BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Petition of

GATEWAY VOCATIONAL, TECHNICAL & ADULT EDUCATION DISTRICT CLERICAL EMPLOYEES LOCAL 2738, AFSCME, AFL-CIO

To Initiate Mediation-Arbitration between said Petitioner and

GATEWAY TECHNICAL INSTITUTE

Case No. XXII
No. 28332 MED/ARB-1303
Decision No. 19120-A

APPEARANCES: KENNETH P. NIEMEYER, Coordinator of Personnel Services, representing the District

ROBERT CHYBOWSKI, District Representative, representing the Association

ARBITRATION AWARD

Gateway Technical Institute, hereinafter referred to as the District, and the Gateway Vocational, Technical & Adult Education District Clerical Employees Local 2738, AFSCME, AFL-CIO, hereinafter referred to as the Union, were unable to voluntarily resolve a number of the issues in dispute in their negotiations for a new 1981-1983 Collective Bargaining Agreement to replace their expiring 1979-1981 Collective Bargaining Agreement, and the Union, on July 8, 1981, petitioned the Wisconsin Employment Relations Commissions (WERC) for the purpose of initiating mediation-arbitration pursuant to the provisions of Section 111.70(4)(cm)6 of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was an impasse which could not be resolved through mediation, certified the matter to mediation-arbitration. The parties selected the undersigned from a panel of mediator-arbitrators submitted to them by the WERC and the WERC issued an Order, dated November 30, 1981, appointing the undersigned as mediator-arbitrator. The undersigned endeavored to mediate the dispute on March 10, 1982 but mediation proved unsuccessful. By prior written consent of the parties, further hearing in the matter was waived in lieu of the filing of written arguments with attached exhibits to be exchanged simultaneously with an automatic right of reply. The parties' initial briefs with attached exhibits, were exchanged on April 17, 1982, and their written reply arguments were exchanged on April 30, 1982. Full consideration has been given to the evidence and arguments presented in rendering the Award herein.

THE ISSUES IN DISPUTE:

There are three remaining issues "in dispute" between the parties. They are:

1. Fair Share.

The parties' 1979-1981 Collective Bargaining Agreement did not contain a fair share provision. It did provide for deduction of Union dues upon written authorization of the employee.

A. District's Offer. The District proposes to include a

fair share agreement in the 1981-1983 Collective Bargaining Agreement. However, its proposal differs from the Union's proposal in two significant respects. First of all, the District's fair share agreement would become effective only after it has been ratified by a referendum conducted among all full-time employees in the bargaining unit, provided at least 60% of the eligible voters vote in favor of such agreement. The proposed referendum would be conducted by the WERC. Secondly, the fair share agreement proposed by the District would only apply to full-time employees in the bargaining unit. There are approximately 48 full-time employees in the bargaining unit, all but two of whom have signed voluntary dues authorizations. There are approximately 15 regular part-time employees working between 20 and 39 hours per week, all but 5 of whom have authorized dues deductions. Finally, there are approximately 24 regular part-time employees who work 19 or less hours per week, 5 of whom have signed dues authorizations. Thus, under the Employer's proposal, only 48 out of 85 bargaining unit members (approximately 54%) would vote in the referendum or be covered by the terms of the fair share agreement.

B. Union's Offer. The Union's proposed fair share agreement would cover all bargaining unit members regardless of their full-time or part-time status or the number of hours per week that they work. It would take effect in the first month following the award herein if the Union's offer is selected.

II. Payout of Accumulated Sick Leave.

The 1979-1981 Collective Bargaining Agreement provided that employees earned one day of sick leave per month, with a provision for accumulation of 180 days for days not used in the year in which they are earned. There were no changes in the sick leave program agreed to in the current negotiations.

A. District's Offer. The District proposes no changes in the sick leave program and specifically does not propose to provide a payout for unused sick leave upon death or retirement as requested by the Union.

B. Union's Offer. The Union proposes that the following new section be added to Article XII - Sick Leave:

> "Upon death or normal retirement, the employee shall be paid the cash equivalent of thirty-five percent (35%) of his/her accumulated sick leave.
>
> "(This provision applies to regular full-time and regular part-time employees.)"

III. Wage Rates.

Under the terms of the 1979-1981 Collective Bargaining Agreement the parties agreed to, as Appendix A, a salary schedule for full-time clerical employees in two groups of classifications. Group 1 consists of clerk-typists and receptionists and Group 2 consists of keypuncher, staff secretary, finance clerk, library assistant, testing clerk, and bookstore cashier. That schedule reads as follows:

" FULL-TIME CLERICAL HOURLY SALARY SCHEDULE

	(July 1, 1979 - June 30, 1980)		(July 1, 1980 - June 30, 1981)	
	I	II	I	II
0	$4.12	$4.52	$4.42	$4.87
1	4.58	5.02	4.91	5.41
2	4.70	5.14	5.03	5.53
3	4.82	5.26	5.15	5.65
4	4.94	5.38	5.27	5.77
5	5.06	5.50	5.39	5.89
6	5.18	5.62	5.51	6.01
7	5.30	5.74	5.63	6.13

There were five employees who received payments in excess of those set out in the above schedule as a result of their having been red-circled at the time two bargaining units were merged to form the existing bargaining unit. Those employees received 40 cents per hour effective July 1, 1979 and 42 cents per hour effective July 1, 1980.

