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BEFORE MEDIATOR-ARBITRATOR  
MARSHALL L. GRATZ

FEB 9 1981

<p>-----          In the matter of the Mediation-Arbitration          of a dispute between</p> <p>ARROWHEAD UNITED TEACHERS ORGANIZATION (AUTO)</p> <p style="text-align: center;">and</p> <p>ARROWHEAD UNION HIGH SCHOOL DISTRICT (DISTRICT or AHS) :</p> <p>-----</p>	<p>WISCONSIN EMPLOYMENT          RELATIONS COMMISSION</p> <p>: WERC Case VI          : No. 25552          : Med/Arb-575          : Decision No.          : 17636-A</p>
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MEDIATION-ARBITRATION AWARD

PRE-HEARING AND HEARING DEVELOPMENTS

On October 1, 1979 the parties exchanged initial proposals on matters to be included in a new collective bargaining agreement to succeed that which was to expire June 30, 1980. The bargaining unit involved consists of all full-time and regular part-time professional employees of the District excluding the District Administrator, supervisors, managerial, confidential employees, nonprofessional employees, per diem substitutes and all statutorily excluded employees. After three bilateral negotiation sessions, two meetings mediated by a WERC staff mediator, a January 4, 1980 AUTO petition for Mediation-Arbitration, and two WERC staff investigation meetings (wherein the parties executed a stipulation of agreed upon items and submitted their respective final offers in writing concerning matters remaining in dispute), the WERC (Wisconsin Employment Relations Commission) determined that an impasse had been reached in the negotiations. Accordingly, in its Dec. No. 17636 dated March 5, 1980, WERC ordered that Mediation-Arbitration within the meaning of the Municipal Employment Relations Act be initiated in the matter and that the parties select a mediator-arbitrator from a list of five names submitted to the parties by WERC.

Rather than selecting their mediator-arbitrator from the list furnished by WERC, the parties mutually agreed that the undersigned should perform that function. Accordingly, on March 30, 1980 WERC issued Dec. No. 17636-A appointing the undersigned ". . . as the mediator-arbitrator to endeavor to mediate the issues in dispute, pursuant to Section 111.70(4) (cm)6.b. of the Municipal Employment Relations Act, and should such endeavor not result in a resolution of the impasse between the parties, to issue a final and binding award, pursuant to Section 111.70(4) (cm)6.c. through h. of the Municipal Employment Relations Act, to resolve said impasse by selecting either the total final offer of the Arrowhead Union High School District or the total final offer of Arrowhead United Teachers Organization."

By agreement of the parties, the matter proceeded immediately to a formal hearing (meeting) in which the parties were given a full opportunity to present evidence and arguments in support of their respective final offers. The parties further agreed, however, that the Mediator-Arbitrator (herein referred to as Arbitrator and undersigned) was not foreclosed by that procedural development from attempting to bring about a mediated resolution of the dispute prior to rendering his award in the matter.

The arbitration hearing (meeting) consisted of some 28 hours of testimony and arguments spread over four sessions, commencing on May 1, 8, 19, and 20, 1980. Several hundred pages of documentary evidence was received in the form of some 205 exhibits, and a transcript of the proceeding was prepared which was 872 pages in length.

## PRESENT AT THE HEARING

For the District: MARK F. VETTER, Attorney, Mulcahy & Wherry, S.C.,  
Milwaukee.  
John Reimer, Chairman, Personnel Committee  
of the District Board of Education  
Larry D. Zenor, District Administrator  
Mary K. Masty, Research Center Staff Member,  
Mulcahy & Wherry, S.C., Milwaukee

For AUTO: ARMIN F. BLAUFUSS, UniServ Director, Cedar  
Lake United Educators  
Charles E. Turpin, AUTO Chief Negotiator  
Peter Roidt, AUTO President

## POST-HEARING DEVELOPMENTS

Originally it was agreed that briefs would be filed three weeks after distribution of the transcript and reply briefs two weeks after receipt of the adversary's initial brief. The transcript was distributed on or about July 1, 1980. Thereafter, however, the briefing schedule was modified by mutual agreement, partly in recognition of the fact that the Mediator-Arbitrator was engaging the principal representatives of the parties in discussions of possible bases for a mediated settlement. As of July 25, 1980, it was clear that those efforts at informal resolution would not be successful, and on that date a revised briefing schedule was agreed upon calling for the reply brief exchange on September 5, 1980. Initial briefs were exchanged in accordance with that revised schedule. Reply briefs were thereafter submitted in accordance with a further agreed-upon extension of that revised schedule, the last being received by the Mediator-Arbitrator on September 15, 1980. Thereafter, on October 7, 1980, the Mediator-Arbitrator received a letter from the District's principal representative clarifying certain aspects of the District's reply brief in response to a written request to that effect from AUTO dated October 2, 1980. As ultimately submitted, the Union's briefs totaled some 79 pages, plus a 41 page addendum. The District's brief and reply brief totaled 96 pages in length.

The Mediator-Arbitrator issues the instant Award on the basis of the evidence received into the record at the hearing and upon consideration of the arguments advanced by the parties at the hearing and in their post-hearing submissions noted above. It is issued in accordance with the requirements of the WERC order of appointment noted above and the statutory requirements noted therein. The statutory factors to be considered in mediation-arbitration proceedings are set forth below, followed by a statement of the ultimate issue for determination herein.

## PERTINENT STATUTORY PROVISION (WIS. STATS., 1979)

### Section 111.70(4)(cm)

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.

#### ISSUE:

Giving weight to the Sec. 111.70(4)(cm)7, Stats., factors, which party's final offer shall be incorporated into the parties' written collective bargaining agreement?

#### BACKGROUND AND CONTENTS OF THE FINAL OFFERS

This dispute involves essentially two subject areas as regards the parties' 1979-80 collective bargaining agreement which expired on June 30, 1980: the wording of a new management rights clause and the method of salary determination.

The District operates the two-campus Arrowhead High School, serving some 1583 senior high school students from an area of north central Waukesha County including the City of Hartland. It employs some 80 bargaining unit professional (78.3 Full Time Equivalency). Eleven bargaining unit employes were hired new to the District in 1979-80. Six members of the bargaining unit are classified as "Specialists" for pay purposes.

The predecessor to the 1979-80 agreement at issue herein covered 1977-78 and 1978-79, but it provided for a second-year reopener regarding calendar, "salary package" and compensation for new co-curricular duties. It contained no express management rights, waiver of bargaining, or entire agreement clause.

Under that 1977-79 agreement, several provisions bore on the determination of teacher salary, culminating in a rather complicated method of determining a combined annual salary/co-curricular compensation figure for each employe. A salary appendix identified five job classifications based on either specialist status or on the extent of nonspecialists' current year point-related (co-curricular) activities. For each of the job classifications, dollar values were set forth for "Base Salary" or minimum, "Bachelor's Maximum", another maximum referred to inter alia as "top of the merit schedule", and for "increment" or "merit increment". That 1977-78 appendix read as follows:

ARROWHEAD HIGH SCHOOL TEACHER'S SALARY SCHEDULE

1977-78

CLASSES I, II, III, IV, & V

MERIT RATINGS AND INCREMENTS

Merit rating 5 = 2 Increments  
 Merit rating 4 = 1½ Increments  
 Merit rating 3 = 1 Increment  
 Merit rating 2 = ½ Increment  
 Merit rating 1 = 0 Increment

<u>JOB CLASSIFICATIONS</u>	<u>CLASS I</u>	<u>CLASS II</u>	<u>CLASS III</u>	<u>CLASS IV</u>	<u>CLASS V OR SPECIALISTS</u>	<u>JOB CLASSIFICATIONS POINT BREAKDOWN</u>
MASTER'S DEGREE + 4 or 5 RATING	17,500*	18,004*	18,468*	18,883*	19,325	Class I 1-15 0-1 pts. Class II 1-15 2-4 pts. Class III 1-15 5-7 pts. Class IV 1-15 8-10 pts. Class V 1-15 11-15 pts.
MERIT INCREMENT	(453)	(464)	(476)	(487)	(499)	Class Va + 1½ 16-18 pts. Class Vb + 1½ 19-21 pts. Class Vc + 1½ 22-24 pts. Class Vd + 2½ 25-27 pts.
BACHELOR'S MAXIMUM	<u>15,754</u>	<u>16,148</u>	<u>16,542</u>	<u>16,935</u>	<u>17,329</u>	
INCREMENTS	(453)	(464)	(476)	(487)	(499)	
PERCENTAGES	100%	+ 2.5%	+ 5%	+ 7.5%	+ 10%	
BASE SALARY	<u>9,407</u>	<u>9,643</u>	<u>9,877</u>	<u>10,112</u>	<u>10,347</u>	

\*TEACHERS WITH A MASTER'S DEGREE CAN PROGRESS ABOVE THE BACHELOR'S MAXIMUM ½ INCREMENT EACH YEAR UPON RECEIVING A 4 MERIT RATING OR 1 FULL INCREMENT WITH A 5 MERIT RATING TO THE TOP OF THE MERIT SALARY SCHEDULE.

Each employe's individual annual salary/co-curricular compensation was determined by adding to the teacher's preceding year salary (excluding co-curricular components) a multiple of the dollar-amount of the merit increment applicable to the job classification in which the employe's current year co-curricular/specialist situation placed the employe. As is noted on the 1977-78 schedule above, the multiple of the increment by which the employe's compensation was to be increased was a function of the final merit rating (1, 2, 3, 4 or 5) decided upon jointly by the District Administrator, the teacher's Principal and the teacher's Department Chairman. Prior to meeting to jointly determine that final rating, each of those supervisors independently completed a rating form and a 1-5 overall rating of the employe after formal observations(s) of the employe's work and conferences with the employe of varying types discussed in more detail below. The employe then met with the three evaluators together and was advised of their joint final rating decision and given oral comments concerning same.

