

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

FEB 22 1982

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of the Petition of :

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HOWARDS GROVE EDUCATION ASSOCIATION : Case IV

: No. 28071

To Initiate Mediation-Arbitration : MED/ARB-1191

Between Said Petitioner and : Decision No. 18941-A

:

SCHOOL DISTRICT OF HOWARDS GROVE :

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APPEARANCES: Richard Terry, Executive Director, Kettle Moraine
UniServ Council, on behalf of the Association

Ken Cole, Director, Employee Relations, Wisconsin
Association of School Boards, Inc., on behalf of
the District

On September 21, 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 Howards Grove Education Association, hereafter the Association, and the School District of Howards Grove, hereafter the District or the Board. Pursuant to statutory responsibilities, the undersigned conducted mediation proceedings between the District and the Association on November 5, 1981. Said mediation effort failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on November 19, 1981 for final and binding determination. Post hearing exhibits and briefs were filed by both parties by January 8, 1982. 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 substantive issues in dispute include disputes over the salary schedule, health insurance contributions and benefits, just cause, and layoffs. The parties generally agree on what constitutes comparable school districts, but disagree as to whether or not the Kiel School District should be included among the comparables. Since the comparability issue has a significant impact on all of the other substantive issues in dispute, it will be discussed first. Thereafter, the merits of the substantive issues in dispute will be discussed individually. Finally, the relative merit of the total final offers of both parties will be considered and discussed.

COMPARABILITY

The parties agree that the following districts are comparable to Howards Grove: Brillion, Cedar Grove, Chilton, Elkhart Lake, Fredonia/Ozaukee, Kohler, Mishicot, Oostburg, Random Lake, Reedsville, and Valders.

The District also submits that Kiel is a comparable district.

The Association contends that the comparability of Kiel is dubious since it is the largest of the listed comparables and it is higher above the average, as measured by the number of pupils, than is the lowest district, Kohler, below the average.

The District believes that the Kiel District is an appropriate comparable since its enrollment is within 500 pupils of the District's and because it is contiguous to the District.

DISCUSSION

Although the undersigned usually is not disposed to reject comparables proposed by both parties, the comparables which will be utilized in

this proceeding will be limited to those districts proposed by both parties which have settled 1981-1982 collective bargaining agreements, and which do not have split salary schedules in either the 1980-81 or 1981-82 school years. The undersigned has deleted proposed comparables which do not meet the above criteria since there are a sufficient number of remaining proposed comparables to provide a reliable basis of comparison, since it is unfair in the undersigned's opinion to compare final offer proposals to other unresolved final offer proposals in otherwise comparable districts, and since split salary schedules provide a less reliable basis for salary comparisons than do salary schedules in effect for an entire school year.

For all of the foregoing reasons, the undersigned has selected the following districts as the comparables which will be utilized in this proceeding: Brillion, Cedar Grove, Chilton, Kohler, Oostburg, Fredonia/Ozaukee, Random Lake, and Valders.

SALARIES

On the salary schedule, both parties propose a horizontal increment of \$400 between lanes. The Association proposes a vertical increment of \$500, while the District proposes \$490. The base salary proposed by the Association is \$12,050 while that proposed by the District is \$12,000.

The parties agree that the dollar amount difference between the two offers is approximately \$8,000 in salary and \$14,000 for the total package.

The District has not raised the issue of ability to pay.

ASSOCIATION POSITION

At the BA minimum level, both the District and Association final offers result in a slight improvement in the District's ranking among comparables.

At the BA maximum, both proposals will result in the District remaining in last place among comparables. The only question to be decided is how far behind the District should be.

A similar analysis can be made at the MA maximum.

At the BA 7th step, the Association is asking no more than to maintain the status quo in terms of its ranking among comparables.

At the MA - 10th step, the District, even under the Association proposal, will lose ground among comparables.

Thus, the Association is not attempting to seek parity with the wage leader among comparables, or in most cases, even move up to the middle of the rankings. However, it is trying to prevent further loss in ranking within comparable districts, which would occur with the adoption of the District's proposal.