In addition to Appendix A, the 1979-1981 Collective Bargaining Agreement also contained, as Appendix B, a separate salary schedule for regular part-time employees in Groups 1 and 2. That schedule read as follows:

"REGULAR PART-TIME HOURLY SALARY SCHEDULE

		Effective July 1, 1979 Hourly Rate	Effective July 1, 1980 Hourly Rate
I	Clerk Typist Receptionist	$4.16	$4.49
II	Keypuncher Staff Secretary Finance Clerk Library Assistant Testing Clerk Book Store Cashier	$4.26	$4.59

A. District's Offer. The District's proposal for the first year of the new agreement would add 46 cents per hour to each step of the wage rates as set out in column I above in the full-time salary schedule for the period July 1, 1980 to June 30, 1981, and 49 cents per hour on each step of column II of that same portion of the full-time salary schedule. In addition, the Employer would eliminate step "zero", thus providing that new employees would begin at step one.

For the second year of the agreement, the District would add 50 cents to each of the wage rates in both columns I and II of the 1981-1982 salary schedule it proposes.

For those employees who are off schedule, the District would add 40 cents across the board for the 1981-1982 school year and 45 cents per hour for the 1982-1983 school year. Similarly, the District would add 40 cents per hour and 45 cents per hour to the wage rates for part-time employees in the two school years in question. All of the District's proposed wage increases would

take effect on July 1 of the respective years in question.

B. Union's Offer. The Union proposes to amend Appendix A and Appendix B of the 1979-1981 Collective Bargaining Agreement to provide that all wage rates therein, including those for "off schedule" employees, be increased by 9.75% effective July 1, 1981 and by 9.5% effective July 1, 1982. The Union's offer, like the Employer's offer, would provide for full retroactivity for wage increases and step increases. The Union's Exhibit No. 7, attached to its initial brief herein, presents for comparative purposes, the affect of the parties' offers on the existing wage rates and is attached hereto as Appendix A for purposes of illustration of the differences between the two offers.

DISTRICT'S POSITION

The District makes six basic arguments: the District offer affords complete equity in wage increases for all clerical personnel, under the District's final offer, Gateway clerical personnel will be compensated with wages that are comparable in a positive manner with other institutions near or within the boundaries of the District; the District's final offer exceeds increases in the cost of living; the total compensation afforded under the Board offer is competitive; the Employer position on fair share is the more reasonable of the two positions; and the Union position on sick leave is not based on a compelling need and does cause money to be spent in a non-productive manner.

Before setting out its basic arguments, the District reviewed each of the statutory criteria setting out its position with regard thereto. Of particular significance is the District's contention that the interests and the welfare of the public require that the undersigned not issue a "high cost" award due to the high rate of unemployment in the areas served by the District and the consequent burden placed on taxpayers living within the District. In support of this argument, it reviews numerous exhibits describing the high rate of unemployment and foreclosures and other economic problems in the area served by the District. Further, in relation to the comparability factor, the District contends that a broad geographic area should be drawn upon because of the three county rural and urban nature of the area served by the District. In support of this argument, it reviews numerous documents and state laws dealing with the mission of a vocational technical institute as opposed to other municipal employers. The District identifies certain "elements of comparability" which it would emphasize in determining which employers are comparable. Based on those elements, the District contends that those educational institutions which lie within or near the borders of the District are most comparable. The seven largest are Wilmot, Elkhorn, Whitewater, Oak Creek, Burlington, Racine, and Kenosha. It also points out that the University of Wisconsin-Parkside and Waukesha County Technical Institute, lie either within or in close proximity to the District.

Inspite of its basic contention that the most comparable employers are those described above, the District provides additional data with regard to wage and benefit surveys among employees employed by private sector employers and other municipal employers in the three county area, including Racine, Kenosha and Walworth Counties.

The District also lays considerable emphasis on recent data with regard to the Consumer Price Index, which demonstrates, according to the District, that the trend is in the direction of a substantially lower rate of increase in the "cost of living." It also reviews the overall compensation received by District

employees, the costing method it has employed (which includes step increases) and certain WERC and arbitrator decisions which it contends support its costing method.

In support of its first argument regarding equity, the District contends that its offer is internally fair because, unlike the Union's offer, it does not grant larger cents per hour increases to employees placed in the higher steps of the salary schedule. The District claims it has sought to maintain the "spread" between the two columns by means of the three cent differential in the first year. Further, it argues that the 40 and 45 cent increases for employees off schedule, offers said employees some increase while at the same time reducing the historic differential enjoyed by said employees. With regard to the Union's offer, the District contends that the 9.75% and 9.5% across the board increase shows favoritism to those employees at the higher stepsof the salary schedule. According to the District, a key question posed by the Union's offer is whether an employee who has been with the District six or seven years should receive a substantially larger wage increase than a person who has been with the District for only one or two years, even though the "learning curve" for such employees indicates that they reach maximum effectiveness within two years after assuming a position.

On the question of comparability, the District argues that its data show that its final offer meets or exceeds 26 of 36 hourly wage comparisons with 9 other educational institutions relied upon by the District. According to the District, this demonstrates that Gateway's historic position of being in the "upper half" of appropriate salary comparisons, is maintained by its offer. It further argues that in comparison with 7 county and municipal employers, the District's offer meets or exceeds 20 of 28 possible comparisons. It points out in this regard that the City of Kenosha and Kenosha County, which have cost of living provisions, have wage rates which are in excess of other employers in the three county area and should be, according to the District, disregarded for that reason. Although it argues that private sector comparisons are of less value, the District also points out that it compares favorably in surveys conducted, which included private sector employers within the area served by the District.

