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RELATIONS COMMISSION

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In the Matter of an Arbitration
Between

SOUTHERN DOOR EDUCATION ASSOCIATION

and

SOUTHERN DOOR COUNTY SCHOOL DISTRICT

* * * * *

Case XI No. 26585
MED/ARB-814
Decision No. 18106-A

Appearances:

Mr. William G. Bracken, Membership Consultant, Wisconsin Association of School Boards; for the Board.

Mr. Dennis W. Muehl, Executive Director, Bayland Teachers' United; for the Association.

Mr. Neil M. Gundermann, Mediator-Arbitrator.

ARBITRATION AWARD

The Southern Door Education Association, hereinafter referred to as the Association, and Southern Door County School District, hereinafter referred to as the Board, were unable to reach agreement on the terms of a 1980-81 Master Agreement. The undersigned was appointed mediator-arbitrator through the appointment procedures of the Wisconsin Employment Relations Commission, and a mediation-arbitration hearing was held on December 23, 1980 in Brussels, Wisconsin. The parties filed post-hearing briefs.

FINAL OFFERS OF THE PARTIES:

1. Salary

Base:

Board	\$11,200
Association	\$11,250

Increment:

Board	\$500
Association	\$560

2. Fair Share

Board's Proposal

B. The employer agrees that effective thirty (30) days after final settlement is reached, it will deduct from the bimonthly earnings of all employees in the collective bargaining unit an amount equal to such employees' proportionate share of the cost of the collective bargaining process and contract administration as certified by the Association and measured by the amount of dues uniformly required of all members, and shall pay said amount to the treasurer of the Association on or before the end of the month following the month in which said deduction was made.

C. Present Employees: As to all unit employees employed on July 1, 1980, such deduction shall be made and forwarded to the treasurer of the bargaining representative only from the monthly earnings of those employees who are members of the employee organization on July 1, 1980. Unit employees who are not members of the employee organization on July 1, 1980, shall not be covered by this article. However, the aforementioned employees not covered by this article may opt to join the employee organization and thus become covered by this article at any time by written request.

New Employees: Such deductions shall be made and forwarded to the treasurer of the bargaining representative from the earnings of all new employees.

D. Nothing in the foregoing shall prevent Association members, or those subject to fair share payments, from transmitting dues (payments) directly to the Association in a lump sum payment. In the event a lump sum payment is made to the Association, the Association will promptly notify the District prior to the first pay period of the school year.

E. The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees to abide by the decisions of the WERC and/or courts of competent jurisdiction in this regard. The Association shall inform the District of the amount of dues established by the Association prior to the first pay period of the school year.

F. The Association shall provide non-Association employees with an internal mechanism within the Association which will allow those employees to challenge the fair share amount certified by the Association as the cost of representation and to receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association. Such notice shall be posted on bulletin boards with a copy given to the district administrator.

G. Responsibilities of the District and the Collective Bargaining Representative

- (1) If an error is discovered with respect to deductions under this provision, the District shall correct said error by appropriate adjustments in the next paycheck of the employee or the next submission of funds to the collective bargaining representative. The District shall not be liable to the collective bargaining representative, officer or any party by reason of the requirements of this Article of the Agreement for the remittance or payment of any sum other than that constituting actual deductions made from employees' wages earned.

(2) Indemnification and Hold Harmless Provision: The collective bargaining representative shall indemnify and save the District harmless against any and all claims, demands, suits, orders, judgments, or other forms of liability that shall arise out of, or by reason of, actions taken or not taken by the District under this section, including, but not limited to, indemnification in the following instances:

- a. Damages and Costs: In the event the provisions of this Fair Share Agreement are successfully challenged in a court or other administrative body, and it is determined that the District must pay such sums as have been deducted from earnings in accordance with the provisions hereof or any other damages, the collective bargaining representative agrees to indemnify the District in full, including any and all costs or interest which may be a part of such order or judgment, for all sums which the District has been determined to be liable.
- b. Reasonable Attorney Fees: In the event an action is brought by any party (other than the District) challenging the validity of the provisions of this Fair Share Agreement or any deductions from earnings made pursuant thereto, in which the employer is named as the defendant, the collective bargaining representative agrees that it will indemnify the District in full for reasonable attorney fees necessary to defend the interests of the District as a defendant in such action.

Association's Proposal

- A. The Association, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, members and non-members, fairly and equally and all employees in the bargaining unit shall be required to pay, as provided in this article, their fair share of the costs of representation by the Association. No employee shall be required to join the Association, but membership in the Association shall be available to all employees who apply consistent with the Association's Constitution and Bylaws.
- B. In a manner consistent with the District's payroll payment practices, the District will deduct from the bi-monthly earnings of all employees in the collective bargaining unit, except exempt employees, their fair share of the cost of representation by the Association, as provided in Section 111.70(1)(h), Wis. Stats. and as certified to the District by the Association, and pay said amount to the treasurer of the Association on or before the end of the month following the month in which said deduction was made. The District will provide the Association with a list of employees from whom deductions are made with each remittance to the Association.
 - (1) For purposes of this section, exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to the Membership Dues Checkoff Provision of this Agreement or paid to the Association in some other manner authorized by the

Association. The Association shall notify the District of those employees who are exempt from the provisions of this Section by the 10th of September of each year, and shall notify the District of any changes in its membership affecting the operation of the provisions of this Section thirty (30) days before the effective date of such change.

