

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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In the Matter of the Petition of	:	WISCONSIN EMPLOYMENT RELATIONS COMMISSION
RICHMOND ELEMENTARY SCHOOL, JT. DISTRICT NO. 2 LISBON-PEWAUKEE	:	Case X No. 26470
To Initiate Mediation-Arbitration Between Said Petitioner and	:	MED/ARB-784 Decision No. 18176-A
ARROWHEAD UNITED TEACHERS ORGANIZATION	:	

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APPEARANCES: George Shiroda, on behalf of the District  
Armin Blaufuss, on behalf of the Association

On November 17, 1981 the Wisconsin Employment Relations Commission appointed the undersigned as Mediator-Arbitrator, pursuant to Section 111.70 (4) (cm) 6.b. of the Municipal Employment Relations Act in the matter of a dispute existing between Richmond Elementary School, Jt. District No. 2 Lisbon-Pewaukee, referred to herein as the District, and Arrowhead United Teachers Organization, referred to herein as the Association. Pursuant to statutory responsibilities, the undersigned conducted a public hearing and mediation proceedings between the District and the Association on January 7, 1981. Said mediation effort failed to result in voluntary resolution of the parties' dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on February 17, 1981 for final and binding determination. Post hearing exhibits and briefs were filed by both parties by May 20, 1981. Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.70 (4) (cm), Wis. Stats., the undersigned renders the following award.

The merits of the parties' final offers on each issue in dispute will be discussed initially on an individual basis before the undersigned discusses the relative merits of each party's total final offer. The issues in dispute involve:

1. the salary schedule
2. the layoff procedure
3. dental insurance
4. the calendar

Although the parties final offers initially contained proposals reflecting a dispute over insurance coverage, the undersigned was advised on May 21, 1981 that said dispute has been voluntarily resolved.

The parties also disagree on what constitutes comparable school districts. Since this issue has an impact on several of the remaining substantive issues in dispute, it will be discussed first.

Issue - Comparability

POSITION OF THE PARTIES

District Position

The District has utilized as comparable districts all of the K-8 districts in the immediate geographical vicinity for which settlement figures for 1980-81 were available. These districts have the following characteristics supporting their appropriateness for comparison:

1. all are fiscally independent K-8 districts
2. all have similar administrative and staffing arrangements
3. the districts generally share specialists such as art, music, physical education teachers and psychologists

4. the districts are confronted with similar constraints on flexibility such as:
  - a. limited enrollment
  - b. limited staff
  - c. high ratios of fixed costs to the cost per pupil such as administrative costs, utility costs, insurance and transportation
5. the districts are characterized as similar types of communities having:
  - a. limited commercial property
  - b. little or no industrial development
  - c. primarily a combination of agricultural property and single family homes
6. the districts meet regularly to share ideas and concerns regarding program development and common problems
7. most of the districts compete in the same athletic conference
8. all are located in close geographic proximity.

These characteristics have been consistently cited as appropriate reasons for the selection of comparable districts.

The District contends that for many years the K-8 districts have used the athletic conference schools as comparables. Therefore, the Association's attempt to broaden the list of comparable districts should be rejected.

Although the District conceded that it may be influenced by larger districts such as Waukesha, Elmbrook and Oconomowoc, it remains unquestionably distinct from those districts.

Such standards as enrollment, school district size, tax base, community similarity, athletic conference, and geographic proximity are totally ignored by the Association.

#### Association Position

The Association proposes that the districts in Waukesha County form a comprehensive set of comparables within the economic and geographic area where the District is located. In support of this proposal is the fact that the District's per capita income is slightly above the average per capita income of the County's districts, while the District's 1979-80 per pupil costs is slightly below the average 1979-80 per pupil costs of the County's districts.

Averaging only the K-12 County districts' per capita income and 1979-80 per pupil costs demonstrates that the District is again above average in per capita income and slightly below average in 1979-80 per pupil costs.

The Association contends that a choice of organizational structure cannot justify differential in pay between teachers in a K-8 district and teachers in a K-12 district living within the same economic and geographic area. This is particularly true where there exists no real school funding differential.

In the alternative, should the Arbitrator not accept the County districts as the appropriate set of comparables, the Association proposes the Arrowhead K-8 "feeder" schools be utilized.

In this regard, the District's per capita income is slightly less than the average per capita income of the Arrowhead K-8 "feeder" schools. The District's 1979-80 per pupil costs rank slightly less than the average 1979-80 per pupil costs of the Arrowhead K-8 "feeder" schools.

The Arrowhead K-8 "feeder" schools - Bark River, Hartland, Lakeside, Merton, Nashotah, North Lake and Stone Bank - provide the students

who make up the Arrowhead Union High School. They share services. The taxes paid by residents in the Arrowhead Union High School District include a levy for the Arrowhead Union High School and a separate levy for the K-8 school district in which the residents reside.

The Association contends that the District's efforts to include the Hartford Union High School K-8 "feeder" districts in the comparables should be rejected since evidence was not presented to sustain their inclusion.

#### Discussion

Joint District No. 2, Towns of Lisbon and Pewaukee was recently a part of a K-12 school district, the Arrowhead School District. The Wisconsin Supreme Court ordered the consolidation of the Arrowhead K-8 "feeder" schools and the Arrowhead Union High School. Subsequently, a referendum returned the consolidated K-12 Arrowhead School District to the K-8 "feeder" school and Union High School structure.

Little evidence was introduced by either party to support the reasonableness of their respective positions on the comparability issue. The record does not contain data with respect to the size of allegedly comparable districts, either in terms of student enrollment or in terms of the number of full time equivalent teachers the districts employ. Nor does the record contain complete data on the relative ability of all potentially comparable districts to support comparable educational programs.

