WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Mediation-Arbitration of a Dispute Between	:	
MENASHA JOINT SCHOOL DISTRICT	:	
and	:	AWARD AND OPINION
MENASHA FEDERATION OF TEACHERS, LOCAL 1166, WFT, AFT, AFL-CIO	:	Decision No. 17966-A

Case No.	XXXV, No. 26523 Med/Arb 797
Hearing Date	September 29, 1980
Appearances:	
For the Employer	Mulcahy & Wherry, S.C., Attorneys at Law, by MR. EDWARD J. WILLIAMS and MR. RANDY WOLFMEYER
For the Union	MR. GREG WEYENBERG, Wisconsin Federation of Teachers
Arbitrator	MR. ROBERT J. MUELLER
Date of Award	December 9, 1980

BACKGROUND

The Menasha Board of Education and the Menasha Teachers Union, Local 1166, WFT, AFT, AFL-CIO, opened negotiations for a new Collective Bargaining Agreement on February 7, 1980. The parties were unable to reach a voluntary agreement and petitioned the Wisconsin Employment Relations Commission pursuant to Section 111.70 Wisconsin Statutes, to initiate mediation /arbitration.

The parties selected the undersigned to serve as mediator/ arbitrator. By order dated August 14, 1980, the Wisconsin Employment Relations Commission appointed the undersigned to so serve.

On September 29, 1980, efforts were made through mediation efforts to resolve the dispute between the parties. Failing resolution of the matter through mediation efforts, the undersigned declared an impasse which was stipulated to and agreed to by the parties. The parties were then given an opportunity to amend or withdraw their respective final offers. Neither party desired to either amend or withdraw their respective final offers and the matter then proceeded to be heard in arbitration.

At the hearing, the parties were given the opportunity to present evidence through exhibits and testimony and to make such arguments as they deemed pertinent. Subsequent to the hearing, the parties agreed to and did submit written briefs to the arbitrator, which briefs were exchanged by the arbitrator and remitted to the parties.

FINAL OFFERS OF THE PARTIES

Final Offer of Menasha Education Association·

1. Salary $12,300 base salary -- 3.68% -- $400 career recognition.

2. Both parties drop personal leave proposals -- language remains status quo

Final Offer of Menasha Joint School District·

1 Salary $12,200 base salary with a 3.68% step increment and a career recognition factor of $400.00.

2. Personal Leave

VII 5 F-1 Change to.

1. Personal leave shall be granted to teachers for a maximum of two (2) days per school year. The teacher shall request personal leave from his/her immediate supervisor, with reason stated in writing, at least ten (10) days prior to the date of the leave being requested. Personal days requested as a result of an emergency negating the ten (10) day notice requirement must be accompanied by a written explanation of the emergency and payment for such days may be authorized by the superintendent of schools with full payment, without payment, or with the cost of the substitute teacher being deducted from the teacher's pay.

F 2 and 3 - As is

F 4 - The first personal day shall not be deducted from sick leave. Each subsequent personal day or additional emergency day as outlined under (G) Additional Emergency Leave shall be deducted from sick leave.

If the 10 day deadline is unable to be met and full pay or substitute pay is deducted, no sick leave deduction shall be administered.

F 5 - As is.

G Additional Emergency Leave

As is under 1, 2, and 3

Add 4 - A sick leave day shall be deducted for each "additional emergency leave" day used.

Statutory Factors to be Considered:

Section 111.70(4)(cm) 7 of the Wisconsin Statutes specifies and enumerates the factors to be considered by the mediator/arbitrator in consideration of the respective final offers of the parties. The parties limited and addressed their evidence and arguments to basically four of the eight factors as specified in the statute. Such evidence and arguments were addressed to the following factors which the undersigned shall therefore consider:

> "d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
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> "e. The average consumer prices for goods and services, commonly known as the cost-of-living.
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> "f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stablility of employment, and all other benefits received.
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> . . .
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> "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."

