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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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Before the Mediator/Arbitrator

In the Matter of the Petition of

CESA #14 EDUCATION ASSOCIATION/
SOUTH WEST TEACHERS UNITED

To Initiate Mediation-Arbitration
Between said Petitioner and

COOPERATIVE EDUCATIONAL SERVICE
AGENCY #14

- -x

Case III
No. 28816 MED/ARB-1432
Decision No. 19403-A

APPEARANCES: KENNETH COLE, Director of Employee Relations, Wisconsin Association of School Boards, Inc., appearing on behalf of the Agency.

PAUL BIERBRAUER, Executive Director, South West Teachers United, appearing on behalf of the Association.

ARBITRATION AWARD

Cooperative Educational Service Agency #14, hereinafter referred to as the Agency, and CESA #14 Education Association/South West Teachers United, hereinafter referred to as the Association, were unable to voluntarily resolve a number of the issues in dispute in their negotiations for an initial Collective Bargaining Agreement covering the 1981-82 and 1982-1983 school years. On November 5, 1981, the Association petitioned the Wisconsin Employment Relations Commission (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 on February 18, 1982. The parties selected the undersigned from a panel of mediator-arbitrators submitted to them by the WERC and the WERC issued an Order, dated March 8, 1982, appointing the undersigned as mediator-arbitrator. The undersigned endeavored to mediate the dispute on April 12, 1982, but mediation proved unsuccessful. Both parties agreed that they did not wish to withdraw their final offers and that a hearing should be scheduled. A hearing was scheduled and took place on May 17, 1982, at which time the parties presented their evidence. The parties filed post-hearing briefs which were received by July 30, 1982 and exchanged on August 2, 1982. Full consideration has been given to the evidence and arguments presented in rendering the Award herein.

BACKGROUND

Although the instant dispute involves the provisions to be contained in a Collective Bargaining Agreement covering the years 1981-1982 and 1982-1983, a number of the issues and arguments relate to events which transpired beginning in the spring of 1977 and concluding with the filing of final offers in this proceeding. Based on the testimony and documentary evidence introduced at the hearing, a thumb nail sketch of that history is helpful for purposes of understanding the issues and arguments herein.

Prior to the spring of 1977, wages, hours, and working conditions for the employees covered by the instant proceeding, were established unilaterally by the Agency, after collective consulation with the employees involved. For a number of years the Agency had pursued the practice of adopting a salary schedule which was basically identical to that salary schedule utilized by the Platteville School District. Based

on exhibits introduced at the hearing, the Platteville salary schedule was generally in a leadership position at most relevant salary points, among the 31 school districts served by the Agency. In the spring of 1977, the Agency took action to adopt the Platteville salary schedule for purposes of compensating its staff during the 1977-1978 school year. However, it also took action to limit to dollar amounts the contribution that the Agency would make towards the employees' STRS (retirement) payments and health insurance costs. Because the Agency was already paying larger sums towards both of these costs in the case of existing employees, this action apparently created a situation where the total compensation received by newer employees was less in comparison to similarly situated employees who had worked prior to the change. Further, the evidence discloses that the relationship between the Agency and the affected employees became somewhat acrimonious due to the failure of the parties to agree on a salary and benefit schedule for the 1977-1978 school year.

There were further efforts at informal negotiations during the 1977-1978 school year but no agreement was reached regarding compensation for the 1978-1979 school year. In the spring of 1978, the Agency again unilaterally set the wages, hours, and working conditions which would apply during the following year. In the meantime, a petition for an election had been filed on behalf of the employees involved. The salary schedule which was adopted for the 1978-1979 school year utilized the same BA minimum base ($9,700.00) and had the same number of lanes and steps as the Platteville schedule, however, the Agency's schedule provided for substantially smaller sums at a number of points on the salary schedule. Individual employees were given an additional $75.00 which they could either apply to salary or fringe benefits.

The litigation concerning the Association's election petition was extensive and was not finally resolved until the parties stipulated to an election in the spring of 1980. In the meantime, the Agency had unilaterally set wages, hours, and working conditions for the 1979-1980 school year. The salary schedule adopted for that year differed from the Platteville schedule at all points. For example, the BA minimum was $50.00 less than Platteville and the schedule maximum was $170.00 less than the Platteville schedule. (Actually both Platteville and the Agency adopted two schedules that year because Platteville reopened its negotiations as a result of higher area settlements and added $200.00, which action resulted in the Agency adding $200.00 to its schedule.)

Negotiations began in May of 1980 and the Association sought, during those negotiations, to bargain for the 1980-1981 school year even though the Agency had, prior to the certification, adopted a new salary schedule for that year. (That salary schedule was, at the base, $200.00 less than the Platteville schedule.) Negotiations continued through the 1980-1981 school year and into the 1981-1982 school year, when the Petition herein was filed. The evidence indicates that it was probably during the investigation, at the time of the call for final offers, that the Association dropped its demand to bargain for the 1980-1981 school year and limited its proposal to the 1981-1982 and 1982-1983 school years. The Agency's proposals were likewise limited to those two years, but did not include a monetary proposal for the second year, providing for a reopener instead.

One further fact is relevant in terms of one of the issues presented herein, fair share, and that relates to the turnover of employees. While no exact figures were presented during the hearing, it is clear that the overwhelming majority of the employees who first sought to bargain changes in wages, hours, and working conditions in the spring of 1977, have since left their employment with the Agency. Further, the testimony indicates that only approximately four members of the current teaching staff are actually members of the Association. However, the results of the election in the spring of 1980 indicate that 17 of the 19 eligible

employees participated and voted 14 to 3 in favor of representation by the Association.

Although the parties apparently put in a considerable amount of time in bargaining and entered into a number of stipulations, they were nevertheless unable to resolve a large number of issues. The Association would attribute this large number of issues to the fact that this is a first contract and its claim that the Agency has engaged in foot-dragging throughout negotiations. The Agency would attribute the large number of issues to the Association's efforts to accomplish too much in a first contract and its apparent objective of having a very desirable salary schedule as well as substantial improvements in fringe benefits. Because of the large number of issues in dispute, the undersigned has generally divided them into two groups, language issues having only an indirect impact on cost, and straight monetary issues. Further, each issue will be discussed along with the position of the parties and the undersigned's evaluation of said issue (in isolation from the other issues). At that point the two final offers will be evaluated under the statutory criteria. Within groups, the issues are presented in inverse order of their impact on the outcome of this dispute, in the view of the undersigned.

HOURS OF WORK

The parties are in agreement on most of the wording of the article dealing with hours of work which provides in relevant part that the normal hours of work will be from 8:00 a.m. to 4:00 p.m. with a 30-minute duty-free lunch period. They further agree that itinerant staff who are regularly scheduled to work with students, will begin their work day at the work site at 8:00 a.m. or earlier if necessary, and will "end with work at the last work site if the employee cannot reach the home office by 4:00 p.m." The dispute herein involves the Association's request that itinerant staff be allowed to follow the staff dismissal time of the district in which their last assignment is on Fridays and on days preceding holidays. The evidence discloses that a number of the districts serviced by the Agency allow their staff to leave early on Fridays, after the students have left the building. The Agency proposes that no distinction be made between itinerant staff and office staff and that all bargaining unit staff be allowed to leave one-half hour early on the last work day prior to a state holiday.