Absent such data, the undersigned has chosen as comparables all districts in CESA #16 for which reliable 1980-81 salary data was available, including union high schools, K-12 districts, and K-8 feeder districts, but excluding what the undersigned believes to be the three largest districts in that population, namely Waukesha, Oconomowoc, and West Bend. Said population includes all of the districts proposed by the District, all but the largest of those proposed by the Association, plus other districts outside of the County which are in CESA #16 and which are therefore relatively close to the District geographically. Although data was not introduced to support the comparability of this population, either in terms of size, ability to pay, or other characteristics, it is reasonable to assume that by virtue of their geographic proximity and the fact that they are all part of CESA #16, that said population, which consists of 21 districts, will serve as a varied, but nevertheless, relatively reliable comparability resource.

In selecting said population, the undersigned concurs with the Association that the organizational distinctions between K-12, K-8, and union high school districts are not sufficient, in and of themselves, to negate the comparability of such districts. Admittedly, other characteristics such as size or ability to pay may affect their comparability, but absent evidence of such distinguishing characteristics, the undersigned has not excluded any of such districts from the list of comparables.

The undersigned also agrees with the District that although there may be some spill over effect from large districts like Waukesha into smaller surrounding districts, it is unfair to utilize such large districts in the list of comparables of such smaller districts, and therefore, the three largest districts in CESA #16 of which the undersigned has general knowledge have been excluded from the list of comparables which will be utilized herein. Such list includes the following districts:

Bark River  
Elmbrook  
Hamilton  
Hartland  
Merton  
Nashotah  
New Berlin  
Pewaukee  
Stone Bank

Erin  
 Germantown  
 Hartford Elementary  
 Hartford UHS  
 Kewaskum  
 Mukwonago  
 Neosho  
 Richfield #2  
 Richfield #7  
 Richfield J. 11  
 Slinger

The undersigned will use the above listing in comparing district salaries; however, smaller groupings of districts will have to be utilized, based upon available data in the record, when analyzing the practice of comparable districts with respect to the other issues in dispute in this proceeding.

Issue - Salary Schedule

Association Final Offer

APPENDIX B  
SALARY SCHEDULE 1980-81

<u>Years of Experience</u>	<u>Step</u>	<u>BA</u>	<u>BA+15</u>	<u>MA</u>	<u>MA+15</u>
0	1	11,300	11,865	12,430	12,995
1	2	11,750	12,315	12,980	13,545
2	3	12,200	12,765	13,530	14,095
3	4	12,650	13,215	14,080	14,645
4	5	13,100	13,665	14,630	15,195
5	6	13,550	14,115	15,180	15,745
6	7	14,000	14,565	15,730	16,295
7	8	14,450	15,015	16,280	16,845
8	9	14,900	15,465	16,830	17,395
9	10	15,350	15,915	17,380	17,945
10	11	15,800	16,365	17,930	18,495
11	12	16,250	16,815	18,480	19,045
12	13	16,700	17,265	19,030	19,595

For the first six (6) pay periods of the 1980-81 contract year teachers will receive salary payment based on the 1979-80 salary schedule with each teacher receiving any earned increment plus correct lane placement. Beginning with the seventh (7th) pay period, the above 1980-81 salary schedule will be in full force and effect. Teachers will receive salary payment based on the 1980-81 salary schedule on the seventh pay period and for the remainder of the contract year.

District Final Offer

APPENDIX B  
SALARY SCHEDULE 1980-81

<u>Step</u>	<u>Lane 1 B</u>	<u>Lane 2 B + 15</u>	<u>Lane 3 M</u>	<u>Lane 4 M + 15</u>
1	11,300	11,625	12,025	12,350
2	11,675	12,000	12,425	12,750
3	12,050	12,375	12,825	13,150
4	12,425	12,750	13,225	13,550
5	12,800	13,125	13,625	13,950
6	13,175	13,500	14,025	14,350
7	13,550	13,875	14,425	14,750
8	13,925	14,250	14,825	15,150
9	14,300	14,625	15,225	15,550
10	14,675	15,000	15,625	15,950
11	15,050	15,375	16,025	16,350
12	15,425	15,750	16,425	16,750
13	15,800	16,125	16,825	17,150
14	16,175	16,500	17,225	17,550
15	16,550	16,875	17,625	17,950

The parties agree that the cost of the District offer for salary alone is an increase of \$36,000 or 12.9%, including lane changes.

There is only a slight difference between the parties in the costing of the Association adjusted offer. The District indicates a cost of \$44,282 or 15.8% while the Association indicates a cost of \$43,447 or a 15.5% increase.

#### POSITION OF THE PARTIES

##### District Position

The District submits that the real impact of the Association's unadjusted offer on salary alone is \$56,000 or a 20% increase.

Furthermore, the deferred payment as prescribed by the Association will likely generate an 18% or greater increase in 1981-82.

Utilizing the District's calculations, if the Association's offer were selected, the District would come to the table for the 1981-82 year with an assured 8.8% increase, including estimated lane changes, and a deferred improvement in dental benefits which cannot be placed into effect until the 1981-82 school year because of the timing of this award. Assuming the Association would settle in 1981-82 for a "modest" improvement of 10%, the District would have an additional 18+% increase. Adding the 15+% of the Association's proposal for 1980-81 and the 18+% cost for 1981-82, the cost to the District would exceed 33%, a totally unreasonable amount in the District's opinion.

The District contends that the deferred payments that would result from selection of the Association's offer must be counted as a part of the total salary increase requested. The same argument applies to the salary impact resulting from lane changes.

Thus, although the immediate difference between the parties is \$8,000 for the Association's adjusted offer, the real difference is approximately \$20,000.