- (2) The Association shall notify the District of the amount certified by the Association to be the fair share of the costs of representation by the Association, referred to above, or before August 15 of each year.

C. The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees to abide by the Wisconsin Employment Relations Commission and/or courts of competent jurisdiction in this regard. The Association agrees to inform the District of any change in the amount of such fair share costs thirty (30) days before the effective date of the change.

D. The Association shall provide employees who are not members of the Association with a mechanism within the Association which will allow those employees to challenge the fair share amount certified by the Association as to the cost of representation and receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association.

E. The Association does hereby indemnify and shall save the District harmless against any and all claims, demands, suits, or other forms of liability, including court costs, that shall arise out of or by reason of action taken or not taken by the District, which District action or non-action is in compliance with the provisions of the Article (fair share agreement), and in reliance on any lists or certificates that have been furnished to the District pursuant to this Article; provided that the defense of any such claims, demands, suits, or other forms of liability shall be under the control of the Association and its attorneys. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this Article (fair share agreement) through representatives of its own choosing and at its own expense.

F. This fair share clause will go into effect as soon as possible, but no later than 30 days following issuance of the arbitrator's award with regard to this article. Specific time limits referred to above will be waived, if necessary, to provide for implementation of the fair share provision during the term of the 1980-81 agreement.

3. Extra-Curricular Schedule (Appendix B)

Board:

Middle School Basketball Coach (3 days/week)	\$427
Middle School Wrestling Coach	\$227

Association:

Middle School Basketball Coach	\$486
Middle School Wrestling Coach	\$416
Spring Concert Supervision	\$ 10.90
Cheerleader Advisor	\$174
Pompom Advisor	\$174

Delete "Compensation for all other extra duties to be decided by the Board."

Insert "Compensation for all other extra duties to be negotiated by the Board and the Association."

Insert language providing that non-contracted duties be paid within 30 days of the event.

BOARD'S POSITION:SALARY

It is the Board's position that the relevant statutory criteria regarding salaries is the approach that must be made in evaluating the respective positions of the parties regarding the issue of salaries.

1. Stipulations of the Parties

The parties have agreed to add one step to the existing salary schedule; thus, all employes will receive an amount of money equal to the increment. The Board has also agreed to increase its health insurance contributions and the extra-curricular salaries were increased. The Board submits these facts indicate the Board's attempt to improve the salaries and fringe benefits for the betterment of teachers.

2. Interest in Welfare of the Public

It is the Board's position that the Association's final offer is not in the best interest or welfare of the public. The Board's final offer reflects an 11 percent total package increase, while the Association's final offer is a staggering 15 percent. The Association's offer is unreasonable, excessive, inflationary and cannot be defended in these turbulent economic times of high unemployment, high taxes, cost controls and state aid cutbacks.

The Board asserts its offer of 11 percent strikes a real-

this criterion. One of the more significant factors is the difference in the method used by the parties in determining the cost of their respective proposals. While both parties are in agreement on the method to be used to calculate the 1980-81 increase, the amounts differ considerably on salaries. The Board submits that its costing of the offers is a more accurate and straightforward version of the true costs than the Association's costing.

The Association contends that the increased premium in dental insurance should not be charged against the increased costs of this agreement since it was implemented for only one-half of the year. The Board does not accept this position, contending its figures reflect the increased cost to the District as a result of dental insurance.

Most assuredly, if the arbitrator awards a 15 percent increase, cuts in other areas of the educational program will have to be made. The Board emphasizes the fact that it is constrained by a 10.5 percent cost control and faced with a 4.4 percent state aid cutback and simply cannot cope with an increase of 15 percent. The fact that the Board has taxing authority does not mean it can "afford" or have the ability to pay a proposal of the magnitude proposed by the Association. Constraints such as high property taxes, income of residents, unemployment rate, state aid, cost controls and other factors play a large role in determining the amount of increase that is reasonable. The Board submits a 15 percent package increase is simply not reasonable.

3. Comparability

According to the Board, its offer maintains the same relative position the Board has had over the past three years. The B.A. and M.A. base salaries have been near the middle of the comparable groups and the B.A. and M.A. maximums have been at or near the bottom. Under the Board's proposal the Board will retain its comparable and relative position.

The Board recognizes that its maximum salaries rank last; however, the Board submits that such ranking can be justified. Historically, the parties have agreed to a shorter salary schedule than most other school districts. There are fewer steps to reach the maximum in this District than in other districts, thus, when comparisons are made using maximums, distortions are readily understandable.

It is emphasized by the Board that the parties in the past have voluntarily agreed upon the salary schedule. This District has

4. Cost of Living

According to the Board the evidence it submitted at the time of the arbitration hearing establishes there are critical aspects that must be viewed when considering the consumer price index (CPI). The Board submits that the CPI's shortcomings are significant enough to render it an inappropriate measure of the "cost of living" and ought not to be used in this proceedings. The basic flaws in the CPI are the following:

(a) The CPI is a fixed-weight index based on a 1972-73 consumer expenditure survey. It does not reflect changes in consumer buying habits in 1980 and because it does not reflect change in consumption patterns, it is misleading.

(b) The CPI overstates the overall inflation rate by overstating some items and understating other items.

