in the two prior three-year agreements.

The District asserts the Association's proposal in this proceeding is different from the concept of the 1976 agreement in three respects:

> "(a) It seeks to make C.P.I. relationship part of a short term agreement, one with a duration of only 1-1½ years, instead of a 3 year agreement.
>
> (b) It seeks to utilize the percent change in the C.P.I. as the measure of the amount of money available but not as the basis for the distribution of that money, whereas in the prior agreement each teacher had an individual cost-of-living

> allowance which determined the amount of money available to him.
>
> (c) It injects an entirely new formula. In the prior agreement the percent change in the C.P.I. was multiplied by the teacher's salary, whereas the Association proposal would multiply 98% of the percent change in the C.P.I. by a base consisting of salary, STRS and health and medical insurance (and, again, for all teachers together rather than for each teacher individually). By enlarging the base, this new formula produces more money than did the formula used in the 1976 agreement. If the 1976 agreement had been extended to cover 1979 without change, the cost to the District would have been an additional $1,007,823, whereas the Association's proposed formula would cost the District an additional $1,045,874."

It is clear that the Association is not now the protector of the status quo, but rather it is proposing something new and different. However, the Association will become the protector of the status quo in the next bargaining if it prevails in this proceeding. The District emphasizes that in the prior agreement the CPI was used prospectively to create a formula to determine future increases within the terms of that particular contract. In contrast, here the Association wants to create a formula the function of which is to govern the negotiations of future agreements.

The District notes that one of the considerations the arbitrator must consider is "(t)he interest and welfare of the public." The District urges that the purpose of the MED/ARB process is to resolve pressing contract disputes, not to establish guidelines for future bargaining. The Association formula, the sole significance of which is to tie the District to CPI changes in the next round of bargaining, would most certainly not give recognition to "(t)he interest and welfare of the public.," which is one of the factors to be considered pursuant to Chapter 111.70(4)(cm)7 of the Statutes.

Additionally, if the District is bound to the proposition that future improvements have to match CPI changes, this particular group of employes would be insulated from a deterioration in their standard of living which others, including the taxpayers of the District, must endure. It is inappropriate to tie the District's next round of bargaining to the CPI when at this very time the validity of the CPI as an accurate measure of cost of living is subject to great question. It is a price index which does not reflect the ability of consumers to make substitutions in their purchases. In stable times the effect of substitution is presumably minimal, but in turbulent economic periods, such as the country has recently experienced, it may be significant. Also, the continuing ability of the CPI to serve as a true measure of cost of living is highly questionable because of the way it measures the cost of home ownership, as the unprecedented rise in interest rates may be distorting the overall index by as much as 20 percent.

Another factor to be considered under 111.70(4)(cm)(7) is whether the teachers employed in comparable communities have their compensation tied to the CPI, as the Association insists. The answer is that they do not.

The District argues that a list of the fifteen most comparable schools, (which includes adjacent school districts, school districts located generally in the southwest portion of the Milwaukee metropolitan area, and the school districts in the same athletic conference), establishes that only one of those schools has a clause referring to the CPI. That clause was found in the Greendale contract and it is different from what the Association has proposed in that it only gives partial recognition to CPI changes. Thus, with only one of the fifteen districts committed to the CPI in any form, it certainly must be concluded that the comparison factor weighs heavily in the District's favor.

The District contends there is an additional reason why the Greendale clause, even though contained in the one-year agreement, does not enhance the Association's position. Greendale, over a period of several agreements, voluntarily adopted the clause in question. It then sought to remove that clause in arbitration while the Association sought only to retain it without any change. It is that circumstance, the fact that the Association sought nothing but the status quo, which caused the arbitrator to rule in favor of the Association. In Greendale the arbitrator said of the employer's argument "that a cost of living provision contained in a one year agreement is contrary to the established primary purpose of a cost of living provision which normally are found in long term agreements," would have a high degree of persuasiveness.