The total District budget for expenditures is \$748,262. Some of the accounts are non-discretionary accounts. Discretionary funds, in the District's opinion, amount to \$53,505. Thus, it is clear that the difference between the parties is a considerable portion of available discretionary funds. In this regard, the District has already made extensive cuts in its discretionary budget areas in order to accommodate its offer to the teachers.

The District contends that it is not making an ability to pay argument on the basis of cost control limits being exceeded. Instead, it argues that many programs had already been cut back to accommodate the District's budgeted 12% increase and that further limitation of other District budget areas to further accommodate an inordinate increase is not appropriate. Furthermore, the deferred cost of the Association's proposal will undoubtedly require further cuts in programs in 1981-82 and will likely cause cost control problems in that budget.

The District further contends that the citizens of the District are already taxed at the highest rate on an equalized basis of all of the K-8 districts in the County. Using the Association's comparables, the District ranks the second highest out of twenty.

In response to the Association's question about the existence of \$66,000 increase in Account 100 (salaries), the District asserts that it is clear from the record that said account is available to pay salaries to many groups in addition to teachers, including:

1. administrative
2. secretarial
3. lunchroom supervisors
4. custodial
5. shared psychologist services
6. reading specialists.

The District contends that its offer exceeds the average salary schedule figure at the Bachelor Degree level for area K-8 districts.

While the salary at the start of the Master Degree level is fairly close at \$270 off the average, the District admits that it is significantly behind at the top of the Master's level.

The District contends that the relative purchasing power changes as reflected by the BLS figures for the Milwaukee area do not reflect the true cost of living increase for the following reasons:

1. Increases in CPI figures are distorted by housing costs and unusually high mortgage interest rates, which are inapplicable to many of the District's teachers.
2. The CPI is a questionable measure of the true cost of living.
3. The "underlying inflation rate theory" is a much more accurate indicator of earning power erosion since it excludes volatile items. This theory generates an inflation rate of seven to nine percent over the past twelve months.
4. The CPI does not reflect changes in living standards and may in fact actually tend to exaggerate inflation.

Therefore, a reasonable assessment of the true cost of living increase requires a reduction of approximately two percent from the CPI, or an approximate increase of twelve percent. It is this twelve percent figure which the District contends should be utilized when comparing the parties' offers to increases in the cost of living.

#### Association Position

Under the Association's proposal, teacher wages will be paid pursuant to the 1979-80 salary schedule for the first six pay periods (25% of the year). The last 18 pay periods will be under the proposed 1980-81 salary schedule (75% of the year). The reason for the delayed implementation is that full year implementation would, according to District figures, cost 19.95%. The delayed implementation reduces that cost to 15.5%.

In support of the reasonableness of its position, the Association contends that the District's teachers suffered a loss of comparability and purchasing power under the 1977-1980 contract. The range of loss in real income and purchasing power for affected teachers is between \$333 and \$1,327.

The District's offer does not offer any "catch up" to the District's teachers, in fact, it does just the opposite, since, if the District's offer were selected, the District's teachers would be further behind in 1980-81 than they were in 1979-80.

The Association contends that the percentage increase that returning 1978-79 District teachers will receive over the two-year period, 1979-80 and 1980-81, should the District offer be selected, will be 21.22%, which ranks seventh out of eight Arrowhead K-8 "feeder" schools. The Association's final offer provides a two-year increase of 23.77% and ranks only fourth out of eight settlements.

Similarly, the District offer provides a 1978-79 returning teacher an average raise of \$2,568 for the two-year period 1979-80 and 1980-81. This average two-year raise ranks eighth out of eight Arrowhead K-8 "feeder" schools and further is \$386 below the composite average. The Association's final offer ranks fifth out of eight and is some \$77 below the composite average.

The Association contends that its proposed salary structure is supported by the composite salary structure of the Waukesha County School Districts and the Arrowhead K-8 "feeder" districts.

District	BA 7th Step	BA Max.	Step	MA Min.	MA 10th Step	MA 13th Step	MA Max.	Step	Sched. Max.	Step
Waukesha County Composite	1.26	1.59	(13.8)	1.11	1.54	1.71	1.82	(15.1)	1.92	(15.4)
Arrowhead K-8 "feeder" Composite	1.25	1.58	(14)	1.10	1.51	1.67	1.77	(14.9)	1.82	(14.9)
AUTO*	1.24	1.48	(13)	1.10	1.54	1.68	1.68	(13)	1.73	(13)
Board	1.20	1.46	(15)	1.06	1.38	1.49	1.56	(15)	1.59	(15)

\*Arrowhead United Teachers Organization

While the Association's offer has a lesser number of steps than does either of the composites, its ratio at that lesser number of steps does not exceed the composites' ratios at the same number of steps.

In comparison, the District's offer has no such comparability to either composite since its salary schedule ratios are substantially deficient.

If the District's offer is selected, the District's teachers will do slightly better based on the "actual" or the adjusted salary received for 1980-81. There is a significant improvement, however, when the Association's unadjusted salary schedule placement is ranked. The Association offer therefore achieves comparability for the future.

The Association submits that the continued double digit inflation experienced by the District's teachers necessitates the selection of its offer. The Milwaukee Metropolitan area Consumer Price Index for Urban Wage Earners and Clerical Workers for the first four months of the 1980-81

school year reflects an annual 15.1% increase in inflation. Should this continue, the Association's proposal would allow the District's teachers to just stay even. This will not change the loss in purchasing power they experienced in 1977-78 through 1979-80.

In this same regard, the Association argues that District efforts to argue that the Consumer Price Index (CPI) is an inappropriate measure of inflation must be rejected. The CPI is, almost without exception, the measure used to determine the impact of inflation and resultant wage or benefit increased, while the Personal Consumption Expenditure deflator mentioned by the District has no known use as a determinant of wage and benefit increases.