As noted on the 1977-78 Appendix, above, a merit rating of 5 would permit a compensation increase of up to two increments, a four rating 1.5 increments, a three rating 1 increment, a two rating 0.5 increment and a one rating 0.0 increment. The Bachelor's (or BA) Maximum was the cutoff point for annual compensation for employes with current year ratings of 3 or less. Annual compensation was permitted to exceed the Bachelor's Maximum for "meritorious" (4 or 5 rated) teachers holding certain master's degrees, and to a somewhat lesser extent, for 5 rated employes not holding a master's (i.e., MA) degree. Limited compensation above the Bachelor's maximum was also permitted to 4-rated employes without master's degrees, but only on a noncumulative, i.e., one-time-only-payment basis.

The 1977-79 Agreement provided that an employe's compensation would be increased by one full increment upon attainment of a qualifying master's degree and it contained related ADVANCEMENT IN CLASSIFICATION language calling for issuance of a contract rider to that effect in the year the degree is attained.

That agreement also contained PROFESSIONAL GROWTH language requiring each employe to earn a specified number of qualifying credits of continuing education during each five year period of AHS employment in order to avoid loss of salary increments for which the staff member would otherwise be eligible. Another 1977-79 agreement provision called for partial District reimbursement of expenses incurred by employes in pursuing approved programs of professional study. That Agreement also contained a provision entitled "DENIAL OF INCREASE" which reads as follows:

"Only employees who render satisfactory service will advance on the salary schedule. The Board reserves the right to deny an increment to any employee not fully performing the duties of his position only for cause and only as determined by adequate supervision (which includes conferences, written observations, and positive assistance in remedying deficiencies.)"

In late-1978 and early-1979, negotiations on the reopener items generated an AUTO petition for mediation-arbitration and a District petition for a declaratory ruling concerning whether AUTO's proposed alteration of the method of salary determination in effect in 1977-78 was within or outside the scope of the parties' agreement to reopen "salary package" for 1979-80. On January 15, 1979, however, the parties reached an agreement that both settled the reopener items for 1979-80 and resulted in the consensual dismissal of both of the above petitions and proceedings. That Agreement essentially left the 1977-78 method of determining compensation intact, increased the minimums and both sets of maximums by \$900, and made certain other additions to the Agreement not material herein.

The parties also agreed as part of the settlement to establish a study committee with the following guidelines:

#### "I. Committee Goals and Objectives

- A. The goals and objectives of this committee will be recognized by the 1979 Arrowhead High School interim School Board and its successor(s) and by the Arrowhead United Teachers Organization and its successor(s).
- B. The committee will address itself to the creation of a conceptual method that will solve the mutual problems facing the Arrowhead High School Board and teachers of the entire compensation system. The conceptual solution is to create a compensation system that is both competitive with and equitable to comparable school systems.

#### II. Committee Members

- A. The Committee shall consist of eight voting members.
- B. The Board representation shall consist of the District Administrator and three members of the community chosen by the teachers.
- C. The teachers' representation shall consist of the teachers' chief negotiator and three teachers chosen by the Board.

#### III. Meetings and Time Schedule

- A. The Committee shall attempt to meet as frequently as possible.
- B. Committee recommendations shall be completed by June 1, 1979.

#### IV. Research Procedures and Data Collection

- A. Within the limits of state laws, all pertinent records of Arrowhead High School should be open to the Committee members.
- B. The comparable schools will include: Oconomowoc, Sussex-Hamilton, Grafton, Kettle Moraine, Germantown, Waukesha, Menomonee Falls and Hartford.

#### V. Record Keeping

- A. The Business Manager shall record and transcribe all minutes of committee meetings. Minutes shall include all proposals, data, and other records presented during meetings.
- B. A tape recorder shall be employed at all meetings and such recordings shall be kept by the Business Manager and erased after approval of the minutes at the next meeting.

#### VI. Costs of the Committee

All costs for this Committee shall be equally borne by both the ATEA (AUTO) and the Arrowhead High School District.

#### VII. Procedural Aspects of Committee Structure

- A. The Committee shall establish procedures at its first regular meeting. Those procedures will address themselves to the objectives of the committee.
- B. All tentative agreements shall be voted upon by secret ballot, unless otherwise agreed to by five of the eight members of the committee, with each committee member receiving one vote.

#### VIII. Implementation of Committee Recommendations and Findings

The Committee's recommended conceptual method shall be considered by the respective negotiating teams in developing their proposals for the 1979-80 Arrowhead High School contract year."

That committee was selected and met on some eight occasions. The teacher and community members were, however, unable to agree on a joint report of findings and recommendations. Instead, each of those two groups presented separate reports. The Community Members' report noted the absence of agreement on a committee report, but expressed the view that the committee's activities had improved the teachers and community members' understandings of the others' points of view. The Community Members' report made only the following observation concerning the subject matter of the committee discussions:

"After many hours of discussion, it would seem to us that we have a philosophical difference.

1. Teachers would like to decide their pay --
  - a. Number of years in the system
  - b. Number of hours for which credit was received at a school of higher learning
2. Community Task Force would like to see the community decide teachers pay by rating of administrators.

We as the Community Group, feel that we do have some areas that will need adjustment in the present schedule, and these can be worked out after the philosophical question of who will determine teachers pay has been decided.

We as a Community Group, also feel that the salary framework and possible adjustment must be negotiated in the near future."

The Teacher Members' report echoed the view that the discussions had been mutually revealing about the community and teacher members' points of view. It summarized inputs of Community members, department chairmen and teacher members and cited six "KEY-POINTS FROM THE MEETINGS", noting the apparent views of teacher and community representatives with respect to each. As its CONCLUSIONS, the teacher members' report stated the following:

There is a definite philosophical difference in the way the teachers should be paid at Arrowhead High School. The community committee members wanted to continue to evaluate teachers and tie this completely into a meritorious schedule. The teachers committee members did not object to the evaluation, but they felt that any stipend should be above and beyond a regular salary schedule. The community members were confident that the department chairmen and administration were fair in evaluating teachers. However, the teachers committee felt that the evaluation was too subjective on which to base an entire salary schedule. The teachers committee were willing to pursue a non-cumulative bonus system based on an evaluation process for the improvement of instruction. However, this monetary sum should be over and above a comparable salary schedule.

The teachers committee preferred the concept of salary lanes according to experience, credits, and degrees. The community members wanted the privilege of rewarding teachers for doing a better teaching job. The feeling was that degrees and years of experience in the profession do not necessarily make a better teacher. The teachers committee felt that they should have a schedule with some control over their raises by improving their education and working toward a higher degree. The community committee's concept was "to pay the good teacher more, He deserves it." However, the implementation, over the past few years has shown that teachers receiving merit do not keep up with comparable schools, especially at the top of the salary schedule. Thus, it is a fair deduction that the present merit pay plan is really a de-merit pay plan.

Once the concept of merit pay is settled, the committee members see hope of further negotiations. The issue is sacred to the board and extremely bitter to the teachers. It is our hope that this issue will be settled early by both parties so that true negotiations can begin.

Sometime after the issuance of those reports, the parties drew up initial proposals regarding the new agreement to succeed the 1977-79 agreement that expired on June 30, 1979. The parties' initial proposals are not a matter of record, but it appears clear that the Union proposed changing the method of salary determination to one based on degree attainment, experience and credits attainment, with the salary impact of merit ratings reduced to additional noncumulative awards based on criteria to be furnished to the employees in advance of the evaluation period. It also appears clear that the District proposed retention of merit increment increases in multiples determined by teachers' merit ratings as one determinant of overall salary, and further that the District proposed elimination of salary recognition of future attainments of master's degrees by teachers not previously possessing same. It is unclear which party initiated certain other agreement modification proposals. It is clear, however, that at no time during the negotiations did AUTO advance proposals or counterproposals which dealt with either pre-evaluation or

post-evaluation conferences or written reports which would be submitted after those evaluations.

The parties' bilateral negotiations, mediation sessions and investigation meetings produced a number of agreements concerning the contents of the parties agreement for 1979-80. As set forth in the parties' Stipulation of Agreed Upon Items, the parties agreed, among other things:

1. to retain the PROFESSIONAL GROWTH and DENIAL OF INCREASE provisions described above;

2. to add a new TEACHER FILE provision entitling teachers, inter alia, to review and copy materials in their official personnel file, to insert responses to file materials that may have an impact on their employment status, and to receive a copy of "any material relative to the teacher's conduct, performance or character" that will be placed in that file by the District;

3. to add a new ENTIRE MEMORANDUM OF AGREEMENT provision to read as follows:

"This Agreement constitutes the entire agreement between the parties and no verbal statements shall supercede any of its provisions. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

The Board and the Association, for the life of this Agreement, each waive their right to bargain with respect to all items contained in this Agreement and all items which were contained in the parties' initial bargaining proposals but not included in this Agreement.

The parties agree that they may exercise their rights under state law with respect to all other mandatory subjects of bargaining. This provision shall evaporate at the expiration of this Agreement."

4. to eliminate the job classification concept entirely;

5. to separate salary compensation from co-curricular compensation;

6. to eliminate the concepts of Bachelor's Maximum and Merit Schedule Maximum as they had been established and applied under the 1977-79 and previous agreements (both final offers contain maximums of a different nature);

7. to compensate co-curricular activities at \$100 per point, thereby eliminating the former impact of the merit rating on co-curricular compensation; and

8. to delete the existing language regarding payment of an additional increment upon attainment of a qualifying master's degree. (but AUTO's final offer would substitute compensation for MA degree possession and attainment)

As noted, the two general issues remaining in dispute are those of Management Rights language and the method of determining salary. The major elements of the parties' respective proposed final offer resolutions of those issues are separately summarized below and then briefly compared.