With regard to the cost of living, the District reviews numerous statistical releases for the purpose of demonstrating its contention that the trend line is definitely downward. According to the District, these percentage figures reflect that its wage offer, which it contends amounts to 9.76% on salaries, is much closer to the current cost of living than the Union's final offer, which the District contends would add 11.3% to salaries for 1981-1982.

With regard to total compensation, the District reviews the available wages and fringe benefits and gives certain examples to illustrate its point. Thus, in the case of the highest paid secretary in the bargaining unit, who like all full-time employees at the Racine campus works 37 hours per week, her salary for the 1981-1982 school year would be $7.83 per hour, or an annual salary of $15,065.00. According to the District, the cost of the benefits provided said employee bring her total compensation to $19,761.58. The more recently hired employee working the same hours would, under the District's offer, earn $11,352.00 in gross wages and total compensation in the amount of $15,320.51. The

District further points out that the first employee enjoys benefits which equal 32% of her gross salary and the second employee enjoys benefits which equal 35% of her gross salary.

With regard to the issue of fair share, the District contends that it is "puzzled" by the Union's resistance to a referendum in view of the fact that the vast majority of the full-time employees are currently on dues authorizations and would therefore presumably vote in favor of such a requirement. It also argues the alleged unfairness of requiring employees who work fewer than 40 hours per week (some as few as 7 to 10 hours per week), to pay the same amount of fair share contributions as full-time employees. To illustrate its argument, the District gives several examples assuming fair share contributions of $8.00 per month. According to the Employer, these examples demonstrate that employees who work only a few hours per week will be required to contribute a substantially larger percentage of their take-home pay to support the Union even though most of those employees have not chosen to voluntarily join the Union.

With regard to the issue of payout for unused sick leave, the District contends that the Union's position is not based on a compelling need for such a provision since it has failed to introduce any evidence that such a provision is needed to control sick leave utilization. According to the District, the burden of proof lies with the Union in this regard and it has failed to meet that burden. The District introduced an exhibit setting out actual sick leave utilization by employees in the bargaining unit which it contends demonstrates that employees are not currently abusing sick leave since the approximate absentee rate for the group in question is 3%. The District acknowledges that four of the nine educational institutions it relies upon provides some form of sick leave payout but distinguishes all of those situations from the situation herein. First it points out that the University of Wisconsin-Parkside campus is governed by state statutes. Secondly it points out that employees at Waukesha Voc Tech receive benefits after 15 years and employees at Oak Creek receive this benefit based on the beginning rate for the employee's classification. Further it points out that in Burlington the wage level for employees is considerably lower. While five of the seven bargaining units of non-educational employees do enjoy this benefit, the District argues that this group is less comparable; that the City of Racine caps the benefit at 120 days, that Racine County provides $10.00 per day rather than full salary; that Waukesha County provides this benefit after 20 years of service; and that Walworth County caps this benefit at 45 days of sick leave. The Employer further points out that the most senior employee in the bargaining unit who would be in a position to immediately take advantage of any such benefit, would receive $3,946.32 under the Union's proposal. With regard to the Union's reliance on the award of Arbitrator Zel Rice involving the custodial employees [1] the District points out that there are only 25 employees in that bargaining unit; that the logic employed by the arbitrator attempted to justify the granting of this benefit based on the fact that the clerical bargaining unit had dental insurance, whereas the custodial unit did not, and that, contrary to the assumption of the arbitrator in that case, the immediate cost of said new benefit was not minimal in that four custodians retired shortly after the issuance of the award and received very substantial sums of money as a result. In summary, the District argues that if the award in question is considered persuasive, it should defeat the Union's argument since the clerical employees have dental insurance and therefore are not entitled to

1. Gateway Vocational, Technical & Adult Education District (Decision No. 18107-A) May 27, 1981.

such new benefit.

In reply to Union arguments, the District contends that this case turns on the question of whether the Union has successfully justified the need for a major fringe benefit addition and an "exorbitant" 11.3% salary increase. According to the District, the Union's contentions must be rejected because its proposals in combination reflect an increase which far exceeds the current average consumer prices for goods and services, commonly known as the cost of living; they are not in the interest and welfare of the public at a time of high unemployment in local business and industry, the Union has cited non-educational comparables which are not fair comparisons because they include a majority of unit employees who do not perform similar services to clerical employees, and the Union has not shown cross data to support nor has it contended that the total compensation paid clerical employees is inadequate, thereby justifying the need for an expensive sick leave payout benefit.

On comparables, the District contends that it is significant that the Union ignores every school district within the area served by the District, with the single exception of Kenosha. It argues that the Union would have the arbitrator compare clerical employees to attorneys, social workers, sheriffs, computer operators, hospital employees, policemen, state blue collar and professional workers, and other similar non-comparable groups. The District argues that the sick leave payout is unreasonable and that its arguments fail to support its contentions that it is reasonable and equitable.