For there to be actual increases in teacher purchasing power during their career progression, teachers must have the ability to actually receive increments and lane advancements that exceed the rate of inflation. The Association submits that the District's offer fails to provide such career incentives.

In support of its position, the Association notes that the average annual intermediate budget for a four-person family was \$20,517 in the fall of 1979. Full-time District teacher salaries in 1979-80 ranged from \$10,650 to \$15,100.

The Association contends that the difference between the Association and District offers in the disputed areas totals \$8,005. When including other cost increases due to the salary difference, the Association calculates the total difference to be \$8,890. The District calculates the difference to be approximately \$100 higher. Thus, it is safe to assume the real difference to be slightly under \$9,000. This difference holds only if the Association's offer is implemented prior to April 1, 1981. Later implementation will lessen the dental cost increase. If the Association's final offer were not implemented until after June 1, 1981, there would be no increased dental costs and the difference would be reduced to about \$8250.

The Association further asserts that there is in excess of \$20,000 in the budget salary line which the District has not been able to specifically account for, even when it had the opportunity to introduce posthearing evidence with respect to this issue.

Although the District tax rate is higher than the average tax rate in the County, the Association noted that the District ranks five out of fifteen in the County in per capita income, and it therefore should be able to support the higher tax levy.

Although the District contends that it is \$16,197 over cost controls, the Association points out that in 1978-79 and 1979-80 it underestimated deductible receipts and handicapped aides in excess of \$8,000.

In this same regard, the Association contends that the District has appealed for an exemption from cost controls for expenditures in the amount of \$24,511. Should those appeals be granted, the District would actually be able to spend \$8,314 over their current budget without exceeding cost controls.

Even if the District were over cost controls, the Association contends that this would not be such a terrible experience since it was over cost controls in 1978-79 and since 18 districts in CESA #16 exceeded cost controls for the 1979-80 budget year, which represents more than half of the districts in CESA #16.

Furthermore, the District has not demonstrated that carrying a deficit would be of substantial harm to its program.

#### Discussion

The following table reflects seven salary benchmarks among the comparable districts the undersigned had selected. Some CESA #16 districts were excluded because of their size, some were excluded because reliable 1980-81 salary data was not made available to the undersigned. In a



1980-81 SALARIES

Waukesha County Districts Excluding Oconomowoc and Waukesha

	<u>BA Min</u>	<u>BA Lane Max</u>	<u>BA Max</u>	<u>MA Min</u>	<u>MA Lane 10th Step</u>	<u>MA Lane Max</u>	<u>MA Max</u>
Bark River	11,500	17,000	17,600	12,800	18,200	20,000	21,700
Elmbrook	11,629	19,561	21,624	13,542	18,993	23,612	24,466
Hamilton	11,750	18,325	20,625	13,250	18,245	21,925	23,525
Hartland	11,550	19,868	19,868	12,705	16,403	21,849	21,849
Merton	11,500	17,700	18,300	12,600	16,250	18,800	18,800
Nashotah	11,500	18,070	18,070	12,700	16,645	19,270	19,270
New Berlin	11,750	18,565	19,975	13,160	18,565	21,030	22,445
Pewaukee	11,575	17,281	19,059	12,501	17,543	20,921	22,462
Stone Bank	10,900	17,985	21,270	12,200	18,239	22,265	22,265

Other CESA #16 Districts Excluding West Bend

Erin	10,464	15,489	18,490	11,327	16,122	19,615	19,615
Germantown	11,950	17,328	20,316	13,744	18,524	22,109	24,500
Hartford Elem	11,450	16,034	20,616	12,880	18,037	20,902	21,760
Hartford UHS	11,500	16,675	19,263	12,650	17,825	20,700	21,850
Kewaskum	11,100	16,375	19,528	12,320	17,554	20,684	22,309
Mukwonago	12,000	18,650	19,475	13,325	18,075	22,175	23,675
Neosho	11,100	16,095	17,760	12,099	16,595	18,093	19,092
Richfield #2	11,150	16,168	18,677	12,545	20,350	20,908	17,563
Richfield #7	11,183	15,663	16,183	12,563	20,423	21,263	17,623
Richfield J. 11	10,310	12,164	14,486	11,753	15,881	15,881	15,881
Slinger	11,330	17,111	18,131	12,576	19,947	21,193	17,679
AVERAGE	11,360	17,105	18,966	12,662	20,525	21,330	17,528
ASSN. OFFER*	11,300 (14)	16,700 (13)	17,265 (19)	12,430 (16)	19,030 (18)	19,595 (17)	17,380 (15)
DIST. OFFER*	11,300 (14)	16,550 (13)	16,875 (19)	12,025 (19)	17,625 (20)	17,950 (20)	15,625 (21)

\*Number in parenthesis reflects ranking among comparables

few instances, where two salary schedules were in effect during the 1980-81 school year, the schedule in effect during the latter part of the year was utilized, since such schedules are most applicable to the instant dispute at this time. The Association's unadjusted salary schedule has been utilized when comparing the Association's final offer with salary schedules currently in effect in comparable districts.