DISCUSSION, EVIDENCE AND ARGUMENT
OF THE PARTIES

The difference in the salary proposals of the two parties consist of a difference of $100.00 on the BA plus zero base of the salary schedule. Such sum, of course, varies slightly as it is applied thereafter under the application of the 3.68% increment to the other steps of the salary schedule. The cost computation of such increase by the parties varied slightly. In applying the proposed increase of each party to the 1979-80 staff, the Union arrived at an average teacher wage only increase of 11.85%. By applying the same foremat, the Board arrived at a corresponding increase of 12.1%. The explainable difference in the two computations involves the co-curricular item which was adjusted by the Board in its computation, but which was not adjusted in the Union's computation. It would therefore appear that the more accurate of the two computations is the Board's computation of 12.1% which represents the Union proposal. The Board's salary proposal is similarly reflected as constituting an 11.2% increase.

Board Exhibit 9 entered into evidence, consisted of a cost computation of the respective offers as applied to the actual 1980-81 staff and indicated that the Union proposal represented an average teacher salary increase of 12% whereas theBoard's final offer represented an average teacher salary increase of 11.1%

The major dispute between the parties involved that of identifying those other school districts that should be given the greatest weight as comparables within the application of factor d of the Wisconsin Statutes.

The Board contends that the most appropriate districts to which comparison should be made, are those of Appleton, Kaukauna, Kimberly, Little Chute, Neenah, Oshkosh, and Two Rivers. They contend that within such group, Menasha compares most favorably with Kaukauna, Kimberly, Little Chute, and Two Rivers. The Board presented evidence showing the average pupil enrollment, full-time equivalent staff, cost per member, geographic proximity, state aid, and full value tax rates that existed in each of the listed districts. The Board set out the following chart in its brief showing the difference in enrollment and FTE staff between Menasha and such districts as follows:

	Enrollment	Difference	FTE	Difference
Appleton	11,440	7844	262.60	318.84
Oshkosh	9,587	5991	516.03	165.38
Neenah	6,739	3143	362.57	64.41
Menasha	3,596		197.19	
Kaukauna	3,142	(454)	177.74	(19.45)
Two Rivers	2,610	(981)	133.80	(63.39)
Kimberly	2,417	(1179)	137.80	(59.39)
Little Chute	1,244	(2352)	72.16	(125.03)

The Board contends that based on the enrollment and staff levels as shown by such chart, that Menasha should more appropriately be compared to the districts of Kaukauna, Two Rivers, Kimberly and Little Chute.

The Board also pointed out that all seven of the school districts, with the exception of Two Rivers, are in Cooperative Educational Service Agency 8 and all, except Two Rivers, are in the geographic area referred to as the Lower Fox River Valley. Additionally, six of the eight districts are members of the Fox Valley Association athletic conference. The statistics involving the cost per member, state aid per member, and full value tax rate applicable to each district, reveals some variation, but basically are not subject to clear variations upon which conclusionary considerations can be assessed. The Board contends that Menasha should not be compared only to the districts of Neenah, Appleton, and Oshkosh, as argued by the Union, as Appleton and Oshkosh in particular, are much larger than Menasha by approximately 235% and that Neenah is approximately 60% larger than Menasha.

The Board further contended that the population of Menasha has not grown significantly during the past five years, whereas the cities of Neenah and Applton have grown considerably.

With respect to the feasibility study of municipal consolidation prepared by the Wisconsin Taxpayers Alliance and the final report and recommendations of the Neenah-Menasha Consolidation feasibility Study Task Force Committee, the Board states in its brief as follows·

> "Union Exhibit 13 concerns the Neenah-Menasha feasibility study on consolidation. It reveals some obstacles to the potential consolidation of these two cities. It states· 'There may be problems in connection with school district organization....' Said 'problems' alluded to would probably result from the differences in tax levy rates and teacher salaries among others. Concurrently, the Board questions the applicability of the feasibility study (Union Exhibits 11-14, 17-18) for the cities of Neenah and Menasha for the purpose of comparing the Neenah and Menasha School Districts. This study deals specifically with the similarities between the two cities. The study never mentions any similarities between the school districts of Neenah and Menasha. In this same vein the Board questions the applicability of the data dealing with a Common Sewerage Commission (Union Exhibit 15), and a Common Chamber of Commerce (Union Exhibit 16)."