Finally, the District contends that the Union has attempted to raise a "non issue" because of the wording of the District's final offer wherein it withdrew certain proposals which had been included in other tentative final offers and that the Union's contentions with regard to reduced dues for part-time employees under its fair share proposal, are misleading because said provision does not require such lower dues and the evidence demonstrates that currently part-time employees pay dues which are $2.40, not $2.60, lower than the dues paid by full-time employees.

UNION'S POSITION

In support of its final offer, the Union first points out that it has, with a few exceptions, confined its evidence to wages and fringe benefits paid by other public employers with unionized employees in the tri-county area served by the District. Its arguments are broken down into four issues, those dealing with fair share, sick leave payout, wages and the wording of the District's proposal with regard to withdrawal of certain proposals in bargaining.

With regard to the issue of fair share, the Union contends that the District's offer contains several serious flaws. The first serious flaw, according to the Union, is the requirement of an implementation vote of 60% of those eligible to vote, which exceeds the statutory requirement for referendum votes which are conducted by the WERC. The more serious flaw in the Union's view, is the District's proposal that fair share be limited to full-time employees. Because the Union has an obligation to represent all bargaining unit employees, regardless of their full-time or part-time status, such provision is unfair, according to the Union. A fair share agreement applicable only to full-time employees, would offer little in the way of economic security to the Union but would sacrifice a considerable portion of economic security with regard to part-time employees.

The Union points out that it has advised the District of its willingness to utilize a lower monthly dues rate for part-time employees and contends that this differential amounts to $2 60 under the current provisions of the Union's constitution. The Union also points out that it has attempted to avoid controversy by proposing that its fair share provision not be retroactive and has instead provided that it would take effect in the first month following an award herein.

The Union points out that the overwhelming proportion of the employers cited in its exhibits have fair share agreements which do not exclude part-time employees.

With regard to the issue of sick leave payout, the Union maintains that this provision is reasonable and equitable on its face. According to the Union, sick leave is an earned benefit and if an employee has the good fortune of good health, such employee should be able to share (with the Employer) in the savings in their sick leave account. Further, this provision has an added benefit for the Employer in that employees will be encouraged to use their sick leave carefully. It is important to note, according to the Union, that this provision is only payable upon death or retirement and is not like provisions in other contracts which provide that the employee may receive this benefit upon termination for any reason. In particular, the Union relies on exhibits which show the prevalence of this provision and, in particular, among employers in the three county area served by the District, as well as a nearby vocational technical school and the Milwaukee school system.

According to the Union, its exhibits demonstrate that some form of earned sick leave payout is enjoyed by most public sector employees to which employees herein should be compared and the form of sick leave payout that the Union seeks is comparatively modest. Finally, the Union points to the award of Arbitrator Rice (referred to above) which it contends "speaks for itself."

With regard to the issue of wages, the Union first points out that comparisons among employees of several employers is fraught with difficulty. According to the Union, this difficulty is exacerbated in the case of secretarial and clerical employees because job duties and requirements are far from standardized among employers. In fact, the Union points out that under the agreement herein, there is little distinction made between the various job classifications that fall within group 1 and 2, even though there are undoubtedly numerous differences in job duties and requirements.

In comparing wage rates, the Union argues that it is appropriate to take note of the top pay step paid for various classifications, how long it takes an employee to reach that step and whether longevity pay is provided along with regular earnings. It notes in this regard, that at Gateway it takes employees seven years to reach the top pay step in their classification and there is no provision for longevity.

According to the Union, its exhibits demonstrate that numerous wage rates were increased among the employers compared by at least 10%. While the increases in Kenosha schools amounted to 8.3% for July 1, 1981 and 9.9% for July 1, 1982, the Union points out that the first year increase was agreed to as part of a package which included a new dental insurance plan for which the Employer picked up 90% of the premium cost. In particular, the Union notes that these percentage increases, as well as all other percentage

increases in its data and arguments, refer to actual increases applied to existing wage rates and do not include schedule step increases.

For these reasons, the Union contends that its proposal is comparable to the general level of wage increases being granted other public employees in the area served by the District and is more reasonable than the District's proposal, particularly when the delay in receiving the first year increase is taken into account.

The Union also contends that there is a fourth issue in this case which is presented as a result of certain language contained within the Employer's final offer. The language in question reads as follows:

> "The dropping of proposal number 1 (Article IV - Union business) from the Employer's original proposals of May 4, 1981 and the Employer proposal of June 29, 1981 (Article X - Work Day and Work Week, Section 1) are withdrawn without prejudice."

First, the Union notes that there is a grammatical ambiguity or error in this statement. Read literally, with two "negatives", this statement seems to say that the proposals referred to were not dropped. However, assuming that the Employer intended to drop said proposals and reflect an "understanding" with respect to the conditions under which they were dropped, the Union contends that the Employer has attempted to use the arbitration process to create bargaining history. That bargaining history presumably would have relevance in some future grievance dispute concerning the proper interpretation and application of the agreement. The Union contends that the arbitrator has no authority to create such bargaining history by adopting the Employer's offer, thereby imposing a compulsory "memorandum of understanding."

The Union points out that the District never explained its intentions with regard to this statement in negotiations or mediation and that an award which included the "without prejudice" stricture would "severely damage the parties' future bargaining relationship and set a poor precedent for other parties who utilize mediation-arbitration to resolve interest disputes." For this reason, the Union contends that the Employer's final offer is "fatally flawed" by inclusion of so "perverse an issue."