On this issue, and a number of the other issues in dispute, the Association draws comparisons to the districts served by the Agency as well as to the two other CESA agencies which have negotiated agreements with their professional staff. According to the Association, its evidence demonstrates that 16 contracts in the CESA #14 area provide for early dismissal on Fridays and days preceding holidays. In addition, the Association points out that the agreements covering the CESA #2 and CESA #4 professional staff both provide that the itinerant staff shall be governed by a work day which is identical to the work day of the district in which they are providing services. It points out in this regard that its proposal would, like the two CESA districts having collective bargaining agreements, allow the itinerant staff to follow the dismissal schedule of the school district in which they are assigned on Fridays and days preceding holidays. In anticipation that the Agency will argue that such a provision treats the covered employees inconsistently, the Association argues that there is no need to have consistency in the hours of employees since the intinerant staff function to provide for the special needs of students and faculty at the schools serviced by the Agency. According to the Association, its proposal best suites the needs of the local school districts by providing an hour's provision that is flexible to the work day of the local school district,

According to the Agency, the issue with respect to hours is really quite simple and turns on the question of whether it is reasonable for the Agency to expect all employees to have a common quitting time. Evidence which the Agency introduced at the hearing demonstrates that employees of the various districts leave their employment at times between 3.20 p.m. and 4:00 p.m., depending upon the need to prepare for the following week's instruction. According to the Agency, teachers in local school districts who participate in extra curricular activities

have a better basis for justifying early dismissal at the end of the week than do Agency employees and for this reason, the Agency contends that the Association's proposal should be rejected as less reasonable than that proposed by the Agency.

The undersigned notes that, as part of the agreed to portion of this provision, itinerant staff are expected to arrive earlier than 8:00 a.m. if such earlier arrival is necessary. It is further noted that the requirement that itinerant staff return to the home office by 4:00 p.m. if they end their work at the last work site in sufficient time to do so, could result in a rather pointless exercise in the case of those districts which provide for early dismissal on Fridays and the day prior to holidays. For these reasons the undersigned finds that the Association's proposal to distinguish between itinerant staff and office staff does not result in an unfair distinction between those two groups of employees and generally makes sense in terms of the differences which exist between the work day of such employees. Thus, the undersigned would favor the Association's proposal on this issue if it were the only issue in dispute.

TERMINATION OF EMPLOYMENT

According to the terms of the 1978-1979 "General Provisions of Employment" adopted by the Agency's Board of Control, employees were allowed to terminate employment "up to 45 days prior to the employee's starting date for the contract year without being assessed replacement/ damages cost." That document further provided that "if a mutual termination agreement cannot be reached, a replacement cost of not more than $400.00 will be assessed. As part of its final offer, the Association proposed a scale of liquidated damages to be applied in the event that an employee terminated employment for other than uncontrollable circumstances. That proposed scale would provide liquidated damages of $100.00 if the resignation occurs between June 1 and July 1, $200.00 if the resignation occurs after July 1, but by August 15, and $300.00 if the resignation occurs after August 15. Under the Association's proposal, no liquidated damages would be assessed if the resignation occurred between April 15 and May 31.

The Agency has proposed, as part of its final offer, that teachers may resign prior to May 1 and that non teaching employees must give 60 working days' notice of resignation. Under the Agency's proposal, if a member of the bargaining unit resigns after May 1 or without giving the required notice, they will be assessed $400.00 as "reasonable liquidated damages." The Agency's proposal goes on to indicate that any portion of the $400.00 which is not actually required will be returned but that "liquidated damages shall not be viewed as the only exclusive remedy or right of the Board of Control in breach of contract matters."

The Association argues that the purpose of a liquidated damages clause is to provide a sum of money which approximates the real cost that would be incurred in the form of damages in the case of a breach of contract. According to the Association, the Agency's proposed amount of $400.00 is excessive. The Association further argues that the date of May 1 is unreasonably early in advance of the school year which begins in late August. On the other hand, the Association contends that its proposal is more reasonable in providing a graduated scale of liquidated damages. According to the Association, the purpose of a liquidated damage clause is lost when it becomes so excessive as to discourage or make impossible resignation. In comparison to other clauses in districts served by the Agency, the Association points out that only five are equal to or exceed the Agency's proposal, whereas eleven state a sum that is less than the Agency's proposal. Further, there appears to be no provision for liquidated damages in the CESA 4 contract and the CESA 2 contract provides for liquidated damages of $200.00, but only if the resignation occurs less than 30 days prior to the start of a term.

Similarly, the Association points out that there are no school districts in the CESA #14 area which provide liquidated damages as early as May 1. There are three that utilize the date of June 1, two that utilize the date of June 15, seven that utilize the date of July 7, and four which utilize the date of July 15. No district applies a $400.00 sum prior to July 15 and four of the five that do equal or exceed that amount do so only after August 1. Finally the Association points out that under the Agency's proposal, the Agency could recover more than $400.00 and could, in its discretion, seek a much larger sum. This constitutes further evidence, according to the Association, that the Agency is seeking to prevent resignation rather than recover the costs associated with a resignation.

The Agency argues that the termination of employment clause has a special significance when it is applied to CESA employees. Because CESA employees have very specialized skills and cannot be replaced easily on short notice, and in view of the Agency's contractual commitments to the school districts which it serves, this clause takes on special significance, according to the Agency. Thus, if the Agency failed to provide the contracted for services as a result of an untimely resignation, it is possible that the district in question could be sued for failure to provide educational services and the Agency could in turn be held liable for its failure to perform under its contract with the district. Also, according to the Agency, federal and state aid could be jeopardized by such a situation. According to the Agency, 18 of 31 districts in the area served already provide for some form of liquidated damages. Further, the Agency contends, that after May 1 it becomes increasingly difficult to replace special teachers. Allowing teachers to resign up to July 1 and merely forfeit $400.00, would expose the Agency to possible loss of aids and possible litigation without sufficient compensation.

The undersigned is inclined to agree with the Agency that untimely resignations in a CESA district are of greater consequence, as a general matter, than untimely resignation of the average teacher in a K through 12 district. Nevertheless, each case of an untimely resignation is different from the next and it is true that many would involve little or no out-of-pocket cost while others would involve substantial out-of-pocket cost. The purpose of a liquidated damages clause normally is to take the uncertainty out of the calculation of costs by agreeing to a sum in advance which will be assessed regardless of actual cost. The Association's proposal is consistent with that purpose. Further, by using a graduated scale, an employee who is uncertain of his or her decision is encouraged to give the earliest possible notice to the Agency. On the other hand, the Agency's proposal, providing as it does for rebate of any unused portion of the $400.00 and liability for actual damages in the event that $400.00 is insufficient, not only constitutes a change of working conditions, but tends to defeat the purpose for withholding $400.00 from the employee's wages as liquidated damages. The Agency's proposal would be viewed as more consistent and more reasonable if it simply eliminated the concept of liquidated damages and allowed employees who resign in an untimely fashion to continue to be exposed to whatever legal liability they may have for such breach. For these reasons the undersigned finds that the Association's proposal should be favored over that of the Agency.

PAID LEAVES OF ABSENCE

Under the terms of the 1978-1979 "General Provisions of Employment," employees were eligible for three days of emergency leave (non accumulative) each year. Use of this leave required permission of the coordinator who could also grant an additional two days travel time when the approved emergency involved travel in excess of 300 miles one way or was related to the employee's immediate family or parents. Further, an additional two days could be granted in a given case by the Board, upon the recommendation of the coordinator.

