BEFORE MEDIATOR-ARBITRATOR MARSHALL L. GRATZ

In the matter of the Mediation-Arbitration of a dispute between	:	WERC Case XXI No. 25516
WHITNALL AREA FEDERATION OF TEACHERS, LOCAL 3307, WFT, AFT, AFL-CIO (Union)	:	MED/ARB-568 Decision No. 17727-A
and	:	
WHITNALL AREA SCHOOL DISTRICT (District)	:	

APPEARANCES

For the Union: STEVE KOWALSKY, WFT Representative, Milwaukee

For the District: MARK L. OLSON, Attorney, Mulcahy & Wherry, S.C., Milwaukee

MEDIATION-ARBITRATION AWARD

INTRODUCTION

On May 27, 1980 the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator pursuant to Sec. 111.70(4)(cm)6.b., Wis. Stats., in a dispute between the Union and District above concerning the terms of a voluntary early retirement plan to be included in the parties' existing 1978-80 Agreement. The parties had jointly requested that the undersigned be so appointed rather than selecting from among the five names provided them by WERC.

By agreement of the parties, the Mediator-Arbitrator met with the parties' representatives at the District office in Greenfield, Wisconsin on July 25, 1980, for the purpose of mediating, and, if necessary, conducting arbitration hearing in the matter, both on the same day. When mediation did not produce a settlement, the arbitration hearing was conducted wherein both parties were given full opportunity to present evidence and arguments in support of their respective final offer as previously filed with WERC. It was agreed at the hearing that the matter would not be ripe for briefing and award until the Mediator-Arbitrator informed the parties that he was satisfied that further mediation would not be fruitful. Following subsequent communications with the parties, the Mediator-Arbitrator terminated the mediation effort and established a briefing schedule by letter dated October 21, 1980. Both parties submitted a brief, the last of which was received by the Mediator-Arbitrator on December 19, 1980.

The Mediator-Arbitrator issues the instant Award on the basis of the evidence admitted into the record at the hearing and upon consideration of the arguments advanced by the parties at the hearing and in their post-hearing briefs 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 issues 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

ISSUES

1. Does the District's change in Compensation language to that contained in its March 24, 1980 final offer, in the circumstances of this case, preclude consideration of the District's final offer by the Mediator-Arbitrator?

2. If not, giving weight to the Sec. 111.70(4)(cm)7, Stats., factors, which party's final offer shall be incorporated into the parties' written 1978-80 collective bargaining agreement?

CONTENTS OF THE FINAL OFFERS

The final offers of the parties are attached at the end of this Award.

BACKGROUND

During the term of their 1978-80 Agreement in effect through August 31, 1980, the parties reopened negotiations to deal solely with the matter of a voluntary early retirement plan. The existing

1978-80 Agreement did not contain a voluntary early retirement plan.

The starting date of those reopener negotiations has been variously identified as August 10 and October 10, 1979. In any event, the first written Union proposal in evidence is dated September 10, 1979; and the first District written proposal in evidence is dated October 29, 1979. Both of those documents provided a compensation formula for employes voluntarily early retiring at an age below 62 under which such employes could, under certain circumstances, ". . . receive yearly a sum which will be 50% of the difference between that employee's current salary in the year of retirement and the negotiated base salary of the contract year in which the retirement occurs. . .". The balance of each party's proposal established differing potential recipients of such payments and differing conditions under which it could be payable, but the quoted phrase was contained in each party's written bargaining position as early as October 29, 1979. Later in the bargaining, the parties' positions became even more similar as regards compensation for employes' early retiring at an age below 62 in that the District expanded its age eligibility down to the age 55 level proposed by the Union and the Union incorporated the $7,000 per year maximum on such compensation proposed by the District.