The Association's proposal is more consistent with the prevailing averages at most of the benchmarks on the salary schedule, and allows for some degree of catch up in terms of dollars earned. The District's offer on the other hand, in several places on the salary schedule, increases the gap between the District's salaries and the average of comparable districts. This is particularly true at the top end of the salary schedule.

In fact, the Association's salary proposal is much closer to the traditional relationships that have existed in terms of salary comparisons since 1979-1980.

Although the longevity payment found in both parties' final offers will result in a gain in compensation by those at the top of the salary proposal, more than half of the comparable districts have longevity provisions. Thus, even with the addition of longevity, the District's teachers are still far behind the average among

comparables in terms of total compensation received. The addition of a benefit enjoyed by other comparable districts should not be used as an excuse to reduce salary rankings of the District.

At the same time that the CPI indicates that we have experienced double digit inflation for the past two years, the District is proposing that its teaching staff lose relative ground in their ability to compete with teachers in comparable districts to purchase goods and services in the same geographical area.

Lastly, the District's teachers need a greater percentage increase than teachers in comparable districts due to their relatively low wage rate just to keep up with such comparable districts.

DISTRICT POSITION

A year ago the parties reached a two-year agreement covering the 1980-81 and 1981-92 school years. Included in this agreement was a reopener that provided that the agreement could be renegotiated if the rate of inflation exceeded 12% as measured by the All Cities C.P.I. The Association by this prior agreement had indicated that up to 12% inflation would be compensated for by the 10.25% settlement previously reached. The Board understood that with inflation slightly in excess of 12% during January that an upward adjustment would have to be made. The Board therefore offered to settle at about 11.9%, while the Association is seeking an increase well in excess of the rate of inflation in any month during 1981, i.e., about 13%. The Board believes that such an adjustment is totally unjustified and unreasonable given the context of the bargaining as part of a reopened agreement and the weight given to the CPI as part of that reopener.

The Board's offer is also well in excess of the rate of inflation as measured by the CPI. In only one month of 1981 was the rate of inflation in excess of the Board's offer. Furthermore, at no time during 1981 or 1980 has the rate of inflation been equal to the magnitude of the increase proposed by the Association.

The Board contends that it has enhanced its position at the BA Base both in terms of its ranking and as its proposed base relates to the average.

At the BA Maximum, the District's ranking remains unchanged with a slight deterioration relative to the average.

At the MA Base, the District has again significantly improved both its ranking and its position relative to the average.

At both the MA Maximum and the Schedule Maximum the District's position is maintained relative to its ranking, however, there is again a slight deterioration relative to the average. However, the deterioration at the schedule maximums is more than compensated for by the addition of the Board's proposed longevity payments.

The longevity concept is not a dominant concept among the comparables. About one half of the districts have longevity and fewer still have provisions that generate the amount of money offered by the District within the same time frame.

The Board has not made an ability to pay argument and therefore any analysis of proposals based on budget impact is inappropriate.

DISCUSSION

The following tables reflect ten salary benchmarks among the comparable districts the undersigned has selected. Charts 1 and 2 indicate that at the B.A. and M.A. bases, the District's offer is the more reasonable of the two in that it more closely approximates the average increase granted in comparable districts, it improves the relative ranking of the District among comparables, 1/ and it improves the relative position of the District as compared to the average salary paid at each of these levels in comparable districts.

1/At the BA Base.

