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In the matter of Arbitration	:	
Between	:	AWARD
Waukesha Education Association	:	Case XIX
EAW, WEAC, NEA	:	No. 26675 MED-ARB-837
and	:	Decision No. 18391-A
SCHOOL DISTRICT OF WAUKESHA	:	

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I. HEARING. A hearing in the above entitled matter was held on March 5, 1981, beginning at 2:15 p.m. at the Offices of the Waukesha School District at 222 Maple Avenue, Waukesha, Wisconsin.

II. APPEARANCES.

DAVID C. PFISTERER, Executive Director, TriWauk UniServ Council, appeared for the Association

GEORGE SHIRODA, Deputy Superintendent of Schools, School District of Waukesha, appeared for the District.

III. NATURE OF THE PROCEEDINGS. This is a proceedings in final and binding final offer arbitration under Section 111.70 (4) (cm) 6 of the Municipal Employment Relations Act of the State of Wisconsin. The Waukesha Education Association, EAW, WEAC, NEA filed a petition on August 15, 1980, with the Wisconsin Employment Relations Commission alleging that an impasse existed between it and the School District of Waukesha in an effort to obtain a collective bargaining agreement. The Commission, through William C. Holihan, a staff member, conducted an investigation and thereafter the Commission found that the parties had not established mutually agreed upon procedures for the final resolutions of disputes in collective bargaining, concluded that the parties had substantially complied with the procedures set forth in Section 111.70 (4) (cm) of the statutes required to initiate mediation-arbitration, and that an impasse existed, certified that the conditions precedent to initiation of such mediation-arbitration as required by Section 111.70 (4) (cm) 6 had been met, and ordered mediation-arbitration on January 16, 1981. The parties having selected Frank P. Zeidler, Milwaukee, Wisconsin, as mediator-arbitrator, the Board appointed him on February 3, 1981.

Mediation occurred on March 5, 1981. The parties failed to reach a voluntary settlement after a reasonable period of negotiation and therefore the arbitrator notified them of his intent to resolve the dispute by final and binding arbitration beginning later on the same day and notified the parties that they had time between the ending of mediation and the beginning of arbitration to withdraw their offers and any modifications thereof. No offers were withdrawn and the arbitration hearing proceeded, during which the parties were given full opportunity to present evidence and witnesses and make argument. Briefs were submitted.

IV. FINAL OFFERS.

A. Association Final Offer (January 12, 1981)

Appendix A - Compensation

E. Salary of Psychologists and Social Workers

The salaries of psychologists and social workers shall be determined by first placing them appropriately on the teacher salary schedule (Appendix A) and multiplying the salary at that step by 110%. This compensation shall be for a 200 day work year.

Renumber remainder of Appendix A - Compensation.

F. 3 Summer compensation for psychologists and social workers shall be at the rate of 1/200 of the annual salary as computed in Section E above for each day of summer work.

B. District Final Offer (January 12, 1981)

Psychologists, Social Workers and Part-Time employees to be included in the Agreement with the Education Association of Waukesha as by the stipulations signed this date. In addition include:

10.04 Psychologists and Social Workers shall be paid at 1.03 times the appropriate step on the Teachers Salary Schedule based upon years of experience and degree status. Any psychologist or social worker newly employed after the ratification of this section shall be paid at 1.00 times the appropriate step on the schedule. Psychologists and social workers will be employed for an additional ten (10) days (total of 200 days) with salary for those days on a per-diem basis.

Appendix A (E) (2) Psychologists and Social Workers shall be paid \$12.50 per hour for any assigned additional summer employment.

Renumber remaining Sections.

V. FACTORS TO BE CONSIDERED.

Section 111.70 (4) (cm) 7 is as follows:

"7. 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors;

"a. The lawful authority of the municipal employer.

"b. Stipulations of the parties.

"c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

"d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employes generally in public employment

"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."

VI. **LAWFUL AUTHORITY.** There is no question of the lawful authority of the Employer to meet either offer.

VII. **STIPULATIONS.** All other matters are stipulated to in the matter of reaching an agreement between the parties.

VIII. **THE INTERESTS AND WELFARE OF THE PUBLIC.** Matters relating to the interests and welfare of the public are subsumed under the specific proposals and discussions related thereto following. The parties contend that their offers are in the interests and welfare of the public.

IX. **ABILITY OF THE GOVERNMENT TO PAY.** There is no question here of the ability of the Employer to meet the costs of either offer.

X. **COSTS OF OFFERS.** The parties presented various exhibits on the costs of the offers and percentage increases. First it must be noted that in the previous year there were 15 FTE psychologists and social workers, and two of them have not continued into the present year. Currently there are 15.6 FTE psychologists and Social Workers. The Board calculated its costs based on 8 psychologists and 5 social workers who continued from the last year to the present. Applying the costs attributable to the 13 continuing employees, the Board developed the following data which is abstracted from its Board Exhibits 4 and 5:

Table I

BOARD ESTIMATE OF COSTS OF OFFERS

	<u>1979-80</u>	<u>1980-81</u>	<u>%</u>	<u>1980-81</u>	<u>%</u>
	<u>Base</u>	<u>Board</u>	<u>Inc.</u>	<u>Association</u>	<u>Inc.</u>
Salary	251,650	277,973	10.5	282,021	12.1
Total with certain benefits	305,655 <sup>1</sup>	338,678	10.8	343,457 <sup>2</sup>	12.4