On December 26, 1979, after approximately three bi-lateral negotiation sessions, the Union petitioned for mediation-arbitration. An investigation meeting was conducted by WERC investigator Douglas Knudson on February 26, 1979. The investigation did not produce either an overall settlement or a stipulation of agreed upon items. It did, however, produce a procedural agreement between the parties regarding the method by which final offers would be exchanged. Specifically, the parties agreed that on three specified dates they would exchange written offers and that the third such offers would be submitted to Knudson and constitute the unamendable final offers of the parties. The exchanges proceeded as agreed. In both its first (March 3, 1980) and second (March 10, 1980) written offer, the District's Compensation language contained the following first paragraph:

> Upon early retirement, teachers who are ages 55 to 61 shall be eligible to receive yearly a sum which will be 50% of the difference between that employee's current salary in the year of retirement and the negotiated base salary of the contract year in which the retirement occurs, to a maximum of $7,000 per year. Such payments shall terminate when the employee reaches age 65.

However, in its third and final offer, the District substituted the following first paragraph for that set forth above:

> Upon early retirement, teachers between the ages of 55 and 61 shall be eligible to receive an amount equalling up to four days of pay for each full year of service in the Whitnall School District, but not to exceed a total of 100 days' pay. In applying the provisions of this policy, a teacher's day's pay shall be 1/190th of the teacher's base salary, excluding all fringe benefits, during the last full year of service prior to retirement.

WERC received that and the Union's final offer on March 27 and 28, 1980, respectively. On March 31, 1980, WERC investigator Knudson mailed to the parties and filed with the Commission his REPORT TO COMMISSION AND NOTICE OF CLOSE OF INVESTIGATION, stating, inter alia, that he was "satisfied there has been substantial

compliance with the requirements of Section 111.70(4)(cm) in this case", that no objection to nonmandatory subjects in either final offer had been timely raised, and that "the investigation. . . is closed."

It is undisputed that the District did not communicate its intention to make the above change, in advance of that change, either to the Union or to the District. Rather, the record indicates that the Union first learned of the change at about the same time that it received a copy of Knudson's notice of close of investigation. It is also undisputed that the Union did not communicate to the District or the WERC concerning its contention that the above offer change was impermissible. Rather, the record indicates that the Union first put the District on notice of its claim in that regard at the time of the July 25, 1980 meeting with the Mediator-Arbitrator herein.

POSITION OF THE UNION

At the hearing the Union made Arguments 1, 2 and 3, below, in support of its view that the Union's position was more reasonable under the statutory criteria. In its brief the Union advanced only Argument 4, below.

1. The differences regarding Application and Compensation are clearly the most important aspects of this dispute, and the determination as to which offer is the more reasonable on those items should clearly govern the ultimate determination herein regardless of the merits of the parties' offers as regards the other aspects of the dispute.

2. The District's Application language unreasonably limits the standard for arbitral review of denials. It also would permit the District, in at least some circumstances, to deny particular employes' early retirement requests year after year, thereby defeating the employes' rights to retire early altogether. The Union's Application proposal, however, strikes a reasonable balance in that regard. It recognizes that legitimate reasons may preclude granting a request the first time around, and that mass requests in the staff or in a department should be subject to some limits. But, after the passage of seventeen or so months from initial request through first denial through an additional twelve months provided in the Union language, the District should be able to manage any problem posed by a request and the employe interests in some certainty of early retirement opportunity should prevail.

3. Bargaining history is a factor to be weighed under the statutory criteria governing mediator-arbitrator selections between final offers. In that regard, the mediator-arbitrator should give great weight to the fact that the District offers in bargaining and during the investigation entailed language regarding Compensation that the District now argues is not reasonable and not consistent with the comparables. The fact that the District had proposed such language as a part of its offer for several months shows that the District agreed at those times that it was a reasonable element. That manifestation on the District's part should control as against the comparables cited by the District.

4. All other contentions of the parties notwithstanding, the Arbitrator must reject the District's final offer and accept the Union's because he is legally without jurisdiction to adopt the District's final offer. For, the District's final offer contains Compensation language on which the parties never bargained. The District effected that change at a time when the Union was precluded from altering its final offer, putting the Union at an unfair disadvantage. It involved a significant and bad faith change not merely in the form of a compensation proposal, but in a matter that had been agreed upon between the parties for many months.