(c) The CPI has over-emphasized the cost of new housing by relying on mortgage rates and new home prices. These two items account for over 18 percent of the CPI, and because the Board pays for 85 percent of the teachers' health insurance, that portion of the CPI does not apply.

(d) The CPI is simply an index that measures the change in prices and does not fully take quality improvement of goods and services into account.

(e) The CPI is biased toward urban areas from where the data is collected.

The Board contends that the consumer price index is not a cost-of-living index and has so been noted by a number of authorities in the field, including the late Julius Shiskin, former Commissioner of the Bureau of Labor Statistics. Shiskin stated:

"The index (CPI) does not take this sort of substitution into account, but rather is predicated on the purchase of the same market basket, in the same proportions, month after month. This is one reason why it is called price index and not a cost-of-living index . . ."

Arbitrator Milo G. Flaten rejected the use of the CPI, concluding:

"All things considered, in this Arbitrator's view, the Consumer Price Index can no longer be regarded as anything but a general reference point of economic well-being." Clark County (Traffic and Sheriff's Department), WERC Dec. No. 17584-A, September 4, 1980, p. 7.

The Board urges the arbitrator to similarly reject the CPI as a valid measure of cost of living and rely instead on the PCE. The Board believes that Section 111.70(4)(cm)(7)(e) does not require the arbitrator to rely exclusively on the CPI to determine average consumer prices. Arbitrator Arlen Christenson reached the same conclusion in Buffalo County (Department of Social Services), WERC Dec. No. 17744-A, August 27, 1980, when he concluded that had the legislature intended the CPI to serve as the standard for measuring average consumer prices, the drafters of the statutes would have so provided.

Even if the CPI is used for the purpose of determining salaries the Board notes that from 1968-69 salaries have greatly exceeded the CPI increase. Salary increases range from 168 percent to 184 percent while the CPI over the same period increased 135 percent. Thus, teachers in the District have kept pace and in fact exceeded the increase in the CPI.

An additional argument is made by the Board that its offer more nearly meets the cost-of-living criteria than does the Association's offer. The Association's offer exceeds the latest CPI figures by over two full percentage points. Thus the Board's offer is more reasonable when compared either to the PCE or the CPI. The Board notes that during these periods of high inflation employees may not be able to keep up with the cost of living. Arbitrator June Miller Weisberger so concluded in Neosho School District, WERC Dec. No. 17305-A, May 14, 1980.

5. Overall Compensation and the Continuity and Stability of Employment

It is emphasized by the Board that it already provides teachers with health insurance, dental insurance, long-term disability insurance and retirement. The Board pays the full cost of these benefits with the exception of health insurance where it pays 85 percent of the premium. Additionally, the Board provides sick leave, emergency leave and funeral leave. Teachers enjoy job security through protection from discipline and discharge as well as non-renewal. The agreement contains a grievance procedure and culminates in binding arbitration. These provisions fairly demonstrate the Board's attempt to provide a secure and stable work environment for its staff.

EXTRA-CURRICULAR SALARY SCHEDULE

The Board has proposed a pro rata reduction in salaries of the head middle school basketball and middle school wrestling coach to correspond to a reduction in workload from five to three days, whereas the Association has sought to maintain those salaries at the same level they were at during the 1979-80 agreement. The Board asserts that this would result in an unjust windfall for these two positions and create morale problems among the remaining staff who work five days a week for other extra-curricular activities. The Board submits that because the workload has been reduced, so should the pay be reduced.

FAIR SHARE

The Board contends the most significant issue in the instant dispute involves fair share. The Board submits that its offer of a modified fair share proposal, whereby current non-Association members are exempt from the fair share clause, is the more reasonable proposal considering the fact that there are employees who are not members of the Association. The Board submits its proposal is in the best interest and welfare of the public. According to the Board, it has tried to reach a reasonable compromise on the union security issue by accommodating the Association's concern for organizational security as well as non-members' desire not to financially support the Association. The Board's proposal strikes a realistic balance between the demands of the Association and the rights of the non-Association members.

There are currently nine employes who have decided not to become members of the Association. The average length of service among these employes is fourteen years. The Board submits it has an obligation to take into account the fact that these nine employes have decided not to support the Association in dealing with the union security issue as a bargainable item in negotiations.

The Board fully recognizes the Association's need for financial support. However, the Board faces the dilemma of union rights versus individual rights which require a compromise. The Board has proposed a solution to the dilemma in its offer of a modified fair share proposal.

Under the Board's proposal the Association is guaranteed that its current membership and future hires will be required to contribute their fair share.

While the Board recognizes a majority of comparable districts provide fair share, the Board contends that not enough facts are known about those schools to determine if full fair share should be awarded in this District. It is not known whether fair share was agreed upon when all of the employes were already members of the Association. There are two comparable schools which have a modified fair share provision similar to the one proposed by the Board; one district provides for dues deduction and no fair share. In the two schools that have modified fair share there are only a total of four teachers who are grandfathered. Those districts are distinguishable from this District in that a significant number of teachers employed by this District do not wish to belong to the Association. The Board argues it has an obligation to protect their freedom of choice and that is why a grandfather clause is essential to the District.

The Board contends that a major problem with the Association's proposal regarding fair share deals with the indemnification clause. The possibility of future litigation surrounding fair share exists. Therefore, the Board proposal that the Association indemnify the Board for reasonable attorney fees to defend the interests of the District is appropriate. In contrast, the Association proposal places control of any defense under the Association and its attorneys. The Board submits this is a material defect in the Association's offer.