#### Summaries of the Final Offers

The District final offer would:

1. add a new Management Rights provision expressly providing that ". . . subject only to the provisions of this contract and applicable law" the District possesses the sole right to operate the District and retains all management rights, and



providing further that such rights including, but not limited to, nine enumerated specifications of management rights, including the right to make reasonable work rules, to impose discipline, to relieve staff of duties for legitimate reasons and to contract out for goods and services;

2. provide a salary appendix containing a minimum salary of \$11,235; a merit increment of \$450; and returning teacher salaries consisting of 109% of 1978-79 salaries (excluding co-curricular pay) plus merit increases of the traditional AHS variety up to maximums on total salary as noted below:

"Merit Ranking 5 = 2 Increments to a maximum total salary of \$22,470

Merit Ranking 4 = 1-1/2 Increments to a maximum total salary of \$20,785

Merit Ranking 3 = 1 Increment to a maximum total salary of \$18,538

Merit Ranking 2 = 1/2 Increment

Merit Ranking 1 = 0 Increment"

The District's final offer does not specify its proposed method of new-to-the-District teacher salary determination, except for the above-noted base salary;

3. retain the PERSONAL EVALUATION provisions materially intact including both the effect of merit ratings on salary and the existing language stating, "individual salaries shall be adjusted according to training, experience, and performance on the job."

4. delete the ADVANCEMENT IN CLASSIFICATION language thereby removing the last of the former provisions related to payment of an additional salary increment upon attainment of a master's degree. (Since past increments granted for master's degrees are part of incumbents' 1978-79 base salary, this deletion has only the effect of eliminating increments as regards future MA degree attainment.

The AUTO final offer would:

1. add a clause entitled MANAGEMENT RIGHTS as follows:

"The Arrowhead United Teachers Organization recognizes that the Board of Education of the Arrowhead Union High School District must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefits and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this State and of the United States and by Section 111.70 of the Wisconsin Statutes.

The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes."

2. delete the contract language that individual salaries be adjusted ". . . according to training, experience and performance on the job."

3. A provision that 1979-80 salaries of returning teachers shall consist of 1979-80 base (non-co-curricular) salaries plus up to \$2,300 based on: a seven percent across the board increase, plus an increment of \$550 for having one additional year of experience (unless denied in accordance with DENIAL OF INCREASE language), plus a master's degree increment of \$550 to non-specialists possessing qualifying master's degrees, plus credit payments of \$250, \$500 or \$750 for those possessing 10 or more, 15 or more, or 20 or more qualifying credits, respectively, Also proration of certain aspects of those increases for part-time employes.

4. A salary schedule (8 lanes, 13 BA steps, 15 MA steps, BA Min.\$11,029, MA Min.\$12,323, uniform step increments of \$550, credit pay as noted above) and provisions for administering same, with placements thereon specified only for staff members new to the system in or after 1979-80, and a "future" provision stating,

"Future salary adjustments, experience increments, Master's degree increments, pay for credits and/or placement on a salary schedule shall be subject to the negotiation process and mutual agreement of [AUTO and the District]."

5. retain the PERSONAL EVALUATION provisions materially intact except delete the language regarding the effect of merit ratings on salary and add a teacher right to receive a copy of each evaluator's evaluation and rating of the employe; and

6. add an AWARD PLAN reserving to the District the right to provide "outstanding service" awards in its discretion to teachers besides the salary provided for elsewhere in the AUTO final offer, subject only to the requirement that "At the beginning of each year the Board and/or administration shall provide all teachers a list of criteria that will be used in determining such awards."

#### Brief Comparison of the Final Offers

A brief comparison of the basic elements of final offers reveals the following: Both would add MANAGEMENT RIGHTS language, but with substantially different legal consequences as will be noted below. Both would essentially retain the PERSONAL EVALUATION system, but AUTO would significantly reduce its potential impact on salary. Both would determine 1979-80 returning teacher salaries by applying an across-the-board percentage increase to the individual's 1978-79 non-co-curricular salary and both would then add in accordance with other salary determinants up to specified maximums. AUTO's other salary determinants are an experience increment (\$550) payable to all returning teachers unless the DENIAL OF INCREASE provision warrants otherwise, an MA degree possession increment, and salary increases based on credits possessed; the District's other salary determinant is the previously existing merit system impact on salary, to wit, multiples of merit increment (here \$450) depending on the yearly merit rating. AUTO's maximum is on total salary increase (not to exceed \$2,300); the District's maximums are on total salary and would vary depending on the individual's yearly merit rating. The District would prospectively eliminate the one increment salary increases based on Master's degree attainment; AUTO would retain that concept and, as noted, add to 1979-80 salaries an increment in recognition of MA degree possession. AUTO would authorize noncumulative "outstanding service" awards at the District's option, awarded on criteria made known to the teachers at the beginning of the school year. AUTO would place new staff on a grid salary schedule in which salary is determined based on experience, degree and credits; the District's 1979-80 salaries for new staff would evidently be at the \$11,235 base salary or above in the District's discretion.

### Some Basic Undisputed Matters

At the arbitration hearing, both sides presented witnesses concerning the operation and efficacy of the evaluation system, the historical development of the salary issue and voluminous analytical data based in part on reference to differing sets of proposed groups of comparable districts. A representative summary of that evidence would unduly lengthen this decision and is not undertaken.

However, several basic and essentially undisputed matters revealed in the record are worthy of particular mention here.

First, the District acknowledges that its Management Rights request is not a response to any particular difficulties experienced by the District under the terms of the 1977-79 or previous agreement(s).

Second, the District acknowledges, regarding the merit based pay system in its final offer, that ". . . there are no other merit pay systems of this nature in the State of Wisconsin."

Third, the general method of determining annual compensation contained in the 1977-79 Agreement (described above) is representative of that in governing compensation plan documents of record dating back to 1971-72. Indeed, there appears to be no dispute with the District's general assertion that the use of supervisor merit ratings as a significant determinant of teacher compensation has been a characteristic of the conditions of employment of District professional employees for 15 years or more. Such concept has been a part of the collective bargaining agreements since at least 1974-75 and perhaps before.

Fourth, the total package costs of the two final offers are so close to one another as to warrant being treated as essentially the same.

Fifth, over the years, including for 1979-80, the 1 and 2 ratings have been quite rare, such that the lowest rating typically received has been a 3. In 1979-80 nearly half the unit received a 4 rating, and nearly half a 3 rating, with the small remainder receiving 5 ratings.

## POSITIONS OF THE PARTIES

The parties have both criticized the other's comparables selections and analytical methodologies and assumptions in various respects. While these criticisms have been weighed by the Arbitrator, they are not reviewed in detail in this award.

The massive presentations by each party and the lengthy and detailed arguments presented in support of their respective arguments are summarized in some detail, below.

### AUTO ARGUMENTS

#### Management Rights

The absence of a management rights clause in the predecessor agreements has, by its own admission, caused the District no difficulty. The parties have already agreed to add limited waiver of bargaining language in the new ENTIRE MEMORANDUM OF AGREEMENT provision. No need for the substantial further changes sought by the District has therefore been demonstrated.

AUTO's proposal conforms to the existing state of the law. It consists essentially of the language of Sec. 111.70(1)(d) describing the rights of municipal management in the context of its bargaining obligations under law. It in no way diminishes the District's rights as provided by chs. 120 and 111 taken together.

The District argues that its proposal would authorize it to make unilateral changes and to avoid impact negotiations during the term of the agreement on certain subjects. AUTO does not waive any such obligations on the District's part, and AUTO does not concede that the District's proposal would have the effects of a waiver if adopted. Hence, adoption of the District's language would likely generate litigation and discord, especially in the absence of elucidating bargaining history on various potential subject matters.

Moreover, if the District's waiver theory were upheld, the effect would be illegal, unreasonable, and contrary to public policy. Illegal because the District's rights would then far exceed those it has in the absence of the agreement. Unreasonable because the District would claim the authority to unilaterally act not only on the enumerated matters in its proposal but in a host of other areas not expressly and substantively dealt with elsewhere in the agreement, given the open-ended nature of the District's clause. And contrary to public policy because it is the public policy in Wisconsin to encourage resolution of disputes by collective bargaining rather than by unilateral employer action or by refusals to discuss mandatory subjects.

For those reasons, the AUTO language must be found preferable to the District's as regards the management rights issue.

#### Salary

This issue is traceable to changes in the merit rating system foreshadowed in August, 1975 remarks of the then-Board Member Andrew Morris to a meeting of the AHS professional staff. Since that time, as teachers feared based on Morris' remarks, there have been many fewer 4 and 5 ratings, a lesser correspondence between evaluator's ratings and the final rating given, and a rating system without specific standards that dwells in arbitrariness and subjectivity; whereas prior to that time, AHS had "a merit system with certain determinations and accurate ratings."

Teachers surveyed by the Union in April of 1976 evidenced their dislike for the changes and 88% of them voted in favor of abolishing the merit pay system. Because the 1976-77 negotiations had been settled by that time, the Union sent a detailed three-page letter to District Administrator Zenor specifying the teachers' objections to the

AUTO ARGUMENTS (cont'd)

rating system as then administered and urging specific procedural modifications to improve its reliability and acceptability to the teachers as a group.

When things did not improve, the Union sought to eliminate the merit system's impact on salary during the 1977-79 contract negotiations, but settled at that time for a one year continuation of the system and a second year reopener of the salary question. The District, however, refused to bargain about a change in the method of salary determination under the reopener, revealingly citing as one of its reasons that the Union's proposal failed to respect "the Board's right and obligation to establish the policy under which the school is to be governed." The study committee created as a result of that impasse failed to resolve the basic dispute as to the efficacy of continued reliance on merit ratings as a key determinant of teacher salaries.

Another survey of teacher sentiment after the study committee efforts ended revealed only 6 of 55 responding favored retention of the present system. Thirty-nine responding favored its elimination.

Accordingly, in the 1979-80 bargaining, AUTO has pursued in its proposals the objectives jointly agreed-upon in the study committee charge: creating "a conceptual method that will solve the mutual problems facing the . . . Board and teachers . . ." and "to create a compensation that is both competitive with and equitable to comparable school systems." To those ends, AUTO has sought to change the determinants of teacher salaries from the arbitrary and unreliable merit ratings to the salary determinants utilized nearly universally in professional education units state-wide: experience, degree held, and credits possessed beyond the BA or MA degree. Giving consideration to the past, present, and likely future status of the AHS staffs compared with peers in the 10 other K-12 or Union High School (UHS) districts in Waukesha County, AUTO developed a proposal that would put the parties on the road to achieving the agreed-upon objectives.