The change was not only from a yearly to a single amount of compensation, but it also injected a whole new issue into its final offer: a change from the 50% method based on a salary differential to a daily rate times years-of-service method. That change is parallel to the changes from a one to a two year contract that resulted in rejection of final offers containing them in the Milwaukee County 1/ and Village of Greendale 2/ cases. For, such a change is inconsistent with the purpose of final-offer arbitration legislation of narrowing the differences between the parties and encouraging a voluntary agreement between the parties. It widened the differences between the parties and put the Union in an unreasonable position in the Arbitration. The Arbitrator, therefore, does not have jurisdiction to grant the Employer's final offer, regardless of how meritorious it might be. The Arbitrator must find for the Union.

POSITION OF THE DISTRICT

The District advanced the following arguments in its brief:

1. The District's offer is supported by area comparables and the Union's is not. Southern Milwaukee County districts are internally comparable and to a greater degree than such districts are comparable with other area districts surrounding Milwaukee. Citing, South Milwaukee Board of Education, Med/Arb-438, WERC Dec. No. ____, Arbitrator Zeidler, 2-4-80). Based on geographic proximity and similarities of staff and student body size and state aid per pupil levels, the following seven districts with voluntary early retirement provisions in their teacher labor agreements are "most comparable" to the District:

Cudahy
Greendale
Greenfield
Muskego
Oak Creek
St. Francis
South Milwaukee;

and the following six districts with voluntary early retirement provisions are generally comparable to the District though somewhat less so than those listed above:

Elmbrook
Menomonee Falls
Nicolet
Shorewood
Wauwatosa
Whitefish Bay.

Since the Union does not challenge the District's comparables, they must be presumed valid.

2. The Union's "Application" language contains staff and department percentage and seniority concepts and express language regarding automatic early retirement after twelve months, none of which is contained in any of the comparable districts' provisions. The District language governing the standards for granting and denying and review by an arbitrator is identical to that in Oak Creek and Cudahy, and Greenfield also has the "arbitrary and capricious" standard for arbitral review.

3. The Union's "Limitations" language, making the provision retroactive to 1978-79 retirees, would be practically and legally

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1/Milwaukee Deputy Sheriffs' Association v. Milwaukee County, 64 W.2d 651 (1974).

2/City of Greendale (MIA-313, WERC Dec. No. 15481-A, Kerkman, 12-18-77).

impossible to implement. For, it is undisputed that the STRS option cannot be applied to employes who retire before the District formally files with the STRS an election of early retirement following a settlement of this dispute. The District's proposal specifies--as do the provisions in Cudahy, Greenfield and Oak Creek--that 1979-80 retirees are the first to be eligible for the program.

4. The Union's option 1 of yearly payments is unlike the provisions in the seven most comparable districts' contracts. Indeed, only three of the thirteen comparables offer a yearly compensation approach, in no case to a maximum as high as the Union-proposed $7,000 per year, and in two cases for significantly less than the ten year period of possible payment under the Union's proposal. The District's Compensation language, on the other hand, is virtually identical with that in Cudahy, Oak Creek, Shorewood and Whitefish Bay; it uses the far more common single amount option rather than the yearly amount approach; and overall it is in line with all of the comparables except Wauwatosa in terms of the total cash to be received by the early retiree. The District's proposal is more consistent with the interests and welfare of the taxpayers in the District, as well, since the substantially greater long range dollar exposure for early retirees involved in the Union's proposal is inappropriate for the District to assume at a time of declining enrollments and reduced state aids.

5. The Union's Insurance provisions include paid life and health insurance coverage, both for a potential period of ten years of early retirement before age 65. The maximum exposure of the seven most comparable districts is four years and in one case five, and none pays for early retiree life insurance. While four of the six generally comparable districts include the life insurance benefit, all but Wauwautosa's is less costly coverage than the District's and for a shorter potential payment period than ten years. The District proposal exceeds the coverage periods of the seven most comparable districts in that it provides for up to five years of coverage, plus additional coverage based on accumulated sick leave fringe benefit purchase payout under Agreement 8.1. The District offer, like nine of the thirteen comparable districts, does not provide for life insurance premium payments for early retirees.

6. The Union's Applicability language mandates an annual review of the program without specifying by whom, in what manner, based on what standards, for what purpose, or with what consequences if adverse conclusions are reached. Such an extraneous and unworkable provision militates against the selection of the Union's offer, as well.