1 Includes salary, Social Security, STRS, health

2 Includes salary, Social Security, STRS, health and dental

The Association based its calculations of costs on the figure of 15.6 FTE in both 1979-80 and 1980-81 school years. According to the Association Exhibit 16, if the 15.6 employees were teachers only and placed on the teacher schedule, the increased cost for them would be 12.2%. However placing them on the teacher schedule and multiplying these placements by the appropriate percentage increases proposed by the parties (1.10 for the Association and 1.03 for the Board), the Association has derived the following information:

Table II

ASSOCIATION ESTIMATE OF COSTS OF OFFERS

	1979-80	1980-81 Board	Av. Inc. Per Empl.	% Inc.	1980-81 Assn.	Av. Inc. Per Empl.	% Inc.
Salary	292,529	323,541	1,988	10.6	328,252	2,290	12.2
Difference							
Association			1980-81		\$328,252		
Board			1980-81		<u>323,541</u>		
Total Difference					\$ 4,711		
Difference per Employee					\$ 302		

The Association at the request of the arbitrator calculated the cost of the 13.6 FTE psychologists and social workers on the schedule as of 1979-80. This total came to \$261,393, or an average salary of \$19,220. The average salary for 15.6 FTE in 1980-81 (A. 14) under the Association offer would be \$21,041, an increase of \$1,821, or 9.47%. Under the Board offer the average salary (A. 15) would be \$20,739, an increase of \$1,519, or an increase of 7.9%.

Board Exhibit 4 showed that of the eight individual psychologists continuing on the staff from 1979-80 to 1980, under the Board proposal the psychologists individually would receive percentage raises ranging from 12.2% to 8.5%; and under the Association proposal, from 13.9% to 10.1%. The range for social workers under the Board proposal would be from 12.2% to 8.0% and under the Association proposal from 13.8% to 9.6%. Generally, the lower percentage increases are received by those employees in the higher "cells", or positions, in the salary schedule.

XI. COMPARABLE DISTRICTS.

A. The parties used considerably different standards for developing a list of comparable districts. The evidence is that the Association used three standards: some adjacent districts if they were not too small; seven of the larger school districts in the state; some other nearby school districts thought to be comparable. The Board used districts that it considers comparable in teacher bargaining, namely districts in CESA 16 and districts in the same athletic conference as Waukesha. The Board, however, did not include Cudahy, Racine, or Kenosha, which are in the athletic conference in its listing. The following table shows a comparison between the regional districts (as contrasted to the large school districts) used by the parties:

Table III

COMPARISON OF REGIONAL DISTRICTS USED AS COMPARABLE DISTRICTS BY THE ASSOCIATION AND THE BOARD

District	Assn. List	Bd. List	Dist <sup>(1)</sup> ADM	No. Psych's. (2)	No. Soc. Wkrs. (2)
Elmbrook	X	X		4	1
Franklin	X		2,349		
Germantown		X	2,929	2	2
Greendale	X		3,347		
Greenfield	X		3,515		
Hamilton		X	3,277	2	1
Hartford		X	(3)	2	1

Table III continued

<u>District</u>	<u>Assn. List</u>	<u>Bd. List</u>	<u>Dist. ADM (1)</u>	<u>No. Psych's. (2)</u>	<u>No. Soc. Wkrs. (2)</u>
Kertle Moraine		X	-	3	1
Kewaskum		X	2,020	1	0
Menomonee Falls	X	X	4,687	3	3
Mequon-Thiensville	X		3,439		
Mukwonago	X	X	4,326	3	3
Muskego	X	X	3,962	1	2
New Berlin	X	X	5,358	4	0
Oak Creek	X		3,947		
Pewaukee		X	1,377	1	1
Shorewood	X	X	2,034	2	0
Slinger		X	2,024	2	1
South Milwaukee		X	3,445	2	2
Wauwatosa	X	X	6,735	5	5
West Allis	X	X	8,651	4	0
West Bend	X		6,219		
Whitefish Bay	X		2,540		
Whitnall	X		2,111		
Waukesha County				4	0
Waukesha			12,488		

(1) From WEAC Research Division, January 1981 "Statewide Pupil/Teacher and Pupil/Total Staff Ratios for Wisconsin, 1980-81."

(2) Bd. Ex. 6

(3) Hartford U.H.S. - 1845 Adm.  
Jt. #1, Hartford 1138 Adm.

The Association had this additional list of larger state districts:

Table IV

LARGER SCHOOL DISTRICTS OF STATE USED BY ASSOCIATION FOR COMPARISON

<u>District</u>	<u>ADM (1)</u>
Eau Claire	9,679
Green Bay	17,292
Kenosha	16,726
La Crosse	6,989
Madison	23,508
Milwaukee	83,570
Sheboygan	8,691

(1) WEAC Research Division, January 1981, "Statewide Pupil/Teacher and Pupil/Total Staff Ratios for Wisconsin 1980-81"

The evidence is that in the various districts there are different numbers of psychologists and social workers per pupil, and further that the method by which compensation is arrived at varies in the district. Payment for psychologists and social workers may be based on a teachers' salary schedule, payment being made the same as the teachers' schedule, on a certain percentage above it, or the schedule plus a flat amount; or there may be separate and independent salary schedules for psychologists and social workers. In some districts salaries are individually negotiated.