The Union states its argument concerning those districts which it deems to be the most comparable in its brief, relevant parts thereof, being as follows:

> "For comparison purposes, Neenah must be considered the most comparable district to Menasha. Not only are they called the 'Twin Cities,' they share many joint organizations as well as governmental operations. In addition, churches, shopping areas, employment areas and a common hospital are all shared. The above is evidenced in Union Exhibit #1 PP. 6-15.
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> "To further prove their likeness in a report written by the Wisconsin Taxpayers Alliance (Union Exhibit #1 P. 13) it was concluded that Neenah and Menasha were comparable economically as well as in government finances and personnel.
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> "In addition, both school districts include a portion of the Town of Menasha and participate in the Fox Valley Association Athletic Conference.
> "The next measure of comparability must certainly be Appleton. Here again common shopping and employment areas, as well as churches and social organizations are found. Both the Appleton and Menasha School Districts (along

with Neenah) have a portion of the Town of Menasha in their district and participate in the same athletic conference. Together the three achool districts (Neenah, Menasha and Appleton) form one contiguous area.

"Both Oshkosh and Kaukauna could be considered the next most comparable because of their common shopping and employment areas with Menasha and their many common social and economic characteristics (Union Exhibit #1, PP. 19-20).

"The five districts including Menasha, Neenah, Appleton, Kaukauna and Oshkosh all participate in the same athletic conference (Fox Valley Association) are of comparable value (Union Exhibit #1 P. 22) and form one of the most concentrated areas of heavy industrialization in the State of Wisconsin

"It must be noted that for the purpose of comparison, the employer chose to include in their list of comparables the Little Chute and Two Rivers School Districts. This is most significant for the following reasons: Two Rivers is located approximately 50 miles away and cannot be considered a part of the same community, it does not participate in the same athletic conference, and has a lesser equalized value than Menasha. Little Chute on the other hand is closer in proximity but certainly cannot be considered a comparable. It does not participate in the same athletic conference, is much smaller in size and is not even close to matching the tax bases of the surrounding communities....

"Therefore, it must be argued by the Union that the Little Chute and Two Rivers school districts are not comparable to Menasha and that their inclusion in the list of comparables by the employer was an attempt to include their lower salary schedules into their argument for a lesser salary increase for the Menasha teachers."

On the basis of an overall evaluation of the various comparability factors, the undersigned concludes that the School District of Neenah should be afforded the greatest weight for comparison purposes. Size alone appears to be the only distinguishing characteristic between the two districts. Geographically, it is clearly a sister or twin city of Neenah. It is comparable in per capita tax base, median family income in both cities are comparable, the cost per member is comparable, the state aid per member is comparable, and the two cities have many jointly shared activities and areas of interchange. The employment area is basically considered and regarded as a single employment area.

The undersigned is of the judgment that the school district of Appleton would be the next most comparable district primarily because of its geographic proximity, and it also being a part of the common employment area along with the Neenah-Menasha area. The third level of comparison, it would seem to the undersigned, would be that of Oshkosh and Kaukauna. Such two districts are in the same basic geographic and employment area and are comparable as to state aid, cost per member, and equalized value per member.

The undersigned would consider the above three levels on a descending order of priority.

The Union has not argued and their final offer shows that they are not asking for parity with the salaries in effect in the Neenah School District. What the Union is in fact contending, is that the salary spread between the two districts should not be enlarged by the amount which the Board's proposal would effectuate.

The arbitrator has developed the following comparative analysis of the BA plus zero rate, the BA plus zero top rate, the MA plus zero rate, and the top rate of the MA plus 30 lane of the Menasha and Neenah salary schedules for the 1978-79 contract year as compared to the 1979-80 contract year and the 1980-81 contract year. The school district of Neenah had reached a voluntary settlement of their 1980-81 contract and such rates are reflected in the following comparison.