AUTO developed and proposed a comparable and competitive salary schedule and proposed that teachers new to AHS in 1979-80 and thereafter be placed on it in accordance with current placement and credit-recognition criteria. Because AUTO was unsuccessful in its efforts to obtain District information/confirmation about past salary placements or to obtain District participation in a joint effort to accurately and equitably place returning teachers on a salary schedule, AUTO chose not to risk inaccurate placements of those employees in 1979-80, preferring to leave that to joint determination in 1980-81. Instead, AUTO proposed an interim method of determining returning teacher salary increases for 1979-80 that monetarily recognizes an additional year of experience, the possession of an MA degree, and the possession of groups of credits beyond the BA or MA. To avoid any dispute concerning total salary dollars, AUTO set a maximum on the salary increases for returning teachers that brings the total dollar impact of its proposal slightly below that of the District's.

Besides removing it as a determinant of cumulative salary, AUTO does not otherwise disturb the contractual evaluation system, except that it proposes that teachers be provided with copies of each individual evaluator's overall evaluation and rating so that teachers will be more effectively guided in improving their performance in subsequent years. Under AUTO's proposal, the District is authorized to reward monetarily for performance and contributions deemed meritorious, but only in noncumulative Award Plan payments based on criteria listed for the teachers at the beginning of the school year involved. AUTO leaves the existing DENIAL OF INCREASE language intact so that if a teacher is not fully performing, that teacher will not be paid an increment for an additional year of experience.

The District responded to AUTO expressions during negotiations about the failings of the merit pay system with merely surface solutions. The District is apparently motivated by its continuing mistaken belief that management has the right to determine the pay structure, i.e., merit, and that the teachers have the right to negotiate the

AUTO ARGUMENTS (cont'd)

monies to be applied to the pay system. The District offer does not eliminate the problems teachers have with the merit pay system in the District. It is merely a one year "fix" of an unjust and inequitable pay system under the District's proposal. There would remain maximums that can prevent employes from obtaining the full value of merit at the top, and the District's proposal exacerbates the plight of MA degree holders relative to their peers in other districts. The District's proposal has not dealt with the regression of the salary schedule, the diminished purchasing power of their proposed increment, pay for credits, the gross inequities created by the lack of MA degree pay recognition and the inconsistency, arbitrariness and subjectivity of the present evaluation system that leads to merit pay determinations. And the amounts of money actually paid above one full increment to 4 and 5 rated teachers amounts to only 5% of the new money in the package, hence providing little incentive in any event as well as causing numerous inequities and problems.

In support of its position, AUTO has presented various analyses comparing AHS pay with the 10 other K-12/UHS districts. Such a grouping for comparison purposes is supported by news media practice in the area and District Administrator Zenor's undisputed statement to at least one teacher that if AHS staff are to be compared with any in the area, it is with those in districts to the east of AHS. Hence, Elmbrook, New Berlin and Muskego warrant inclusion among the relevant comparables. Even if Germantown and Hartford or even Watertown is added, AUTO documentation has shown that its conclusion would remain valid.

The District's comparables, on the other hand, are skewed to lower paying districts without justification. While the District adds noncontiguous districts, Menomonee Falls and Waukesha, it excludes other (higher paying) Waukesha County districts to the east. Furthermore, the District's statistical criteria do not persuasively support its deselection of the other K-12/UHS schools, nor are those criteria even claimed to support the inappropriate comparisons with the nine K-8 feeder districts. The feeder districts are not comparable to AHS; they are far smaller districts, and they share no historical pay or bargaining relationship with AHS.

In any event, since it is undisputed that AHS' is the only pay system of its kind in the state; and since every district cited as comparable by either party makes degree, experience, and credits the determinants of salary; AUTO's proposal, which is based on those three elements, must prevail.

AUTO has also shown through record evidence that the existing evaluation system carried forward in the District's proposal is not an accurate means of determining teacher merit. The reliability of any rating scale evaluation system requires careful administration to avoid material invalidating influences. The District's administration of the existing system has heightened rather than reduced those influences. Eighteen teacher witnesses gave essentially uncontroverted testimony about numerous rating system abuses.

Overall, the record shows that the following are among the material deficiencies rendering the system's administration inconsistent, arbitrary, subjective, arrogant and therefore unreliable as a determinant of teacher salary:

1. All three raters have an equal vote in determining the final rating whereas differences in the extent of their respective opportunities to observe and know the teacher's performance should make the department chairman's evaluation most valid and more heavily weighted.

AUTO ARGUMENTS (cont'd)

2. Factors other than first-hand evaluator observations find their way into the evaluation process, making the reliability of the ratings suspect. Those factors include campus deans' inputs, other teachers' input, telephone calls, hearsay, citizens' opinions, etc. Indeed, the District Administrator undisputedly told at least one teacher that he rates employes 3 unless he has received outside communications praising the teacher's performance.

3. Teachers are not routinely informed as to how they should modify their performance so as to improve their rating. Where specific recommendations are made and then met by the teacher, the criteria for a higher rating appear to change. Indeed, Mr. Zenor admitted in his testimony that his criteria for ratings possibly change from day to day and are probably affected by how he feels.

4. Numerous inconsistencies make the system unfair. The frequency and duration of formal observations varies substantially teacher to teacher. Some are told their department chairman's evaluation and ratings, others are not, and none learn of the specifics of the District Administrator's own evaluation and rating of their overall performance; hence teachers are often left to guess what to do to improve their performance and merit rating. Pre- and post-observation conferencing and write-up practices vary greatly evaluator to evaluator, as well. And the system unfairly concentrates virtually all of its evaluation on only half of the teacher's performance -- that in the first semester.

5. It is undisputed that there are no specific standards for becoming a 4 or 5 rated teacher in contrast to a 3 rated teacher. One department chairman undisputedly admitted that he had difficulty in distinguishing the 3, 4 and 5 ratings. Zenor identified 4's as outstanding and 5's as superior, but the decisional standards he described for identifying such performance were illusive: to be 4 or 5 rated, "They must be able to show that they are doing more", "some type of visibility that would give me an idea that more is happening than I would expect"; ratings must be "something you can live with" and "justify". The District also apparently continues to follow Mr. Morris' 1975 stated view that "status quo performance would not merit the same rating the following year."

6. The evidence concerning rating trends shows ratings depend less on staff performance than on arbitrary and preconceived notions of Zenor and Morris as to how many employes ought to be deemed meritorious in an evaluation system as they arbitrarily envision it. When Morris admonished evaluators to "be honest" and Zenor took an active role in evaluations, the proportions of staff rated 4 or higher dropped from the 80-90% levels of the preceding several years to a level 30-35% lower and remained there until rising to the 1979-80 level of 58.3%, apparently in anticipation of a bargaining challenge to the merit system. Indeed, Zenor testified that his preconceived notion about "how a merit system ought to be working" probably contributed in part to his judgment that the system was generating too many 4 and 5 ratings.

7. The evidence also shows numerous examples of Zenor's arrogance in administration of the merit rating system as regards the system generally, and in responses to teachers' efforts for rating reconsideration and teachers' requests for guidance as to what aspects of the teacher's performance needed to improve for his rating to improve. Zenor essentially admitted that teachers would not ordinarily "ever have an opportunity to know what is in [his] mind in terms of what will be meritorious or not", "unless they are willing to spend more time." Yet, when one teacher conscientiously asked repeatedly what it would take for him to achieve a 4 rating, Zenor criticized these inquiries as difficulties in communication on the teacher's part and told the teacher that "there are some people who are meritorious and there are some who will never be meritorious."

AUTO ARGUMENTS (cont'd)

8. There has been no consistent or required correspondence between the various ratings of aspects of employe performance by the individual evaluators and either that evaluator's overall rating of the teacher or the final rating received by the teacher for salary determination purposes.

For those reasons, the evaluation system ought not be relied upon as a determinant of cumulative salary year in and year out.

The effects of merit-based salary determination in the past years is revealed by the evidence of the below-comparable-pay received by the 35 returning teachers with AHS since at least 1974-75 relative to what they would have earned in Waukesha County comparable districts. Another indicator of the AHS staff's plight is revealed when the future earnings of bargaining unit personnel is compared with that which would be generated for them in the comparable districts if the pay systems in each district were frozen for several years to come.

Since the District would pay 4 and 5 rated teachers only an aggregate \$6,539 to 4 and 5 rated teachers above what they would have received if 3-rated, the 1979-80 merit pay is really of little motivational value to teachers. But the District would take credit for such compensation in present and past years in comparison with other districts whereas the proper comparison is with consistently 3-rated teacher pay in AHS. For, a 3 rating indicates performance that is satisfactory in all respects. A true merit system would compensate above the comparable rates for satisfactory teachers. It would not, as the District in effect proposes herein, continue to penalize the 3-rated teacher in order to better compensate the 4 and 5 rated teachers.

The District's claim that substantial numbers of AHS teachers would be paid better under the District's offer than they would in certain other districts is an analysis fatally flawed by faulty data. The District's contention that its proposed per teacher increases exceed those provided in comparable district settlements is fatally flawed by unreliable data. For those reasons, neither of those contentions is worthy of weight in determining the outcome herein.

The District's own comparisons undercut its contention that it is proposing maximums that are comparatively "preeminent". The District's merit 3 maximum ranks 4th out of the District's nine K-12/UHS comparables BA+15 maximums, and 8th out of those nine districts' BA+30 maximums. The ranking would obviously be as bad or worse in the MA columns of those districts. The District's merit 4 maximum ranks 4th out of nine MA+0 maximums, and 5th out of nine MA+15 maximums. The merit 5 maximum does rank 2nd out of nine MA+30 maximums. But only eleven of the thirty-eight teachers who have been at AHS since 1974-75 have been continuously ranked meritorious (4 or 5). I.e., less than one-third of the long service teachers have continuously been at least 4 rated. No one has been continuously 5 rated. Thus, the District reserves the preeminent level for very few employes.

In various specific aspects of the pay system proposed, the District fails to resolve problems caused by the status quo system; whereas the AUTO proposal--though not a complete resolution of all problems--more nearly creates a compensation system that is both competitive with and equitable to comparable school systems.