B. The Association's Position. The Association holds that there is a lack of a standard manner of computing salaries of psychologists and social workers, and so the Association selected a comparability other than it would have used for teacher salaries. A comparison based solely on proximity to Waukesha could not be used, because the districts were small, or they computed wages in a manner defying comparison with others, or had no salary schedules, or the individuals bargained for themselves. It notes that the Board encountered the same problem. The Association then picked a representative grouping of similarly sized schools surrounding the metropolitan area and a group of larger school districts state-wide.

The Association notes that its districts are all in excess of 2000 ADM, and the larger districts range from 7000 to 83000. All of the districts used in regional comparison are within close proximity to Waukesha and the metropolitan area.

The Association says that it never agreed to the Board's conception that the comparable districts are those in CESA 16 and the athletic conference.

C. The Board's Position. The Board's position is that it considers the districts within CESA 16 and the athletic council comparable districts.

The Board contends that the districts which are appropriate for comparison do not appear to be an issue in dispute. This is because it is difficult to secure data on a comparable basis. However the Board created three categories among its own districts for comparison purposes, which are as follows:

1. TriWauk UniServ Districts: Waukesha, Menomonee Falls and Elmbrook.
2. Contiguous Districts: Elmbrook, New Berlin, Mukwonago, Kettle Moraine, Pewaukee and Hamilton.
3. All districts together cited by the Board.

The Board in its grouping of all districts into categories did not group area districts listed by the Association. It says it decided not to do so since most of those districts had lower salaries than the Board offer, so the Association's case is not harmed by this approach.

D. Discussion. There are difficulties in making comparisons for psychologists and social workers. In addition to the difficulty of applying the common standards of size and proximity, there is also the difficulty that comes from the lack of nearly uniform rates of psychologists and social workers to pupils, as can be applied in the employment of teachers. Also there are different ways in which salaries are achieved. This latter problem will be considered further in connection with salary comparison. There are also differences in the number of days in the work year.

Nevertheless, in spite of the difficulties, comparable districts can be ascertained by reasonable application of proximity and size of the districts. An inspection of the list of comparables used by the parties reveals to this arbitrator that there is a primary list of comparable districts based on size, proximity, and use of psychologists and social workers (though not numbers).

The most comparable districts based on size and proximity are Waukesha, West Allis, Wauwatosa and New Berlin, although Waukesha has by far the largest ADM. Second in order of priority, in the opinion of the arbitrator, are the adjacent districts of Elmbrook, Hamilton, Kettle Moraine, Mukwonago, Pewaukee and, again, New Berlin in this group. In the opinion of the arbitrator the third most comparable districts are the nearby districts of Franklin, Germantown, Greendale, Greenfield, Menomonee Falls, Muskego and Whitnall. Fourth in comparability are the regional districts of Hartford, Kewaskum, Mequon-Thiensville, Oak Creek, Shorewood, Slinger, South Milwaukee, West Bend and Whitefish Bay.

While applying the offers in comparison to the above districts especially in salary comparison, the arbitrator will also give consideration to the groupings of comparables presented by the parties for their merits both on salaries and with the other aspects of the offers.

## XII. COMPARISONS WITH OTHER DISTRICTS.

A. The parties used different concepts in developing comparison tables. The Board ascertained what were the existing minimum and maximum salaries independent of possible salary ranges. The Association developed a table showing ranges where they existed and also salaries that were achieved by individual bargaining or other methods. The following table is derived from Association Exhibit 8 and is based on the arbitrator's judgment of the most comparable districts.

Table V

### SALARY MINIMUMS AND MAXIMUMS FOR PSYCHOLOGISTS AND SOCIAL WORKERS IN CERTAIN COMPARABLE DISTRICTS

#### A. Districts Most Comparable

District	Work Days	Salary Min.	Daily Rate	Salary Max.	Daily Rate
Waukesha Board	200	\$14,671	\$73.35	\$25,967	\$129.83
Waukesha Association		14,884	74.42	26,345	131.72
Wauwatosa	190	11,969	62.99	26,332	138.59
West Allis	200	14,116	70.58	26,785	133.92
New Berlin	190	Individ. Barg.		27,000	142.10

#### B. Adjacent Districts

Elmbrook	220	16,100	73.19	24,900	113.60
Mukwonago		Individ. Barg.			

#### C. Nearby Districts

Menomonee Falls	210	18,100	85.71	?	
Muskego	201	Teacher Sal. + 10%		25,674	127.73
Franklin	205	13,750	67.07	28,200	137.56
Greendale	190	13,463	70.86	26,602	140.01
Greenfield	210	21,414	101.97	27,961	133.15
Whitnall	200	16,000	80.00	28,980	144.90

#### D. Regional Districts

Mequon-Thiensville	190	21,000	110.53	27,500	144.74
Oak Creek	200	16,000	80.00	27,000	135.00
Shorewood	190	Teacher Sal. +800		24,748	130.25
Whitefish Bay		?		Teacher Max. + \$2000	
West Bend	191	14,383	75.30	24,156	126.47

The following table is also derived from Association Exhibit 8:

Table VI

SALARY MINIMUMS AND MAXIMUMS FOR PSYCHOLOGISTS  
AND SOCIAL WORKERS IN CERTAIN STATE LARGE DISTRICTS

District	Work Day	Salary Min.	Daily Rate	Salary Max.	Daily Rate
Sheboygan	11 mo.	17,853		28,650	
La Crosse	190	Start at Step 5 Teacher Schedule		22,695	119.45
Eau Claire	199	16,000 <sup>(1)</sup>	80.40	27,000	135.68
Green Bay	Teacher Yr. + 2 weeks	14,000		27,000	
Kenosha	190	13,173	69.33	22,576	118.82
Madison	192	15,860 <sup>(2)</sup>	82.60	25,620+	133.44+
Milwaukee					
Psychologists	200				
Level I		18,004	90.02	27,433	137.16
Level II		19,723	98.61	29,532	147.66
Social Wkrs.		15,812	79.06	29,468	147.34

(1) Teacher Schedule + 20%

(2) Teacher Schedule, Step 5

The Board comparisons furnished in Board Exhibit 6 are the source of the next table. The table again reflects the arbitrator's judgment of the degree of comparability.