As can be seen from the above chart, neither offer differs significantly either in ranking or in relationship to the comparable averages at the BA minimum. Only slight differences begin to occur in the relationship between the final offers and the comparable averages at the BA lane maximum. At this position on the salary schedule, both offers are below the comparable average, the Association by \$405 and the District by \$555. At this point, there is no difference in the ranking of the offers, as is the case at the BA maximum level. However, at this latter point, both offers are appreciably below comparable averages, the Association by \$1701, and the District by \$2091. Both offers rank 19 out of 21 at this point on the salary schedule. At the MA level, a similar, but somewhat more exaggerated pattern develops. At the MA minimum, the Association's offer ranks 16 while the District's ranks 19; both are below the comparable average, the Association by \$232, and the District by \$637. At the MA lane, 10th step, the Association offer ranks 15 while the District offer ranks 21. Both offers are below the comparable average, the Association's by \$148 and the District's by \$1903. At the MA lane maximum, the Association offer ranks 18 and the District offer ranks 20, both are below the comparable average, the Association by \$1495 and the District by \$2900. Lastly, at the MA maximum level, the Association offer ranks 17 and the District ranks 20, both are below the comparable average, the Association by \$1735 and the District by \$3380.

In summary, both offers are below the comparable average at all of the points on the salary schedule utilized for comparison. Both sets of offers would rank the District no higher than 13 out of 21 at any point on the salary schedule, and in most instances, under either offer, the District would rank no higher than 15 out of 21.

The parties' salary offers are distinguishable primarily as they apply to experienced teachers in the District with a substantial number of graduate credits. At the MA lane 10th step, the MA lane maximum, and the MA maximum, the District's offer is generally below the comparable average by at least \$1900 and by as much as \$3380. At these three points on the salary schedule, the District ranks no higher than 20 out of 21 comparable districts.

Based upon all of the foregoing, because the Association's salary offer is less out of line with salary norms among comparable districts, and because said offer does not result in a situation where the District would become a wage leader among comparable districts, based upon a comparison of absolute salaries among comparable districts, the Association's offer is deemed to be more comparable and therefore more reasonable in that regard.

However, the weight to be given to the above conclusion must be assessed in light of the District's inability to pay arguments and in light of the size of the increases the Association seeks in order to catch up with comparable districts.

With respect to the latter issue, based upon the rather limited information presented regarding the size of increases granted to teachers in the Arrowhead K-8 feeder districts, both in percentages and in dollars, it seems clear the Association's 1980-81 catch up proposal exceeds the average increase granted among said districts, even when the adjusted salary schedule is used as a basis for comparison. The size of the Association's proposed increase is even more out of line with the 1980-81 increases granted by comparable Arrowhead K-8 districts if the unadjusted salary schedule is used as a basis for comparison. However, when the increases granted over two years are considered, the Association's salary proposal is much more in accord with the size of increases granted among said comparable districts than is the District's salary proposal.

The undersigned has not concluded that the size of the increases requested by the Association is more reasonable than the District's position based upon an analysis of comparable districts; in fact, the contrary would appear to be the case, particularly if the Association's unadjusted salary schedule is used as the basis for comparison. However,

the undersigned has concluded that the reasonableness of the size of the increases requested by the Association cannot be measured solely on the basis of a comparison of the size of increases granted by comparable districts. Instead, one must look at the absolute salaries teachers similarly situated have received in comparable districts over a period of time, to the extent that such an analysis is possible; the impact of inflation on the affected teachers; and also, at the ability of the District to correct inequities that may be found to exist without substantially harming the quality of its educational program.

Based upon evidence presented by the Association regarding comparable districts in Waukesha County, it seems clear that the District's teachers have lost ground in the last few years with respect to the actual salaries they receive as compared to teachers similarly situated in comparable districts in said County. In light of this relative loss of position, which presumably carries over to other comparable districts listed in the above noted comparability chart, it is not unreasonable for the Association to seek to improve the relative salary status of those teachers whose salaries are most out of line with comparable averages, even though such improvements may require larger than comparable salary increases, assuming the District has the ability to pay for such increases.

With respect to the issue of the impact of inflation on the affected teachers, although the District has presented some persuasive arguments in support of its contention the Consumer Price Index may be a somewhat inflated measure of the impact of the cost of living on wage earners who for example have fixed housing costs and whose medical costs are primarily covered by group insurance plans, the undersigned feels rather secure in concluding that the affected teacher population has lost real income and purchasing power over the past several years as a result of increases in the cost of living, whichever measure is used, and that at best, as the Association's salary offer would affect the total population involved herein, many teachers in the unit will simply be able to hold their own in that losses of real income will generally be prevented, while some teachers will be afforded the opportunity to make up for some of the losses they have previously incurred as a result of the double digit inflation we have experienced over the past several years.

In this same regard, while the undersigned recognizes that the Consumer Price Index is an imperfect instrument, particularly when applied to a particular set of circumstances, it remains the most generally accepted measure of the cost of living when applied to the determination of salaries and fringe benefits in disputes such as these. Thus, although it is in all probability not a totally reliable measure as it affects all persons involved herein, it is neither inappropriate nor unfair to utilize the CPI as the inflationary measure against which the size of salary increases should be analyzed and evaluated.

With respect to the District's ability to pay arguments, several distinct issues must be addressed.

First, the undersigned agrees with the District that the cost impact of the Association's proposed unadjusted salary schedule will occur over two years, and that in fact, additional new costs will be incurred in the 1981-82 budget year which may pose budgetary problems for the District during that year. However, because of the many uncertainties which presently exist regarding the actual teaching staff in the District for the 1981-82 school year, it is impossible to speculate at this time what the real cost impact of the Association's proposal will be. Thus, the District's ability to pay arguments, as they pertain to the 1981-82 school year, must be deferred to the negotiations of the agreement which will be in effect during that year. Although it is clear that the Association's salary proposal will have an economic impact on the District's budget for that year, said impact will be affected by turnover, and by the actual number of full time equivalent teachers that the District will employ during that year. Until such facts are available, it is not possible to fairly assess the budgetary impact of the Association's proposal.

Regarding the 1980-81 budget year impact, two distinct issues have been raised and must be addressed. The first pertains to the District's cost control status, which issue appears to have substantially evaporated during the course of the instant proceeding.