The Association has asked this arbitrator to consider a different comparable grouping of schools than proposed by the District. By embracing all districts located in Milwaukee County, except the City of Milwaukee, certain additional districts are included; however, by choosing the districts the Association did, it established that only one district other than Greendale has a CPI clause, that being Fox Point-Bayside. Thus the inclusion of the comparables suggested by the Association does not establish a common practice of incorporating clauses related to the CPI into collective bargaining agreements.

While the Association introduced into evidence the collective bargaining agreement of four manufacturers in the Milwaukee area, the District argues such submissions do not support an argument of comparability. There is no evidence that the four clauses constitute a representative sample of the area's industrial practice. Additionally, none of the clauses cited tie all economic improvement to CPI changes, and only one clause creates a full percentage relationship even for wages. The others provide for a supplemental wage payment of 1¢ per hour for each specified fractional change in the CPI; and in addition to that, one of the clauses is capped. Also, each of the clauses is contained in an agreement which extends for a term of three years.

It is far more significant in the instant case to look at the situation prevailing with respect to non-teaching employes

of the District. The District has two-year collective bargaining relationships with Local 80 and District Council 48, AFSCME, AFL-CIO. One unit consists of custodial and maintenance employes and the other consists of clerical employes. In each unit there were CPI clauses in the past which were similar to the clause in the 1976 agreement with the Association. In each unit the District was successful in achieving, through collective bargaining, the elimination of those clauses. Moreover, in the case of the custodial and maintenance unit the percent increase granted in wages and benefits was comparable to that offered the Association.

Even if the Association were simply attempting to retain status quo, which it is not, the fact that the CPI clauses have been eliminated from agreements with other units would constitute "persuasive reason" for the District's position herein. City of Greenfield Police Department, No. 20663; Greendale School District, (September 14, 1978). That fact should be more persuasive because the Association is not simply attempting to retain status quo, but rather is seeking a new and different CPI approach to be included in a short-term agreement.

Other Factors Normally Taken Into Account.

According to the District the Association proposal is flawed, both with respect to the 1979 period and with respect to the January through June 1980 period. Under the Association's proposal the CPI formula would not cover the full cost of the improved salary schedule and benefits. It would be necessary under the Association's proposal to reduce slightly each step of the salary schedule by some odd dollar amount, which is not what either party wants. It is apparent, upon doing a cost analysis of the Association's position, that the Association ignored the CPI in the preparation of its proposed language.

With respect to the January through June 1980 proposal, it is flawed in the disposition to be made in the dental and long-term disability insurance if they cannot be initiated by June 1. Unlike the District's proposal, which would add the money equivalent to the salary schedule, the Association proposal would initiate the program and add the money to the schedule. Thus, under the Association's proposal, the District would have two elements of increased cost continuing after June 1: (1) the cost of the insurance programs; and (2) the cost of the extra salary schedule improvement.

In apparent realization of the inequity of its approach, the Association has in effect attempted to amend its final offer by claiming that it meant only to add dollars to each teacher's salary for the January through June 1980 period, and then to revert to the salary schedule which would have applied if the dental and long-term disability program had been implemented on January 1, 1980. The Association attempted to explain away the inequity by claiming, "It is our interpretation of our language that that is a method of distributing those dollars, not to be charged to the District forever." While this may be the claim of the Association, the District submits that the language in question cannot be interpreted to support such claim.

The District submits there is nothing in the language which would permit a one-time payment of extra salary dollars. The proposal is clear. The money available by reason of deferred implementation of the dental and long-term disability program "shall be applied to increase the salary schedule." The conclusion must be that the Association is seeking to amend its final offer. No such amendment is possible without the District's consent.

Even assuming, for the sake of argument, that the Association's interpretation is not a final offer amendment, it makes no sense; if a one-time payment is to be made, the distribution should not be different for different teachers, as the Association proposal would have it, because the amount which would have been paid for premiums would have been the same for each teacher.