7. Finally, neither the history of bargaining nor applicable case law supports the Union's contention that the District should be precluded from prevailing in this matter by reason of the manner in which it altered the Compensation portion of its final offer. The change was made in accordance with the offer exchange procedure agreed upon between the parties, and it occurred before the close of the investigation and before the formal declaration of impasse by WERC. The change did not present a new issue not previously bargained. Rather, it involved modification of a portion of the subject area of compensation to be paid to voluntary early retirees which had been the subject of written proposals and bargaining since the outset of the negotiations. Thus, the language substituted by the District in its final offer dated March 24 did not "present[] a question not germane to the previous negotiations". Hence, this case is clearly distinguishable from the holdings in the Milwaukee County 3/ and City of Greendale 4/ cases. 5/ The change was not made in bad faith. It is undisputed

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3/Above, Note 1

4/Above, Note 2

5/Citing, Kenosha Unified School District (Med/Arb-464, WERC Dec. No. 17368-A, Kerkman, 4-15-80).

that the District bargaining representatives told the Union across the table that the District intended its proposal to provide Whitnall teachers with a voluntary early retirement package comparable to the pattern of such benefits in other area districts. The modification at issue simply conformed the District's offer to those intentions once the District discovered that its prior understanding--that the compensation provisions in several comparable districts involved yearly payments up to 100 days pay rather than one such payment--was mistaken. That mistake became known to the District representatives between the second and third offer exchanges, as a result of Attorney Olson's discussions with representatives of other districts in preparing for bargaining in those districts.

In any event, the Union's failure to object to the change in the several months since it received the District's March 27 offer makes its raising these objections for the first time at the July 25, 1980 mediation-arbitration proceeding an act of Union bad faith making its claims regarding District conduct unworthy of controlling weight herein.

DISCUSSION

Jurisdiction

Assuming (without deciding) that the principles established in the Milwaukee County case by the Supreme Court are applicable to Sec. 111.70(4)(cm)6 proceedings, the validity of the Union's argument (#4 above) that the Arbitrator lacks jurisdiction to select the District's offer would turn on whether the District's modification of the first Compensation paragraph of its offer between its second and third exchanges presented an issue that is "germane to the matters subject to negotiations in the previous bargaining sessions." 6/ The Arbitrator finds that the modification, while placing the Union at a significant disadvantage in arbitration, was nonetheless germane to the matters subject to negotiations in the previous bargaining sessions. The subject area of compensation for the employes retiring at age 61 or below was a matter bargained between the parties from the beginning of the reopened negotiations. Each had proposals on that subject in writing by the end of October, 1979. The proposals of the parties on that subject were modified to some extent thereafter, though the parties' proposals both dealt with the subject matter in terms that were identical insofar as the yearly payment 50% of salary differential provisions were concerned. The District's third final offer changed the form of compensation proposed by the District for early retirees 55 to 61, but it did not thereby inject a new issue into the bargaining.

It seems clear that by failing to advise the Union of its intent to change and of its realization that the comparables did not warrant the previous District treatment of the Compensation matter, the District caused the Union to be substantially disadvantaged as regards the Compensation aspects of the arbitration proceeding. The Mediator-Arbitrator would note, however, that the Union permitted itself to be taken advantage of in that regard by agreeing to the three-exchanges/last offer unamendable procedure in the investigation without first obtaining a stipulation of agreed-upon items putting the aspects of Compensation changed by the District outside the scope of language subject to changes in the District's third final offer. For, the Sec. 111.70(4)(cm)6, Stats., procedures are, as the Union argues, designed to narrow the differences

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6/The Supreme Court stated in Milwaukee County, above, Note 1, that,

> "The final offer, although it can be amended and submitted to final arbitration, must, if amended, be germane to the matters subject to negotiations in the prior bargaining sessions." 64 W.2d at 658.