For example, the District's \$450 increment received by all those rated 3 on the staff, is below the step increments in comparable districts and is even \$3 lower than that in AHS in 1978-79. AUTO's experience increment of \$550 is, in contrast, far closer to the average increments in Waukesha County comparables: \$528 at BA+0 to \$598 at MA+30. Indeed, if the District offered an experience increment in line with the comparables, its 9% across the board increase would be substantially less.



AUTO ARGUMENTS (cont'd)

AUTO's increased and prospective recognition of an MA degree differential is consistent with the existence and average percentage level of that differential among the comparables. No other district cited by either party prospectively denies such a differential, but the District proposes such a denial. That regresses from the inadequate differential previously in place in the contract, without any legitimate justification. In comparison, AUTO's offer makes a substantial step forward in resolving the heretofore inequitable treatment for teachers with MA degrees. AUTO's proposal would provide greater increases to 35 employes, of whom 24 possess an MA degree.

AUTO's offer involves 13 steps to the BA Max. The District's would take 16 years for a 3-rated teacher to reach the maximum. The AUTO proposal is clearly more in tune with the pattern in comparable districts.

AUTO proposes pay for credits; the District does not. AUTO's average \$25 per credit is below the average credit payment in comparable districts.

AUTO's offer stops the salary regression experienced under the merit pay system; the District's--with one minor exception (at the maximum)--would continue that regression.

AUTO better distributes the virtually identical total salary dollars. AUTO's offer provides more to 26 of the 38 returning teachers who were on staff since prior to 1975-76, and, as noted, 24 of the 35 teachers receiving more money under AUTO's offer have a masters degree. AUTO therefore better recognizes the needs of the career teacher than does the District's. The District, on the other hand, proposes a base salary well above that needed to meet comparable starting pay levels, without any showing that job market factors require such heavy weighting of starting and short-service employe pay levels. In that way, the District is essentially financing higher-than-necessary short service employe pay at the expense of long service and MA possessing employe pay.

Finally, the District's maximums are arbitrary and potentially problematical in their administration. They present the possibility that a teacher who is downrated in a subsequent year would take a pay cut as a result. That would be both unfair and inconsistent with pay systems in effect in any other district.

For those reasons, the AUTO salary proposal and AUTO's final offer generally must be found more consistent with the statutory criteria and adopted by the arbitrator.

## DISTRICT ARGUMENTS

### Management Rights

Since both parties are proposing a management rights clause, the parties are beyond the threshold issue of whether such a clause is needed. By proposing one, the Union has acknowledged that one is needed. The only remaining question is which of the proposed is most reasonable.

The District's is conventional in form and conforms to pattern language in the District's comparables pool. It authorizes the District to act during the term of the agreement free of constantly bargaining with the Union before doing so. The rights specified "are those which generally deal with day-to-day operations of the District." The District needs to be free of the bargaining obligation as a precondition to acting as regards such matters, in order that it may provide effective and efficient management of the District in those regards. Avoidance of frequent in-term negotiations on those subjects will also "lead to general labor peace and stability during the term of the agreement." The District's proposal thus "...provides a balance between the District's right to manage the District in certain areas and the teachers right to bargain in other areas."

The Union's language is really not a management rights clause at all. It does not enumerate any of the rights to which it refers, and it expressly limits the exercise of the general rights referred to by making them subject to Sec. 111.70 including impact bargaining as regards permissive subject decisions.

The Union has not supported its proposal with comparable language in any other district, or with any other supportive testimony or evidence. The Union's claim that the bargaining history is lacking as regards the District's proposal, if at all relevant, is the Union's fault for not inquiring as to the District's understanding of its proposal during this round of bargaining. Contrary to the Union's contention, the Board's proposal does not give it a carte blanche to ". . . act in a host of areas that may not be expressly covered by the collective bargaining agreement." Rather, it delineates certain areas where the Board could act unilaterally, subject to the employee's right to bargain under state statutes and applicable caselaw. Even taken together with the "Entire Memorandum of Agreement" language already agreed upon, the District's proposed language would have to meet the WERC requirement of clear and unequivocal evidence in light of all circumstances before the Union would be deemed to have waived its right to bargain on any given mandatory subject during the term of the agreement.

The District's language must therefore be found to be the more reasonable of the two proposals on the management rights issue.

### Salary

In proper perspective, this salary issue must be traced back to the parties January, 1979 agreement that they should have "a compensation system that is both competitive with and equitable to comparable systems." A joint committee studied the pay system and identified several problems with the merit system, including a philosophical divergence of views: teacher members' desire for pay determination based on years of service, credits and degrees versus community members' desire that pay continue to be determined by the merit rating received by the teachers.

The several problems with the existing merit system of pay identified by the study committee discussions were discussed in the 1979-80 bargaining, and the majority of those problems were either entirely alleviated or eased by compromise solutions of various

DISTRICT ARGUMENTS (cont'd)

kinds. Among other changes, co-curricular compensation was separated from salary and made independent of the merit ratings; a flat \$5.00 per hour rate was created for extra assignments; a flat \$100 per point was established as the method of co-curricular compensation; the five job classification categories were eliminated; the provisions dealing with the nature of the old BA maximum and conditions on which it would be exceeded were eliminated; summer school compensation was tied to full salary rather than a lesser figure; and a new TEACHER FILE provision provided new rights regarding employment status related documents. By agreeing to so modify the existing system, the District has already gone much more than half-way toward resolving the problems that were identified in Committee reports.

While the District has found it necessary and appropriate to propose maximum salaries for each merit level in order to establish "the parameters of a fair settlement" in terms of total dollars, the maximums it has proposed at the merit 3, 4 and 5 levels are pegged at the average of maximums in comparable districts at the BA+15, and MA, and MA+30 levels, respectively.

The District designed its offer to provide total dollars well in excess of comparable district settlements. It thereby endeavored ". . . to 'buy' the retention of the merit pay system and to rectify past inequities." And, the District reduced the salary impact of the 1979-80 merit ratings by proposing a substantial (9%) across the board increase that is not tied to performance ratings in any way. As a result, the majority of each returning teacher's increase is entirely independent of merit ratings, and total monies paid in merit increments becomes a very minor portion of total contracted salary (2.5%)

In response to these efforts at compromise by the District, the Union has taken an extreme position. It proposes an above-pattern total dollar settlement equivalent to that offered by the District, but virtually eliminates salary impact of the existing merit pay system and substitutes a method of paying returning teachers that is not comparable to the method used in any other district cited by either party.

To the extent noted above, the District has sought to retain the merit pay system that has been traditional at AHS because it is the Board of Education's view that it must make every effort to provide quality education to the community. In the Board's view,

"quality education is provided by qualified professionals who view education as a profession and not merely a job for which pay is received merely for putting in time. The Board has made it clearly evident that it is willing to pay substantial amounts for quality education, but it demands exceptional performance; it demands value for money paid.

The Board submits that the Union's arguments against the merit system are but a shallow attempt to camouflage the fact that they are disinterested in producing a valuable product that merits substantial recompense. The Union is clearly espousing a system of mediocrity which the Board is unwilling to accept." [District Reply Brief at 22].

DISTRICT ARGUMENTS (cont'd)

Since the final offers cost almost identical amounts, it must be that the parties believe the offers will provide "comparable salaries". Hence, the dispute is limited to the pay system or method of distribution of the dollars in the respective final offers.

The absence of merit-based compensation systems in comparable districts alone does not make the Union's salary proposal preferable to the District's. For, the Union is proposing abandonment of the longstanding status quo method of salary determination that has been negotiated by the parties and set forth in previous agreements. In such circumstances, interest arbitrators have properly required the proponent to also show persuasive reasons in support of the change, and have refused to alter longstanding negotiated arrangements in the absence of such a showing even though the status quo is not supported by the comparables.

Despite its massive expenditure of hearing time and brief space to the alledged shortcomings of the merit rating system, the Union's contentions in that regard ought not even be considered in this matter, and if considered, they will be found insignificant and unpersuasive.

The Union's contentions that the current evaluation procedure involves inconsistencies, arbitrariness, subjectivity, and arrogance must be given no consideration in these proceedings. For, the Union has raised these matters for the first time in the arbitration proceeding. Specifically, the Union cites the absence of pre-evaluation conferences, the absence of post-evaluation conferences and the absence of post-evaluation written reports. But the Union never included corrective proposals in those respects in the Union's initial or subsequent bargaining proposals. Hence, no such Union proposals were ever discussed between the parties during the bargaining, mediation and investigation sessions. In essence, the Union has unconscionably injected the "problems with current evaluation procedure" subject matter into the arbitration proceeding without it having been a subject of pre-arbitral negotiations. Such is inconsistent with the duty to bargain in good faith, and with the purpose of statutory final offer arbitration as defined by the Wisconsin Supreme Court in Milwaukee County Deputy Sheriff's Association v. Milwaukee County, 64 Wis. 2d 651 (1974). Hence, the Arbitrator must disregard the approximately 22 hours of testimony of 18 Union witnesses and 23 (of 47) Union brief pages, regarding their complaints about the evaluation system.

Even if considered, the Union's charges that the evaluation system is "arbitrary, inconsistent, subjective and arrogant" are inaccurate as a whole and unwarranted. That system is reliably based on numerous observations--far more frequent than are undertaken in other districts--from the three distinct perspectives of the department chairman (six formal observations), the school principal (two formal observations), and the District administrator (one formal observation). Those perspectives are, respectively: general teaching performance; contribution to campus and the extracurricular program; and general working relationships with co-workers, students, parents and the community as a whole. The net result is a composite view of the teacher's entire performance and overall contribution to the school system, determined during a concentrated and lengthy review meeting in a consensual framework during which the three evaluators pool their individual preliminary evaluations in an effort to reach a consensus regarding one final rating number. The observation/evaluation activities are conducted entirely in the first semester, giving the teacher the entire second semester to improve his performance. Teachers with a two rating are provided help in areas of deficiency at the initiation of the department chairman. Teachers with a three rating or higher are expected to take the initiative to work with their department chairman to improve their performance, contribution and merit rating. If teachers in the latter group do not initiate such improvement in-

DISTRICT ARGUMENTS (cont'd)

quiries and efforts, it is reasonable to presume that they are satisfied with the rating they have received.