With regard to arguments contained in the District's brief, the Union notes that the District failed to identify its attempted effort to withdraw certain proposals "without prejudice" as an issue in dispute. Secondly, the Union argues that the District appears, by several of its exhibits and arguments, to be raising a question of inability to pay but that it has failed to prove such inability because of the total absence of any data relative to the financial health of the District. Further, the evidence with regard to unemployment is irrelevant, according to the Union, because District employees are expected to increase productivity in times of economic adversity; the unemployed workers in question have substantial unemployment benefits available to them in recognition that periodic unemployment will occur in said industries; and public sector employees do not generally enjoy the wage and fringe benefit increases received by large private sector unions in good economic times.

With regard to the Employer's arguments related to its "mission", the Union contends that such argument is irrelevant since the District necessarily must pay the going rate when it purchases computers, copy machines, typewriters, etc., and should not expect to be able to hire clerical employees for less than the "going rate."

Similarly, the Union takes issue with the District's wage argument that clerical employees are sufficiently different from other public sector employees that they cannot be compared to bargaining units which contain other public sector employees. Such argument, like its converse, simply will not hold water, according to the Union. The Union also argues that the Employer has exaggerated the cost of wage increases by including increment increases and thereby distorted comparisons. Along this same line, it argues that many employees will not stay through the life of the new agreement and increments are intended to be recognition that employees with longevity are worth more than those without.

The Union contends that the Employer's criticism of percentage wage increases is contrary to its argument that step increases should be considered as part of the increase being offered under its proposal and that the Employer has attempted to ignore substantial COLA payments in other contracts. According to the Union, its exhibits demonstrate a fuller more accurate story concerning comparable wage rates, including COLA increases and longevity pay.

While the Union acknowledges that the cost of living as measured by the CPI has decreased in recent months, it argues that the experience currently is more relevant to negotiations for the next labor agreement.

With regard to the question of sick leave, the Union notes that the Employer offered scant evidence with regard to its position in this regard. The Union points out that its exhibits show exactly what is provided in the other agreements. Further, it points out that one of the school districts relied upon by the District (Elkhorn) is currently in mediation-arbitration to settle a dispute, including the Union request for a 50% cash payout of sick leave upon termination.

While the Union acknowledges that Kenosha County does not provide a payout for sick leave, it points out that Kenosha has an entirely different form of income protection in the event of illness in the form of five "casual days" which are paid for in cash each year, if unused. According to the Union, the District is displeased with the result of the award issued by Arbitrator Rice but contends, nevertheless, that such award should be considered persuasive herein. In particular, the Union notes that the Union was awarded the requested benefit on "much less evidence" than that presented herein. According to the Union, Arbitrator Rice's remarks about the lack of dental insurance were merely unnecessary "anodyne" accompanying an adverse decision.

On the issue of fair share, the Union notes that the District offers no comparative evidence in support of its position. The Union contends that this is so because there is none. According to the Union, it should not be "puzzling" to the Employer why it is not willing to agree to a 60% vote since such a requirement is unnecessary, even according to the District. The Union contends that the proposed exclusion of part-time employees is not required in the interest of fairness, as alleged by the Employer. It points out that the Union must expend as much time, effort and resources in representing a part-time employee who has a grievance, as it does on a full-time employee. Further it points out that society provides us with numerous examples of where one must pay the same rate for a service provided, regardless of one's ability to pay or the utilization rate of the service in question.

DISCUSSION

As noted at the outset, the parties' final offers, on their face, reflect that there are three remaining issues "in dispute" between the parties: fair share, payout of accumulated sick leave, and wage rates. It is the Union's position that because of the

presence of the above quoted language in the final offer submitted by the District, there is actually a fourth issue "in dispute", i.e., the District's effort to establish that its dropping of two elements of prior tentative offers was "without prejudice."

While the Union would appear to be correct that the District failed to address this question in the mediation conducted by the undersigned or in its initial brief, it is also true that there is nothing in the record before the undersigned which would establish that the Union at any time raised a question with regard to the propriety of the wording of the District's final offer. The question of whether the District's decision to drop the two proposals in question should be treated as being "without prejudice" because of the presence of such statement in the District's final offer may well come up in some future grievance arbitration proceeding or in future collective bargaining. However, the undersigned is convinced that the presence of said language in the District's final offer does not place a fourth issue "in dispute" or constitute a "fatal flaw" in the District's final offer. Its presence in the District's final offer, at most, evidences that the District attempted to drop its two proposals without prejudice. The question of whether it was successful in that effort is not pending before this arbitrator.

Having thus disposed of the alleged fourth issue in dispute between the parties, the undersigned now turns to a discussion of each of the three issues in dispute. After each of the issues in dispute has been analyzed separately, the two final offers will be reviewed in their entirety for purposes of determining which is the most reasonable under the statutory criteria.

I. Fair Share.

The District's proposal that the implementation of a fair share agreement be subject to a referendum among full-time employees to determine if at least 60% of the eligible employees favor such an agreement is really an irrelevant difference between the two parties' offers. The substantive difference between the parties' offers relates to the question of whether the fair share provision should apply to part-time employees. If the District were proposing a fair share agreement which would apply to all employees in the bargaining unit, subject to a referendum vote, it would be appropriate to discuss this aspect of the District's proposal in greater detail. However, as the Union points out, the presence of this requirement in the District's final offer has no real significance in view of its proposal that the fair share agreement, as well as the referendum, be limited to full-time employees who are overwhelmingly in favor of Union membership.