Table VII

SALARY COMPARISONS, ACTUAL LOW AND HIGH, 1981,  
FOR DISTRICTS CONSIDERED COMPARABLE BY THE BOARD

A. Districts Most Comparable

<u>District</u>	No.	<u>Psychologists</u>		No.	<u>Social Workers</u>	
		Low	High		Low	High
Waukesha						
Board		17,268	25,967		19,735	24,798
Assn.		17,510	26,345		20,022	25,159
New Berlin	4	19,894	29,638			
Wauwatosa	5	20,158	27,718	5	14,741	25,249
West Allis	4	17,894	25,263			

B. Adjacent Districts

Elmbrook	4	14,636	24,900	1	16,666	16,666
Hamilton	2	20,755	24,230	1	20,755	20,755
Kettle Moraine	3	18,568	18,568	1	18,568	18,568
Mukwonago	3	17,143	20,000	3	15,238	16,190
Pewaukee	1	20,136	20,136	1	18,726	18,726



Table VII - continued

<u>District</u>	No.	<u>Psychologists</u>		No.	<u>Social Workers</u>	
		Low	High		Low	High
C. Nearby Districts						
Germantown	2	18,137	21,907	2	20,129	25,189
Menomonee Falls	3	17,143	22,857	3	17,143	22,857
Muskego	1	21,685	21,685	2	15,845	19,490
D. Regional Districts						
Hartford	2	16,810	21,910	1	17,695	17,695
Kewaskum	1	16,900	16,900			
Slinger	2	17,900	24,500	1	20,350	20,350
South Milwaukee	2	17,150	22,664	2	19,658	23,393
Shorewood	2	24,239	24,239			
E. Other						
Waukesha Co.	4	17,888	22,829			

The Board averaged all the salaries in the above listings and found that for psychologists the average low salary was \$18,649 and the high salary average was \$22,290. For social workers the average low salary was \$17,960 and the average high salary was \$20,477 (Bd. Ex. 6).

The Association provided data from 1979-80 as to what was being paid for psychologists and social workers, these data being collected by WEAC (Assn. Ex. 9 A-E). These data are placed in the following table:

Table VIII

HIGH AND LOW SALARIES FOR 1979-80  
FOUND IN ASSOCIATION EX. 9 A-E

District	Psychologists		Social Workers	
	Low	High	Low	High
Hamilton	20,244	25,069	20,244	20,244
Kettle Moraine	20,768	23,347		
Mukwonago	17,450	20,400	13,500	14,400
Muskego	19,530	24,400	14,250	17,550
New Berlin	18,987	25,686		
Mequon-				
Thiensville	22,800	25,400	19,800	
Shorewood	23,948	24,548		
Whitefish Bay	23,275	23,838	13,563	
Elmbrook	16,800	26,200		
Menomonee Falls	18,000	20,700	21,500	22,500
Waukesha	15,384	25,262	14,430	22,954
Oak Creek	19,721	23,908	16,592	17,792
South Milwaukee	15,211	21,240	15,211	23,975
Greendale	17,386	22,775	23,448	
Greenfield	22,149	25,652	24,228	
Franklin	15,100	25,900	18,350	

Association Exhibit 1 was a set of guidelines for school psychological services under the date of October 10, 1973, from Robert C. Van Raalte, Assistant Superintendent, Division for Instructional Services of the Department of Public Instruction of the State of Wisconsin. This was issued in relation to an annual Plan of School Psychological Services and dealt with reimbursement procedures among other things. Under the subject of salary considerations this guideline was included:

"A. The most relevant guideline for setting salary schedules for school psychologists is by reference to the schedules established locally for professional positions with comparable training and experience requirements in other professional fields of public education. It is recommended that salaries paid school psychologists be comparable to those paid general supervisors and/or other pupil services and special education personnel with similar levels of academic training and years of experience. Salary schedules for school psychologists should recognize the more extensive requirements of their master's degree training program in comparison with other professional specialties within education.

"B. A secondary guideline might be by reference to salaries paid school psychologists in the regional area, or by reference to state civil service salary ranges 14 through 18 and accompanying requirements for psychologists."

Psychologists in the Waukesha system all have attained the status of a Psychologist II or "Level II Psychologist". Among other things this calls for the degree status of "Ph.D., Ed.D., or its equivalent (60 graduate semester credits) plus appropriate experience of a 1-year internship as a school psychologist under supervision...." or appropriate experience.

In the course of the hearing, an Association witness, Psychologist Schultz, testified to the effect that social workers should be paid the same as psychologists in that they had to spend more time on a Practicum than psychologists though they did not have as many credits.