The Union's specific criticisms of the rating system are unwarranted for the following reasons:

1. The number of formal observations to be carried out in the evaluation procedure is specified in the collective bargaining agreement. Absent evidence that employes complained or grieved about noncompliance with that provision during the term of the past agreements, the Union is in no posture herein to complain that its application has been inconsistent from teacher to teacher.

2. Consideration of the inputs of campus deans is not only proper, it was mandated by the language of the expired agreement. (Sec. 7.03[7]). Moreover, the evidence does not support the notion that hearsay is used to rate a teacher; the District Administrator emphatically denied that contention.

3. The Union's contention that the evaluation system stifles teacher improvement and that the administration never makes recommendations for improvement is factually unsupported by the record. Any teacher rated 3 or higher would receive assistance if they would ask for it, but the Union's complaining witnesses have not been shown to have asked for such assistance from their department chairmen during the second semester improvement period. The record also contains numerous examples of administration efforts to help teachers remedy deficiencies in their performance.

4. The Union criticisms of inconsistent or nonexistent pre- and post-observation conferences must be rejected because: the Union did not seek remedies at the bargaining table; the teachers have not been shown to have sought remedies at the departmental level; and the District has been shown to have been flexible in permitting department faculties to fashion workable pre- and post-evaluation procedures of their own design.

5. The absence of observations and evaluations in the second semester is not a valid criticism. For, the District needs to complete its evaluations in time to issue statutory nonrenewal notices where appropriate. Moreover, any performance improvements generated in the second semester will surely be reflected during the rating period in the following school year's first semester.

6. The District Administrator's allegedly subjective initial perceptions about the merit system upon his arrival in 1975 and Board Member Andrew Morris' comments at those times were realistic identifications of an actual shortcoming in the system, to wit, a distortion of skewing towards one end of the merit scale. Rather than being "subjective", that criticism of the system was based on the "halo" effect cited by a Union witness' testimony regarding shortcomings of some rating systems.

7. The District has shown, contrary to the Union's contentions, that it is not unwilling to review new information that might bear upon the merit rating it has given a teacher. Of course, a reconsideration will not automatically result in an altered rating (notwithstanding the Union witnesses' apparent expectations to that effect). It must also be remembered that the final evaluation is based on a teacher's overall performance and not isolated actions or isolated supporting documentation. The isolated matters noted by various teachers dissatisfied with their ratings in certain years fade into insignificance when the entirety of their year's performance and contribution to the District is considered.

DISTRICT ARGUMENTS (cont'd)

8. There is nothing inappropriate about administration statements that teachers cannot expect the same merit rating based on a status quo performance in a subsequent year. No teacher's performance is perfect, and there is always room for improvement.

9. While one department head may have been unable to verbalize the difference between certain merit ratings, that is a matter that can and will be corrected. It cannot, however, be attributed to all other department chairmen or to all other evaluators, with any degree of confidence.

10. Finally, the Union's arguments focusing on the individual evaluators' initial categorical and overall evaluations of their evaluatees miss the important point that evaluations are only the starting point for a discussion of the teacher's strengths and weaknesses by the three evaluators involved in the final rating process. Hence, arithmetic analyses of those initial evaluations are an empty and meaningless exercise.

Since the Union has therefore failed to prove that there are persuasive reasons for eliminating the salary impact of the merit rating system, it has not met its burden of persuasion and the District's offer must prevail.

In any event, the Union would bear the additional burden of proposing a replacement for the eliminated status quo that more closely corresponds to pay systems in comparable districts. The Union has also failed to sustain that burden herein.

For, the compensation system proposed in the Union offer does not correspond to any effect in any comparable district. The salary schedule proposed by the Union has different lane incentive break points from those in all of the Union's comparables districts and all but one of the District's comparables pool (Merton #8). Under the Union's schedule, teachers would receive credits lane change money sooner than their peers in numerous of the districts cited as comparable by the parties.

More importantly, only the eleven new teachers are placed on the proposed schedule by the Union. Returning teachers, i.e., the vast majority of the unit, are not placed on the schedule. Rather, the Union proposes 7% across the board plus certain credit pay, plus a \$550 increment plus an additional \$550 for a masters degree. There is no record evidence that such a method of compensation is followed in any comparable school district. School districts with salary schedules pay according to those schedules, not in accordance with some other obscure method. Fully 31 of the returning teachers would receive more under the Union's offer than they would if actually placed on the schedule (some in excess of \$2,000 more), and 38 would receive less. The Union's argument that the Board refused to jointly work out the problem of salary schedule placement of returning teachers does not excuse the Union's failure to place the returning teachers on the schedule it proposes. "The blame cannot rest with the Board for refusing to deal with a concept which it does not believe in or recognize. It is the Union's proposal and it had the obligation to formulate a proposal which was comparable." It has failed to do so.

The District has submitted accurate, reliable, and valid modes of analysis--with emphasis on actual earnings--that show its final offer is competitive with compensation received by teachers in comparable districts.

The seventeen school districts identified by the District as relevant comparable districts have been shown to be comparable based on recognized arbitral considerations of geographic proximity,

DISTRICT ARGUMENTS (cont'd)

average daily pupil membership, full time equivalent staff, cost expended per pupil, state aid per pupil, full value tax rate and the special relationship that exists between the district and its several K-8 feeder districts. On those bases, the following districts constitute the proper pool of comparable districts: Waukesha, Menomonee Falls, Oconomowoc, Hamilton, Kettle Moraine, Germantown, Hartford Union High School, Pewaukee, Hartland #3, Merton #9, Lisbon #2, Merton #7, Merton #8, Merton #4, Nashota, Delafield #6 and Delafield #7.

The Union's various proposed comparables pools must be rejected because: they are not supported by evidence grounded on recognized arbitral standards of comparability; they have been proposed in so many alternative groupings that the Union must not be sure what the appropriate comparables are; they include districts too distant from AHS (Mukwonago, Muskego, New Berlin, Elmbrook and Watertown); they failed, early on at least, to include Hartford UHS and Germantown; and finally the Union comparables exclude the District's K-8 feeder districts despite arbitral recognition of the special comparability relationship of a Union High School and feeder districts which serve the same geographic community.

Comparisons of both teacher wages and settlements with those in the comparable districts noted above shows the District's economic offer is more reasonable than AUTO's.

The District's proposed base salary exceeds the base salaries paid in all of the 17 districts in the District's comparables pool.

The District's proposed maximums compare favorably with various maximums in the District's pool of comparable districts. The \$18,538 merit 3 maximum offered would rank in the upper half of the total comparables pool when compared with BA+30 maximums. But since almost 50% of the District's teachers were ranked at the merit 4 level for 1979-80 salary determination purposes, "it can therefore be assumed that a teacher with a BA+30 credits can, because of meritorious service attain the "merit 4" maximum salary of \$20,785." [District Brief at 28.] That teacher would then enjoy a higher salary than would be received at the BA+30 maximum in any other comparable district. That merit 4 maximum would rank in the upper one-fourth of the MA+0 maximums, and well above the average of the comparables' MA+0 maximums. The District's \$22,470 merit 5 maximum would exceed all but one comparable district MA+15 maximum and would be above the average MA+30 maximum among the comparables, ranking in the upper third thereof. Hence, under the District's offer, the bargaining unit will be receiving a fair and competitive wage that is no longer affected by the artificial upper limitations extant in the old agreement. The District's offer is nowhere below the upper one-half of the comparables maximums and in most instances the District's offer places it in the upper third of the comparables' maximums.

The Board's offer (with eleven new teachers calculated at 9% increases over presumed 1978-79 salary levels) generates full time increases ranging from \$928 to \$1,913 and from 9% to 15% of 1978-79 individual non-co-curricular salary. Those increases average a substantial \$1,724, which compares with \$1,726 at Hartford UHS and exceeds each of the other settlements in the District comparables pool by at least \$119. The District's offer would generate an average percentage increase of 11.46%, exceeding the K-12/UHS comparables average by 2.46% and exceeding the next highest percentage average increase per teacher by 1.23% (over Hamilton UHS' 10.23%). Clearly, the District would have been justified by the pattern of settlements in its comparables pool to propose an increase in the \$1,350 average per teacher neighborhood. Instead, as noted, it deliberately chose to exceed the

## DISTRICT ARGUMENTS (cont'd)

pattern by nearly \$400 and the average percentage increase by over 2% in order "to 'buy' the retention of the merit pay system and to rectify past inequities."

Furthermore, the District's offer pays the bargaining unit as a whole more than it would receive if placed in the salary schedules in all but one of the comparables (based on full degree and credit recognition and one step per year of AHS service). Only Waukesha's salary schedule would generate a higher bargaining unit average salary, and only \$128 per teacher more, at that. Placement on each of the other comparables schedules would generate a lower level of total salary for the AHS bargaining unit than would the District's offer. AUTO's offer would pay slightly less, as well. In addition, under the District offer, 32.5% of the staff (25.4 FTE) would be receiving more than they would be paid were they placed in any other comparable K-12 or UHS districts. And, some 60% of the AHS staff (i.e., some 47 employees) would do better under the District's offer than they would when placed on half or more of those K-12/UHS comparables' schedules. By comparison, the Union's offer would place only 21.3% in the first rank and fewer than half the employees in a more favorable salary situation in half or more of K-12/UHS districts. For all those reasons, the District's offer is the most economically beneficial to the teachers of the District and insures a level of economic well being unmatched in any other comparable district.

In sum, more of the bargaining unit does better--relative to what they would earn in comparable districts based on their degrees, credits and experience-- under the District offer than under the AUTO offer; and the District offer would pay 60% of the teachers better than they would do in at least half the comparable K-12/UHS districts and in all of the K-12 feeder districts.

Some responses to Union arguments are set forth below.