CHART 1
BA Base

	<u>1980-81</u>	<u>1981-82</u>	<u>% Increase</u>
Brillion	11,000	11,750	6.8
Cedar Grove	10,900	11,900	9.2
Chilton	11,050	12,000	8.6
Kohler	11,300	12,250	8.4
Oostburg	10,700	11,875	11.
Fredonia/Ozaukee	11,275	11,320	9.3
Random Lake	11,025	12,050	9.3
Valders	11,100	11,925	7.4
Average	11,043.75	11,883.75	8.8
Howards Grove	11,000.00 (6/7) *		
		Board 12,000 (3/4) *	9.1
		Assn. 12,050 (2/3) *	9.5
Variance from Average	-43.75	Board +116.25 Assn. +166.25	

*Ranking out of 9 districts

CHART 2
MA Base

	<u>1980-81</u>	<u>1981-82</u>	<u>% Increase</u>
Brillion	11,900	12,650	6.3
Cedar Grove	11,900	13,390	11.7
Chilton	11,750	12,700	8.1
Kohler	12,769	13,843	8.4
Oostburg	12,305	13,656	11.
Fredonia/Ozaukee	12,967	14,168	9.3
Random Lake	12,679	13,858	9.3
Valders	11,800	12,725	7.8
Average	12,258.75	13,373.75	9
Howards Grove	12,050 (5) *		
		Board 13,260 (6) *	9.5
		Assn. 13,250 (6) *	10.
Variance from Average	-208.75	Board -173.75 Assn. -123.75	

*Ranking out of 9 districts

CHART 3
BA 7th Step

	<u>1980-81</u>	<u>1981-82</u>	<u>% Increase</u>
Brillion	13,430	14,378	7.
Cedar Grove	14,170	15,470	9.2
Chilton	14,089	15,300	8.6
Kohler	15,255	16,538	8.4
Oostburg	13,910	15,438	11.
Fredonia/Ozaukee	14,658	16,016	9.3
Random Lake	14,333	15,665	9.3
Valders	13,455	14,730	9.5
Average	14,162.50	15,441.88	9.
Howards Grove	13,730(7) *		
	Board	14,940(7) *	8.8
	Assn.	15,050(7) *	9.6
Variance from Average	-432.50		
	Board	-501.88	
	Assn.	-391.88	

*Ranking out of 9 districts

CHART 4
MA 10th STEP

	<u>1980-81</u>	<u>1981-82</u>	<u>% Increase</u>
Brillion	15,815	16,916	7.
Cedar Grove	16,895	18,745	11.
Chilton	16,744	18,098	8.1
Kohler	18,193	19,724	8.4
Oostburg	17,120	19,000	11.
Fredonia/Ozaukee	18,041	19,712	9.3
Random Lake	17,640	19,280	9.3
Valders	15,370	16,970	10.4
Average	16,977.25	18,555.63	9.3
Howards Grove	16,145(7) *		
	Board	17,610(7) *	9.
	Assn.	17,750(7) *	9.9
Variance from Average	-832.25		
	Board	-945.63	
	Assn.	-805.63	

*Ranking out of 9 districts

CHART 5
BA MAXIMUM

	<u>1980-81 No. of Increments</u>	<u>1981-82 No. of Increments</u>	<u>% Increase</u>
Brillion	16,265/13	17,444/13	7.2
Cedar Grove	16,350/9	17,850/10	9.2
Chilton	16,299/10	17,700/10	8.6
Kohler	18,080/12	19,600/12	8.4
Oostburg	16,585/11	18,406/11	11.
Fredonia/Ozaukee	17,476/11	19,096/11	9.3
Random Lake	18,743/14	20,485/14	9.3
Valders	16,795/15	18,670/14	11.
Average	17,074.13/11.9	18,656.38/11.9	9.3
Howards Grove	15,550/10(9)*		
		Board 16,900/10(9)*	8.7
		Assn. 17,050/10(9)*	9.6
Variance from Average	-1,524.13	Board -1,756.38	
		Assn. -1,606.38	