Under the Association's proposal it would be difficult for the Board to have any control over future suits once this control is acceded to the Association. The Board must have the option of retaining its own attorneys in those unforeseen instances where the Association cannot be of direct legal assistance.

The Board contends it is a fundamental right of someone who is being sued to determine who will defend those interests. Thus the Board must retain this right and not turn control of any litigation over to the Association and its attorneys. Since the Board is the innocent victim in fair share litigation, it is only reasonable for the Association to defend the Board in such action. The Board should not be forced to grant control of the litigation to the Association.

According to the Board, more litigation possibilities exist under the Association's proposal of full fair share and much less under the Board's proposal of modified fair share. While the Association's language permits the Board to participate in a legal proceedings at its own expense, the control of the litigation is

still in the hands of the Association. Problems would inevitably occur under such an arrangement. There is a contradiction between control by the Association and allowing the Board to participate. The two clauses cannot be reconciled.

The Board submits that at no time in the proceeding did the Association show a need for fair share monies to fulfill its duty of representation. The Association has not shown that it needs the support of the nine teachers who have elected not to contribute to its organization. Since the Association has failed to document the need for fair share to cost of representation, it should not force individuals to pay for services which they do not want.

The Board believes that fair share should not come into being as a result of an arbitrator but rather should come into being as a result of a voluntary agreement between the parties. The union security arrangements involve a fundamental element of the relationship between the District and the Association. A third party should not disrupt this relationship by the imposition of full fair share on the Board and non-members.

The fact that the Board's offer does not contain dues deduction should not pose a significant problem. The Association has demanded fair share. The Board has obliged by proposing a modified fair share provision. The Association has in the past always equated fair share with their total dues. The fact that this issue is currently before the WERC for determination should not have any effect on this case.

Under the Board's proposal, the Board would deduct the legally permissible amount of fair share from all employees who are members of the Association, new hires, and any of the non-members who subsequently join. There is no need for a dues deduction clause.

For all of the above reasons the Board submits that its offer on fair share is the more reasonable of the offers.

ASSOCIATION'S POSITION:

SALARY

The Association notes that neither it nor the Board specifically raised the issue of ability to pay during the arbitration hearing. Although the Board expressed a concern about the Association's offer, no claim was made by the Board as to its inability to pay, or the threat of cost controls, or high taxes as a result of the awarding of the Association's position.

Regarding cost controls, the Association submits the evidence establishes that among those districts most comparable to the District, those districts in the Packerland Athletic Conference, all are experiencing a significant decline in student population. However the District projects a student enrollment drop during the current school year of only three students. Therefore, in terms of cost controls, the District is in a much better position than are other schools within the athletic conference deemed comparable. Therefore, under the presently existing statutes, the impact of the cost-control formula upon the District is negligible. Other districts will be losing state aids because of declining enrollment,

and at the same time suffer a reduction in the cost control to something less than 10.5 percent. This District has not experienced a declining enrollment and also spends considerably less than the state average on a per-child basis.

While the Association recognizes the District is essentially a rural district, where the primary occupation is dairy farming, the Association notes that the evidence indicates that the income from dairy farming has increased substantially in the last year or two. Therefore the taxpayers of the District have the ability to provide a salary increase for their teachers commensurate with the times experienced by Wisconsin farmers in 1979.

According to the Association, the District has not met its responsibilities with regard to local effort in financing its schools. The District experiences school costs, i.e., expenditures per child, in the lowest 10 percent category of all school districts in the state. Although the amount of state aid received per pupil and the equalized valuation behind each child is about average for the state, the District tax is in the lower 30 percent of the school districts statewide. Of the school districts in the Packerland Conference, the District is not a leader. Moreover, the Association contends that the evidence does not support the position that the District's teachers should be the lowest paid in the Conference, but rather that they should be "somewhere in the middle of the pack." The Association's proposal does not bring the teachers to the average. In most categories, the relative rank in terms of scheduled placement does not change, even under the Association's offer.

The Association notes that there is some difference in the techniques used by the parties in costing their respective proposals. However, the Association submits that its costing, while very close to the costing of the District, is the most appropriate and meaningful approach to the costing of the parties' respective positions. In any event, the Association contends that it is not the difference resulting from the different method of costing which is keeping the parties from reaching a voluntary agreement.

According to the Association, the primary difference between the parties' costs involves the method of determining the cost of dental insurance and health insurance. The dental insurance was in effect under the prior agreement for six months. The Association alleges that the \$16,032 was for an eight-month period, while the Board contends that amount was for a six-month period. The parties also disagree on the implementation date of the health premium in terms of premium increases which would account for some of the dollar differences between the parties in terms of fringe costs.

The Association recognizes that it is not unusual for parties in these kinds of situations to cost their respective packages in a manner which will most favorably support their respective offers. In the instant case, each party has attempted to frame its costing efforts in such a manner as to maximize its interest in terms of a presentation. The Association is persuaded the Board will argue that the Association's proposal represents a 15.016 percent change. The Association argues that the Board's offer is a 9.45 percent package which is unreasonable in light of other settlements. The parties are in agreement on one significant factor, that being that the dollar difference between the two offers is approximately \$55,000.