The Association's final offer seeks a new contract provision which reads as follows:

> "Payment of Summer Fringe Benefits
>
> If a teacher, who completes a full academic year of service to the District is laid off, nonrenewed, dismissed or retired; or if a teacher plans to resign at the end of the second semester and gives written notification of such resignation to the Superintendent on or before April 15, such teacher shall have Health and Medical, Dental, LTD and TSA insurance premiums continued to be paid by the Board through August. Teachers who are forced through unforeseen circumstances to resign after April 15, shall also be entitled to full insurance premiums to be paid by the Board through August."

The background on the issue created by this proposal is not disputed. Under the prior collective bargaining agreement there was no provision for the continuation through August of any fringe benefits at District expense for any terminated teacher. In the current negotiations the parties agreed that hospital/medical insurance premiums would be paid by the District through August for any teacher laid off and for any teacher who resigned as of the end of the school year with notice prior to April 15. The Association is proposing to: (1) extend payment of hospital/medical insurance premiums to teachers who are nonrenewed, dismissed or retired, and to teachers who are "forced through unforeseen circumstances" to resign after April 15; and (2) add, for teachers in each category, payment of dental, long-term disability and tax sheltered annuity premiums. The District has proposed that the only payment should be those agreed upon and contained in the MED/ARB stipulation.

According to the District, the Association presented evidence only on the factor of comparability with teachers in other districts. Perusal of the evidence introduced by the Association shows that it fails to serve its intended purpose. There is obvious ambiguity under the headings used by the Association in its survey, and additionally the survey fails to reflect that there are certain limitations even in those districts that do provide benefits during the summer.

Additionally, the survey covered only layoffs and quits, whereas the Association's proposal would commit the District in cases of nonrenewal, dismissal and retirement as well. With the single exception of Maple Dale, there is no recitation of the benefits included. There is also no indication that the benefits are provided at employer expense rather than employe expense, and there is no description of eligibility requirements. The District presented in its contractual analysis of the fifteen districts it deemed comparable an analysis which shows contract provisions of only three districts that granted any kind of benefit continuation at the employer's expense. An Association witness stated that the Association's documentation was not intended as a contract analysis but rather as a "practice" analysis. While the document lists as its source "WEAC Insurance Trust, Head Negotiators of Districts and Administration Business Offices," the witness testified the document was actually constructed from telephone conversations.

The unreliability of the Association's approach is obvious when it is considered in the light of the District's contract comparisons. In all districts which appear on the District's list as well as the Association's list, the alleged practice is simply not supported by contract language. In some cases there is a direct contradiction--the most glaring example of which is Franklin. The Association lists it as having provided benefits for layoffs and quits, yet Section 7 of the Franklin contract expressly states, both for resignation as of the end of the school year and for layoff, that all benefits terminate at the end of the day on June 30. In numerous other instances the contract states that a benefit or benefits may be continued during layoff, but only at the teacher's expense.

Even when the existence of a practice is claimed by one of the parties supposedly directly governed by it, strong proof of that practice is required. (Hawaiian Airlines, Inc., 47 LA 781.) It is well established that in order to establish a binding past practice it must be: "(1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties." (Celanese Corp. of America, 24 LA 168.) Additionally, the party alleging the practice has the burden of establishing it. (Columbian Carbon Company, 48 LA 919.) These propositions applied to the immediate parties most certainly should also be applied to an outside party who, as in the instant case, seeks to establish the factor of comparability, under contract language which is at best silent and at worst in apparent contradiction, by a series of telephone calls to unnamed individuals. On that basis alone it can be concluded that the Association's proposal is not supported by the comparability factor. It has no support at all on the factor of comparability with respect to nonrenewal, dismissal, and retirement, for which no evidence of any kind was submitted.