On April 28, 1981, the District was advised by the Department of Public Instruction that its request for an adjustment in the amount of \$381.00 and its appeal for exemption in the amount of \$24,511.00 had been conditionally granted. The granted request for adjustment in the amount of \$381.00 reduced the amount of the District's costs in excess of cost controls to \$15,816.00.

The District's appeal which complied with the statutory grounds for cost control exemption amounted to \$24,511.00. However, only the amount necessary to bring the District's budget into compliance with cost control limitation was granted. Therefore, the District's appeal was granted in the amount of \$15,816.00. Should the 1980-81 annual budget reveal additional excess costs, the balance of the District's approved appeal will automatically be granted up to the amount necessary to bring the District into cost control compliance. Thus, a balance of \$8,695.00 would still be available if it were spent by the District in the 1980-81 budget year.

As a result of the foregoing, there appears to be little or no problem for the District in being able to fund the Association's salary proposal for the 1980-81 school year without having to exceed cost controls. In this regard, the District ultimately conceded that cost controls are not the source of the District's alleged ability to pay problems.

Instead, the District asserts that it has cut discretionary budget lines to the bone in order to support its salary offer, and that it cannot afford to make further cuts in order to fund the Association's offer. In this regard, although the District has strenuously made such an assertion, it has failed to demonstrate with any evidence or proof that budgetary adjustments cannot be made without harming its educational program. The mere assertion that such cuts are not possible is not sufficient to prove in a proceeding such as this that the District cannot afford to fund the Association's offer. No evidence was offered to demonstrate that such discretionary budget lines had been fully utilized or that specific programs, materials, or necessary maintenance and repairs would have to be sacrificed. In fact, specific questions were raised in the proceeding regarding the allocation of budgeted salary monies which were never completely answered by the District with specificity.

In addition to the foregoing, the District did not assert that long-term deficit financing would have to be utilized in order to fund the Association's proposal, nor did it assert that it would have to resort to politically unacceptable tax increases to meet its obligations under the Association's proposal.

Absent such evidence of the District's inability to fund the Association's salary proposal, and in light of the fact that the Association's proposed salary schedule is more in accord with salary schedules in comparable districts than the District's proposed schedule, the undersigned concludes that the Association's final salary offer is the more reasonable of the two submitted herein.

Issue - Dental Insurance

The District proposed no change in the current agreement.

Cost of present plan:

\$17.24/month - family  
\$ 5.85/month - single

The Association proposes an increase in the benefit level and the premium paid by the District.

Cost of proposed plan:

\$30.00/month - family  
\$11.00/month - single

POSITION OF THE PARTIES

Association Position

The Association contends that comparables support the Association's proposed improvement in dental coverage. One district in the County has no dental coverage. Seven of thirteen County districts having dental insurance have benefits the same as or better than the Association's offer. The District's offer on the other hand is either the poorest plan or the next to the poorest plan among the County districts.

The same comparison holds true for the Arrowhead K-8 "feeder" districts. Five of the six Arrowhead K-8 "feeder" schools having dental insurance have benefits the same as or better than the Association's final offer.

The Association's dependent dental rate that the District would be required to pay ranks third out of the thirteen County districts having dental insurance. The single rate ranks first. Among the Arrowhead K-8 "feeder" schools having dental insurance, the Association's dependent rate ranks second out of seven, while the single rate again ranks first. On the other hand, the District's dependent rate ranks twelfth/thirteenth out of thirteen County districts having dental insurance. The single rate ranks twelfth out of thirteen. Among the Arrowhead K-8 "feeder" districts, the District's dependent rate ranks sixth/seventh out of seven, while the single rate ranks sixth out of seven.

Furthermore, the specifications of maximum rates in the Association's final offer will cause the teachers to pay a portion of the premium cost, as the premium for the plan proposed by the Association will undoubtedly exceed the specified maximums at the time the award is implemented.

District Position

The District believes the dental insurance issue to be of minimal significance in this proceeding. The cost of the Association's proposal should be considered in assessing the total costs of the parties' respective packages. The District felt it was more appropriate to apply money available to the salary schedule as opposed to increasing the benefit level and thereby the cost of the dental plan.

Discussion

It is not clear from the record submitted herein how dental insurance benefits compare with those requested by the Association among all of the comparable districts selected by the undersigned. The Association has asserted that five of the six Arrowhead K-8 "feeder" districts having dental insurance have benefits the same as or better than the Association's proposal. Said assertion has not been refuted by the District. Assuming that the above comparisons are generally true among the total population of comparable districts, which assumption cannot be proven from the evidence submitted herein, it also appears to be true that the District is required to pay more for similar benefits than the majority of its comparable districts, based upon the somewhat limited evidence submitted by the Association. This fact weighs against the reasonableness of the Association's proposal at a time when it is seeking increases which are out of line with those granted by comparable districts in order to catch up with those districts in the salary area.

Thus, the comparability of benefits argument seems somewhat less meritorious when viewed in light of the additional costs of the new plan which must be added on to the unusually large catch up salary increase requested by the Association.

This conclusion is tempered somewhat by the fact that if the Association's dental plan were placed into effect as a result of this award, the cost impact to the District for this year would be practically non-existent. Because of the timing of this award, implementation of the Association's proposed dental plan will in all likelihood not occur until the 1981-82 school year. Assuming there were no change in dental plan enrollment, the additional costs to the District for the 1981-82 school year would be approximately \$3900.00. Because the costs of said benefit will in all likelihood be deferred entirely until the 1981-82 school year, because they appropriately should be considered new money incorporated into the negotiation of the 1981-82 agreement, and because the addition of such new benefits even if supported by comparables, is not reasonable at the same time the Association is seeking a substantial catch up salary increase, the undersigned deems the District's position to be more reasonable than the Association's on the dental insurance issue.