The evidence establishes that members who work part-time, currently pay dues which are, according to the Employer, $2.40 less than the dues paid by full-time employees. Thus the undersigned deems it reasonable to assume that at least this differential will be maintained if part-time employees are brought under the fair share provision.

The Union would appear to be correct in its assertion that a strong argument can be made for the fairness of requiring employees to pay equally for representation by the Union, regardless of whether they work full-time or part-time. The Union has a duty of fair representation to all bargaining union members regardless of their Union membership or full-time versus part-time status. The undersigned is personally aware of numerous instances where Union's have expended great sums and other resources on behalf of part-time employees and non-members because of the existence of said duty. Nevertheless, the undersigned believes that the Employer makes a valid point that the introduction of a fair share provision will fall disproportionately hard on a few employees who work as little as 7 to 10 hours per week. However, given the fact that the Union has in the past, and intends in the future, to

exercise its right under the Union's constitution to differentiate for dues purposes between full-time and part-time employees and the reasonableness of its general position that all bargaining unit members should be required to contribute support for the Union's representation so long as the majority of the employees desire the Union to represent them, the undersigned concludes that the Union's proposal with regard to fair share, is preferred to that of the District. There is no evidence in the record to contradict the evidence and arguments presented by the Union tending to establish that fair share agreements are generally applied to full-time and part-time employees alike. The comparables clearly support the existence of a fair share agreement and there would appear to be no compelling reason related to any of the other statutory criteria as to why such an agreement should not exist in this District.

II. Payout of Accumulated Sick Leave.

First of all, it should be observed that while the undersigned agrees that the burden of persuasion is on the Union concerning the appropriateness of introducing this new fringe benefit, that burden is not as heavy a burden as the District implies in its argument. The Union is not here seeking to introduce a new fringe benefit or working condition which is without precedent among comparable employers. Thus, some of the arbitration awards quoted by the District are not apropos to this situation.

It is also true that the Union did not present any evidence to back up its claim that this provision will be a benefit to the Employer by discouraging the utilization of sick leave. However, the undersigned is mindful that such information is not readily accessable to the Union and the Union relies primarily on the existence of this benefit in other employment settings in the tri-county area

On the other hand, the District did introduce evidence which it claims supports the position that this new benefit is unnecessary from the Employer's point of view with regard to sick leave utilization. A close examination of that evidence (Employer's Exhibit No. 42) indicates that there are serious flaws in the Employer's argument in this regard. The Employer correctly states that the division of 11,000 work days by 363 1/2 days of sick leave taken during the period in question, represents an absentee rate for this group of employees equal to 3%. However, it does not necessarily follow that there is no problem with potential abuse of sick leave in this bargaining unit. Thus, the 44 employees whose sick leave utilization is set out on said exhibit, used a total of 363 1/2 days. Even if it is assumed that said employees earned as many as 12 days per year (i.e. they were on 12 month contracts). They apparently utilized 69% of the 528 available days of sick leave generated by their employment that year. Individual employees, in fact, utilized sick leave in excess of the accumulation rate. Thirteen used 12 or more days and 1 used as many as 22 days during the period in question.

The undersigned recognizes that the evidence with regard to comparables merely establishes that approximately one-half of the available comparisons include a provision for sick leave payout. Further, it is recognized that the University system is a unique situation because of the existence of State statutes which control. However, it is clear that the benefit in question is reasonably prevalent and currently exists for another bargaining unit employed by the District. [2/] It is also true that there are numerous differences among the various provisions that exist in the agreements set

2. The undersigned is also mindful of the fact that the benefit was gained by that unit over the District's objection and through an award, the logic of which the District seriously questions. This point is discussed further below.

out in the parties' evidence. Some contain caps that differ from that proposed by the Union herein and some contain other limitations, such as waiting periods and dollar amounts. If the District were proposing a sick leave payout provision which contained different limitations than those set out in the Union's proposal, it would be necessary to compare the two proposals as to their relative fairness in light of the prevailing practice in those situations where such provisions have been agreed to. However, there is nothing in the Union's proposal which is particularly unreasonable. The lack of a dollar limit is not considered to be fatal given the relative wage rates enjoyed by employees in the bargaining unit in question. While the 15 year waiting period contained in one agreement would clearly reduce the number of employees who would ever be able to collect on this benefit, it tends to defeat the affect of encouraging employees, who might otherwise take a short term view of their employment, from using sick leave excessively.

The question of whether the undersigned agrees or disagrees with the logic employed by Arbitrator Rice in his decision when he granted this benefit to the custodial employees, is really irrelevant to the proper disposition of the Union's proposal in this case. However, the existence of that benefit,which was introduced in a unit which did not have dental insurance, is of some concern because the potential for the rewarding of "leap frogging" that results. However, the undersigned finds no basis for faulting the Union in this case for the other Unions' decision to pursue a new benefit in the form of sick leave payout rather than dental insurance. It is significant in this regard that while the Union's proposal provides for payout of up to 180 days, which is greater than that enjoyed by the custodial employees, the payout percentage is lower in the Union's proposal herein. The Union apparently selected the 180 day limitation because that is the limitation set out in the agreement for sick leave accumulation in this bargaining unit, and its decision to reduce the payout percentage accordingly will give the District some leverage in resisting further efforts at leap frogging.