The Association has essentially proposed to replace this provision with a provision providing for bereavement leave, personal leave, and child-bearing leave. It would provide for up to three days for a death in the "immediate family", as defined in the proposal, and two days leave of absence for "personal, legal, business, household, or family matters which require absence during working hours." In requesting personal leave, the employee is expected to give one day's notice (except in the case of emergencies) but is not required to state the reason why the leave is being requested. Under the Association's child-bearing leave proposal, the Agency is required to treat child-bearing and any associated complications as the equivalent of a personal illness or disability, and in the event the employee does not have sufficient sick leave to cover the absence, provide the employee with a leave of absence without pay for a reasonable period of time with reinstatement "to the status which she held when the leave began without decrease in rate of compensation or loss of promotional opportunities, or other right or privilege of employment."

The Agency's proposal provides for three days of emergency leave, defined as "something the employee has little or no control over and he/she needs time off from work and expects to receive pay." The Agency's proposal specifically states that emergency leave shall not be considered as personal leave or as a paid vacation. The Agency's proposal subjects all requests for emergency leave to the approval or disapproval of the Agency administrator and provides that an additional two days of emergency will be granted for death or serious illness involving a spouse, children, or parents. Advance notice is required whenever possible.

According to the Association, the differences between the two proposals relate to the identification by title and to a conceptual disagreement with regard to the need for the inclusion of administrative discretion in the granting of leave. Thus, the Association points out that the Agency has provided for five days of "emergency leave," whereas the Association has provided for three days of "bereavement leave" and two days of "personal leave." In addition, according to the Association, it has provided a contractual statement of child-bearing leave which is consistent with the Agency's statutory obligations. The Association notes that under the Agency's proposal, the decision of the Agency administrator would appear to be "not appealable," thus leaving no redress for a unit member whose leave request is disapproved. According to the Association, the employee, not the Agency administrator, should determine whether the employee must take one, two, or three days of leave to arrange for and attend the funeral of a family member. The inclusion of the statement of maternity leave in the contract is appropriate, according to the Association, so that all unit employees may rely on one document to spell out their rights. With regard to the portion of the Agency's proposal dealing with emergency leave, the Association argues that its statement that emergency leave shall not be construed as personal leave, is contrary to common practice in contracts in the public sector. In this regard it points out that CESA #4, CESA #2 and 25 of the 31 school districts in the area served have a contractual provision for "personal/business/emergency" leave. Finally, the Association points out that a contractual statement regarding maternity leave is provided in the CESA #2 agreement in 14 of the the agreements covering districts served by the Agency.

According to the Agency, the Association's proposal to include a maternity leave provision is unnecessary. With regard to bereavement leave, the Agency contends that its proposal is superior to the Association's in both the amount of time and the purposes for which it can be utilized. With regard to the issue of personal leave, the Agency points out that only five school districts have provisions similar to that which is proposed by the Association. According to the Agency, nearly every district with a personal leave provision either deducts the cost of the substitute from the teacher's salary or deducts the day from the accumulated sick leave of the teacher.

For these reasons, and because the personal leave proposal is the most significant aspect of the Association's proposal, the Agency argues that the Association's proposal is not supported by the comparable districts and should be rejected as unreasonable.

There are a number of flaws in the arguments advanced by the Association in support of its proposal on paid leaves of absence. First, it is not accurate to characterize the difference between the two proposals as relating to their title and a conceptual difference as to the need for the inclusion of administrative discretion in the granting of the leave. The difference is one of substance since the Association's proposal would make the bereavement leave available for a much larger group and would make the two days of personal leave the rough equivalent of personal holidays. Because the personal leave would be available for nearly any purpose, administrative oversight would probably not be necessary under the Association's proposal. (Administrative oversight would clearly be necessary under the Agency's proposal to avoid claims of unequal treatment). Secondly, the impact of putting the proposed maternity leave provision in the agreement, would have an effect beyond providing a convenient point of reference. It would also make the stated policy easily enforceable through arbitration and subject the Agency to the theoretical possibility of enforcement in multiple forms. Finally, the Association would appear to be incorrect that, under the Agency's proposal, determinations by the Agency administrator would not be appealable, since his determinations would be subject to review for consistency with the contractual purposes of the leave and resolving any claims of arbitrary, discriminatory, or unreasonable denials.

The undersigned has evaluated the parties' respective proposals on the basis of the substantive differences between them. While the Association's proposal on bereavement leave more broadly defines immediate family, it is not deemed to be unreasonable in view of the fact that the leave may only be used for the purpose of bereavement. The Association's request for two days of personal leave, for broadly stated purposes, would be supported by the comparables if it were not for the fact that it does not require the employee to deduct such time from his or her sick leave account or to pay for the cost of a substitute teacher. Thus, the Association's proposal would appear to constitute a request for a fringe benefit which, while not unreasonable in itself, goes beyond that justified by the comparables. While the undersigned can understand the Agency's reluctance to agree to expose itself to the possibility of litigation in the arbitration forum for purposes of enforcing the maternity leave policy, the undersigned does not deem it likely that the Agency would be subjected to multiple litigation in most circumstances involving maternity leave and arbitration would probably provide a quick and final answer to any claims in that regard. On balance, the undersigned finds it difficult to choose between the two proposals on this item, but would tend to favor the Agency's proposal unless it can be shown that the Association's proposal should be selected as part of an otherwise reasonable package for a two-year agreement.

UNPAID LEAVES OF ABSENCE

The 1978-1979 "General Provisions of Employment" did not contain a specific provision dealing with unpaid leaves of absence. It did provide "any staff member unable to perform any or all of his duties by reason of illness, accident, or other cause beyond the point where all accumulated sick leave benefits are exhausted, shall be placed on leave of absence without further salary or benefits until such employee is able to resume his position but not longer than the current contract period or unless employee resigns." The provision went on to provide that health insurance premiums would be paid at the agreed upon rate for up to 90 additional days for disabled employees. The Association

has proposed that non paid leaves of absence of up to five days per year "may" be granted by the Agency administrator. It has further proposed that the Board of Control "will grant" requests for unpaid leaves of up to six months at a time "for serious health problems and family illness." It further provides that up to 12 months of unpaid leave "may be granted" for employees who seek advance training in the fields in which they were employed. Upon return, an employee would be entitled to the same position which was held before the leave, if available, or an equivalent position. However, if the employee had a special assignment, this special assignment or a similar special assignment would be made upon the employee's return.

The Agency has likewise proposed that non paid leaves of absences of up to five days' duration may be granted by the Agency administrator. However, with regard to longer leaves, the Agency proposes that its Board of Control "will consider requests of up to six months at a time for unpaid leave for serious health problems and family illness." It further provides that up to 12 months of unpaid leave will be considered for employees who seek advanced training in their field. Like the Association's proposal, the Agency's proposal would allow the Board to extend any leave that has been granted. However, upon return the employee would only be entitled to the same position or assignment if available and if not, "to at least the next available position similar to the one the employee previously held."

According to the Association, the only issue with regard to unpaid leaves of absence relates to the inclusion of an unpaid leave of absence for serious illness and family illness. It notes that its proposal would require the Board of Control to grant such leaves for a duration of up to six months, whereas the Agency's proposal would merely have the Board of Control consider requests. Thus, the question boils down to whether the Agency should be able to exercise discretion on a case-by-case basis. According to the Association, the Agency's proposal creates considerable anxiety among employees because of the uncertainty in terms of job security that results. This anxiety would be in addition to the anxiety caused by the illness itself. According to the Association "the Employer is not held to an indefinite commitment as total disablement of an employee would remove any future obligation on the part of the Employer." However, from the time of initial incapacitation to the time that an employee either returns to good health or is determined to be disabled, the Agency would have an obligation to grant the leave. According to the Association, provision for a medical leave of absence is not uncommon and is contained in the CESA #2 agreement and 12 of the CESA #14 area school districts. Finally, the Association argues that "it is more unreasonable to take the chance that an employee may one day suffer loss of a job because of a six-month illness" than to require that the leave of absence be granted since the hardship worked against the employee would be greater than that against the Employer.