Historical Comparison

District	78-79 BA base	Difference	79-80 BA base	Difference	80-81 BA base	Difference
Menasha	10,500		11,100 (6 mo.) 11,300 (6 mo.)		Union - 12,300 Board - 12,200	
Neenah	10,500	0	11,200 (6 mo.) 11,400 (6 mo.)	+100	12,500	U +200 B +300
			BA Top Rate			
Menasha	15,046		16,176		U 17683 B 17539	
Neenah	16,581	+1535	18,000	+1824	19740	U +2057 B +2201
			MA + 0			
Menasha	11,658		12,548		U 13659 B 13547	
Neenah	11,550	-108	12,540	-8	13750	U +91 B +203
			MA + 30			
Menasha	20,042		21,552		U 23541 B 23357	
Neenah	22669	+2627	24,611	+3059	26987	U +3446 B +3630

What is shown by the above historical analysis, is that in 1978-79, the BA + 0 rate was the same in both districts. In that year, the MA + 0 lane started $108.00 higher than Neenah. The BA + 0 top rate and the MA + 30 top rate on the other hand, were substantially lower at Menasha than at Neenah. In 1978-79, the rates at Neenah generally forged ahead of those at Menasha, by the sum of $100.00 at the BA + 0 and MA + 0 pay lanes and by approximately $300.00 and $400.00 additional respectively at the BA top rate and the MA + 30 top rate.

Under the Union final proposal for 1980-81, both the BA + 0 and MA + 0 base rates would be widened further an additional $100.00. Under the Board's proposal, such difference would be widened by approximately $300.00. The BA top rate and MA + 30 top rate would both be correspondently widened an additional $300.00 to $500.00 approximately.

The undersigned could understand and accept the proposition that there could exist some reasonable differential between the rates at Menasha in comparison to Neenah on the basis of the respective size of the two districts. On the other hand, the size of the two districts is the only distinguishing consideration bearing on their comparability. In almost all other respects, as to tax base, median income, cost per member, etc., no factor favors one over the other.

The Union presented into evidence salary schedules of various classifications in the police and fire departments of Menasha, Neenah and Appleton. An examination of such exhibit reveals that as between the various classifications in the police and fire department, that in some classifications, Menasha pays a higher rate than does Neenah while in others Neenah pays a higher rate. An average of the various rates would seem to indicate that they very closely parallel each other and are basically on parity. The Union suggests, on the basis of such evidence, that where other public employees are relatively equal as between the two municipalities, why should not teachers also be treated relatively the same? It would seem to the arbitrator, that such argument does contain merit and that such question is a difficult one to answer. It would appear from the record evidence, that the parties have afforded some recognition to the size differential existing between the two districts when they continued and/or created a lower salary structure in the 1979-80 contract. It also appears that the Union acknowledges that some greater difference is justifiable by virtue of their final offer which would establish a slightly greater difference between the two salary schedules. The undersigned cannot, however, conclude on the basis of the total evidence, that the greater spread between the Menasha and Neenah salary schedules is called for or justified to the extent which the Board's final offer would effectuate.

In examining the historical relationship of the various pay lanes at Menasha to those of Appleton over the same time period, one finds that Appleton rates have generally risen slightly more each year over those at Menasha at the same comparable pay ranges. For instance, in 1978-79, the BA + 0 rate at Appleton was $100.00 higher than at Menasha, in 1979-80, it was $150.00 higher, and under the Union's proposal at Menasha for 1980-81, it would be $200.00 higher whereas under the Board's offer it would be $300.00 higher. Similar widening of the differential has occurred at the BA top rate, the MA + 0 rate, and the MA + 30 top rate.

At Oshkosh, the evidence reveals that in 1979-80, the BA + 0 rate at Oshkosh was $11,200.00. For 1980-81, the BA + 0 rate will be $12,580.00.

At Kaukauna, the 1980-81 contract is not yet settled but has been subject to the submission of final offers in mediation/ arbitration, with the School Board having proposed a starting BA + 0 rate of $12,225.00 and the Union having proposed a rate of $12,350.00. The evidence reveals that the 1979-80 BA + 0 rate was $11,225.00. One can thus see from such figures, that under the Board's final offer, the proposed increase would be in the sum of $1,000.00. While the BA + 0 rate at Kaukauna in 1979-80 was lower than the year end rate at Menasha, under the Board's final proposal for Kaukauna School District, such rate would result in being higher than the starting BA + 0 rate under the Menasha School Board proposal of $12,200.00.