Overall, based on the above analysis and particularly on the criteria dealing with comparability and "other considerations," the undersigned concludes that the Union's proposal for sick leave payout to be included in a new agreement covering a two-year period, is preferred over the District's proposal of no such benefit.

III Wages.

Because the District's offer is based on cents per hour increases, it presents some difficulty for purposes of comparison with the Union's offer on wages. A review of Appendix A attached hereto, demonstrates that the District's offer would provide wage increases for full-time employees in Group 1 ranging from 8.17% to 9.37%. in the first year of the agreement. Employees in Group 2 would get wage increases ranging from a low of 7.99% to a high of 9.06% in the first year of the agreement. In the second year of the agreement, employees in Group 1 would receive increases ranging from a low of 8.21% to a high of 9.31% in the first year and Group 2 employees would receive increases ranging from 7.55% to 8.47%.

Utilizing the schedule placement data contained in Employer Exhibit No. 33 and applying that data against the percentage increases set out in Appendix A, the undersigned has calculated the weighted average increase for employees in the two years of the agreement under the Employer's proposal. In the first year of the agreement, full-time employees in Group 1 would receive a weighted average increase of 8.63% and employees in Group 2 would receive a weighted average increase of 8.39% The overall weighted average increase in the first year of the agreement under the Employer's proposal amounts to 8.46%. In the second year of the agreement, full-time employees in Group 1 would receive a weighted average increase of 8.51% and full-time employees in

Group 2 would receive a weighted average increase of 8.13%. The overall percentage increase for full-time employees in the second year of the agreement under the Employer's proposal amounts to 8.38%.

These weighted average increases in the two years of agreement under the Employer's proposal would provide a "lift" of the existing wage rates of 17.55% for the employees in question. In addition, all but 16 of the 43 full-time employees in question (as of April 14, 1981) would receive step increases under the salary schedule.

It is easier to evaluate the final offers on wages on the basis of comparability in the first year of the agreement. This is so because there is more available data concerning wage rates in existence in comparable employment settings during 1981 and 1982. The data with regard to 1982-1983, to the extent that it exists, is based on multi year agreements negotiated prior to the substantial decline in the cost of living, which has occurred within the 1981-1982 period. Further, as the District points out, there has been a substantial change in the overall political and economic climate particularly in the Racine and Kenosha area as a result of high unemployment and projected cut-backs in federal spending.

While the undersigned agrees that the substantial decline in the cost of living is not particularly relevant to the first year of the agreement here in dispute, the Union would appear to be incorrect in its assertion that the cost of living decline is only relevant for purposes of negotiating a successor agreement to the agreement here in dispute. Looking only at the first year of the agreement, the Union's offer would appear to be well supported by the data concerning percentage increases negotiated with employers in the three county area contained within it grouping of comparables. The Union is correct that there are numerous reasonably persuasive examples of increases in the range of 9 to 10%. (There are notable exceptions such as the increases negotiated statewide and applicable at the University of Wisconsin-Parkside which amount to 7% on the base wage rate.) Thus, if this case turned on which offer was the most reasonable on a one year basis (1981-1982), the Union's offer would clearly be favored.

Looking at the two years of the agreement together, the question boils down to whether the Union's combined percentage increases of 9.75% and 9.5% (which provide a "lift" of 20.18% over the two years of the agreement) is out of line when consideration is given to changes which have occurred since the beginning of the 1981-1982 school year.

Of particular relevance in this analysis are the increases negotiated with the Kenosha School District. While utilization of that particular comparison can be critized on the grounds that it focuses on a large urban employer and tends to ignore the fact that the District has a campus in Walworth County and Racine County, the undersigned is convinced that such comparison is useful in this case. As the District points out, comparisons to the City and County of Kenosha are not only difficult because of the cost of living factor and the assumptions made within the Union's data in that regard, such comparisons are also difficult because of the substantially higher wage rates overall paid by those employers due to prior cost of living increases. The Kenosha School District agreed to implement a dental insurance program and to grant 8.3% and 9.9% increases. These increases provide a "lift" of 19.02% over the two year period. In comparing this increase which was negotiated prior to the recent dramatic decline in the cost of living and increase in the unemployment rate, it should be noted that the overall lift provided is more than 1% less than that sought by the Union herein. The Union points out that the inclusion of dental insurance no doubt had an impact on the package increase agreed to by Kenosha Schools. However, the bargaining unit here, has enjoyed dental insurance for a number of years.

Another relevant comparison for purposes of this analysis, is that provided by the recent Walworth County settlements covering the calendar year 1982. While this comparison can no doubt be critized on the grounds that Walworth County is more rural than the area in which the bulk of the District's employees work, the District does have a campus in Walworth County. Further, even if it is assumed that comparable employees in Walworth County earn less than their counterparts in Racine and Kenosha County, the focus here is on the percentage increase in the base rates for comparison purposes. These recently negotiated increases are lower than the District's second year proposal herein by an amount roughly equal to the difference between the District's first year proposal and the pattern of 1981-1982 settlements demonstrated by the Union's data. [3/]

For these reasons, and based on an evaluation of all the evidence and arguments presented, the undersigned concludes, under the statutory criteria, the District's proposal on wages is more reasonable than that proposed by the Union.