*Ranking out of 9 districts

CHART 6
MA MAXIMUM

	<u>1980-81 No. of Increments</u>	<u>1981-82 No. of Increments</u>	<u>% Increase</u>
Brillion	17,990/14	19,286/14	7.2
Cedar Grove	20,105/15	22,315/15	10.7
Chilton	19,958/19	20,955/15	8.1
Kohler	20,453/14	22,173/14	8.4
Oostburg	19,260/13	21,375/13	11.
Fredonia/Ozaukee	20,860/14	22,792/14	9.3
Random Lake	20,948/15	22,895/15	9.3
Valders	18,025/16	20,075/15	11.4
Average	19,699.87/15	21,483.25/14.4	9.4
Howards Grove	18,420/14(7)*		
		Board 20,060/14(8)*	8.9
		Assn. 20,250/14(7)*	9.9
Variance from Average	-1,279.87	Board -1,423.25	
		Assn. -1233.25	

*Ranking out of 9 districts

CHART 7
SCHEDULE MAXIMUM

	<u>1980-81 No. of Increments</u>	<u>1981-82 No. of Increments</u>	<u>% Increase</u>
Brillion	17,990/14	19,286/14	7.2
Cedar Grove	20,819/15	23,209/15	11.5
Chilton	20,296/19	21,285/15	7.9
Kohler	22,600/16	24,500/16	8.4
Oostburg	21,721/13	24,107/13	11.
Fredonia/Ozaukee	22,129/14	24,640/14	11.3
Random Lake	22,271/16	24,341/15	9.3
Valders	18,425/16	20,475/15	11.1
Average	20,781.38/17	22,730.38/14.6	9.7
Howards Grove	19,225/15(7) *		
		Board 20,950/15(7) *	9.
		Assn. 21,150/15(7) *	10.
Variance from Average	-1,556.38		
		Board -1,780.38	
		-1,580.38	

*Ranking out of 9 districts

CHART 8
1981-82 SALARY + LONGEVITY COMPARISONS

	<u>BA (15 yrs)</u>	<u>MA (20 yrs)</u>	<u>Schedule Max(21 yrs)</u>
Brillion	17,260	19,470	19,470
Cedar Grove	17,850	22,315	23,209
Chilton	17,700	21,563	21,901
Kohler	18,080	22,573	24,900
Oostburg	18,406	21,375	24,107
Fredonia/Ozaukee	19,096	22,792	24,640
Random Lake	20,485	22,895	24,341
Valders	18,670	20,075	20,475
Average	18,488.38	21,632.25	22,880.38
Howards Grove			
Board	16,900(9) *	21,560(6) *	22,950(6) *
Assn.	17,050(9) *	21,750(5) *	23,150(6) *
Variance from Average			
Board	-1,588.38	-72.25	+69.62
Assn.	-1,438.38	+117.75	+269.62

*Ranking among 9 districts

Charts 3 and 4 indicate that at the BA 7th step and MA 10th step, the District's offer is slightly more reasonable than the Association's in that it more closely approximates the average increase granted in comparable districts in terms of percentages and it preserves the District's relative ranking among comparables. However, the weight to be given to the foregoing facts is somewhat diminished by the fact that in both instances, the District's offer increases the distance between the District and the average salary at each of these steps in comparable districts.

Charts 5 and 8 indicate that at the BA Maximum, with or without longevity, the Association's proposal is the more reasonable of the two. In either case, the District ranks last among comparables and is substantially below the average salary paid at this level.

Charts 6 and 8 indicate that at the MA Maximum, without longevity, the Association's proposal is the more reasonable of the two since in percentage terms it is the same distance from the average as is the District's offer; since it preserves the District's relative ranking and does not increase the difference between the District's salary and the average salary paid in comparable districts, as does the District's offer. However, when longevity adjustments are factored into the comparisons, the District's position becomes the more reasonable of the two in that it improves the relative ranking of the District and significantly diminishes the difference between the District's salary offer and the average in comparable districts.

While the undersigned recognizes that the diversity of longevity arrangements makes comparisons difficult, Chart 8 does indicate that a long-term employee of the District with an M.A. degree does have the potential of receiving a competitive salary to that received by teachers similarly situated in comparable districts under the District's offer, which the undersigned understands to be a high priority consideration of the Association.