The Association contends that the comparables support its offer on salary. It is emphasized by the Association that the parties have generally recognized what are comparables within the geographic vicinity. The only difference in the comparables is the inclusion of Mishicot by the Board. The Association does not object to such inclusion.

The relative ranking of the District in the Conference supports the Association's position that its offer is more reasonable than the Board's. All of the Board's exhibits and the Association exhibits pertaining to the salary issue point out that the District has never been a wage leader in the athletic conference. In fact, the District, at best, has been only approaching average in the few years during which comparisons were made.

Even under the final offer of the Association, the relative rank of the District within the Conference does not change. According to the Association, the evidence establishes that since 1976-77 the relative position of teachers employed by the District has dropped in comparison to other districts within the Conference. In 1976-77 the District's B.A. base salary was second in the Conference. However, during the 1980-81 agreement, even under the Association's proposal, the District would drop to sixth. Under the Board's proposal the rank is sixth or seventh. In 1976-77 the District's B.A. maximum salary ranked seventh of the eight schools used at that time. However, in 1980-81 that rank has dropped to eighth position, even under the Association's proposal. The M.A. base shows an even more significant drop from 1976-77 to 1980-81. The M.A. salary base was ranked second in 1976-77 and now ranks eighth under the proposal of either party for 1980-81. The M.A. maximum and scheduled maximum columns do show an improvement under the Association's proposal from 1976-77 to the present, while the Board's offer actually reduces the relative position of the scheduled placement from seventh to eighth position. It is emphasized by the Association that the Board admitted at the time of the arbitration hearing that even its exhibits show that the District was in last place. The Association concedes that its proposal will improve the District's relative ranking in the two M.A. salary schedule maximum categories but at best to fifth place of the eight schools considered to be comparable.

The actual salary comparison since 1976-77 within the athletic conference further supports the Association's position. According to the Association, the Board offer places teachers further behind in terms of dollar ranking with the average of the other schools than in the past. The net result of the Board's proposal would be to increase the gap between what the teachers in the District are receiving and what teachers in the comparable districts are receiving. The Association's offer in contrast narrows the gap somewhat and in some categories provides for a limited catch-up. The Association submits that the essential difference between the District's offer and the Association's offer is that under the District's offer the teachers will become further disadvantaged in terms of the average salaries paid by the other districts. The Association's proposal, in contrast, will make limited catch-up compared to the average paid by other districts, but in no event will it vault the teachers into a leadership position regarding salary earnings.

The Association's proposal of a \$560 increment is comparable to the increments received by other districts within the Conference and in most cases trails the increment provided by the other districts.

The Association's proposal maintains the practice of increasing the increment annually as a percentage of the B.A. base. Contrastingly, the Board's offer reverses that trend and in effect reduces the percentage increment as a percent of the base salary to less than it was in 1978-79. The Board offer has the impact of reducing a benefit that heretofore has been enjoyed by the teachers, i.e., a steady and consistent rise in the incremental percentage each year. It is asserted by the Association that many districts have increased the incremental structure on a regular basis, whereas the District is seeking to reduce that incremental structure-- something that has not been done in other districts.

In further support of its request for the \$560 increment the Association notes that the teachers are disadvantaged with regard to professional advancement on the salary schedule. All districts in the athletic conference, with the exception of this District and Mishicot, provide teachers with an opportunity to improve their financial position by seeking professional advancement in terms of post-graduate studies. This District's salary schedule has only three lanes, while teachers in the neighboring Sturgeon Bay district can utilize nine lanes for economic and professional advancement. The average number of lanes in the other comparable districts is six compared to the District's three. Therefore, teachers must depend on vertical increments for professional advancement purposes. Consequently, the Board's offer to lessen the size of the percentage relationship between the B.A. base and the lane increments puts the teachers in an even greater disadvantageous position when compared to the earnings potential of other teachers.

A random selection of teachers utilizing the first and last teacher on the list and each twentieth teacher in between establishes that the earnings of the individual teachers would be higher teaching in other Conference schools. It is obvious that the Board's offer maintains a second-to-last-place position for the most part, and last place if Mishicot is excluded from the comparables. The Association's offer, on the other hand, moves teachers a little higher but in no case higher than the median for the nine districts. Under the Board's offer all teachers in the District would be among the lowest paid in the athletic conference. Even with the Association's offer, the best a teacher can do is reach the median level which will still be below the average salary in most cases. The Association's salary offer is not unreasonable; it is, in fact, much more reasonable than that of the Board and as such should be determinative in this dispute.

An additional argument is advanced by the Association that cost of living is a consideration, and the Association's offer comes closer to matching the present and persistent rate of inflation. The evidence establishes that the District's teachers have been ravaged in terms of relative purchasing power within the set of comparables for too long to gain any buying power satisfaction from a one-year adjustment which happens to come close to matching the current inflation rate. The Association's offer was intended to be a movement toward "catch-up" with the earning ability of teachers in other Conference schools. To provide a hedge against inflation would cause a proposal far in excess of the offer the arbitrator is considering at the present time.

It is emphasized by the Association that as a result of inflation the teachers have suffered a loss in income. The CPI has advanced in 1979 at a level of 13.3 percent. In 1980 that level was 12.4 percent. Not since 1918-19 has the inflation exceeded 10 percent for two consecutive years.