and encourage settlement. The statute expressly provides an opportunity for identifying and "walling off" agreed upon matters from further conflict by its provisions for a stipulation of agreed upon items. 7/ In the absence of such a stipulation, the Union had reason to know that all of the matters in the District's offer were fair game for changes in form. Moreover, the Commission's rules are designed to prevent one party from advancing to arbitration a provision in a form to which the other side has not had an opportunity to adjust its own final offer. 8/ But the procedural agreement reached between the parties--and hence approved by the Union as well as the District--removed that protection by allowing for changes between the second and third exchanges to which the parties would not have the right to respond by subsequent amendment of their own offers. Thus, while the Arbitrator finds that the District's failure to alert the Union as to its intentions in the circumstances is conduct which is not promotive of a harmonious collective bargaining relationship, it could not have harmed the Union had not the Union side-stepped statutory and administrative rules' protections otherwise available to it. While the objective of speeding up and finalizing the offer exchange process was probably the parties' motivation in adopting its special exchange procedure, in pursuing that objective in the ways it did herein, the Union took the risk that it might be taken advantage of in precisely the manner that occurred herein.

7/Section 111.70(4)(cm)6.a., Stats, reads in part as follows:

> . . . Prior to the close of the investigation each party shall submit in writing its single final offer containing its final proposals on all issues in dispute to the commission. Such final offers may include only mandatory subjects of bargaining. Permissive subjects of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement.

8/Commission Rule ERB 31.09(2), Wis. Adm. Code (1978) provides, in part, as follows:

> (2) INFORMAL INVESTIGATION PROCEDURE. . . .Prior to the close of the investigation the investigator shall obtain in writing the final offers of the parties on the issues in dispute, as well as a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. At the same time the parties shall exchange copies of their final offers, and shall retain copies of such stipulation, and if at said time, or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal or proposals relating to nonmandatory subjects of bargaining, the commission agent shall serve a notice in writing upon the parties indicating the investigation is closed. The commission or its agent shall not close the investigation until the commission or its agent is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer. . . .

In any event, since the District's change was germane to the matters subject to negotiations in the prior bargaining sessions, there is no jurisdictional bar to selection of the District's proposal.

Merits of Final Offers Based on Statutory Criteria

The Union did not challenge the District's contentions regarding appropriate sets of comparables, and the Mediator-Arbitrator does not find any basis in the record for altering same; hence, they are deemed appropriate for purposes of this proceeding.

The Union is correct when it asserts that the Compensation and Application items are the most significant matters in dispute herein. Nevertheless, it is at least to be noted in passing that the Mediator-Arbitrator finds merit in the District's contentions set forth as #5 above regarding Insurance and #6 regarding the Union's proposal for an annual review.

The District overstates the case against the Union's "automatic" early retirement provision, however. While this is the only such provision to be found in the comparables, there is one "most comparable" district (Muskego-Norway) and three "generally comparable" districts (Wauwatosa, Elmbrook and Nicolet) in which the language does not expressly authorize employer denial of timely applications by employes meeting the eligibility criteria in terms of years of age and service. Absent other evidence concerning the application of those provisions, the Mediator-Arbitrator concludes that those four districts provide automatic early retirement to eligible employes making timely application for early retirement. Thus, rather than being "unique and unparallelled" in its limitation on District discretion regarding grant/denial decisions, the Union's proposal steers a creative compromise course between the approach in the four districts noted above on the one hand, and the Board-decision-is-final (Menomonee Falls, Shorewood, Whitefish Bay) and the Board-right-to-deny-under-specified-circumstances-and-standards (Cudahy, Greendale, Greenfield, Oak Creek, St. Francis, South Milwaukee) approaches, on the other. Nevertheless, the District's language parallels the "arbitrary and capricious" standard of arbitral review of denials in three other districts (Oak Creek, Cudahy, Greenfield), and it is more akin to the approach utilized in a majority of the comparable districts than the Union's proposal is.