According to the Agency, the question of the reasonableness of its proposal with regard to unpaid leaves of absence, is not the critical issue in this proceeding. According to the Agency, this is so because the evidence introduced at the hearing establishes that its offer is equivalent to any of the provisions contained in the other agreements with districts in the area served by CESA #14.

Under their proposals, both parties would add a new benefit in the form of a provision for a five-day discretionary leave of absence. In addition, the Association proposes that the Agency must grant requests for leaves of absence for up to six months at a time for serious health problems and family illness and that it may grant up to 12 month leaves of absence for purposes of seeking advanced training in their field. The undersigned does not find the use of the expression "will be considered" to be substantially different than the use of the word "may." Both approaches give the Agency considerable latitude to pursue a consistent policy with regard to the granting or denying of

such leaves. Further, the available comparisons indicate that those districts which have written agreements in this regard, including CESA #2, all have permissive language and time limits on leaves for purposes unrelated to health problems. Thus, the crux of the difference between the two proposals, in the view of the undersigned, centers on the Association's proposal that the Agency must grant the leave requests in the case of personal or family illness. When this requirement is combined with the requirement that the Agency hold the employee's job open or be prepared to place the employee in a similar job, it becomes clear that the Association's proposal goes well beyond that provided in the 12 area agreements and the CESA #2 agreement. Only a few of those agreements use mandatory language and all do so with express limitations, including time limits.

Under the prior conditions of employment employees could take a leave of absence for the balance of their contractual year in the case of illness and such leaves could equal or exceed the six months provided in the Association's proposal. However, the undersigned is concerned that the Association's proposal, as worded, is so openended that it does not preclude multiple requests of an arguably unlimited number. Further, the provision does not actually state, as the Association concedes in its argument, that the right to a leave ceases at some point in time, such as when an illness becomes so protracted that it would arguably constitute a permanent disability. In the view of the undersigned, this is considered to be such a serious flaw in the Association's proposal as to be sufficient in itself to reject it as being unreasonable in relation to the Agency's proposal. While this flaw could be corrected in a subsequent round of negotiations, a dispute might also arise as to whether any employee initially granted a leave under the clause as currently worded, has a vested claim to unlimited leavesof absence.

JUST CAUSE FOR ADVERSE ACTIONS AGAINST PROBATIONARY EMPLOYEES

Both parties have proposed provisions which would require that the Agency have just cause to take adverse actions against employees. Further, both provisions would provide a two-year probationary period, during which the Agency could nonrenew the contract of an employee. However, under the wording of the Association's proposal, the Agency would have to have just cause to suspend, reduce in compensation, or render an adverse evaluation of employee performance. Under the Agency's proposal, its just cause provision, which otherwise applies to discharges, nonrenewals, or reductions in compensation, would not apply to employees during their first two years of employment. Further, the Agency's proposal specifically states that there shall be no recourse to the grievance procedure during said period and that the just cause standard does not apply to layoffs.

The Association acknowledges that the parties' final offers on this issue are superficially similar, but contends that the impact on probationary employees is very dissimilar. Thus, under the Association's proposal, the Agency could nonrenew a teacher during the first two years of employment without meeting the just cause standard, provided it met the procedural requirements of Section 118.22, Wisconsin Statutes, which normally apply to nonrenewals. The Association states that under its proposal a teacher would have redress through the grievance procedure if the Agency could not substantiate a nonrenewal in any way and, more importantly, the existence of the probationary period would not preclude application of the just cause standard to dismissals or reduction in compensation. The Association contends that the Agency's proposal is far less reasonable in that it would not allow a probationary employee any form of redress under the agreement even in the most severe action that can be taken against an employee, discharge. This latter feature raises a constitutional issue, according to the Association, since the teacher would otherwise have a property right that would be protected from arbitrary action. Further, the Association argues, the Agency's proposal is contrary to the provisions of the CESA #2 and CESA #4 agreements

and the agreements with other area districts. According to the Association, the most common practice in the school districts in the CESA #14 area is to apply probation to nonrenewal only. Thus, it points out 11 districts have no probationary period, 6 districts have a probationary period in the case of nonrenewal, and 26 do not provide for probation in the case of dismissal. Even in those five districts which have no provision for just cause, the Association argues that employees there would have greater rights pursuant to the Fourteenth Amendment of the United States Constitution. In sum, the Association contends that 21 of the 31 districts practice a standard for dismissal that is the same as the standard contained in the Association's proposal.

According to the Agency, the issue presented by these proposals is not whether there should be a just cause standard for discipline, but how extensive and ambiguous such protection should be. According to the Agency, its proposal provides the necessary job security but avoids the use of ambiguous language, which is especially significant in a first agreement. This alleged ambiguity exists, according to the Agency, in only a few of the area school districts. The Agency argues that the parties should be afforded the opportunity to experience application of the just cause standard as provided in its proposal before agreeing to a more sophisticated form of job security, such as that provided in the Association's proposal.

While it is true that there is some ambiguity in the Association's proposal as it is currently worded, the most serious ambiguity complained of by the Agency, that which refers to "deprivation of professional advantage," has been eliminated from the official final offer of the Association. Further, the Agency's proposal to not apply the just cause standard to dismissals or reductions in compensation in the case of probationary employees, would appear to go beyond the normal purpose of a probationary period in educational employment. Also, any action adversely impacting on the individual teachers' liberty interests or property rights would be subject to constitutional challenge and statutory challenge in a court proceeding which would be far more expensive and less expeditious than an arbitration proceeding. In the view of the undersigned if the Agency had concerns about a teacher's performance sufficient to justify discharge or reduction in compensation, it is not unreasonable to expect that the Agency would be prepared to meet a just cause standard for taking such action. While it would appear that under the Association's proposal a probationary teacher could appeal an adverse evaluation, the second paragraph of the Association's proposal clearly states that any nonrenewal of a probationary teacher is not subject to the just cause standard. Comparing the Association's proposal to the other just cause provisions contained in area contracts it would appear to be generally supported by the practice in other area districts which have agreed to the just cause standard. For these reasons the undersigned would select the Association's proposal on this issue if it were the sole issue in dispute.

FAIR SHARE

Currently there is no form of union security provided by the Agency. The Association proposes a fair share provision which is applicable to all employees which it represents and which contains those provisions normally contained within fair share agreements in Wisconsin. Under the terms of the Association's proposal, its fair share provision would go into effect during the second year (1982-1983) of the agreement. The Agency proposes to include a clause dealing with salary deductions which would allow for dues check off in addition to deductions for such purposes as tax sheltered annuities and deferred compensation accounts.