#### Issue - Layoff

The District proposes no change in the current agreement.

The Association proposed to modify the current agreement to:

1. include coverage under the layoff clause of a reduction of hours
2. move from a "qualified" standard to "certified" standard on recall
3. include statutory non-renewal notification dates in the layoff provision instead of the current clause which does not provide for notice of layoff.

#### POSITION OF THE PARTIES

##### Association Position

The Association's proposal would require the District to provide preliminary notification of layoff to teachers prior to March 1st with final notification to occur on or before March 15. The District proposes no date for notification.

The Association contends that the current layoff provision was negotiated at a time when the parties believed that Section 118.22 Wis. Stats. applied to layoffs. Since that time the Wisconsin Courts have determined that said statutory section does not apply, thereby creating the need for the Association's notification proposal.

The Association contends that comparables support its final offer on layoff notification. Nine of the fourteen County districts have a specific contractual date before the commencement of the next school year for notice of layoff. Five of the seven Arrowhead K-8 "feeder" districts have the same protection. Four of these specifically use the 118.22 time frame.

With respect to the issue of recall based upon certification, the Association contends that nine of fourteen County districts base recall on certification and that five of seven Arrowhead K-8 "feeder" districts base recall on certification.

The Association's offer specifies that reduction in hours will be covered under the layoff clause. Three of the Arrowhead K-8 "feeder" districts presently specify that reductions in hours are covered.

##### District Position

The District contends that the Association's layoff proposal represents an attempt by the Association to win a "take away" where favorable language to the District was previously agreed to by the parties in the bargaining process.

The District contends that the current agreement contains a comprehensive layoff section which was previously agreed to by the parties, providing for the following:

1. layoff is defined as a reduction in staff
2. criteria for layoff are included
3. the method of laying off is established
4. recall is based upon qualifications
5. teacher obligation regarding return is described
6. the District's obligation to recall is limited to two years.

The agreement is silent as to the amount of notice required in the event of a layoff and does not impose any layoff dates.

The District contends that the Association has failed to provide any justification for its proposal in terms of any alleged problems with current practice under the terms of the current agreement. No suggestion or evidence was established that any layoff injustices have occurred.

Furthermore, comparables support the District's position. Only one out of the fourteen districts submitted by the Association as comparables includes a reduction in hours as qualifying for layoff status. Furthermore, eight out of eight K-8 districts in the area do not include reduction in hours as a layoff.

Seven out of the fourteen districts used by the Association as comparables use the March 1 date while the remaining seven use some other date or no date. This is not a persuasive reason, in the District's opinion, to grant the March 1 notification date.

While nine out of the fourteen districts used by the Association as comparables use certification as the recall standard, only three of the six K-8 districts use said standard, while three use qualifications.

The District therefore argues that a comparison of comparable districts supports the District's position on the layoff issue.

Lastly, the District contends that while larger schools with larger staffs can accommodate a lack of flexibility in a layoff procedure through the availability of more options in staffing, smaller schools with limited staffs do not enjoy this opportunity.

#### Discussion

Reference to comparable layoff clauses to resolve the issues in dispute herein proves to be an unsatisfactory criterion which certainly should not be determinative of the disposition of said issues because of the complexity and ever changing nature of the clauses currently in place, and just as importantly, because of the changing nature of the law affecting the negotiation of such clauses <sup>1/</sup> and the pressing current circumstances mandating the refinement of such clauses.

In all candor, on all three issues in dispute with respect to layoffs, neither party's final offer adequately addresses the complexities associated with the legitimate interests of both parties.

With respect to notification of employees to be laid off, it is reasonable to anticipate that fair notice should be given to such employees absent circumstances beyond the parties' control which foreclose such notice. Therefore, the District's position, which guarantees no notice under any circumstances, is deemed unreasonable by the undersigned since it fails to address a legitimate problem affecting critical employee interests. On the other hand, the Association's proposal fails to address the fact that the District may be required, for reasons which cannot be foreseen and which are beyond its control, to layoff at times other than the end of a

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<sup>1/</sup> West Bend Joint School District No. 1, Decision No. 18512, May 15, 1981.

school year. Similarly, such uncontrolled external factors may also prevent notice in accord with Section 118.22 time line requirements. Although fair and timely notice is not too much to ask in most circumstances, a proposal which does not recognize the external constraints which may force the District to lay off employees in an unplanned manner does not adequately deal with the realities that governmental units must face today. While timely notice of planned and foreseeable layoffs should be the norm in such procedures, recognition must also be given to the possibility that externally caused emergencies may necessitate unforeseen action.

For the above mentioned reasons the undersigned believes that both parties' positions on notification are equally unreasonable.

With respect to the reduction in hours issue, the undersigned concurs with Arbitrator Kerkman's conclusion in Turtle Lake School District (Case XII No. 24915 MED/ARB 482, Dec. No. 17601-A) that if the parties have in place a seniority based layoff procedure, said procedure should also apply to situations where the reduction in teachers' teaching loads or hours might be necessitated for the same reasons that a reduction in staff would be needed. In this regard at least, the Association's final offer is slightly more reasonable than the District's. However, with respect to this issue, the Association's approach grossly oversimplifies the problem, and leaves several serious questions unaddressed. One problem which immediately comes to mind is whether said provision is applicable to part-time teachers, particularly those whose teaching load has traditionally fluctuated for a variety of reasons? The Association's proposal makes no distinction between full and part-time teachers nor between teachers who traditionally have had fluctuating teaching loads and those who have had stable teaching loads who might be subject to a reduction in their teaching load in lieu of a total layoff. Comparable districts have addressed this problem in a variety of ways, some have not addressed it at all. In the undersigned's opinion, assuming that a reduction in hours is covered by a layoff clause, the problems created thereby must be addressed. The Association's failure to do so in its proposal somewhat diminishes the merits of its position.