Regarding the Compensation language, the District's proposal is clearly supported by the greater weight of the comparables. While the Union's proposal is similar to that in effect in Wauwatosa in several respects, including compensation based on salary level up to a stated maximum, the District's is identical regarding Compensation to that in four comparable districts, and closer to the approach and cost impacts entailed in the substantial majority of the comparables than is the Union's proposal. Indeed, the Union acknowledges in its brief that as a result of the District's change in its final offer,

> The Union is stuck with its compensation proposal which has practically no support when looking at other comparable school districts. The Employer's compensation issue is very comparable to other school districts. In fact, in many cases it is identical language. (Union Brief at 3-4)

Against the acknowledged support for the District's position in the comparables, the Union (at the hearing) advanced the contention that since the District had found the "receive yearly a sum which will be 50% of the difference between the employee's current salary in the year of retirement and the negotiated base salary of the contract year in which retirement occurs" language and concepts acceptable for a period of several months of bargaining, those

concepts should be deemed reasonable herein regardless of the comparables analysis. Such contention runs contrary to persuasive arbitral opinion, however. In that regard, Arbitrator Joseph Kerkman commented as follows, with regard to a contention that controlling weight should be given to a tentative agreement reached between bargaining teams but which was rejected in a ratification vote by the Union's membership:

> . . . the undersigned has serious concerns about finding for either party's offer solely on the basis that a prior tentative agreement had been reached between the parties. If arbitrators accepted the principle that once a tentative agreement were entered into that agreement should be enforced; the result would undoubtedly have a chilling effect on the bargaining process. Parties would be reluctant to enter into tentative agreements to take back either to the membership or the board for ratification, and that result should be avoided because it is the parties' responsibilities to effectuate an agreement voluntarily. Any suggestion that an arbitrator later would enforce a tentative agreement, which was rejected by either party which might reduce the possibilities of entering into tentative agreements, therefore, should be viewed with extreme caution. 9/

The same considerations militate against giving significant weight to a position offered and later changed by the District. In sum, the comparables support of the District's offer regarding Compensation overcomes the fact that there had been times during the bargaining that the District had been agreeable to certain language in the Union's final offer.

Considering all of the above, the Arbitrator finds that under the statutory criteria the District's offer is the more reasonable of the two.

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:

1. The District's change in Compensation language to that contained in its March 24, 1980 final offer, in the circumstances of this case, do not preclude consideration of the District's offer by the Mediator-Arbitrator.

2. Giving weight to the Section 111.70(4)(cm)7, Stats., factors, the District final offer shall be incorporated into the parties' written 1978-80 collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 10th day of June, 1981.

Marshall L. Gratz

Marshall L. Gratz, Mediator-Arbitrator

9/ Kenosha Unified School District, above, Note 5.

Voluntary Early Retirement

WHITNALL FEDERATION OF TEACHERS
Local 3307, WFT/AFT, AFL-CIO

THIRD AND LAST FINAL OFFER March 26, 1980

Description:

Early retirement benefits shall be available to teachers between the ages of 55 and 65 who resign their regular full-time duties. In the event that eligibility for payout of State Teacher Retirement Service accrued benefits is revised upward from age 65, the availability of early retirement benefits shall be adjusted accordingly, in order that a ten year period of eligibility for voluntary early retirement benefits shall be maintained. (Note: said adjustment shall be applicable to all other statements herein contained with regard to eligibility date for early retirement benefits.)

Eligibility:

An applicant for early retirement benefits must be a regular full-time, degree-holding teacher who is at least 55 years of age and who has at least 12 full years of service in the District as of the date of retirement. "Age" for the purpose of this policy is defined as the employee's age as of January 1 or June 30 following the semester in which retirement becomes effective.

Application:

a. All applications for early retirement must be filed with the Superintendent no later than February 1 for first semester retirements and by August 1 for second semester retirements.

b. All applications timely filed shall be honored with the following restrictions:

   1. No more than 10% of the total staff may early retire in any one year. In the event that applications exceed the 10% limit, requests will be granted on the basis of seniority.

   2. No more than 50% of the staff in one department may early retire in any one year. In the event that applications exceed the 50% limit, requests will be granted on the basis of seniority.

   3. The Board reserves the right to deny any early retirement requests for other legitimate reasons. Any teacher who

Compensation:

Upon early retirement, teachers who are ages 55 to 61 have the following retirement options:

1. Receive yearly a sum which will be 50% of the difference between the employee's current salary in the year of retirement and the negotiated base salary of the contract year in which retirement occurs, to a maximum of $7,000 per year; or

2. Have the full amount required by current state law paid to the State Teachers Retirement System by the Board. Payments shall be made pursuant to the requirements of Sec. 42.245(2)BM, Wis. Stats. and the administrative rules of the system.