The Association points out that public policy in Wisconsin supports the concept of fair share agreements in public employment as well as all union agreements in private employment. It points to differences between fair share agreements and all union agreements, based on the latter's apparent requirement of union membership. According to the Association, a fair share agreement is consistent with public interest in that it helps promote stable labor relations and labor peace. In this regard, the Association contends that a union security agreement is the counterpart of a management rights clause or other form of management "security." Further, unions alleged need fair share agreements for economic survival in view of an power imbalance in the normal relationship that exists between labor and management. The Association points out that the comparables relied upon by the parties demonstrate "overwhelming acceptance of the fair share concept." Thus, both CESA #2 and CESA #4 agreements contain fair share provisions and 25 of the 31 area agreements also contain fair share provisions. Additionally, 25 out of the 28 area districts represented by a WEAC or AFT affiliate have fair share provisions. Anticipating that the Agency might argue that a referendum would be appropriate for purposes of implementing a fair share agreement, the Association argues that such point is immaterial in view of the Agency's failure to make such a proposal and the argument is without merit in view of the legislative determination that a referendum should only be required upon a 30% showing of interest.

The Agency points out that the evidence discloses that there still are a number of districts in the CESA 14 area who do not have fair share provisions. Further, it points out that two districts have just recently added this concept to their agreements for the 1982-1983 school year. However, the Agency contends that comparability should not form the basis for deciding this issue. This is so, according to the Agency, because this is the first agreement between the parties and seldom do initial agreements contain provisions for fair share. In addition, the Agency points out that currently there are only four bargaining unit members that are members of the Association. This evidence establishes that the Association has not yet established itself as sufficiently accepted by the employees themselves to warrant the granting of a fair share provision.

It is clear that, based on comparables alone, the Association's proposal for a fair share agreement should be preferred over the Agency's proposal for a dues check off provision. Nevertheless, the Agency is correct when it points out that the inclusion of a fair share agreement in a first contract, especially when so few employees have voluntarily joined the Association is very unusual. The undersigned would be inclined to exclude a fair share provision from the initial Collective Bargaining Agreement between the parties if this issue were to be decided on its own merits. However, it should be pointed out that if a fair share provision is included in the parties' agreement it can be easily eliminated by the employees themselves upon presenting a 30% showing of interest through the Agency and obtaining a referendum on the matter. If it were not for this latter provision, contained within state law, the undersigned would find the Association's proposal to be a very serious flaw in its final offer, given the small number of employees who have voluntarily joined the Association. Given the long history concerning the efforts of the employees to bargain collectively with the Agency, it is possible that the small number of employees who have voluntarily joined the Association is more reflective of turnover and frustration than their desires regarding representation.

MILEAGE REIMBURSEMENT

This is the first issue of a strictly monetary nature of the five to be discussed. It is undisputed that itinerant teachers who work for the Agency drive many miles in the course of their employment. As part of their negotiations for a two-year agreement, the Agency and

Association have agreed to increase the per mile reimbursement rate to 24 cents per mile. Because the Agency has proposed a reopener of monetary issues, it has no proposal with regard to the mileage reimbursement rate for the second year of the agreement and its mileage reimbursement rate simply states "the mileage rate of 24 cents per mile will be paid for all approved CESA mileage." The Association has proposed that as of July 1, 1982, the mileage rate of 24 cents per mile shall be thereafter modified quarterly by one cent for each ten cent increase or decrease in the retail price of unleaded gasoline, as measured by the average price posted at three filling stations in Fennimore, Wisconsin. The first such change would take place on October 1, the second on January 1, the third on April 1, and the fourth on July 1. The Association's proposal also contains some clarifying language regarding when compensation is due, which apparently reflects current practice.

The Association relates it proposal with regard to mileage to the unusually large number of miles traveled by itinerant teachers in the performance of their duties. According to the Association, it is not uncommon for an employee to have assignments in three or four schools resulting in as many as 200 miles of driving per day.

The Association attached some exhibits to its brief purporting to substantiate its claims in this regard, which were not specifically objected to by the Agency. (The undersigned has not relied on those exhibits since a review of the area served by CESA #14 as well as the other undisputed evidence of record establishes that the mileage reimbursement rate is a significant factor.) According to the Association, it is unfair to compare the mileage reimbursement rates provided in local school districts because of the large number of business miles traveled by itinerant teachers for the Agency. In fact, according to the Association, many area districts do not even bargain a mileage rate, and the rates set out in Agency exhibits reflect unilateral policy of district boards. Further, the Association points out that some of those districts only operate out of a single building. Agency exhibits also reflect rates for the 1980-1981 school year which are outdated and failed to include the use of a formula (1 cent for each 10 cents in increased gasoline costs) for the school district of Richland, according to the Association. The best comparisons for this purpose, according to the Association, are CESA #2 and CESA #4 which both provide for adjustments in the mileage rate during the term of the agreement. In CESA #2 the rate is set by the Board based on the changing cost of gasoline. The Association contends that it is unreasonable for the Agency to expect its employees to subsidize their employment by assuming any portion of their travel costs. In this regard the Association points out that studies conducted by national organizations, some of which are attached to its brief, generally reflect actual operating costs well in excess of the 24 cents agreed to herein. For these reasons there is a compelling rationale to select the Association's proposal which is more reasonable and necessary under the employment conditions that exist at CESA #14, according to the Association.

The Agency contends that the evidence it introduced at the hearing establishes that within the school districts served by the Agency, only one district, Kickapoo, has an excalating arrangement and only three districts have rates of reimbursement higher than the 24 cents per mile established by the parties here. Those districts are Dodgeville, Richland and Weston, according to the Agency. For these reasons the Agency contends that its position with respect to mileage reimbursement is clearly more reasonable.

In the view of the undersigned, the parties are not far apart on this issue, except for the Agency's reluctance to utilize a formula for purposes of escalating its mileage reimbursement rate. In this regard the Agency points out that the Weston School District agreed to a 30% increase in order to buy out such a formula. Nevertheless, there

are at least three districts which use an agreed to formula for purposes of increasing the mileage reimbursement rate. CESA #4, which the undersigned finds more comparable to the Agency herein for purposes of this particular working condition, provides a reimbursement rate of 18 cents per mile plus 1 cent per mile for every 10 cents over a base rate of 85 cents. Richland School District provides a formula of 1 cent for every 10 cents and Kickapoo provides a formula of 1 cent for every 5 cents. Further, as the Agency concedes, at least three districts in the area provide reimbursement rates which are higher than the agreed to rate for 1981-1982. Based on available cost-of-living data, particularly that relating to fuel prices, the undersigned does not believe that the Association has proposed an unreasonable formula. Nevertheless, the Agency's concern about the lack of control over mileage costs is not without reason, given the recent history of gasoline prices. If the undersigned were forced to a choice between the two proposals on this issue alone, it would be a difficult choice because of the reopener clause contained within the Agency's duration clause. Since the price of gasoline is only one of the escalating costs of transportation, the undersigned has no doubt that the Association will be able to provide persuasive arguments for further increases in the agreed to mileage rate. (The Association's proposal assumes a fairly low miles per gallon rate and is presumably designed to cover other costs as well.) For these reasons, and because of the importance of this item in a CESA district, the undersigned has a slight preference for the Agency's proposal which would subject this item to annual or biennial negotiations.

HEALTH INSURANCE

Health insurance, as a fringe benefit, is not really in issue except to the extent that the Agency's proposal is for a one-year agreement and would subject this item to renegotiation for the 1982-1983 school year. The parties are in agreement as to the rate of contribution to be provided by the Agency for the first year of the agreement, $1150 for persons electing family coverage and $455 for persons electing single coverage. The Association proposes that during the 1982-1983 school year the Agency's contribution be increased by a dollar amount equal to 20% to $1380 for persons electing family coverage and $546 for persons electing single coverage.