The Association introduced evidence relating to "Middle Management Salary Policy" for the period after April 22, 1977, and the period after March 15, 1979 (Assn. Exs. 5 and 6). Under the 1977 document, psychologists, social workers and helping teachers were paid at a rate of 110% of their placement on the teachers' salary schedule and additional work was paid on a per diem basis (Assn. Ex. 5). The same provisions obtained in the 1979 document. These policy documents, however, were not contracts but were unilaterally issued by management after conferring with middle management.

"Middle Management Policies" for 1980-81 was issued after the psychologists and social workers had entered the Association and were represented. A new salary arrangement was created in which there was a placement schedule of 21 steps and 5 columns. Administrators were placed in various steps, according to their responsibilities and then could move to higher compensation in the same step, but a higher column was contingent upon satisfactory evaluations. It was also placed in evidence through testimony that the Board was considering changes in the use of vacation time by shortening it.

The Association listed the salary ranges of High School and Elementary School Principals as shown in its Exhibit 19. These were 1979-80 ranges derived from WEAC bulletin 79-4, April 1980.

The districts listed were those shown in the Association's list of 17 comparable districts. In the range for High School Principals, of 16 districts for which top salaries were given, Waukesha's top was 14th. Among 17 elementary school districts, its top salary was 8th (Assn. Ex. 18).

B. Summary of the Association Position on Salary Comparisons. The Association holds that state requirements for certification of psychologists and social workers are greater than those for most district employees and consequently the psychologists and social workers should have significantly higher salaries. The Association further holds that the salaries of psychologists and social workers in Waukesha have historically been tied to mid-management and general supervisors and have been computed at the rate of 110% of the appropriate teacher schedule placement. This is shown in the experience of Eugene Schultz, the most senior district psychologist, who received a 110% rate increase in every year but one since his 1971 employment. This 110% policy also applied to helping teachers and, with an additional 5%, for the coordinator of outdoor education. The policy is continued for coordinators as a part of middle management for 1980-81.

Further, although the Board seems reluctant to pay the 110% increase for its own middle management, this may be a temporary reluctance for the Board is continuing to pay the 110% rate of the teacher schedule pending settlement here, where placement of a psychologist requires an advance in increment. The policy is historically established and one with which the district had no philosophical or financial difficulties. The policy then should not be changed without a showing of significant needs, and no such need has been shown.

The Association contends that the argument of the Board for reducing the rate at which psychologists and social workers are paid, namely that such raises should never equal administrative raises and never had, is not borne out by fact. However, Association exhibits show that most administrators received a 6.9% raise while all teachers, psychologists and social workers received a 6.7% raise, and where increments were received the percentage increase was far higher.

The Association rejects the linking of the salary rates of psychologists and social workers with administrators' salaries, and the Board contention that the psychologists and social workers' salaries will exceed the pay of administrators. The Association holds that it is the Board's own policy of lowering weekly or daily rates for administrators that is causing the situation. The Association notes that Waukesha administrator salaries are low in comparison to those paid in other metropolitan areas. The reduction then of the salaries of psychologists and social workers under this pressure is not in the interests of the Association.

The Association questions the Board contention that while the pay of psychologists may have been about right, that the pay of social workers is too high, since the Board in its own proposal treats them identically. Lowering the social workers' salary under the Board proposal would penalize the psychologists.

The Association also rejects the Board contention that if the psychologists and social workers had not entered the Union and remained in middle management, they could not have expected to receive the 110% increase this year. The Association says that it has not attempted to state what management should pay its employees, but in view of past policies established by management itself with the 110% rate, this rate should not be abandoned.

The Association objects to the Board's method of averaging low and high salaries. If there is a district with only one social worker, the Board has listed that employee's salary as both the low and high figure in its calculations, and this distorts the high salaries making the Waukesha salary appear inordinately high. The Association's exhibits however show that social worker salaries are in line with those paid in other districts when minimums and maximums are taken into consideration. Further low salaries shown in the Waukesha district list are salaries of employees who are already in the scale, and if the actual starting salaries for the new employees in the past year were considered, it would be seen that they are less than the average of low salaries calculated by the Board.

The Association notes that if the 15.6 FTE psychologists and teachers had been paid on the teacher schedule, they would have received on the average a 12.2% increase over last year's salary, which would have generated an average increase of \$2,082. If the Association offer prevails, the psychologists and social workers would get an increase of \$2,290 per employee. However, the Board offer constitutes an increase of only 10.6% which amounts to an increase of \$1,988 per employee.

C. Summary of the Board's Position. In summarizing the position of the Board, the Board notes that the psychologists and social workers unanimously requested to be dropped from middle management and to be represented by the Association. The salary and fringe benefit schedule of middle management is not a labor agreement, but only the policy of the Board. The Personnel Committee of the Board has decided to eliminate the 110% method for determining salaries of remaining non-supervisory employees, and this determination had been made at the time the psychologists and social workers were still part of middle management, the reason being that their salaries were increasingly inordinately high and were passing the salaries of principals and administrators with greater job responsibility.

The Board contends that the principal of "substantial proof" used by arbitrators in judging whether a change from past and customary practice is justified does not apply here. The reason is that policy toward a non-union group of Board employees should not be the basis of applying this principle, because to do so would be harmful to the Board and the non-union employees in their relationships.

However, even if the substantial proof standard were to be applied, it was the Association and the group of psychologists and social workers who changed the relationship in that the group elected to sever its employees from membership in middle management and to forego all aspects of that membership.

Also if the substantial proof principle were to be applied, the application of the criteria for arbitral judgment provides substantial proof for the change.