In conclusion, particularly with respect to an evaluation of the historical relationships as shown by the above discussion and analysis, the arbitrator is of the judgment that such comparison favors the final offer of the Union.

The Board presented evidence and argued that the wage settlements of other public employees of the City of Menasha lends support to the level of the Board's final offer in this case. The Board's exhibit reveals that the Department of Public Works employees received an increase on wages only of 10.6% which yielded a total compensation settlement of 9.25%. City Hall employees received a wages only settlement of 12.1%, which yielded a total compensation package of 10.6%. Fire Department employees settled on a two-year contract for 1980 and 1981 of 9.5% and 9% respectively. The Police Department 1980 contract settlement was 9%. The Board contends that the Board's final offer to the teachers is .5% higher than the total package settlement of 10.6% granted City Hall employees, whereas the Union's final offer is 1.4% higher than such highest settlement with the four public employee units. While such facts are persuasive, the undersigned is of the judgment that the comparative standing of such other type public employees of the City of Menasha to those same type employees in the City of Neenah, as shown by Union Exhibit No. 3, along with that consideration concerning the historical relationship and the salary spread variance between Menasha teachers and Neenah teachers, as being worthy of greater weight and consideration in the final analysis.

With respect to the arguments of the parties concerning the impact of the consumer price index and the cost of living factor to the respective final offers of each, the Union contended that using the Milwaukee index, the CPI incurred a 13% increase from July 1979 through July 1980. The Board contends that the time frame that should be utilized should be that of August 1979 to August 1980, which then would indicate a 12.8% increase for all urban wage earners. The Board contends that the stated CPI percentage should not be literally applied. They contend that there exists a number of factors which render the CPI percentage calculations unrealistic for literal application. They state in their brief as follows·

> "In utilizing the Consumer Price Index one must thoroughly understand its composite nature if it is to have any significance in measuring the amount of wage increases for public employees. The CPI does not purport to, nor does it, relfect changes in expenditure patterns. Further, it cannot adjust to the introduction of new products or services. The CPI merely establishes the cost of a given basket of goods which has not changed since 1972. The All Cities Average merely is an average of the cost of the basket of goods in the cities compared.
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> "The CPI, while giving a basis for comparison, does not measure changes in consumer preference. For example, a shopper in a grocery store might go to the meat counter to see that the price of hamburger has increased dramatically since last month. However, the price of chicken has diminished because of a sale put on by the retailer. The normal consumer might change their expenditure pattern by buying chicken instead of hamburger. The CPI does not allow for consumer decisions, rather it requires the purchase of that pound of hamburger even though market conditions might make such a purchase unlikely by the normal consumer.
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> "As an alternative to the CPI, many economists suggest

that more attention should be given to the personal-Consumption Expenditures (PCE) deflator, an inflation index derived from the Commerce Departments Quarterly report on the gross national product. Because the GNP figures are based on actual transactions in the economy the PCE index mirros behavior. By that measure, consumer prices rose at an annual rate of 10.5% from June, 1979 to June, 1980. (Since the PCE is computed quarterly, it must be compared with the June, 1979 to June 1980 CPI in order to make a meaningful comparison). From June, 1979 to June, 1980 the CPI increased by 13.2%. The increase in the PCE is far less than the increase reported in the Consumer Price Index for the same period of time. Since the PCE measures the changed prices of goods and services consumers buy currently, not of items in a hypothetical basket of goods selected in 1972 and because the CPI over-emphasizes mortgage rate changes which in a given month affect few consumers, the Board maintains that the PCE Index is a better measure of the real market behavior (Board Exhibits 16-23).

"As a result of the above, the Board contends that its offer of 11.2% keeps pace with the real inflation which occurred in the period July, 1979 to July 1980."