An analysis of Charts 7 and 8 relating to the schedule maximum results in similar conclusions to those reached above regarding the MA maximum, although at this level, the relative merit of the District's proposal is slightly greater than at the MA level. This is so since at the Schedule Maximum, plus longevity, the District eradicates the difference between its salary and the average salary in comparable districts, and in fact, slightly exceeds the average with its offer.

Based upon all of the foregoing, the undersigned concludes that the District's proposal is more reasonable and comparable than the Association's at at least six of the ten benchmarks utilized as a basis of comparison; that at two of these benchmarks, i.e., the MA maximum and schedule maximum, including longevity, the District's offer reasonably responds to high priority concerns of the Association; and that accordingly, in its entirety, the District's final offer is slightly more reasonable than the Association's in this regard.

HEALTH INSURANCE COVERAGE AND BENEFITS

The current agreement provides for a 100% payment of single insurance premiums and a 95% payment of family insurance premiums. The District seeks to change to a dollar amount of \$33.42 for the single premium and \$94.52 for the family premium. This amounts to 100% of both the single and family premium until May 1982, after which the premiums may or may not be increased. The Association's final offer provides for 100% payment of both the family and single premium by the District, expressed in percentage terms.

The Association also is proposing a new bridgework benefit.

ASSOCIATION POSITION

Any departure from a collective bargaining agreement currently in effect should require some justification on the part of the party proposing it. The District in the instant case has offered no justification for the proposed departure from the current practice of paying of insurance premiums expressed as a percentage.

Furthermore, the increase from 95 to 100% in this regard is fully supported by the practice in comparable districts.

Relatedly, the inclusion or exclusion of bridgework should not be determinative in the instant dispute. While it is true that the District would rank among the leaders in terms of this benefit, a small fringe benefit is not sufficient to offset an already severely disparate salary situation.

DISTRICT POSITION

The issue with respect to health insurance contributions is mainly the result of the volatility of the premium rates.

The District is part of a multi-district insurance program through the CESA organization, and therefore, it is not possible for the District to change the anniversary date. Asking the teachers to pay two months of premium increases is not a significant amount, especially since it represents the bulk of the individual's contribution to a relatively expensive but highly desirable benefit.

With respect to the issue of increased dental benefits, said demand is not supported by the practice in comparable districts.

DISCUSSION

Reference to the health insurance coverage afforded in comparable districts indicates that six of the eight comparables utilized provide 100% coverage of both the family and single policies, which supports the comparability and reasonableness of the Association's position on this issue. On the other hand, only three comparable districts clearly have a benefit similar to the bridgework benefit requested by the Association, which makes the District's position slightly more reasonable on this issue. Overall however, on the insurance issue, the Association's position would appear to be more comparable to the benefit in comparable districts than the District's position, and therefore, the Association's offer on this issue is deemed to be the more reasonable of the two.

JUST CAUSE

Both parties seek changes in the current collective bargaining agreement pertaining to just cause.

The District's final offer provides that, "excepting teachers new to the District, no teacher shall be non-renewed, discharged, denied an increment, suspended without pay or dismissed except for willful neglect of duty; repeated violations of written administrative directives and/or rules of the District, conviction of a felony, immorality, physical or mental incapacity to perform his/her duties; incompetency; or for other just cause."

The Association final offer states that, "no teacher shall be non-renewed, discharged, disciplined or dismissed except for just cause. This standard applies to all excepting probationary teachers."

ASSOCIATION POSITION

If the District's offer regarding just cause were selected, the District would be alone among comparable districts in not providing for just cause for discipline. On the other hand, the Association's offer simply provides the protection afforded all teachers within the comparables.

The District's argument that its offer guarantees employees just cause lacks credibility. If that were the case, there should be nothing objectionable to the District in the Association's final offer.

Instead, the District's offer incorporates many standards in discipline and discharge cases, only one of which is just cause.

DISTRICT POSITION

With respect to the issue related to the just cause standard, the Association has not pointed to any problems it has experienced with the existing language.

In response to the Association's contention that the District is not really proposing just cause, the Board contends that the reasons given in the provision are merely examples of the type of infractions that would be considered as just cause for termination.