Most forecasts for 1981 show little if any relief from this level of increasing prices. The District's proposal would result in teaching staff members losing relative position in terms of the cost of living. Other area districts have recognized the need for higher income for their respective professional staffs while the District, on the other hand, continues to pay its teachers below the prevailing rate. In fact, the District is attempting to widen the gap between the prevailing rate and the pay of their District teachers through the arbitration process.

The Board is seeking to justify its substandard wage by attacking the Consumer Price Index as a measure of inflation. The Board has offered evidence in support of its position that the CPI is not the appropriate means of measuring inflationary rates. The Association submits that the evidence it has submitted clearly establishes that the CPI is a valuable tool in determining the cost of living. While the Association concedes that there are differing views regarding the CPI, nonetheless it has an application and meaning in determining the appropriate level of salaries.

Inherent in the discussion offered heretofore concerning the reasonableness of the Association's offer is a recognition of the current trends in the cost of living. The public, including the arbitrator, has been bombarded daily with the latest news of the continuing and persistent double-digit inflation rate. Even with its proposal, the Association knows that the teachers cannot keep up with the inflation spiral, but only hope to minimize the loss caused by their declining purchasing power further complicated by their substandard wages.

It is emphasized by the Association that the protection of purchasing power is not relevant if that purchasing power is too low in the first instance. Even if the Association's offer would protect the present level of purchasing power, the teachers would be able to no more than maintain a level of wages that is far below their prevailing rate. Even with a 13 percent total economic package the Association offer does little more than maintain the status quo for the teachers in terms of prevailing wage rates in the athletic conference.

Even if the arbitrator accepted the Board's cost of its offer at 11 percent, this is still far below the current trend in the consumer price index. An 11 percent package would still widen the gap between the District and the other districts assuming the percentage increases in the other districts were as high or higher than the District's offer, which apparently they were. The Association offer does little more than maintain the status quo, while the Board's offer impacts the status quo negatively.

FAIR SHARE

The Association contends that its fair share offer is more reasonable and consistent with the comparables than the offer of the Board. The Board's proposal on fair share provides that all teachers, except those who are grandfathered out of the system, would be fair-shared without regard to membership status. As a result, without a voluntary membership dues-deduction mechanism, the Association would be placed in the position of collecting membership dues by methods other than dues deductions. Such dues deduction would be cumbersome and disruptive and potentially have the impact of encouraging fair share membership as opposed to voluntary membership

in the Association. The Board's proposal, therefore, would have the net impact of eroding the effectiveness of the bargaining agent in terms of its responsibility under the collective bargaining agreement. Membership dues deduction is an individual right dependent upon voluntary authorization, while fair share is an organizational right for union security purposes. The Board seeks to tie these two concepts together, whereas the Wisconsin statutes intended them to be separate and distinct. The Association offer maintains the separation of voluntary membership dues and mandatory fair share.

According to the Association, in every instance where the parties within the Conference have included fair share agreements in their contracts, they have also provided for a separate voluntary dues deduction process. The seven fair share deduction agreements already in existence in the athletic conference are separated from voluntary dues deduction.

The Board's proposal regarding legal indemnification is a serious matter to the Association. The language proposed by the Board effectively provides that the Association would have to pay attorney's fees in any litigation arising out of a dispute involving Union security. The Association contends that many of the issues which have arisen regarding union security have been raised by employers; consequently, there is a conflict of interest in that an employer could encourage such suit and then have the Association pay the cost of defending the suit which was instigated by the employer. This, the Association submits, is clearly a conflict of interest.

In contrast to the Board's indemnification offer, the Association's proposal does not strip away the District's right to be involved in litigation. It merely provides that if the Board opts to participate in litigation, it will be responsible for its own legal fees. The Association proposal does not deny the Board its right to select and hire its own counsel.

An additional argument is advanced by the Association that comparables support the inclusion of a "full" fair share provision as opposed to a "grandfather" fair share provision. The fundamental difference between the two offers of the parties on fair share is who will be covered by the provision. The Association proposes that all bargaining unit members, other than voluntary Association members, be subject to fair share deductions. The Board proposes that all Association members as of July 1, 1980 would be subject to the fair share deduction and thereafter new employees would be subject to such provision. Five of the seven Conference districts have negotiated full fair share agreements. Only two have grandfather clauses exempting a total of four employees. Thus the comparables clearly establish that most of the districts within the Conference have full fair share agreements. The Association concludes its argument by contending the Board's offer is not supported by the facts, nor is it reasonable in light of existing public policy in the area. According to the Association, its offer regarding fair share is more reasonable than the Board's offer in terms of application and in view of area comparables.

EXTRA-CURRICULAR SALARY SCHEDULE

In regard to the middle school basketball coach, the Board is proposing a decrease in pay from the 1979-80 salary of \$486 to \$427 due to the cutback in responsibilities from five days to three days. In contrast, the Association proposes to freeze the salary

at its 1979-80 level. The Association contends that other schools within the Conference are operating on a three-day schedule also. Therefore the salaries for the middle school basketball coaches in the Conference schools already reflect a shorter work week. The average middle school basketball coaching salary for the four schools that have such programs is \$563. The Association contends its proposal of \$486 is closer to the established rate for the assignment than the \$427 offer made by the Board.