Teachers applying for early retirement at age 62, 63 or 64 shall only have option 2 available.

In the event that a teacher who is receiving voluntary early retirement benefits pursuant to the terms of this section applies for, and receives unemployment compensation which is drawn against the account of the School District, the voluntary early retirement benefits specified herein shall be reduced by the amount of the unemployment compensation for the duration of the period in which the unemployment compensation is drawn.

Pension Payment Schedule:

Method of pension payment for teachers retiring at age 55 to 61 and selecting option 1, shall be worked out on an individual basis with each individual electing early retirement. Deductions, such as state and federal income tax, social security tax, or other taxes will be made only as required by law. If, after early retirement, a teacher dies before full payment has been made, the balance due (i.e., the amount that would have been paid to the employee to age 65) and owing shall be paid to a named beneficiary or, lacking same, to the estate of the deceased.

Insurance:

a. Any certified staff member who retires pursuant to this provision shall have the Board contribute the amount set forth in Article 8.1 for single or family plan health insurance coverage and in Article 8.3 for life insurance, if acceptable to the insurance carrier. Said payments shall terminate at the end of the school year in which the teacher reaches age 65, or in the event that the employee obtains insurance coverage from another employer, or in the event the employee becomes eligible for Medicare. In the event the employee becomes eligible for Medicare/Medicaid, the Board shall bear the cost of the Medicare/Medicaid supplementary insurance premium until age 65. In the event that a teacher retiring under the provision of this section has unused

accumulated sick leave days in his/her primary reserve, the provision of Sec.8.1. shall apply, and health insurance shall be paid from this primary reserve until exhausted. Thereafter, the District shall contribute the remainder of the health insurance and life insurance, pursuant to the provisions of this section.

b. If, after early retirement pursuant to this provision, a teacher dies before age 65, the surviving dependents of the teacher may remain within the health insurance group plan at their expense to the end of the school year in which the deceased teacher would have reached age 65, in the event that such a plan is acceptable to the health insurance carrier. In addition, if the deceased teacher had unused accumulated sick leave days in his/her primary or secondary reserve, which were unused at the time of his/her death, his/her surviving dependents may utilize the remainder of these unused accumulated sick leave days toward payment of the health insurance premium, if such a plan is acceptable to the health insurance carrier.

Recall Limitations:

Employees electing to retire under this program shall retain no reemployment rights with the District nor any other rights or benefits except those specified within this voluntary early retirement provision.

Employees exercising the rights as set forth in this Article may, at their option, reapply for District positions as they become open; however, the recall limitations set forth herein shall apply.

Validity:

If any aspect of this provision is found to be discriminatory or violative of the Federation Age Discrimination in Employment Act, the Wisconsin Fair Employment Act, or any other state or federal legislation by any court of competent jurisdiction, the parties agree to renegotiate the provision in question, unless it is not legally possible to do so, this obligation shall be deemed waived.

Applicability:

This program and payments made herein shall be reviewed annually. However, any individual already governed by the program set forth herein shall continue to receive benefits as set forth at the time of their early retirement and shall do so until the attainment of age 65.

nk/opeiu#9
afl-cio

March 24, 1980

WHITNALL SCHOOL DISTRICT

VOLUNTARY EARLY RETIREMENT

Board Final Offer

Description:

Early retirement benefits shall be available to teachers between the ages of 55 and 65 who resign their regular full-time duties. In the event that eligibility for payout of State Teacher Retirement Service accrued benefits is revised upward from age 65, the availability of early retirement benefits shall be adjusted accordingly, in order that a ten year period of eligibility for voluntary early retirement benefits shall be maintained. (Note: said adjustment shall be applicable to all other statements contained herein with regard to eligibility date for early retirement benefits.)

Eligibility:

An applicant for early retirement benefits must be a regular full-time, degree-holding teacher who is at least 55 years of age and who has served in the school system for not less than 12 full years. "Age" for the purpose of this policy is defined as the employee's age as of June 30 following the school year in which retirement becomes effective.