The Board, citing the experience of Psychologist Schultz, notes that in his tenure in the district the Board did depart from the 110% standard on one occasion. The Board contends that the selection of the Association offer will burden the district with an inappropriate method of salary determination which is inappropriate in comparison to salaries within and outside the district, and inappropriate as a benchmark.

The Board is not arguing inability to pay, but contends that its offer more nearly meets the criterion of the interest and welfare of the public, because its proposal is more appropriate as determined by comparisons.

The Board contends that a comparison of salaries for psychologists and social workers cannot be made on the basis of salary schedules such as apply to teachers. Both parties showed in their testimony that structural salary schedules do not exist for both groups. Sometimes modified teachers' schedules are used, but a majority of the districts place both groups of employees within a range. The only logical way then to proceed is on the basis of actual low and high salary schedules.

The Board contends that its Exhibit 6 showing actual low and high salaries is more accurate than Association Exhibit 8. This is because in Board Exhibit 6 the salary has been adjusted to 200 days whereas the Association did not make this adjustment in its exhibit. The Board also got its information by contacting school business managers, whereas the Association was unclear and indefinite as to who had been contacted and also as to whether psychologists who are administrators were included. The Board says that in some instances its figures based on 200 days are more favorable to the Association than the Association's figures.

The Board says that the matter of which districts are appropriate for a comparison does not appear to be an issue, because it is so hard to make like comparisons, but it has made three types of comparisons: comparison of TriWauk schools, of contiguous schools, and of the Board's list of schools. The following table shows the results of the Board's calculations on these districts:

Table IX

COMPARISON OF OFFERS IN TRI-WAUK, CONTIGUOUS AND AREA DISTRICTS FOR PSYCHOLOGISTS AND SOCIAL WORKERS AND WAUKESHA COUNTY PSYCHOLOGISTS

	<u>Psychologists</u>		<u>Social Workers</u>	
	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>
A. TriWauk Districts				
Average	15,890	22,879	17,643	19,762
Board	17,268	25,967	19,735	24,798
Association	17,510	26,345	20,022	25,159
B. Contiguous Districts				
Average	18,538 <sup>(1)</sup>	22,830 <sup>(1)</sup>	17,991 <sup>(2)</sup>	18,181 <sup>(2)</sup>
Board	17,268	25,967	19,732	24,798
Association	17,510	26,345	20,022	25,159
C. Area Districts				
Average	18,649	22,920	17,960	20,477
Board	17,268	25,967	19,735	24,798
Association	17,510	26,345	20,022	25,159
D. Waukesha County				
Average	17,888	22,829		
Board	17,268	25,967		
Association	17,510	26,345		

(1) 6 Districts

(2) 5 Districts

The Board is asserting that the adoption of the Association offer would result in paying psychologists and social workers more than most administrators in the district on a per diem basis. District administrators have 230 work days in the year. When their yearly salaries are reduced proportionately to 200 days, the new totals of actual pay rates for most administrators would be less than the top pay for five top psychologists or social workers. The top psychologist would receive a salary higher on a per diem basis than 74% of the administrators, and the four top social workers would receive salaries on a per diem basis higher than 43% of the administrators.

The Board selected at random 17 state school districts to compare elementary school principal's salaries with the highest salaries listed for psychologists and social workers in that district. In all but one district the elementary school principal's salary was higher than that of psychologists or social workers.

The Board listed the percentage increases in the annual salary increases of Psychologist Schultz. His increases range from 4.1% in 1973-1974 to 7.3% in 1975-1976. In 1979-1980 the increase was 6.7%. The average was 5.7%. The Board says that its increase for this year comes to 8.5%. The Board notes further that if the employees who have reached the top of the schedule are removed from the list, the average increase for those employees in lower steps of the schedule is 11.8%.

D. Discussion on Comparison of Salaries with Other Districts. In considering the comparison of the salaries of psychologists and social workers in the Waukesha District with the salaries of the same type of employees in other districts, a number of relationships need to be weighed as to their importance. There is the matter of what districts are really comparable. There is also the matter of whether the use of "low" and "high" salaries, or schedule minimums and maximums are valid. A further complicating factor is whether to use the total salary earned in the normal work year, or to make comparison on the daily rate earned, because the work days in a year vary.

Further there is the matter of how much weight to give to an argument that the salaries of psychologists and social workers should be lower both as to daily rate and yearly rate to administrators. There is also the matter of whether there should be a differential consideration of the rates of psychologists as compared to social workers.

To attempt to resolve the issue, it seems initially useful to address the Association position that the most significant relationship is an internal one - the relationship of the salaries of psychologists and social workers and teachers.

With respect to maintaining the pattern of psychologists and social workers receiving a rate 110% above the teachers' schedule, the arbitrator is not persuaded that this pattern used in the past must necessarily be sustained now because no change in circumstances sufficient to justify the change has occurred. The arbitrator believes that circumstances have sufficiently changed. The 110% rate was, first, the result of a unilateral action of the District after a "meet-and-confer" process with non-union middle management. It was a practice unilaterally established and one which could be unilaterally changed. Secondly, and more importantly, the psychologists and social workers by becoming a represented group, subjected themselves to the test of not only internal comparisons in the District, but also to the test of comparison of salary rates in comparable districts. Thus the arbitrator is of the opinion that a very important factor here is that of comparability of pay rates in the Waukesha districts with pay rates in other districts.