The Board is also proposing a reduction in pay for the middle school wrestling coach for the 1980-81 school year. The Board has proposed to cut the rate of pay by 50 percent and then increase the reduced amount by 9 percent commensurate with the general increase for the positions on the extra-curricular schedule. The Association contends the average rate of pay for middle school wrestling coaches in those districts that have such program is \$492, while the Board's offer of \$227 is substantially below the average pay. The Association proposes \$416. The Association submits its offer appears to be more in line with the comparables.

The Association proposes payment for spring concert supervision, while the Board does not propose any compensation. The Association proposes a \$10.90 figure which is the rate paid teachers working on a non-contracted basis for activities outside the regular school hours. The Association's offer is nothing more than equal pay for equal work. The Board offer is no pay for extra work regarding spring concert supervision.

The Association is proposing that payments for non-contracted duties be paid within thirty days of the event. This is contrasted with the Board's proposal that payment for such duties be made at the end of each semester. The Association contends that the comparables established that other districts pay teachers no later than the following payroll date which would fall within the thirty-day time limit proposed by the Association.

The Association has proposed splitting the responsibility for cheerleader and pompom adviser into two parts with \$177 paid for each responsibility. The Board proposes that the responsibilities be combined with one payment of \$353. The evidence establishes, and indeed the superintendent confirms, that the position has been divided between two individuals and they are splitting the salary. The Association's proposal merely clarifies the situation as it currently exists.

The Board has proposed to continue a contract provision which prohibits contract term bargaining with the Association over newly created extra-duty assignments. The Association's proposal

DISCUSSION:

Section 111.70(4)(cm)7, Wis. Stats., contains the statutory criteria which mediator-arbitrators must follow in making their decision. Those criteria are as follows:

- "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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment."

There are three areas in dispute in this case: Salary Schedule, Fair Share and Extra-curricular Salary Schedule. Regarding the salary schedule, both the base salary and the increment is in contention. The Board has proposed a B.A. base of \$11,200 with \$500 increments, and the Association has proposed a B.A. base of \$11,250 with \$560 increments. The parties have agreed to add an additional step at the B.A. lane for a new total of twelve, an additional step at the B.A. + 12 lane for a new total of thirteen, and an additional step at the M.A. lane for a new total of fourteen.

The Board does not assert that it does not have the financial ability to meet the Association's final offer. Therefore, ability to pay is not an issue in this case.

There is a dispute as to the costs of each party's final offer. The Board claims its final offer is \$155,681 (an 11 percent increase), while the Association's final offer is costed by the Board at \$212,915 (a 15.016 percent increase). The Association claims the Board's final offer is \$132,830 (or a 9.45 percent increase), while its final offer is \$186,578 (or a 13.27 percent increase). It is impossible to determine from the record which figures are most accurate, and at the time of the hearing neither party was able to satisfactorily explain the differences. Part of the difference may be attributable to the costing of dental insurance and health insurance.

Although the parties are in disagreement as to the total cost of their respective proposals, the parties are in agreement, at least in terms of percentages, as to the costs of their respective proposals relating to the salary schedule. The parties agree that the Board's proposal represents a 9.1 percent increase, while the Association's proposal represents a 13.2 percent increase.

It is agreed by the parties that the following districts are comparable: Gibraltar, Sevastopol, Sturgeon Bay, Algoma, Luxemburg-Casco, Kewaunee, Denmark and Mishicot. The following table reflects the B.A. base, B.A. maximum, the number of steps, and increments.

TABLE 1*

	<u>BA Base</u>	<u>BA Maximum</u>	<u>Steps</u>	<u>Increment</u>
Gibraltar	\$11,400	\$19,200	14	\$600
Sevastopol	11,300	18,645	15	4.5% 0-10 4% 11-15
Sturgeon Bay	11,400	19,150	14	5% 0-12 4% 13-14
Algoma	11,175	18,438	13	5%
Luxemburg-Casco	11,300	18,645	13	\$565
Kewaunee	11,400	18,696	12	5% 1-8 6% 9-12
Denmark	11,200	18,308	15	5% 1-8 4% 9-14 \$500 15
Mishicot	11,050	16,354	12	4%
S. Door (Board)	11,200	17,200	12	\$500
S. Door (Assoc.)	11,250	17,970	12	\$560

*Source: Association Exhibit No. 8

Several observations are readily apparent from Table 1. The proposed B.A. base, either under the Board's proposal or the Association's proposal, is less than the B.A. base of five of the comparable districts. Under either proposal the B.A. maximum is less than seven of the eight comparables, with only Mishicot having a lower B.A. maximum. Only Mishicot's increment is less than that proposed by the Board.

It can be concluded that under either proposal neither the B.A. base nor the B.A. maximum approaches the salaries paid at the B.A. lane by comparable districts. More significantly, under the Board's proposal the B.A. maximum is over \$1,000 below the maximum salary paid by seven of the eight comparable districts.

This difference will be further exaggerated if the Board's final offer is awarded, as the teachers will not only have a lower maximum but will progress through the salary schedule at a slower rate by virtue of a \$500 increment--the smallest increment of all districts but Mishicot. A dollar amount of \$500, with a base of \$11,200, equals 4.46 percent at the B.A. minimum and 2.9 percent at the B.A. maximum. An increase of \$560, with a base of \$11,250, equals 4.98 percent at the B.A. minimum and 3.1 percent at the B.A. maximum. It is obvious that the increment proposed by the Association is more comparable than that proposed by the Board.