According to the Association, its proposal includes a 20%"rollup" for the probable increase in insurance premiums during the 1982-1983 school year. The Association acknowledges that there is no way for anyone to know for certain what the health insurance costs for 1982-1983 will be. However, the Association points to newspaper articles and other media stories concerning the current rapid rise in health insurance costs. According to the Association, if the trend established in 1981-1982 continues, it is probable that any increase will be in the 30% range rather than the 20% range. Thus, according to the Association, it is probable that the Agency will pay no greater portion of the full costs of health insurance in 1982-1983 than it has agreed to pay in 1981-1982. Further, it is probable that the Association's proposal will appear "very modest" once the actual rates for 1982-1983 are known. Finally, as a portion of the overall increase in compensation for teachers, the Association contends its proposal on health insurance is "modest."

The Agency did not separately address the issue of health insurance and treated the cost of the Association's proposal in its argument with regard to the alleged unreasonableness of the overall cost of the Association's proposal for 1982-1983.

The undersigned would agree with the Association that a proposed 20% increase in the cost of health insurance, in the absence of hard data concerning the actual increase that will be experienced, is not particularly unreasonable. However, it is not possible to evaluate the reasonableness of the Association's proposal on this issue without reference to the other monetary issues of consequence, i.e., the rate

of contribution for STRS and the salary schedule for the 1982-1983 school year.

RATE OF CONTRIBUTION FOR STRS

As noted above, in the background discussion, the Agency's decision to establish fixed dollar amounts for purposes of STRS contributions which were in some cases lower than existing dollar contributions for previously hired employees provided some of the impetus for the Association's efforts to represent the employees in question. Under the Agency's proposal for 1981-1982, all employees, regardless of their date of hire, would be entitled to receive an increasing scale of dollar contributions towards the cost of their portion of the STRS contributions. Employees at salary levels 1 through 3 would receive $600, employees at salary levels 4 through 6 would receive $700, employees at salary level 7 through 9 would receive $750, employees at salary level 10 through 12 would receive $800, and employees over level 12 would receive $900. The Association's proposal would require the Agency to pay the equivalent of 5% of gross salary (the full contribution level) for all employees covered by the agreement during both years of the agreement. Under the Association's proposal the Agency would be required to pay a range of contributions from a low of $615 to a high of $894 for full-time employees teaching between 190 and 210 days per year. The total cost of the Association's proposal on retirement during the first year of the agreement amounts to $9,445, according to the Association's calculations. That amounts to the equivalent of approximately $700 per FTE employee. On the other hand, the first year cost of the Agency's proposal, according to its calculations, amounts to $7,608.26 or a cost per teacher of $563.57 based on 13.5 FTE teachers. The Association estimates the second year cost of its STRS proposal at $10,595. Thus, the cost of the STRS contribution would increase by $1,150 or approximately $85 per FTE teacher in the second year of the agreement.

The Association contends that its proposal with regard to STRS contribution compares favorably with the general practice in the area and throughout the State. It notes in particular that CESA #4 pays the full 5% employee portion of the STRS contribution formula. In addition, CESA #2 also pays full retirement costs of its employees. According to the Association, "an overwhelming majority" of the districts in the CESA #14 area pay the full 5% contribution. Specifically, it contends that 21 districts pay the full 5%, seven pay the full 5% up to a given maximum, and one district pays a dollar range of $575 to $750. According to the Association, only two area district pay retirement based on a schedule, as proposed by the Agency. According to the Association, if the undersigned were to select the Agency's proposal, it would result in the imposition of a far lesser standard than that practice by most employers. Similarly with regard to the second year of the agreement, the Association argues that there is no evidence concerning a trend toward dollar amount contributions which would make its proposal for a continued 5% contribution appear to be less comparable in the second year of the agreement. Finally, the Association argues that its proposal in this regard when considered as part of its total compensation increase requested, constitutes a "modest demand."

The Agency does not separate its arguments with regard to STRS contributions from its argument with regard to salary. The Agency contends that its proposal with regard to STRS, when combined with its salary proposal in the first year, amounts to an offer of approximately 11.3%. For reasons discussed more fully below, the Agency contends that its proposal is more reasonable overall than the Association's.

The Association would appear to be correct that the prevailing practice with regard to STRS contributions clearly supports its proposal for a 5% contribution level. In fact, the Agency mounts no specific argument with regard to the propriety of that contribution level and relies instead on its argument that the Association's proposal overall is excessive. Thus, the undersigned concludes that the Association's proposal for a full 5% STRS contribution should be favored over that of the Agency, provided its overall package is not deemed excessive.

SALARY

As noted above in the discussion of the background of this dispute, the salary schedule which was unilaterally established by the Agency for the 1980-1981 school year, is similar to the salary schedule for the Platteville School District but remains below the Platteville salary schedule at all points. In particular, the Agency's schedule for 1980-1981 was $200 below the Platteville schedule for the Bachelor's base salary and a slightly larger amount below the Platteville schedule at most other points on the schedule. In its proposed schedule for the 1981-1982 school year, which is attached hereto as Appendix A, the Association has proposed to increase each cell of the salary schedule by 9%. This would raise the Bachelor's base salary to $12,000 which would still be $225 below the Platteville base. Further, it would add new steps to the Master's Degree lanes, as does the Platteville schedule. The application of a 9% increase would result in a general diminishing of the gap between the Agency schedule and the Platteville schedule in the higher steps of the schedule. Thus, the difference between the MA+20, step 14 salary on the Platteville schedule and the same step on the Agency's schedule would only be $86. This would have the additional effect of raising the ratio of maximum to minimum salary to a 1.748 level (compared to a 1.72 level for Platteville).

The Agency's proposed salary schedule for 1981-1982, which is attached hereto as Appendix B, would likewise add new steps to the three Master's Degree lanes. Further, it would employ a $12,125 base, which is higher than the base proposed by the Association and only $100 less than the Platteville base. However, because the Agency's proposed salary schedule uses declining dollar increments which are less than the 4% increments contained within the Association's proposed salary schedule, the dollar difference between most cells on the two salary schedules becomes larger as you progress through the schedules. Further, only the first four Bachelor's base salary figures on the Agency's schedule are larger than the salaries provided on the Association's schedule. This is a result of the fact that the Association provides for $300 differences between each lane on the schedule and the Agency's schedule provides for flat dollar amounts ranging from $228 (between the BA+10 and BA+20 lanes) to $301 (between the BA+30 and MA lane.)

The Association's proposed 1982-1983 salary schedule is identical in structure to the Association's proposed 1981-1982 schedule. However, the Association has proposed to increase each cell of the 1982-1983 salary schedule by 8.5%. This would increase the dollar difference between lanes but would maintain the same overall ratio relationship within the schedule. Thus, the ratio between the top step in the Master's plus 20 lane and the Bachelor's base would continue to be 1.748. Returning teachers placed on this schedule would receive an 8.5% increase plus a 4% increment and most returning teachers would be eligible for a step increase.

The Association acknowledges that among the numerous issues presented by the parties' final offers, the economic issues, the just cause issue and the fair share issue are probably the most important. Among those issues the Association would rank the economic issues, and in particular salary, as the most important.

In support of its salary proposal the Association relies heavily on the evidence regarding the history of the Agency's practice prior to union representation. According to the Association, the Agency had an established and recognized practice of paying the highest salaries in the area, i.e., those provided by the Platteville salary schedule. According to the Association, the record is replete with uncontroverted evidence to support this claim. The Association contends that the Agency continued the utilization of the Platteville salary schedule into the 1979-1980 school year and that the Agency paid out an additional $200 per employee during that year when it learned that the Platteville School District has reopened its negotiations and increased its previously settled salary base. According to the Association, it was only because of dilatory tactics on the part of the Agency that it

was unable to bargain with regard to restoring the relationship between the Platteville salary schedule and the 1980-1981 salary schedule followed by the Agency.