Additionally, the Association's proposal should be deemed inappropriate because of the attempt to build upon a concession made by the District in the pre-arbitration bargaining. The District previously agreed to payment of hospital/medical premiums on resignation and the Association signed a stipulation to that effect. Now the Association seeks to broaden that agreement to include

premium payments under other circumstances. Finally, the idea of continued premium payments for teachers who are "forced through unforeseen circumstances" to resign is a dream for lawyers and a nightmare for everyone else.

For the above reasons the District requests that the arbitrator award its final offer.

DISCUSSION:

Arbitrators appointed under the provisions of Chapter 111.70(4)(cm)6 pertaining to "Mediation-Arbitration" are subject to the provisions of Chapter 111.70(4)(cm)7 which provides the following:

> "7. 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:
>
> 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 the same community and in comparable communities and in private employment in the same community and 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."

There are two issues involved in the instant dispute, one involving the inclusion or exclusion of a cost-of-living provision, and the other relating to the payment of certain fringe benefits during the summer months for teachers whose employment has been terminated, voluntarily or involuntarily. The record establishes that in the two preceding agreements, both of which were for three years' duration, a cost-of-living provision appeared. It was first suggested by the District and incorporated into the 1973-75 agreement. Subsequently the provision was modified and incorporated into the 1976-78 agreement. During the negotiations for a successor agreement to the 1976-78 agreement, the parties agreed that the duration of the successor agreement would cover the period from January 1, 1979 through June 30, 1980. It is the terms to be incorporated in that agreement which gave rise to the instant dispute.

Several factors contribute to the unusual nature of this dispute, most of which are attributable to the timing of the arbitration proceedings. The salaries and fringe benefits proposed by the parties for the 1979 calendar year are for all practical purposes identical, and any difference would be so minor as to have no impact on the decision in this case. While a greater difference exists in the parties' proposals for the period January 1 through June 30, 1980, that difference is not of sufficient magnitude to impact on the decision. Another unusual aspect of this case is that the parties know what the increase of the CPI has been, and thus know the impact of the cost-of-living proposal made by the Association. Additionally, there is no contention on the part of the District that it is unable to afford the Association's proposal.

It is apparent that the issue involving the salary schedule is not an economic issue, at least in the usual sense. The issue appears to have greater future significance than present significance. However, this does not diminish the importance of the issue.

Both parties noted that in arbitration the party seeking to change the status quo has the burden of convincing the arbitrator by "persuasive reason" of the justification for the change. The Association contends it is attempting to maintain the status quo by continuing the cost-of-living concept in the agreement. The District takes a contrary position claiming the Association's proposed change in the cost-of-living provision is so significant as to eliminate the status quo. The American Heritage Dictionary of the English Language defines status quo as follows: "The existing condition or state of affairs." Black's Law Dictionary, Fourth Edition, defines status quo as: "The existing state of things at any given date." Under either definition it does not appear that either party is seeking to maintain the status quo. The District is proposing to eliminate the cost-of-living provision and the Association is proposing a significant change in the existing provision. Where, as in this case, one party is seeking to remove a provision from the agreement and the other is proposing a significant

change in the provision, it cannot be concluded that either party is seeking to maintain the status quo. Thus neither party bears a greater burden of convincing the arbitrator by "persuasive reason" of the merits of its respective position, as neither party is seeking to maintain the status quo.

The two statutory criteria most germaine to this dispute are (d) and (h). Under (d) the arbitrator is directed to compare the wages, hours and conditions of employment of the employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services, other public employes in the same community and in comparable communities, and employes in private employment in the same community and in comparable communities. Under (h) the arbitrator is directed to consider "other factors" normally or traditionally taken into consideration in determining wages, hours and conditions of employment in both private and public employment.