In making this judgment, the arbitrator also rejects the argument of the Board that the salary rates of psychologists and social workers of necessity must be less than Waukesha administrator salaries when compared on a daily rate. For the same reason advanced above, once the psychologists and social workers became represented, their salaries became subject to the standard of comparisons in like districts, and not just and only the matter of whether such salaries in comparison will exceed certain administrator's salaries on a daily rate.

The task now is how to interpret the data furnished by the parties, when the data is so disparate. The matter of psychologists as a class of employees will be considered first. In considering the matter of actual wages paid, the arbitrator finds that this type of consideration has a serious weakness. If all the districts had achieved their rates through individual bargaining, this method would have some validity, but some districts have not done so. Further the method of consideration does not give what the arbitrator thinks is the proper weight to experience and length of service, since this is a factor determining many of the salary schedules. Further where only one employee in the classification of psychologist exists, it does not adequately reflect differences between the concepts of "low" and "high".

Thus the information supplied by the Board and shown in Table VII has deficiencies if the arbitrator used it alone to make a determination here.

The arbitrator does believe however that Table VII is useful for certain general observations, especially with respect to those larger districts which the arbitrator considers most comparable. From a study of the data in this table, the arbitrator is of the opinion that with respect to the most comparable districts the Waukesha entry level for psychologists would be lowest of four districts and both the Board and Association offer would rank 3rd for the maximum salary.

The arbitrator also concludes that without knowing the full range of salaries achievable in the adjacent districts, the Waukesha actual rate and range is superior on the average (though the Association data is sparse on this particular point).

Further, the arbitrator believes the conclusion is justified that social workers on the average do not command the salaries achieved by psychologists in either the most comparable districts or adjacent districts.

A review of the ranges for psychologists supplied by the Association and shown in Table V now is in order. The arbitrator does not find this table fatally defective on the two grounds suggested by the Board, namely that the work days have not been annualized to 200 days and that it may be that psychologists with administrative functions are included. In the opinion of the arbitrator, the matter of the daily rate, while it has significance in summer pay, is likely to be a subordinate concern to an employee when the amount that can be achieved through an annual rate is considered; so annual rates will be considered when minimums and maximums are discussed.

Table V indicates that both Waukesha offers would be third of four most comparable districts for the minimum, and the Association offer would be third at the maximum while the Board offer would be fourth. The information on adjacent districts is too incomplete for any substantial comparison, but range comparisons for nearby districts put Waukesha at

the lower end of the list of comparables. However, most of the nearby districts are in Milwaukee County and are more subject to the influence of the higher rates in the Milwaukee Public Schools.

Recognizing then that the Waukesha school district is partly urban and partly rural, and not in Milwaukee County itself where rates tend to be higher, and recognizing further that adjacent districts do not, on the whole, currently meet the Waukesha levels of compensation, the arbitrator concludes that the Waukesha District is making a reasonable effort for psychologists salaries with an 8.5% increase for persons at the top of the schedule and an average of 11.8% for persons in the steps of the schedule, and the Board having made this offer meets the statutory criterion of comparability on the issue of this aspect of the salary offer.

With respect now to the salaries of social workers, the arbitrator is of the opinion that the evidence indicates that the Waukesha District is paying a higher rate than most other comparable districts, not only on the basis of "lows" and "highs", but likely on the basis of maximums and minimums, though the evidence is not conclusive, and one has to rely on older data such as Association Exhibit 19, the WEAC Research Bulletin 79-4.

The weight of the factor of comparable districts then falls to the Board.

#### XIII. SUMMER PAY.

A. The matter of the proposals for summer pay will now be considered.

B. The Board's Position Summarized. The Board contends that the Association's own exhibit on summer pay supports the Board's position. Only 10 of 23 districts work on a per diem basis, and 13 do not, some not even offering summer work.

The Board says that its proposed rate for summer pay would give five of eight psychologists more than the per diem rate, and three would get less. Social workers have little or no summer work.

C. The Association's Position Summarized. The Association notes that its proposal is to have summer pay set at the same rate per day as the normal work year rate would produce when calculated on a daily basis. The testimony is that psychologists do exactly the same work in the summer as they do during the school year. The work is not clerical and is different from that performed by teachers.

Work beyond the normal work year is normally compensated at a rate in excess of straight time. The Board in its position, although it is proposing to pay some employees more than straight time, is proposing to pay others less.

Association Exhibit 8 shows the following information:

A. Districts paying full per diem: Wauwatosa, West Allis, Greenfield, Greendale, Oak Creek, Mequon-Thiensville, Whitefish Bay, West Bend (9 days maximum), La Crosse, Eau Claire, Green Bay, Madison, Milwaukee (social workers).



B. Districts which pay a proportion of per diem: Shorewood, Milwaukee (psychologists).

C. Hourly rate: New Berlin, Waukesha Board proposal.

D. Other: Kenosha (6 weeks at \$300 per week).

E. No additional pay: Elmbrook, Menomonee Falls, Mukwonago, Franklin, Sheboygan.

D. Discussion. From the data provided, it is the opinion of the arbitrator that where the opportunity for summer pay is afforded, the criterion of comparability favors the Association's offer, both as to the most comparable districts and as to its general list of districts. The Waukesha Board notes that most of the districts cited in the Association exhibit either do not offer summer pay, or pay only a fraction of the daily rate, or have some other method of payment. However, in the opinion of the arbitrator, once the opportunity exists and the work is for a full day, the most common method of payment is on a per diem basis. By this standard then, where summer pay is offered for a full day, the Association offer meets the test of being most comparable.