The Union's claim that catch-up is needed to remedy allegedly regressive salary developments over the years must be rejected as: inconsistent with the Union's acceptance of the District's total dollar offer as suitable for 1979-80; predicated on methodological deficiencies and inconsistencies rendering it unsupported by reliable fact; improperly focused on years other than that for which the parties are bargaining in these negotiations; neglectful of the fact that both parties are responsible for the bargaining outcomes in prior years; and neglectful of the fact that the District's final offer takes steps to remedy weaknesses in the status quo system, e.g., by eliminating the restrictive BA Maximum concept and related provisions.

The Union's analysis of increment changes over the years as compared to CPI changes is misleading and immaterial since increment changes do not reflect accurately the salaries actually received by the entire bargaining unit during those times. Since fully one-half of the bargaining unit received 1979-80 merit ratings in excess of a 3, it is deceptive and misleading for the Union to focus attention solely on merit 3 rated personnel for this or any other comparisons.

While the Union's proposal pays more to certain long service and MA possessing teachers, the District's offer pays more to 56% (45) of the returnees and to 79% of those with a BA degree, and the BA degree holders notably comprise a majority of the returnees (52 of 80). Since it benefits the greater number of employees, the District's offer provides a more equitable distribution of the settlement dollars overall.



## DISTRICT ARGUMENTS (cont'd)

The District's proposed elimination of the increment for attaining an MA degree is reasonable. It is prospective only, and it brings the overall compensation system in the District closer to the basic philosophy that has underlied it for many years: that teachers should be paid for value received from them. "While the level of one's education theoretically would enable a teacher to provide quality education, it does not guarantee that quality education would occur." Moreover, it remedies another problem with the merit system that was identified in study committee discussions.

The Union's contention that consistently 3-rated MA degree holders are undercompensated neglects the standing of a 4-rated teacher entirely, despite the fact that 50% of the unit is 4-rated or higher in 1979-80. Moreover, the Union has not shown that its offer will remedy the problem alleged to exist in this regard.

Finally, the Union's hypothetical and accumulated earnings analyses are methodologically deficient, misleading, and worthy of no weight. Even if considered seriously, those analyses do not reveal either that the unit is in a comparative plight requiring a remedy or that the Union's offer provides such a remedy in any event. The District's evidence relating to actual earnings and justifiable comparisons shows that the unit is well off relative to their peers and the the District's offer is entirely fair and reasonable.

For all of the foregoing reasons, the District's salary proposal and its final offer generally should be adopted by the arbitrator as more reasonable when analyzed on the basis of the statutory criteria governing this dispute.

## DISCUSSION OF ARBITRATOR'S RATIONALE

The following discussion is intended to outline the principal elements of the Arbitrator's rationale for the decision rendered herein. This decision is rendered upon consideration of the statutory criteria, record, and arguments, as a whole, even though the following discussion does not expressly address each aspect thereof.

### Management Rights Issue

The management rights issue herein relates more to a structuring of the parties' respective rights and obligations under the Municipal Employment Relations Act, Sec. 111.70 et. seq. than with the range of actions the District may take in its sole discretion without violating the agreement itself.

The statute imposes limits on the ch. 120 powers of the District. It requires the District to bargain collectively with AUTO as regards mandatory subjects of bargaining including the mandatory subject impact of District decisions on nonmandatory subjects. It requires such bargaining not only when requested by the Union, but also requires notice to and bargaining with the Union before the District makes changes in mandatory subject matters. (i.e.,

ARBITRATOR'S RATIONALE (cont'd)

of the bargaining obligation may also arise from or depend, in whole or in part, upon the existence or nonexistence of general waiver of bargaining provisions and/or management rights provisions.

The 1977-79 agreement contained no general waiver of bargaining or management rights language. The parties have agreed already that the 1979-80 agreement shall contain waiver of bargaining language contained in the ENTIRE MEMORANDUM OF AGREEMENT provision in the stipulation of agreed upon items and noted above. That language reads as follows:

"The Board and the Association, for all the life of this agreement, each waiver their right to bargain with respect to all items contained in this agreement and all items which were contained in the parties' initial bargaining proposals but not included in this Agreement. The parties agree that they may exercise their rights under state law with respect to all other mandatory subjects of bargaining."

In the Arbitrator's opinion, the Union's proposed management rights language would have little if any additional effect on the parties' rights and obligations. For, it merely sets forth Sec. 111.70 language that would govern the parties' relationship in the absence of a waiver clearly and unmistakably evidenced in agreement or bargaining history.

The District's management rights proposal, on the other hand, would add to the items contained in the agreement, and hence expand the scope of the waiver expressed in the Entire Memorandum of Agreement language. Given the WERC's requirement of unmistakable and clear contract language or bargaining history as the evidentiary basis for finding a waiver of statutory bargaining rights protection, it seems fair to conclude that only the rights enumerated in A-M of the District's language would become the additional subjects on which in-term bargaining is so waived.

The District has persuasively demonstrated that the language it proposes is quite consistent with management rights enumerated in surrounding districts' agreements affecting professional teaching bargaining units. While the District has not claimed or shown that operational problems or difficulties have in the past been experienced by reason of its obligation to engage in in-term bargaining as a condition precedent to taking certain management actions, an express identification of matters as to which the employer may act unilaterally is the norm among surrounding districts. In addition, the concept of waiving bargaining rights is not foreign to the instant relationship even though no general language has addressed the matter in prior agreements. For the agreement to include provisions governing particular subject matters for the term of the contract involved effected a waiver of in-term bargaining rights by both parties as regards that subject matter and that contract term.

Moreover, the rights enumerated in the District's proposal are not without limits. For example, the right to establish work rules refers to work rules that are reasonable, and the right to discipline a teacher is subject to the cause standard established elsewhere in the Agreement.

The AUTO language has not been supported by any evidence of comparable language in other districts' agreements.

Finally, as a practical matter, the 1979-80 school year is over. The term of the 1979-80 agreement has expired. By its terms, the Entire Memorandum of Agreement evaporates at the expiration of

## ARBITRATOR'S RATIONALE (cont'd)

the Agreement. Hence, any particular limitations that the Union believes are needed as regards the subject areas touched upon by the enumerated rights in the District's proposal can be addressed in the 1980-81 bargaining which will surely be commencing shortly after the instant award's issuance.

For all of those reasons, the Arbitrator finds the District's proposal on management rights more worthy of adoption than AUTO's.

### Salary

In essence, this issue involves how and to what extent the salary impact of 1979-80 merit ratings will be reduced relative to the salary impact merit ratings have had in previous years.

Notably, that impact will be reduced in some respects regardless of the outcome herein. The parties have already agreed, for example, to make co-curricular payments independent of the teacher's merit rating for the first time. The 1979-80 merit ratings' salary impact is further reduced by the fact that both parties have proposed substantial across the board increases as part of their offers, which increases are not conditioned upon employe performance or merit ratings.

On the other hand, since both parties base returning teacher salary determinations on 1978-79 salaries (excluding co-curricular pay), the effect on intra-unit salary relationships of past merit ratings and merit increases is retained and, indeed, magnified by the across the board percentage increases proposed. Since the District's across the board percentage increase is 2% larger than AUTO's, the District's magnification of the impact of past merit ratings on intra-unit salary relationships would be that much greater.

The different percent across the board increases aside, the critical difference between the final offers--at least as regards returning teachers, i.e., the vast majority of the unit--is that AUTO would increase the MA differential and introduce credit pay and experience increment as new salary determinants whereas the District would eliminate MA differential for future attainments and provide merit increases determined in the status quo fashion.

It could be argued that the critical difference is somewhat narrower on the grounds that merit ratings below 3 have been so rare that an increase of one full merit increment is, in practice, a floor parallel to the experience increment payable for an additional year of satisfactory experience. In that frame of reference, the critical difference between the final offers on the salary issue would be pay for credits and MA differential versus the status quo extra one-half increment for a 4 rating and extra full increment for a 5 rating.

Under either analysis, however, it is undisputed that the District is proposing a method of teacher salary determination unlike that in any other comparable district cited in the record by either party.

That is surely a significant consideration in view of the emphasis on comparability in the statutory criteria. It is not, however, sufficient in and of itself to require rejection of the District's proposal. For, as the District has argued, arbitrators ordinarily require the proponent of a change in a longstanding condition of employment recognized in predecessor negotiated agreements to justify proposed changes with persuasive supporting reasons. Furthermore, the absence of comparables support for the status quo, alone, would obviously not require rejecting it in favor of an alternative approach if that alternative itself had equal or less support in terms of com-

ARBITRATOR'S RATIONALE (cont'd)

parability.

Of critical importance to the salary issue outcome, then, is whether AUTO has sustained its burden of showing persuasive reasons for changing the existing arrangement whereby cumulative salary increases are based to a significant extent on the teacher's individual final merit rating as determined by administrators in the existing performance evaluation system.

The Arbitrator is satisfied that AUTO has sustained that burden of persuasion herein.

For, AUTO has shown that the merit rating system as applied in recent years has not been a reliable means of differentiating relative meritorious service as among individuals who have received merit ratings of 3, 4 and 5. There are admittedly no established criteria for differentiating a final merit 3 performance from a merit 4 or merit 5 performance. While individual evaluators rate employe performance on forms containing descriptive standards for each rating on the various categories of performance and contribution ratable on the form, there is no requisite or consistent correlation between the categorical ratings given by each evaluator and either the overall rating given by that evaluator or the final rating given by the three evaluators working together. Instead, the three evaluators engage in a discussion and seek a consensus or at least a majority in favor of a particular final rating, all without benefit of established criteria for reaching their decision in that regard. Such a process, no matter how earnestly administered, does not appear likely to provide uniformity and reliability of rating outcome from evaluator group to evaluator group, year to year, or even day to day. Indeed, the District acknowledges that the same performance by the same individual in a succeeding year might well receive a lower merit rating under the existing system.