Application:

All applications for early retirement must be filed with the Superintendent no later than February 1 for first semester retirements and by August 1 for second semester retirements. The Superintendent shall make recommendations to the Board for approval of the applications for early retirement benefits. The Board reserves the right to deny requests for early retirement for any legitimate reason. Said denial shall not be unreasonable. The Board's decision shall be subject to the grievance procedure. However, the Board's decision shall not be overturned by an arbitrator unless it is found to be arbitrary or capricious.

Limitations:

This early retirement policy shall apply only to teachers who retire at the conclusion of the 1979-80 school year and thereafter and shall not be retroactive to any teacher who retired prior to the date that this agreement is adopted by the Board. This policy shall not apply to any employee who is discharged, terminated or non-renewed for just cause. The volun-

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tary early retirement program shall not be applicable to any employee who has not applied and received the approval of the School Board for the early retirement.

Compensation:

Upon early retirement, teachers between the ages of 55 and 61 shall be eligible to receive an amount equalling up to four days of pay for each full year of service in the Whitnall School District, but not to exceed a total of 100 days' pay. In applying the provisions of this policy, a teacher's day's pay shall be 1/190th of the teacher's base salary, excluding all fringe benefits, during the last full year of service prior to retirement.

Teachers applying for early retirement at age 62, 63, or 64 shall have the full amount required by current state law paid to the State Teachers Retirement System by the Board until they reach age 65. Payments shall be made pursuant to the requirements of Sec. 42.245(2)BM, Wis. Stats., and the administrative rules of the system.

Under no circumstances will an employee be allowed to combine provisions of the above options.

In the event that a teacher who is receiving voluntary early retirement benefits pursuant to the terms of this section applies for, and receives unemployment compensation which is drawn against the account of the School District, the voluntary early retirement benefits specified herein shall be reduced by the amount of the unemployment compensation for the duration of the period in which the unemployment compensation is drawn.

Payment Schedule:

Method of payment for teachers retiring at ages 55 to 61 shall be worked out on an individual basis with each individual electing early retirement. Deductions, such as state and federal income tax, social security tax, or other taxes will be made only as required by law. If, after early retirement, a teacher dies before full payment has been made, the balance due and owing shall be paid to a named beneficiary or, lacking same, to the estate of the deceased.

Insurance:

Any certified staff member who retires pursuant to this provision shall have the Board contribute the amount set forth in Article 8.1 for single or family health insurance coverage for a period of five years. Said payments shall terminate at the end of five years; at the end of the school year in which the teacher reaches age 65; in the event the employee obtains insurance coverage from another employer; or in the event the employee becomes eligible for Medicare. In addition to the above, and subject to the above

limitations, in the event that a teacher retiring under the provisions of this Section has unused accumulated sick leave days in his/her primary reserve, the provisions of Section 8.1 shall apply, and health insurance shall be paid from this primary reserve until exhausted. In the event the teacher utilizes accumulated sick leave and the applicable five year Board contribution, the teacher may remain a part of the health insurance group, at his/her own expense, until he/she reaches age 65. All of the above provisions shall be expressly contingent upon approval of the insurance carrier.

If, after early retirement pursuant to this provision, a teacher dies before age 65, the surviving dependents of the teacher may remain within the health insurance group plan at their expense until the end of the school year that the deceased teacher would have reached 65, in the event such a plan is acceptable to the health insurance carrier. In addition, and subject to the above limitations within this paragraph, if the deceased teacher had unused accumulated sick leave days in his/her primary or secondary reserve, which were unused at the time of his/her death, his/her surviving dependents may utilize the remainder of these unused accumulated sick leave days toward payment of the health insurance premium, if such a plan is acceptable to the health insurance carrier.

Recall Limitations:

Employees electing to retire under this program shall retain no reemployment rights with the District nor any other rights or benefits except those specified within this voluntary early retirement provision. Employees exercising the rights as set forth in this Article may, at their option, reapply for District positions as they become open; however, the recall limitations set forth herein shall apply.

Validity:

If any aspect of this provision is found to be discriminatory or violative of the Federal Age Discrimination in Employment Act, the Wisconsin Fair Employment Act, or any other state or federal legislation by any court of competent jurisdiction, the parties agree to renegotiate the provision in question, unless it is not legally possible to do so. In the event it is not legally possible to do so, this obligation shall be deemed waived.