#### XIV. PAY OF NEWLY EMPLOYED PSYCHOLOGISTS AND SOCIAL WORKERS.

A. The Board is proposing the following:

"Any psychologist or social worker newly employed after the ratification of this section shall be paid at 1.00 times the appropriate step on the schedule. Psychologists and social workers will be employed for an additional ten (10) days (total of 200 days) with salary for those days on a per-diem basis." As the arbitrator understands this provision, the total annual pay of the newly hired employees under the Board offer would come to a level of 1.052+ of the teachers' salaries in the same placement step. The proposal would "red-circle" existing employees at their current rates.

B. The Board Position on Salaries for New Hires. The Board says that its position of holding psychologists and social workers to the same base pay as the teachers is simply applying the principle of red-circling, to which the Association had agreed when the Association and the Board agreed to eliminate an additional premium of 3% of the base for all newly hired counsellors. If the principle was not onerous to the Association in that instance, it should not be onerous now.

That social workers should be red-circled now is due to the fact that they perform tasks identical to counsellors for much of the job. The single significant difference is that they assist principals in court hearings on students.

C. The Association Position on Salaries for New Hires. The Association says that the Board proposal to establish a salary scale for psychologists and social workers hired from this contract forward by setting the scale at a significant level below that for current employees will create a potential for labor unrest. The Association acknowledges that it did agree at the urging of the district and in recognition of a change in counsellors' work, to eliminate a contract provision paying counsellors an extra 3% on base. Those who had received this pay were "red-circled". The Association, however, regards the red-circling here which provides a different pay scale for newly hired psychologists and social workers as the most onerous of the Board's proposal. The new scales could amount to between \$500 and \$720 less for new employees for the first year and much more later.

The salaries paid psychologists and social workers now are not out of the range of reality. If this proposal of the Board is sustained, the Association would have to come to the bargaining table in a short time to restore reality.

D. Discussion. As the arbitrator perceives the effect of the Board proposal for a new pay scale for new hires, the newly hired employees would be getting a salary about 1.052 times the salary of teachers in the same placement level. This is a rate which might be justified for social workers on the basis of comparability (although the evidence is not conclusive), but it is not a rate which the standards of comparability would justify for the psychologists. The arbitrator is not persuaded that it is in the interests of the public to set the starting salaries for psychologists lower than what comparability would indicate in order to obtain a lower rate for social workers who may be paid too high. It could likely produce additional disputes. The Board, not having divided the two classifications in its final offer, presents the arbitrator with the task of deciding wherein the public interest lies - whether to compensate the psychologists adequately while paying social workers above a level justified by comparability, or to pay psychologists less than what comparability would require to have social workers paid a comparable salary. The arbitrator believes that the public interest lies in the former course, wherein the psychologists with their higher educational qualifications are paid adequately. The arbitrator does not believe that reducing the differential between psychologists already hired from a 1.08 relationship to teachers' salaries to a 1.05 ratio with a longer work year is justified.

On the criteria of comparability and interests of the public, the Association offer here more nearly meets statutory standards.

XV. OVERALL COMPENSATION. The matter of overall compensation was not addressed by the parties.

XVI. COST OF LIVING. The matter of the cost of living was not addressed by the parties. The arbitrator, taking arbitral notice of changes in the cost of living during the pendency of the proceedings, notes that the CPI-W for the Milwaukee area for March reached a 10.8% increase.

XVII. OTHER FACTORS. The arbitrator perceives no other factors as being raised by the parties.

XVIII. SUMMARY. The following summarizes findings and conclusions of the arbitrator:

1. There is no question of the lawful authority of the Employer to meet either offer.

2. All other matters in reaching an agreement have been stipulated to by the parties.

3. There is no question here of the ability of the unit of government to meet either offer.

4. The arbitrator is of the opinion that for comparison purposes there are groups of districts ranging in degree of comparability in rank, the most comparable being Waukesha, West Allis, Wauwatosa and New Berlin, followed by adjacent or contiguous districts, nearby districts and districts in the region, in that order.

5. On the basis of comparability, the Board offer for salary with an 8.5% increase for employees at the top of the range and 11.8% increase for employees in the steps meets the statutory criterion of comparability.

6. On the basis of comparability, the Association offer meets the test of being most comparable where summer pay is offered for a full day's work.

7. On the matter of new hires, the arbitrator believes that the Board proposal for newly employed psychologists does not meet the test of either comparability or the interest and welfare of the public.

8. No evidence was offered on the matter of overall compensation.

9. The cost of living increases as reflected in the CPI-W for the Milwaukee metropolitan area surpasses the Board offer, and the Association offer is closer.

10. The arbitrator perceives no other factors to be considered than those above cited.

Of the foregoing factors, in the opinion of the arbitrator the two most significant are those involving salary, which favors the Board's offer, and the matter of a new salary scale for new hires, which favors the Association's position. The arbitrator believes that the latter item is predominant. A new and lower salary schedule for psychologists (though not for social workers) is not justified either on the basis of comparability, nor on the basis of public interest, because of the potential for further dispute.

On the basis of the above discussion, the following award is made:

XIX. AWARD. The new Agreement between the School District of Waukesha and the Waukesha Education Association should include the final offer of the Association.



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FRANK P. ZEIDLER  
ARBITRATOR

DATE: April 28, 1981