TABLE 2

	<u>MA Base</u>	<u>MA Maximum</u>	<u>Steps</u>	<u>Increment</u>
Gibraltar	\$12,000	\$20,000	15	\$600 1-14 \$200 15
Sevastopol	12,080	19,425 ¹	15	4.5% 0-10 4% 11-15
Sturgeon Bay	12,310	20,860	15	5%
Algoma	11,775	20,017	14	5%
Luxemburg-Casco	12,200	20,130	13	\$610
Kewaunee	12,000	19,680	12	5% 1-8 6% 9-12
Denmark	12,025	19,619.75	15	5% 1-8 4% 9-14 \$500 15
Mishicot	12,155	17,901	16	4% 0-12 1% 13-16
S. Door (Board)	11,800	18,800	14	\$500
S. Door (Assoc.)	11,850	19,690	14	\$560

¹\$780 is added to the BA lane for an MA.

Table 2 is a comparison of the M.A. base, maximum, number of steps, and increments of the comparable districts, with the Board's proposal and the Association's proposal. As in Table 1, if the Board's final offer is awarded, seven of the eight comparable districts would have a higher M.A. maximum than the Board, and seven of the eight comparables would have a higher base. Even more significant than the M.A. base and maximum is the incremental structure.

An increment of \$500 at the M.A. base of \$11,800, the Board's final offer, equals 4.24 percent. At the Board's proposed maximum of \$18,800, the \$500 increment equals 2.66 percent. None of the comparable districts, even including Mishicot, have an incremental structure similar to that which would result from the Board's final offer. Even under the Association's final offer the \$560 increment at the M.A. base of \$11,850 would equal 4.73 percent, and at the M.A. maximum of \$19,690, the \$560 increment would equal 2.8 percent.

Without question the Association's final offer would result in a significant increase in the M.A. maximum. It would be increased by \$2,325. However, even with an increase of that magnitude the Association's salary schedule would not place the District in the position of paying the highest salaries; it would simply make the District average for the Conference. Based on the above, it is the opinion of the undersigned that the Association's final offer is the more reasonable.

While the Board notes that it has numerous fringe benefits, a review of the benefits provided by the Board as well as those provided by the comparable districts establishes that the Board does not provide benefits significantly different from those provided by the comparable districts. Thus no persuasive argument can be made that the District's salaries should be lower than comparable districts due to its fringe benefits.

The evidence establishes that most of the comparable districts have fair share. The Board contends that its position protects the freedom of choice of nine teachers who have not joined the Association and are thus not contributing to the Association financially.

The Legislature, by providing for fair share, has recognized the right of the individual to join or refrain from joining a labor organization. The Legislature has also recognized that the labor organization must represent all members of the bargaining unit, Association members as well as non-members, and such representation represents a cost that can be shared equally among all members of the bargaining unit.

Aside from the Board not wanting to force non-Association members to contribute financially to the Association, the Board raises an issue regarding the indemnification provision contained in the Association's fair share language. The language appears to state that the Association indemnifies the Board provided the Association controls the legal proceedings. It is conceivable, and indeed likely, that if a legal issue arose regarding fair share the Board would be the respondent and indemnified only if the Association or its attorneys controlled the proceedings on behalf of the Board. This could well result in a conflict of interest. It must be noted that under the Association's proposal the Board could participate in any proceedings, at its own expense.

Despite what the undersigned considers to be a defect in the Association's fair share proposal, the undersigned considers the Association's proposal more reasonable as the Board's proposal provides for only fair share and not for the collection of dues of Association members. The comparables clearly support the Association's position regarding fair share.

The remaining issue is the extra-curricular salary schedule. The Board argues for the reduction in the middle school basketball coaching assignment based on the fact the number of days per week is being reduced from five to three. Under normal circumstances a reduction in workload of 40 percent would most certainly justify a reduction in salary. However, according to the evidence, middle school basketball coaching assignments in comparable districts are based on a three-day week. The salary paid under the preceding contract (the salary proposed by the Association for this contract), while not equal to, more closely approximates the salary paid by other districts for the middle school basketball coaching assignment than does the Board's proposal.

The evidence establishes that in those districts that have a middle school wrestling program, the rate of pay is substantially higher than the rate of \$227 proposed by the Board. While the Board is proposing a reduction in salary to reflect a reduction in workload, the evidence establishes that the average rate of pay for a middle school wrestling coach is over \$400. If the District's proposal were to be awarded the District would be significantly below the comparable districts.


Obviously the pay for non-contracted duties within thirty days as opposed to once each semester will add some additional work to the District. This must be balanced against the desire of the teachers to be paid within a reasonable period of time following the performance of the duty. The amount of money is not so significant as to require payment within thirty days. In this regard the undersigned believes the District's position is more reasonable.

Another issue regarding the extra-curricular salary schedule is the Association's request to delete the present language which gives the District the right to unilaterally determine the compensation for any extra duties not incorporated in the schedule. The Association requests that such compensation be subject to negotiations. If, during the term of the contract, the District decides it wishes to have an additional extra duty, it seems reasonable that the rate of pay for the duty be subject to bargaining rather than being unilaterally established by the District.

Having given due consideration to the statutory guidelines, the evidence and the arguments of the parties, the undersigned renders the following

AWARD

That the Association's final offer be awarded.


Neil M. Gundermann, Arbitrator

Dated this 23rd day
of February, 1981 at
Madison, Wisconsin.