In the absence of established and widely-disseminated criteria for 3, 4 and 5 ratings, by which teachers could guide their own efforts at improving their performance and rating, heavy emphasis develops on the need for detailed, comprehensive and reliable feedback from evaluators in those regards. Such feedback has been limited in the existing system, however, by a switch to unrecorded oral (rather than written) final evaluation meeting comments by administrators, by the absence of uniform provision to evaluatees of individual evaluators' annual evaluations, and by leaving the initiative for performance improvement to the teacher except where a merit 2 rating is involved. Under such conditions, it is understandably difficult for teachers to identify performance objectives which, if achieved, will likely result in a higher rating. Resultant expressions of teacher frustration and mistrust of the system are neither surprising nor unreasonable in such circumstances.

Apart from the individual teachers' reactions to the system--which are not a controlling consideration in this dispute--the record also reveals disturbingly sharp changes in overall ratings at two different points in time, [see p.15, #6, above]. It seems unlikely that such substantial shifts in staff ratings were the result of widespread disimprovement/improvement in teacher performance. Rather they appear to have resulted from altered rater attitudes.

A system without established criteria for differentiating final ratings of 3, 4 and 5, and which is susceptible to such substantial ratings shifts, can properly be characterized as "too subjective" and too unreliable a measure of employe performance to be a determinant of cumulative teacher salary.

ARBITRATOR'S RATIONALE (cont'd)

The Arbitrator rejects the District's assertion that policy reasons require that the AUTO arguments and proofs criticizing the merit rating system be totally disregarded herein. While it is undisputed that AUTO did not submit formal proposals in this round of bargaining seeking to alter many of the aspects of the rating system that it has criticized herein, AUTO contends in its brief that "During negotiations AUTO made the Board aware of these [rating system] failings." The record does not support the notion that AUTO failed to make known its concerns that the rating system was deficient in the various ways criticized in this proceeding. <sup>1/</sup> Moreover, the Union has formally proposed the concept of expressly-stated evaluational criteria in its Award Plan language and has further formally proposed that the evaluations and ratings of each evaluator be made known to the evaluatee.

Also, in its May 22, 1976 written communication to the District Administrator, in advance of the 1976-77 school year, the Union expressed many of its criticisms of the rating system as administered and listed numerous proposed remedial suggestions. From the descriptions of the rating system's operation contained in the record herein, it would appear that those proposed remedies have not been incorporated by the Administration. Those Union suggestions included the following: more comprehensive feedback than was provided in the final rating conference; establishment of specific criteria relative to the various ratings given; expressed rationale for the ratings given in each category; and several other suggestions relating to problems with the rating system cited herein by AUTO. Moreover, the study committee teacher members' report expressly concluded that the merit rating evaluation was "too subjective" to be the basis of cumulative salary determinations.

After AUTO's effort in 1976 to remedy the problems by writing to the administration, and after the study committee failed to produce a joint recommendation, it does not seem an act of bad faith for AUTO to pursue relief from the problem of subjectivity of salary determinations by proposing to greatly circumscribe the impact of merit ratings on salary. For, as the District persuasively argues in defense of its unwillingness to cooperate in AUTO efforts at placement of employes on a conventional salary schedule, the blame cannot rest on a party "for refusing to deal with a concept which it does not believe in or recognize." [District reply brief at 16]. Similarly, the Union cannot be blamed for seeking a solution that would better serve its purposes than would another attempt at improving a rating system AUTO had found in recent years to be fundamentally deficient and not readily susceptible to meaningful change, even when such change was suggested by the Union as in 1976.

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<sup>1/</sup> A news account of a November 20, 1979 negotiation session supporting the Union's contention in this regard was forwarded to the Arbitrator by Counsel for the District. It was attached to AUTO's letter of October 2, 1980 to the District's Counsel, which letter was forwarded to the Arbitrator by the District's Counsel along with the District's October 6, 1980 response thereto. However, since the news account has not formally been made a part of the record in this proceeding, its contents cannot form the basis for an affirmative finding as opposed to the negatively worded finding in the text above.

## ARBITRATOR'S RATIONALE (cont'd)

For those reasons, the Arbitrator has found it appropriate to consider the merit rating system criticisms advanced by the Union and the proofs offered by it in support of those criticisms.

Upon consideration of the record as a whole, including AUTO's criticisms and proofs regarding the merit rating system as administered in recent years and proposed under the District's final offer, the Arbitrator is persuaded that the system is sufficiently unreliable as a measure of relative teacher performance and contribution to the District that the final merit ratings produced by that system are not suitable as a determinant of salary.

The extent to which the parties' nearly identical total cost proposals exceed what would have been a pattern settlement among comparable districts is disputed. Assuming the validity of the District's data and contention in that regard, however, the comparative level of settlement involved herein does not suffice to alter either the Arbitrator's conclusion above or his ultimate conclusion regarding the salary issue.

The Union's proposal regarding new teachers' salaries establishes a salary schedule of the same type as are in effect in districts cited as comparable by either of the parties. That proposal has not been shown to involve either improper placement methods or pay methods/levels so lacking in comparability with other comparable districts' schedules as to make the Union's salary proposal as a whole untenable.

It is true, as pointed out by the District, that the Union's proposed method of determining 1979-80 returning teacher salaries is not the same as that in effect in any other district cited by either party. For, the Union has not placed returning teachers on its proposed salary schedule. Of greater importance, however, is the fact that the Union would replace the discredited merit-rating-based increases in cumulative salary with determinants that are conventional elements in teacher salary increase determination in comparable districts and in school districts throughout the state, to wit, monetary recognition of the factors of an additional year of satisfactory experience, credits possessed beyond degree, and degree possessed.

While the Union limits its total increase per teacher to an admittedly expedient maximum of \$2,300 in order to generate a total dollar proposal not exceeding the District's, the District's offer is also made subject to maxima resorted to for purposes of establishing the parameters of a fair settlement. The District's merit-rating-based maximums are conceptually unlike comparable-district maximums, just as are the Union's.

The Arbitrator would also note that the task of equitably placing returning teachers on a conventional salary schedule for the first time (which the District criticizes the Union for having failed to undertake on its own) is a difficult process, generally. Especially so where the returning staff members, in many instances, have been paid merit-rating-based increases over several years. It is a process that might well be found most appropriately undertaken on a phase-in basis over a longer term than is involved in the instant one year bargain. It is also a process that would benefit from a free-flowing exchange of information and ideas in bilateral negotiations free of the burden of a fundamental dispute regarding what the basic determinants of salary ought to be.

In one respect, the Union's noninsistence on 1979-80 salary schedule placement of returning teachers can be viewed as a compromise on AUTO's part, albeit an unintended one in that respect. For, by basing its returning teacher proposal on 1978-79 (nonco-curricular) salaries and applying a 7% across the board increase thereto, AUTO is retaining and, to some extent magnifying the effect of past merit increases on intra-unit salary relationships.

## ARBITRATOR'S RATIONALE (cont'd)

The Union also avoids extremes by proposing its Award Plan language wherein a right is reserved to the District to pay noncumulative monetary awards for outstanding service--in amounts and on criteria determined and administered exclusively by the District. That Award Plan does require that such criteria be listed and provided to all teachers, but such requirements are clearly reasonable and desirable for reasons discussed earlier.

The District's pre-arbitral agreements and elements of its final offer would, as noted, reduce the salary impact of the 1979-80 merit ratings in some respects. They would do so, however, without embracing more conventional determinants of salary such as pay for credits and degree. And the District's final offer would move contrary to comparable-district pay methods (without persuasive reasons for doing so) by eliminating the status quo MA differential for teachers attaining that degree in the future.

More importantly, the District's proposal would retain a cumulative salary impact based on the status quo merit rating system. Since that system has been persuasively discredited as a means of accurately distinguishing meritorious from merely satisfactory performance, and since as a salary determinant it is not supported by either overall pay systems or corresponding pay system elements in any of the districts cited as comparable by either of the parties in the instant dispute, the District's salary proposal appears, overall, less defensible than the Union's.

While the District's offer distributes the available increase dollars more evenly than AUTO's, it makes that distribution, in part, based on unreliable ratings of merit. Hence, the Union's proposal--which at least introduces distribution bases that are widely recognized in other districts' pay systems--is the more reasonable approach overall.

The Arbitrator therefore finds the Union's salary offer to be more appropriately adopted under the statutory criteria than the District's.

### Final Offer Selection

The mediation-arbitration procedures provided for in 111.70(4)(cm) under which the instant proceeding is being conducted, and the WERC appointment pursuant to which the undersigned is acting as Arbitrator (i.e., mediator-arbitrator) herein, both require that the mediator-arbitrator choose all of the final offer of one of the parties. No compromise of any kind is permitted absent a mutual agreement to that effect, and there has been no such mutual agreement in this case.

Hence, although it would not be the outcome were the Arbitrator permitted to pick and choose elements of both parties' positions, the award herein directs that the Union's proposal be incorporated in the 1979-80 agreement.

The Arbitrator so concludes because the Union's has been found the more preferable of the two salary issue proposals, and the salary issue is, in the Arbitrator's view, the more weighty of the two issues for several reasons.

First, it received substantially more attention by the parties in their briefs and hearing presentations. Second, the Union's proposal addresses a proven problem experienced under past agreements--salary determinations based on ratings derived from a system shown unreliable as a measure of the relative merit of employe performance and contribution to the District. In contrast, the District's preferable management rights proposal addresses a subject area in which the District has shown and claimed no difficulties in operating under the status quo. And

ARBITRATOR'S RATIONALE (cont'd)

finally, the salary issue has represented a dispute of long-standing in the District and one to which a good deal of attention has been paid by the parties in bargaining and study committee proceedings and other communications. Implementation of the outcome on that longstanding dispute seems clearly more important than avoiding what amounts to continuation of the status quo regarding management's rights for a school year that has already become history.

DECISION AND AWARD

For the foregoing reasons, and based on the record as a whole, it is the decision and award of the undersigned in the abovenoted dispute that:

Giving weight to the Sec. 111.70(4)(cm)7 Stats., factors, the AUTO final offer shall be incorporated into the parties' written collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 7th day of February, 1981.

*Marshall L. Gratz*

Marshall L. Gratz, Mediator-Arbitrator