OVERALL SUMMARY AND EVALUATION

The Union's proposal of a fair share agreement which applies equally to all employees in the bargaining unit has been favored over that proposed by the District. This issue, while significant, cannot control the outcome of the instant proceeding because of the wide difference between the parties on the other two issues in dispute.

While the undersigned has concluded that the Union's proposal with regard to payout of sick leave as a new fringe benefit to be included in a two-year collective bargaining agreement should be favored over the District's proposal of no change in this regard, such conclusion is based primarily on the fact that such a proposal is not unreasonable in view of the fact that roughly half of the comparable employers relied upon by both the Union and the District, have a provision along these lines. However, it cannot be said that the Union's case for the inclusion of this new fringe benefit is so compelling that this issue alone is of sufficient significance to offset the substantial difference between the two offers in terms of wages.

Based on the statutory criteria and the discussion above, the undersigned concludes that the District's proposal on wages should be favored over that of the Union. When considered in conjunction with the Union's proposed additional fringe benefit in the form of sick leave payout, the Union's final offer, measured in terms of total cost, must be viewed as unacceptably high, particularly in the second year.

Costing data developed by the District, which is unchallenged by the Union, establishes that the first year salary cost of the Union's final offer amounts to 11.3% (taking into account step increases). The second year salary cost of the Union's final offer amounts to 10.5%. The overall package cost of the Union's first year proposal (not including the cost of the sick leave payout proposal) amounts to 10.9%. The District did not provide a second year overall cost estimate, presumably because of the lack of data

3. Data with regard to projected increases in the City and County of Kenosha are not deemed reliable because of the absence of sufficient information regarding the cost of living formula and its operation on existing wage rates in the City and County. It is clear that, as the County concedes in its arguments, comparable employees employed by the City and County of Kenosha earn substantially more than employees in either the public or private sectors performing comparable jobs.

with regard to the cost of medical and dental coverage.

Absent a showing that such double digit figures in the second year of this agreement are justified in terms of an abnormally low first year cost increase or needed "catch up" (such as the addition of a fringe benefit generally enjoyed by most comparable employees such as dental insurance), the undersigned concludes that the District's offer, which will provide substantial wage increases in both years of the agreement[4/] should be favored overall.

For the above and foregoing reasons, the undersigned renders the following award.

The District's final offer shall be included in the parties' 1981-1983 Collective Bargaining Agreement along with all of the provisions of the 1979-1981 Collective Bargaining Agreement which are to remain unchanged and the stipulated changes agreed to by the parties.

Dated at Madison, Wisconsin this 30th day of June, 1982.

George R. Fleischli
Mediator/Arbitrator

APPENDIX A

EMPLOYER (E) AND UNION (U)
FINAL OFFERS AND RESULTING PERCENT INCREASES IN WAGE RATES

Full Time Clerical Hourly Salary Schedule, 1981-1983

		1981-1982				1982-1983			
I	80-81	E	(%)	U	(%)	E	(%)	U	(%)
0	4.42								
1	4.91	5.37	(9.37)	5.39	(9.75)	5.87	(9.31)	5.90	(9.50)
2	5.03	5.49	(9.15)	5.52	(9.75)	5.99	(9.11)	6.04	(9.50)
3	5.15	5.61	(8.93)	5.65	(9.75)	6.11	(8.91)	6.19	(9.50)
4	5.27	5.73	(8.72)	5.78	(9.75)	6.23	(8.73)	6.33	(9.50)
5	5.39	5.85	(8.53)	5.92	(9.75)	6.35	(8.55)	6.48	(9.50)
6	5.51	5.97	(8.35)	6.05	(9.75)	6.47	(8.38)	6.62	(9.50)
7	5.63	6.09	(8.17)	6.18	(9.75)	6.59	(8.21)	6.77	(9.50)

		1981-1982				1982-1983			
II	80-81	E	(%)	U	(%)	E	(%)	U	(%)
0	4.87								
1	5.41	5.90	(9.06)	5.94	(9.75)	6.40	(8.47)	6.50	(9.50)
2	5.53	6.02	(8.86)	6.07	(9.75)	6.52	(8.31)	6.65	(9.50)
3	5.65	6.14	(8.67)	6.20	(9.75)	6.64	(8.14)	6.79	(9.50)
4	5.77	6.26	(8.49)	6.33	(9.75)	6.76	(7.99)	6.93	(9.50)
5	5.89	6.38	(8.32)	6.46	(9.75)	6.88	(7.84)	7.08	(9.50)
6	6.01	6.50	(8.15)	6.60	(9.75)	7.00	(7.69)	7.23	(9.50)
7	6.13	6.62	(7.99)	6.73	(9.75)	7.12	(7.55)	7.37	(9.50)

Regular Part-Time Hourly Salary Schedule, 1981-1983

		1981-1982				1982-1983			
	80-81	E	(%)	U	(%)	E	(%)	U	(%)
I	4.49	4.89	(8.91)	4.93	(9.75)	5.34	(9.20)	5.40	(9.50)
II	4.59	4.99	(8.71)	5.04	(9.75)	5.44	(9.02)	5.52	(9.50)
Mail Jobs		4.76	--	--	--	5.21	(9.45)		