Each party submitted a list of school districts it deemed comparable for the purposes of this proceeding. The District's list is composed of the following districts: Cudahy, Franklin, Greendale, South Milwaukee, St. Francis, Menomonee Falls, Waukesha, Muskego, New Berlin, Wauwatosa, Shorewood, Whitefish Bay, Elmbrook, Greenfield and Whitnall. The Association's list is composed of the following: Brown Deer, Cudahy, Fox Point, Franklin, Greendale, Greenfield, Maple Dale, Nicolet, Oak Creek, St. Francis, Shorewood, South Milwaukee, Wauwatosa, Whitefish Bay and Whitnall. The District's list includes districts in the same athletic conference, districts that border the District, and districts located in the southwest portion of the Milwaukee metropolitan area. The Association's list is composed of schools within Milwaukee County. Of the districts listed by the District, only Greendale has a clause relating to the CPI. If the Association's list is used for comparison purposes one additional district, Fox Point-Bayside, is found to have a clause relating to CPI. However the Fox Point-Bayside agreement is a three-year agreement.

Whichever list of districts is deemed to be comparable for the purpose of this proceedings, the inescapable conclusion is that the great majority of districts do not have cost-of-living provisions in their agreements. Additionally, one of the two districts which has a cost-of-living provision based on the CPI has a three-year agreement.

There is no evidence in the record relating to other public employes in other occupations, with the exception of the District's custodial and maintenance unit, clerical unit, and teacher aide unit. According to District Exhibit 1-L, both the custodial and maintenance unit and the clerical unit previously had cost-of-living clauses in their agreements dating back to January 1, 1974 and January 1, 1973 respectively. The clause was removed from the custodial unit's agreement which became effective July 1, 1979, and from the clerical unit's agreement which became effective January 1, 1979. The continuation of the cost-of-living provision for the teacher aide unit, which was first incorporated in their agreement on January 1, 1973, is presently in dispute. Based on the evidence, cost-of-living provisions have been bargained out of two of the four agreements negotiated by the District with its employes.

The Association introduced into evidence Association Exhibit 1, pp. 94-104, which contained excerpts from four private sector collective bargaining agreements containing cost-of-living provisions. The evidence indicates that three of the agreements are for three years' duration and the other are for two and one-half years.

Applying the statutory criteria contained in Chapter 111.70 (4)(cm)7.d. to the evidence in the instant dispute the following is established: (1) very few (two) of the districts deemed comparable by the parties have collective bargaining agreements with teachers which contain cost-of-living provisions based on the CPI; (2) during the negotiations which resulted in the current collective bargaining agreements covering the custodial and maintenance unit and the clerical unit, the District was successful in negotiating the removal of the cost-of-living provisions based on the CPI; (3) cost-of-living provisions are found in some private sector agreements that are of a multi-year duration.

The second group of criteria applicable in this case are those contained in (h): "Such other factors . . . which are normally or traditionally taken into consideration . . ." The bargaining history of the parties establishes that a cost-of-living provision was contained in the two preceding agreements, and the duration of those agreements was three years. The parties have agreed that the term of the agreement currently in dispute will be eighteen months. It is generally recognized that a cost-of-living provision is intended to protect negotiated increases from being eroded by escalating costs, which are generally represented by the CPI. The quid pro quo for a multi-year agreement is frequently a cost-of-living provision which affords employes some protection against the unknown--the future cost of living. Such provisions are unusual in short-term agreements as the parties return to the bargaining table at more frequent intervals and thus have the opportunity during negotiations to address the issue of rising costs.

Arbitrator Kerkman in Greendale (September 14, 1978) found that the employer's argument, that a cost-of-living provision contained in a one-year agreement is contrary to the established primary purpose of a cost-of-living provision (which normally is found in long-term agreements), had "a high degree of persuasiveness." While Arbitrator Kerkman awarded in favor of continuing the cost-of-living provision in a one-year agreement, he did so primarily on the grounds the association was seeking to maintain the status quo and the district, which was seeking to change it, failed to establish "persuasive reason" for the change.

In City of Greenfield Police Department, No. 20663, Arbitrator Stearn enunciated a criterion for removing a provision from an agreement. That criterion is that the party seeking the removal of the provision establish that it was successful in removing the provision through negotiations with other units of the same employer. The record establishes that the District was successful in negotiating out of the custodial and maintenance agreement and the clerical agreement a cost-of-living provision.