Furthermore, the existing provision is the equivalent to those provisions contained in the Valders, Mishicot and Brillion agreements.

DISCUSSION

Although the undersigned agrees with the District's contention that its proposal does not deprive the employees of just cause protection, there has been no demonstration of the need for the use of examples proposed by the District. In addition, the District's proposal does not provide teachers just cause protection in instances where they might receive disciplinary reprimands or warnings, which protection arguably exists in most of the comparable districts. Thus the Association's proposal is the more reasonable of the two.

LAYOFFS

The District proposes continuation of the layoff language in the current Agreement. The Association proposes five changes from the current agreement.

One, it proposes eliminating the clause which allows the District to retain less experienced teachers for curricular or programatic reasons.

Secondly, it proposes the elimination of the deadline for contingent contracts issued in anticipation of certification.

Thirdly, it proposes elimination of the reference to departmental seniority pools at the secondary level.

Fourthly, it proposes that laid off teachers only be required to accept "equivalent" positions rather than any available position without forfeiting their layoff rights.

Lastly, it proposes to eliminate the six-year limit on accrued seniority for teachers who have been involuntarily transferred from one seniority pool to another, so that such teachers can retain all of their accrued seniority.

ASSOCIATION POSITION

The Association seeks to frame the layoff pools into three distinct categories: elementary, secondary and special certifications. The current Agreement provides for layoff pools of elementary, secondary, and special certification, with layoff at the secondary level being implemented on a departmental basis.

Generally, certification is by high school area; where that is not the case, specialists have been recognized in both the current Agreement and in the Association's final offer.

The Association is asking for no great change in the number of layoff pools. The District is proposing five pools, and the change from five to three is not very significant. In addition, the number of pools proposed by the Association is more in accord with the practice in comparable districts.

The change proposed by the Association pertaining to exceptions to layoff by seniority for curricular and programatic reasons is also supported by the practice in comparable districts. In fact, the protection of curricular programs is also addressed by virtue of the District's ability to lay off within areas of certification.

If the District's programatic reasons are extra-curricular or athletic programs, the Association finds that definition to be objectionable in light of the District's current practice of hiring non-bargaining unit personnel to fill such jobs.

The current language provides that an employee who refuses any recall shall forfeit all rights to a position for which she/he may be qualified. The Association's offer is designed to protect the employees who are on layoff from recall to a position which perhaps is insufficient to support their family. Under the District's proposal, an employee who was employed 100% could be recalled to a 30% job; and refusing same could then cause that employee to forfeit all rights to recall to a full-time position as it became available.

The retention of seniority when transferred is supported by the practice in comparable districts.

If the District chooses to transfer an employee from one seniority pool to another, maintaining seniority certainly seems a minimal right that the employee should be granted.

DISTRICT POSITION

The curricular and programatic exception in the current layoff language is no different than the provision in the Chilton District that allows for lay offs outside of seniority order if it is necessary because of educational interests. Similarly, in Mishicot and Brillion, both lay off clauses reflect the need of the District to lay off outside of the order of seniority. Brillion uses the expression "capable, qualified and numerically adequate." Mishicot utilizes the words "qualified for their positions as determined by Superintendent."

The Board recognizes that it would have the burden of proof in those lay off situations where seniority was not utilized precisely, but it also recognizes the need to have that option available.

The Association has not shown any difficulty with the current layoff provision. Therefore, the language should remain unchanged.

DISCUSSION

The issues raised by the parties pertaining to layoffs are the most difficult to analyze in terms of comparables. Because of the diversity of approaches to this problem which have been utilized in comparable districts, and because of the ambiguity which exists in many of their layoff provisions, reliable comparisons cannot be made in most instances. Therefore, with respect to this issue, the relative merits of the parties' respective positions must in large part depend on the reasonableness and persuasiveness of the parties' arguments.