The Association has proposed a $12,000 base with an indexed structure which it alleges would continue the structure unilaterally imposed by the Agency in 1980-1981. On the other hand, the Association contends that the Agency has proposed a totally new structure, utilizing a graduated dollar value increment. Thus, although the Agency has offered a larger base salary figure ($12,125) it has diminished the value of the experience increment so that the maximum salaries are increased only a very small amount, e.g., $131 or .9% at BS, step 8.

The Association contends that, because of the uniqueness of working conditions and the wage leadership status previously enjoyed by CESA #14 employees, the Agency should continue to be a wage leader in the area. However, it contends that its proposal is no more than a "modest attempt" to regain a small portion of that status. In this regard it relies on state-wide averages to support its position.

The Association also points to comparisons with CESA #2 and CESA #4. According to the Association, its data establishes that the Agency has failed to keep pace with increases at seven representative points on the salary schedule when compared to those two agencies.

When the proposed salary schedules are compared to the Platteville salary schedule, the Association contends that its proposal should be found to be much more reasonable. While the Association's proposal "retains the level of comparative pay" the Agency's proposal creates a growth in the gap between the two schedules.

The "real difference" between the two schedules, according to the Association, is the Agency's deviation from past practice with regard to the structure of the schedule. This is perhaps best demonstrated by the Platteville comparison, and evidences an effort to bring about lesser pay as a result of arbitration and thereby "discredit" the Association.

In comparing the salary schedules proposed by the parties herein to salary schedules in other area districts, the Association claims that the Agency proposal would improve the rank and relationship at the BA base level but would, at many other points, cause a deterioration in the relationship. Of particular significance, according to the Association, is the failure to provide reasonable increases for experienced teachers. Whereas, the area average increase for teachers at the maximum in the various lanes analyzed by the Association is approximately 9%, the increase for teachers at the maximum on the Agency's schedule would, in all cases, be substantially below that figure.

The Association also argues that a comparison of total compensation costs establishes the unreasonableness of the Agency's proposal with regard to the first year of the agreement. Thus, the Agency's proposed increase falls approximately $256 below the average increase as shown in Association exhibits. Further, its average increase is $1,711 or $499 less than the largest average increase in the area (Mineral Point at $2,210). In fact, according to the Association, its calculations for average increases demonstrates that its proposed increase per employee is slightly below average whereas the Agency's proposed increase is substantially below average.

With regard to its proposed salary schedule for the second year of the agreement, the Association acknowledges that there were no available area settlements at the time of the hearing. Thus, the Association points to the state-wide figures compiled by the WEAC in support of its 1982-1983 salary schedule. According to the Association,

its proposed 8.5% increase, utilizing the same "index" used in prior years, is more reasonable than the Agency's position which is to provide for no salary increase at this time. In this regard the Association contends that if bargaining for the 1982-1983 school year is postponed until after the Award herein, it is quite unlikely that the economic conditions for 1982-1983 will be established before the end of that contract year.

In support of its data regarding state-wide settlements, the Association points out that that data is based on the second year of two-year agreements. It argues in this regard that even if the settlement trend were to drop by 2 to 3 percentage points, the Association's proposal would still be "modest" at 8.5%.

Finally, the Association argues that the negotiated costs of the 1982-1983 package would, by its calculations, increase by $25,346.50 over the costs of 1981-1982. It argues that when this cost is distributed among the 13.3 FTE staff members, the increase per staff member is $1,905.75, an increase smaller than the Association proposed for 1981-1982.

The Agency contends that, although the practices of other CESA districts, including those who responded to a survey conducted by the Agency (the results of which were introduced into evidence), are relevant, the controlling comparable group for most purposes consists of the districts which are served by the Agency. This is true, according to the Agency, not only because both parties utilized these districts in support of their arguments, but also because these districts do in fact represent the existing level of wages and benefits in the geographic area in which the Agency operates.

The Agency contends that the state-wide average data relied upon by the Association is inappropriate because wage levels vary substantially across the State. Further, the use of comparisons with other selected CESA districts is inappropriate for the same reason. According to the Agency, the evidence submitted with regard to the practices of other CESA units establishes that there is a strong relationship between the salaries and benefits in each CESA district and the districts served by the CESA district. In particular, the Agency points to statements to the effect that the CESA districts attempt to maintain salary and benefit levels which are at or below average among the districts served.

According to the Agency, the salary issue is the most significant issue separating the parties. For the 1981-1982 school year its offer would cause the district to rank fourth at the BA base, eleventh at the MA base and eleventh at the schedule maximum, according to the Agency's exhibits.

The Agency acknowledges that its ranking may deteriorate slightly for the 1981-1982 school year under its proposed salary schedule but argues that this is justified because of the increased costs of health insurance and STRS contribution. It further points out that nearly all of the teachers will be eligible to receive an increment this year, whereas teachers in other districts frequently do not receive such increments because they are at the top step of the lane in which they are placed. For this reason the Agency argues, the analysis must be directed to increases received by individuals.

The Agency acknowledges that there was considerable dispute at the hearing concerning the accuracy of the parties' respective costing figures. Nevertheless, the Agency argues that its offer does approximate 11.3%. On the other hand, the Association's proposal, according to the Agency, represents an increase of approximately 13.9% in 1981-1982 and 12.4% in 1982-1983, according to the Association's own figures. Thus, according to the Agency, the Association's proposal is in excess ov 25% over the two-year period involved.

According to the Agency, the difficulty in costing in this case arises from the turnover in staff and the length of time over which the bargaining has continued. However, when the 1980-1981 employees and their salary and benefits are compared for 1981-1982, the increases vary from approximately 10% to 14%, whereas the Association's proposal would generate averages approximately 2% more.

Finally, the Agency argues that the average total compensation increases relied upon by the Association in its arguments, are not reliable because the salary and benefit levels in the other districts were higher initially. On the other hand, because the Agency's offer is in excess of the rate of inflation, and otherwise more reasonable than the Association's, its offer on salary should be selected over that of the Association.

Before addressing the salary issue, the undersigned would make a number of observations concerning some of the evidence and arguments presented. First of all, with regard to the parties' arguments concerning the appropriate comparable group, it would appear to the undersigned that other CESA districts are more persuasive for certain comparisons, other than salary. Thus, as noted above, other CESA districts, particularly those with negotiated agreements, are considered persuasive for purposes of certain working conditions, such as mileage reimbursement. However, on the issue of salary (and fringe benefits such as insurance and STRS contribution) the other school districts within the area served by the CESA agency are deemed to be the most comparable group. It is these districts which purchase the services of the CESA agency and dominate its Board of Control. As the Agency points out, if the salary and fringe benefits paid to CESA employees are not in line with those paid to employees of the districts served by the CESA, the districts are given an incentive to make other arrangements for purposes of obtaining the specialized services provided by the CESA agency. In fact, this phenomenon is directly reflected in the salary provisions of one of the CESA districts relied upon by the Association as a comparable.

For this same reason, the Association's evidence with regard to state-wide averages is not deemed to be particularly persuasive. Further, much of its data, to the extent that it reflects average salary increases for teachers in the districts served by the Agency, must be carefully scrutinized because of a possible distortion when comparison is drawn to the employees of the Agency. This is so because of the fact that of the 14 employees employed by the Agency and covered by the agreement, nine are in the Bachelor's lane and only one is above the Master's lane.