I one accepts the Union's contention that the literal and historical application of the CPI percentage should apply, one would then conclude that the cost of living factor is more favorable to the Union's final offer. If one accepts the Board's argument as above expressed, one would then apply an annual rate of 10.5% which would favor the Board's final proposal. The considerations urged by the Board are relatively new concepts, but are ones that are beginning to gain some degree of recognition. As of this date, the arbitrator has not seen or read any counter critique to the procedures and theories advanced by the Board. Undoubtedly, as those theories are more frequently advanced, counter critiques will emerge. To the undersigned's knowledge, such approach has not been widely recognized and accepted as of this date. Undoubtedly, many points and considerations expressed therein have some degree of validity. The arbitrator is not willing, at this time, and in this precise case, to adopt the approach advanced by the Board on its face. There may be some fallacies and weaknesses in such approach that would call for certain modifications and yield adjustments that would call for a percentage application that would be somewhere between the literal CPI percentage figure and the TCE index figure suggested by the Board.

In the final analysis, the undersigned would find that neither final offer is shown by the evidence to be most favored over that of the other by application and consideration of the cost of living factor.

The final issue and matter to be resolved concerns the respective final offers of the parties concerning the use of personal days.

The present contractual provision that was voluntarily negotiated in the 1978-79 contract, provided as follows:

"F. Personal Leave

1. Personal leave shall be granted to teachers for a maximum of two (2) days per school year. The

> teacher shall request personal leave (reason need not be given) from his/her immediate supervisor, in writing, at teast ten (10) days prior to the date of the leave being requested. Personal days requested without a ten (10) day notice must be accompanied by a written explanation of the emergency nature of the request and payment for such day may be denied by the Superintendent of Schools if the employee is negligent in giving the ten (10) day notice. (Emergency is defined as in G-2, Additional Emergency Leave)."

The evidence revealed that in administering such provision, both of such two personal days therein provided, were deducted from sick leave.

Under the Board's final proposal, teachers would be required to state in writing the reason for requesting the personal leave day in all cases. Under such Board proposal, the first personal day would not be deducted from sick leave. The second of such two days and any additional emergency day, would be so deducted from sick leave.

The sole dispute between the parties concerns the proposed change that would require employees to provide a reason for such two days of personal leave.

The 1977-78 collective bargaining agreement contained the following language applicable to personal leaves.

> "Requests for such leave shall be in writing and submitted to the superintendent at least ten (10) school days prior to the date of the leave being requested or as soon as such reasons become known."

The Board contended that during that contract year, only 19 personal days were utilized by the teaching staff. After the language was changed in the 1978-79 contract, employees used 134 personal days and during the 1979-80 contract, employees used 195 days.

The Board contends that such numbers clearly indicate an abuse of such provision and that the Board's proposal is intended not to deny a benefit, but to insure the proper use of that benefit. In fact, the Board contends that they have liberalized the application of such provision from the current procedure by providing that the first personal day so used is not to be charged against sick leave. They contend that the Board's offer in essence provides for an additional day of sick leave to employees.

The Board also presented provisions from other school district contracts consisting of those utilized in the group proposed by the Board for salary comparisons wherein only Two Rivers does not require that a reason by furnished. All six of the other contracts do require teachers to submit a reason for personal leave.

The Union's argument as presented in its brief, relevant parts thereof, is as follows

> "This very important contract clause was agreed to, voluntarily, by both parties in mediation during the 1978-79 contract negotiations. Contained in this

package or consent award was a guarantee that the employer would have teaching personnel assigned to supervision assignments prior to the normal work day, a shortened lunch period at the high school (requested by the employer), and an agreement to conduct a fair share election.

"During contract negotiations of 1978-79, a top priority of the Union was to make the personal leave clause of the contract strictly personal. As testified to by Bev Long and Sally Weisgerber in the hearing, the old language (Union Exhibit #2, PP. 54-55) caused a great deal of confusion and resentment on the part of the teachers and perhaps administration. Mrs. Long was able to cite two specific examples in the hearing where principals did not apply this clause in a uniform and equal manner. Miss Weisgerber, being on the negotiation team during the inclusion of this clause, testified to the great dissatisfaction among the teachers in the application of the previous language. She further testified that the present language in the agreement was drafted by the employer and accepted by the Union in mediation. This point is most significant since the employer wanted controls safeguarding the number of people who could be absent on a given day and a control of deducting one sick leave day for each personal day used. The Union's thrust was to make the clause strictly personal. Now it seems the employer wants all of the safeguards they proposed as well as eliminating the Union's prime concern.