Perhaps the most significant issue affecting layoffs is whether there should be programatic and curricular exceptions to the use of seniority in layoffs. On this issue the District concedes that if an exception were necessary, it would have the burden of proving the need for such an exception if its actions were contested. In light of this admission, and the references in other procedures to qualifications and teaching experience as valid criteria which deserve at least some consideration, the undersigned deems the District's position to be slightly more reasonable than the Association's. In this regard, the undersigned believes that further refinement and definition of the District's proposal would be preferable so that potential disputes could be dealt with in the negotiation process rather than in the grievance and arbitration procedure. In this respect, the parties might wish to address the question as to what constitutes legitimate programatic and/or curricular exceptions to the use of seniority for layoff purposes.

The second most significant issue pertaining to layoffs involves the number of layoff pools which should be utilized. On this specific issue, neither party has presented persuasive evidence or argument supporting the relative merits of their respective proposal. Patterns do not seem to be well established in comparable districts, problems

and inequities in the present departmental pool arrangement have not been demonstrated, and perhaps most importantly, there does not appear to be a clear understanding between the parties as to how the present arrangement would be implemented. For all of these reasons, the undersigned concludes that the record does not demonstrate that either party's position is substantially more meritorious than the other's on this issue, and therefore, no weight will be given to the issue in determining the relative merit of the parties' final offers on the layoff issue. It does seem clear however that additional attention should be given to the issue in future rounds of negotiations to assure that some common understanding can be reached regarding same.

Thirdly, although layoff provisions in comparable districts do not appear to address the question raised herein regarding the issuance of contingent contracts in anticipation of certification, the provision in the current agreement does not appear to be unreasonable on its face, and a persuasive argument has not been made demonstrating inequities which might arise thereunder. Therefore, the undersigned concludes that the District's position is the more reasonable of the two in this regard.

Fourthly, the Association has also presented a persuasive argument, which has not been rebutted by the District, in support of the reasonableness of its contention that laid off individuals should not be required to accept any available position or face the forfeiture of all of their layoff rights. Accordingly, the Association's proposal on this specific issue is deemed to be the more meritorious of the two.

Lastly, though reference to comparable experience is missing, the Association has made a persuasive argument that limiting accrued seniority for involuntarily transferred teachers to a maximum of six years imposes unduly harsh potential consequences on such teachers during periods of layoff. Accordingly, the undersigned deems the Association's proposal in this regard the more reasonable of the two.

Based upon all of the foregoing, when viewed in its entirety, the District's layoff proposal is deemed to be the more reasonable of the two, although modifications and clarification of the layoff procedure would appear to be justified in future rounds of negotiations. This conclusion is based primarily on the fact that in the undersigned's opinion, the issue related to seniority versus programmatic and curricular considerations is significantly more important to both parties than the other layoff issues raised herein.

TOTAL FINAL OFFER

Based upon the foregoing discussion of all of the individual issues in dispute, the undersigned concludes that the District's total final offer is the more reasonable of the two. Of the four basic issues in dispute, the most critical issue to both parties under the contract reopener in question clearly is salaries. For the reasons discussed above, the District's final offer on said issue has been deemed to be the more reasonable of the two.

Of the remaining issues, the District's position in layoffs is more reasonable than the Association's, and the Association's positions on just cause and insurance coverage and benefits has been deemed to be more reasonable than the District's positions on these issues. Where, as here, the contract has been reopened as a result of an unanticipated increase in the CPI, the relative merit of the District's position on salaries and layoff, two critical issues having serious economic consequences on both parties, justifies the undersigned's selection of its total final offer, in spite of the fact that the Association's final offer is relatively more meritorious than the District's with respect to several other issues of lesser importance.

Accordingly, and for all of the foregoing reasons, the undersigned renders the following

ARBITRATION AWARD

The 1981-1982 agreement between the Howards Grove Education Association and the School District of Howards Grove shall include the final offer of the District which has been submitted herein.

Dated this 17th day of February, 1982 at Madison, Wisconsin.

BY Byron Yaffe
Byron Yaffe, Arbitrator