The Association argues that the District's final offer should be rejected on the grounds that it contains alternative

proposals, and the Association cites Janesville Education Association , MED/ARB-371, in support of its position. The case cited by the Association is distinguishable from the instant dispute in several material respects. The most obvious distinction is that in Janesville Education Association the district offered two "packages" of unrelated items from which the arbitrator could select the district's final offer. The arbitrator noted in that case that the presentation of alternatives detracted from the final offer. Additionally, and more significantly, the alternatives proffered by the district in Janesville were not intended to address problems arising out of time constraints. The alternatives put forth by the District in this dispute were intended to address the issue of timeliness as to the implementation of certain fringe benefits.

The District argues that the Association attempted to unilaterally modify its final offer during the arbitration proceedings by reinterpreting its final offer as to the inclusion in the salary schedule of certain monies not paid for specific fringes. According to the District, the Association's final offer provides that the money available by reason of deferred implementation of the dental and long-term disability programs would be applied to the salary schedule. However, at the time of the hearing the Association's representative stated it was not intended that the dollars be charged to the District "forever." There is apparent conflict between what the Association intended and what its final offer provides. Its final offer clearly provides "the increased balance of money thereby made available for the months of delayed implementation shall be applied to increase the salary schedule." The arbitrator is compelled to consider the final offer submitted to the Wisconsin Employment Relations Commission as the Association's final offer.

That final offer appears to provide not only for the increase in salary, as noted above, but for the fringe benefits including dental insurance and long-term disability insurance as well. Clearly the teachers would be entitled to the money saved in premiums as a result of the delayed implementation of the insurance programs. However, the Association's proposal is to put the money into the salary schedule attaching a degree of permanency to the money and creating a schedule off which future bargaining will occur. Had the Association proposed a lump sum payment to teachers of the money available as a result of delaying the implementation of the insurance program, the Association's position would have been more persuasive.

The second issue in dispute involves the Association's proposal to insert a provision in the agreement entitled "Payment of Summer Fringe Benefits." The proposed provision provides the following:

> "If a teacher, who completes a full academic year of service to the District is laid off, nonrenewed, dismissed or retired; or if a teacher plans to resign at the end of the second semester and gives written notification of such resignation to the Superintendent on or before April 15, such teacher shall have Health and Medical, Dental, LTD and TSA

"insurance premiums continued to be paid by the Board through August. Teachers who are forced through unforeseen circumstances to resign after April 15, shall also be entitled to full insurance premiums to be paid by the Board through August."

In Northeast Wis. Technical Institute (8/15/74) the arbitrator concluded the payment of insurance benefits during the summer represented deferred compensation. Although that case dealt with a grievance, the rationale of the arbitrator is persuasive. Equally persuasive is the evidence introduced by the District establishing that none of the districts it considered comparable had such comprehensive coverage as is proposed by the Association.

Under (d) the arbitrator is directed to give consideration to the wages, hours and conditions of employment of comparable employes. The evidence establishes that none of the districts deemed comparable by the parties have language as all-inclusive as that proposed by the Association. While the Association introduced into evidence the result of a survey of districts which indicates a number of districts provide the benefits, at least as a matter of "practice," the best evidence as to the districts' contractual obligations is the agreements themselves. A review of the agreements establishes that the districts deemed comparable by the parties do not contractually provide the benefits being sought by the Association.

Based on the entire record, and with due consideration to the statutory criteria contained in Chapter 111.70(4)(cm)7, it is the opinion of the undersigned that the District's final offer must be awarded. It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

That the final offer of the District be incorporated into the collective bargaining agreement retroactive to January 1, 1979.

Neil M. Gundermann, Arbitrator

Dated this 23rd day
of May, 1980 at
Madison, Wisconsin.