. . .

"Furthermore, it must be argued that the language change sought by the employer will actually have no effect on limiting the days teachers can be absent from the classroom. It makes no sense at all to have people give reasons for taking personal leave even though the days must be granted as long as the proper time and other limiting factors in each building have been met. The real change in the employer offer is simply to require a reason to be given for each day used. Therefore, the argument by the employer that too many days were being taken by teachers, thus resulting in less class time, is irrelevant since their language revision has no provision to deny <u>any</u> timely request."

To the Union's allegation that the Board's proposal contains no language that would allow the Board to deny an employee's request for use of personal leave (the two days) and that the requirement that would require an employee to give a reason therefor, as being meaningless, the evidence and argument on behalf of the Board leaves such contention in some doubt. Such contention was not specifically addressed by the Board, but was covered to some extent through cross-examination by the Union of the Director of Business Services. Such witness appears to have agreed under cross-examination that under the Board's proposed language, that there could be no denial of a teacher's request of the two personal days therein provided, where such request was timely, was in writing, and gave a reason. He further testified that such same result would have prevailed under the existing contract provision. He further testified, however, that employees had utilized such personal days in the past for "no reason" and that if they were required to give a reason, that it may serve to limit the use of such personal days.

It seems to the undersigned, that such expressed assumption is questionable. It would depend to a large extent, upon the amount of detail that may be required in specifying the reasons called for. It would seem that unless some action of the Board is to be taken such as approval or denial of such type request based upon consideration of the reasons given, that such requirement is very illusory and not contractually meaningful. It may have a limiting affect, but there certainly is no guarantee in that respect.

The Union also contends that the record of personal days used as submitted by the Board, is not reliable. They contended that the method of record keeping varied considerably from one school to the other and that the categorization of absences at the various schools varied considerably. In evaluating the data supplied by the Union and entered as Union Exhibit No. 2, it is clear that despite the alleged discrepancy in record keeping, it appears even by the Union's exhibits, that the utilization of personal leave days did increase substantially, particularly in several selected school locations since the 78-79 contract change.

It appears, through the testimony of Union witnesses, that a bargain was struck between the Board and the Union in 1978-79 negotiations whereby the Union obtained a change in the contract language that would allow for the taking of two personal days without the requirement of reasons being given and without the requirement that such requests be approved, and that the Board in exchange for such bargain, received certain benefits and safeguards with respect to other contractual areas. It would seem that each concluded that they had received a quid pro quo for which each had given.

The undersigned finds it a little difficult to accept the premise that the Board's proposal would likely result in less usage of personal days by employees. Under the Board's proposal, it appears to be conceded that where reasons are given, even though the reasons may not be good ones, a request for the personal day off cannot be refused. Under the Board's proposal, the first day so used would not be charged to sick leave. It seems to the undersigned, that such provision would serve to further encourage employees to utilize the personal leave days even more than under the old provision, because of the fact that such first day is a freebee. Under the present contractual provision, both of the two personal leave days are charged to sick leave. That fact should be somewhat of a deterrent to the usage thereof.

The undersigned is not in a position to dispute or quarrel with the record evidence which clearly indicates that employees have utilized personal leave days at an increasing frequency over the past several years. Such fact is clearly established by the record evidence. The arbitrator, however, is not persuaded that the Board's proposal as herein submitted, would effectively address such increased frequency of usage. In fact, the undersigned is of the belief that it would not. It therefore follows on that basis, that the undersigned is unable to find present in this case, persuasive considerations that would lend support or favor to the Board's proposal over that of the Union.

On the basis of the above facts and discussion thereon, it therefore follows that the undersigned renders the following decision and

AWARD

That the final offer of the Menasha Education Association is found to be the more reasonable and is hereby selected and directed that it be incorporated into the written Collective Bargaining Agreement as required by Statute.

Dated at Madison, Wisconsin this 9th day of December, 1980.

Robert J. Mueller
Arbitrator