Finally, it is evident that the Association relies heavily on the historical relationship which the Agency has enjoyed with Platteville, in terms of salary schedule alone. Because of that relationship and in view of the specialized nature of the work performed by the employees in question, the undersigned does not consider it unreasonable that the Association seek a salary schedule that is above average, when compared to other districts represented by the Agency. However, it must also be kept in mind, that when the Agency maintained a parity relationship with the Platteville schedule, Agency employees did not enjoy the same benefits and working conditions as Platteville, most of which are now being sought as part of the agreement herein.

If the undersigned were forced to a choice between the two first-year salary schedules, he might be inclined to select the Association's salary schedule over that of the Agency. That schedule is not only closer to the Platteville schedule, but in some respects is an improvement upon the Platteville schedule. Further, that schedule would cause no "erosion" of position at any relevant point on the schedule. Finally, that schedule would cause no "harm" to any returning staff member, because all cells on the schedule would be increased by a substantial amount. However, if the undersigned were to select the Association's final offer for purposes of implementing the first-year salary schedule and allow the Association to "catch up" with the Platteville schedule,

individual returning employees would all receive very sizable salary increases (ranging from a low of 12.4% to a high of 13.46% based on data in the Association's own exhibits) while at the same time receiving a full STRS contribution and a significant increase in insurance contributions.

The reason why the undersigned might be inclined to accept the Association's first-year salary schedule relates to the fact that the Agency's proposal for a first-year salary schedule represents a further departure from the Platteville schule and "erosion" of position at a number of points on the salary schedule, when compared to other districts represented by the Agency. Nevertheless, it should not be overlooked that the schedule in question is, to a large extent, a theoretical problem because of the small number of teachers, particularly returning teachers,who will be placed on that schedule. Under the Agency's proposal, most of the returning staff will get a significant wage increase, but not nearly in the same range as they would under the Association's proposal. Of the six returning staff identifiable on the Association's Exhibit No. 56, two employees will receive salary increases of 12.95%, and three others will receive salary increases ranging from a high of 11.2% to a low of 7.55%. One part-time employee who will be located at the top step of the Bachelor's lane will only receive a 4.2% increase in salary. Further, it should be remembered that all these employees will receive increases in the district's contribution toward their retirement and insurance.

When the Association's second-year salary proposal is added on top of its first year salary proposal and requested increases in retirement and insurance, the undersigned is compelled to conclude that it is excessive overall. In the second year of the agreement employees would receive an 8.5% across the board increase plus a 4% increase based on the increment. (All but one would appear to qualify for an increment based on the 1981-1982 staff.) There is no way to predict with certainty, based on the record herein, what level of settlements will be forthcoming among the districts served by the Agency. However, it is clear that the Association's proposal would not only exceed the probable level of such settlements but would also result in establishing itself as a leader in the area. Given the small size of the bargaining unit in question, that status would seem unwarranted.

While the undersigned agrees that there are a number of problems with the Agency's first-year salary schedule, which apparently relate to declining dollar amount increments provided therein, the Association can seek to correct those deficiencies in the reopened negotiations for 1982-1983. On the other hand, if the Association's salary offer were selected, no such mid-term correction would be possible.

OVERALL ANALYSIS

The above analysis may be recapped as follows: of the six "language" issues discussed above, the Association's proposal has been preferred on three and the Agency's proposal has been preferred on three; of the two issues identified by the Association as important, just cause for adverse actions and fair share, the Association's proposal has been preferred on one and the Agency's proposal has been preferred on the other; of the four less significant language issues, the Association's proposal has been favored on the two deemed least significant by the undersigned and the Agency's position has been preferred on the two deemed more significant by the undersigned; an overall weighting of the language issues would seem to favor the Agency's position slightly over that of the Association; the first monetary item, mileage reimbursement, is not deemed particularly significant and weighs slightly in the Agency's favor; the Association's position on insurance in the second year of the agreement and on STRS during both years of the agreement, is favored over that of the Agency, but only if otherwise supported as a part of its overall economic proposal; the Association's salary proposal for

the first year of the agreement is deemed superior to that of the Agency but its overall value, when combined with the Association's second-year salary proposal and the proposed increases in insurance and STRS costs, is deemed excessive when compared to other districts served by the Agency. It should be apparent from this analysis that, overall, the Agency's final offer should be preferred over that of the Association. Some, but not all, of the above described problems with the Agency's proposal can be corrected in negotiations over monetary issues for 1982-1983.

For the above and foregoing reasons the undersigned renders the following

AWARD

The Agency's final offer, submitted to the Wisconsin Employment Relations Commission, shall be included in the parties 1981-1983 Collective Bargaining Agreement along with all of the provisions which were stipulated to by the parties.

Dated at Madison, Wisconsin this 20th day of September, 1982.[1/]

George R. Fleischli
Arbitrator

1/ The original award in this proceeding was issued on September 7, 1982. The award was amended on September 20, 1982 to correct an error in the wording of the Award. The parties concurred in the amendment, as proposed by the arbitrator.

ASSOCIATION PROPOSAL

CESA # 14
1981-1982

	BA	BA+10	BA+20	BA+30	MA	MA+10	MA+20
1	12,000	12,300	12,600	12,900	13,200	13,500	13,800
2	12,480	12,792	13,104	13,416	13,728	14,040	14,352
3	12,960	13,284	13,608	13,932	14,256	14,580	14,904
4	13,440	13,776	14,112	14,448	14,784	15,120	15,456
5	13,920	14,268	14,616	14,964	15,312	15,660	16,008
6	14,400	14,760	15,120	15,480	15,840	16,200	16,560
7	14,880	15,252	15,624	15,996	16,368	16,740	17,112
8	15,360	15,744	16,128	16,512	16,896	17,280	17,664
9		16,236	16,632	17,028	17,424	17,820	18,216
10			17,136	17,544	17,952	18,360	18,768
11				18,060	18,480	18,900	19,320
12					19,008	19,440	19,872
13					19,536	19,980	20,424
14					20,064	20,520	20,976

New employees will be credited with a regular full year teaching experience on the salary schedule for each year of outside experience. Board action may permit crediting additional years of experience based upon special needs of the Agency.

APPENDIX A

AGENCY PROPOSAL

ARTICLE XV

CLSA #14 TEACHER SALARY SCHEDULE

Effective Beginning the 1981-82 School Year

STEP	BA	BA+10	BA+20	BA+30	MA	MA+10	MA+20
1.	12,125	12,368	12,636	12,904	13,197	13,465	13,733
2.	12,423	12,745	13,024	13,303	13,632	13,910	14,189
3.	12,725	13,122	13,412	13,702	14,066	14,356	14,645
4.	13,025	13,500	13,800	14,100	14,501	14,801	15,101
5.	13,325	13,877	14,188	14,499	14,935	15,246	15,557
6.	13,625	14,354	14,576	14,890	15,370	15,692	16,013
7.	13,925	14,631	14,964	15,297	15,804	16,137	16,470
8.	14,225	15,009	15,352	15,695	16,239	16,582	16,926
9.		15,384	15,740	16,094	16,673	17,028	17,382
10.			16,128	16,493	17,108	17,473	17,838
11.				16,894	17,542	17,918	18,294
12.					17,977	18,363	18,750
13.					18,411	18,809	19.206
14.					18,852	19,250	19,661

Regular full year teaching experience will be credited on the salary schedule up to five years. Board action may permit crediting additional years of experience based on special needs of the Agency.

APPENDIX B