Lastly, with respect to the standard to be applied in recall situations, although a slight majority of the comparable districts in Waukesha County appear to utilize the "certified" standard, there may be circumstances in a small district which may necessitate the consideration of other factors in determining how to fill vacancies where scarce personnel and economic resources are available. Thus, although certification of recalled teachers should be given priority in making recall decisions, it does not seem reasonable in a district as small as Richmond that other legitimate considerations, which preferably should be spelled out in the layoff clause, should not be allowed. Thus, in the undersigned's opinion, neither party's position again adequately addresses the complexity of the issue in dispute.

For all of the foregoing reasons, the undersigned concludes that although the Association's proposal on reduction in hours is slightly more reasonable than the District's, in their entirety, neither proposal is sufficiently more reasonable than the other to justify giving any significant weight to either proposal in the selection of the most reasonable final offer. This issue will therefore have to be determined by the reasonableness of the parties' total final offers, which should, in the undersigned's opinion, result in a situation, in either case, where the layoff clause will require substantial renegotiation during the negotiation of the parties' successor collective bargaining agreement.

#### Issue - Calendar

The District proposes no change in the existing agreement; which provides that the District has sole authority to determine the specific days school is in session after recommendations are submitted to the Board by the Association. The number of work days has been agreed to and is included in the agreement.



The Association has proposed a clause specifically providing that the calendar shall be negotiated annually.

#### POSITION OF THE PARTIES

##### Association Position

The Association contends that seven of the fourteen County districts specifically provide that calendar will be negotiated. Five have no limitation on the union's right to negotiate the calendar and only one has a provision similar to the District's proposal. Five of the seven Arrowhead K-8 "feeder" districts specifically provide that the calendar will be negotiated.

##### District Position

The District negotiated the calendar with the Association and was successful in securing the language that currently exists. Therefore, the District contends that the Association has not justified its proposal regarding negotiation of the school calendar. In this regard, the District cites the arbitral precedent that in interest arbitration it is customary to require substantial justification by a party proposing an abrupt departure from past and customary practices. The only justification given by the Association for its proposal is that other districts negotiate the calendar. The District contends that it negotiates the calendar as well. Thus, a decision in favor of the Association on this issue would grant relief it already enjoys, namely, the right to negotiate the calendar.

Not only has the Association failed to justify its proposal, it has presented no evidence that the current contract language has presented any problems in practice.

##### Discussion

In truth, what the Association seeks to achieve by its proposal does not guarantee it any more rights than it currently has under Wisconsin Statutes. In fact, there is no contention in this proceeding that the District has not negotiated the calendar in the past, only that the Association has been unsuccessful in said negotiations in getting the District to agree on a calendar which the parties have mutually agreed to incorporate in their collective bargaining agreement.

Thus, although the Association's proposal properly sets forth the District's statutory obligations, it does not guarantee the successful negotiation of the school calendar in a timely manner, and therefore, even though said proposal is not unreasonable, it does not guarantee the successful negotiation of the school calendar. Nevertheless, because it simply sets forth the District's statutory obligations in this regard, it is deemed by the undersigned to be a reasonable proposal. However, because of its limited utility, it shall be given little weight in the determination of the reasonableness of the parties' total final offers.

#### TOTAL FINAL OFFER

##### Discussion

For the reasons discussed above, the undersigned has determined that the Association's proposal on the salary schedule and the calendar are more reasonable than the District's. On the other hand, the District's proposal on dental insurance is the more reasonable of the two final offers on said issue. In addition, for the reasons previously discussed, the undersigned has concluded that neither party's final offer on the layoff procedure is sufficiently more reasonable than the other's to justify giving weight to either of said proposals in determining the reasonableness of parties' respective total final offers.

In view of the fact that the salary issue clearly outweighs the other issues in dispute in terms of its economic impact and import to the parties, the undersigned has selected the Association's total final offer as the more reasonable of the two. This selection is made with several rather serious reservations, which the undersigned feels compelled to specifically set forth.

The selection of the Association's final offer will undoubtedly have a significant impact on the negotiations of the parties' successor collective bargaining agreement. In this regard, the undersigned believes it is fair and reasonable to include the cost impact of the unadjusted salary schedule and the new dental insurance benefits as new money in the parties' negotiations of 1981-82 salaries and benefits.

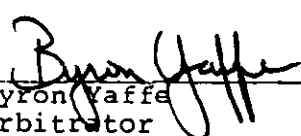
Furthermore, the undersigned has selected the Association's final offer, while being fully aware of the fact that the Association's layoff proposal is likely to pose legitimate problems for the District which must be addressed in the parties' next round of negotiations.

In spite of all of the above, because of the lack of competitiveness of the District's current salary position and the failure of its proposal to remedy same, the Association's salary position has been selected to assist the District's teachers in catching up with teachers similarly situated in comparable districts, which does not appear to be an unreasonable or unfair result absent evidence that the District cannot afford to fund such a settlement without harming its educational program, without making unreasonably harmful accommodations in other areas of its budget, without resorting to long-term deficit financing, and without resorting to politically unacceptable tax rates.

#### AWARD

The 1980-81 agreement between Richmond Elementary School, Jt. District No. 2 Lisbon-Pewaukee and Arrowhead United Teachers Organization shall include the final offer of the Association which has been submitted herein.

Dated this 31<sup>st</sup> day of May, 1981 at Madison, Wisconsin.

  
Byron Vaffe  
Arbitrator