RECEIVED

SEP 29 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE MEDIATOR/ARBITRATOR

In the Matter of the Stipulation of WEST BEND SCHOOL DISTRICT NO. 1 and WEST BEND EDUCATION ASSOCIATION To Initiate Mediation-Arbitration Between Said Parties	Case XXXVII No. 28263 Med/Arb-1267 Decision No. 19443-A

APPEARANCES: Mulcahy & Wherry, S.C., Attorneys at Law, by ROBERT W. MULCAHY, and PAUL R. VANCE, Employee Relations Coordinator, appearing on behalf of the District.

DENNIS G. EISENBERG, Executive UniServ Director, Cedar-Lake United Educators, appearing on behalf of the Association.

ARBITRATION AWARD

West Bend Joint School District No. 1, hereinafter referred to as the District, and West Bend Education Association, hereinafter referred to as the Association, 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 both parties, on June 24, 1981, filed a Stipulation with 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 March 5, 1982.1/ 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 30, 1982, appointing the undersigned as mediator-arbitrator. The undersigned endeavored to mediate the dispute on June 22, 1982, but mediation proved unsuccessful. Pursuant to prior written notice, a hearing was held on the same date and continued until 11:35 p.m., when it was adjourned to June 28, 1982. A verbatim transcript of the hearing was prepared and the parties filed post-hearing briefs and reply briefs, the last of which were received by August 9, 1982. Full consideration has been given to the evidence and arguments presented in rendering the Award herein.

THE ISSUES IN DISPUTE

If the parties' proposals with regard to salary increases for the two years of the agreement (including the rate of pay for hourly assignments) are treated as one issue, there are four basic issues in dispute. They are:

1/ A portion of the delay between the filing of the Stipulation and the certification of impasse was attributable to disputes involving the bargainability of a number of Association proposals, which resulted in the filing of three separate declaratory ruling petitions with the WERC.

I. Continuation of Insurance Benefits for Teachers who Complete the Term of Their Individual Contract.

The 1979-1981 Collective Bargaining Agreement contained a provision (Article XI, Section (1)) dealing with the District's health insurance program. That provision stated that the District would pay the full cost of group hospital-surgical insurance for all teachers and that, in the case of a teacher who fulfilled his or her individual contract obligations, but left the District for other than retirement, the District would pay the first two months of coverage (July and August), after the month in which the teacher left employment,provided the teacher exercised the conversion privilege under such program. In the case of a teacher who left employment after completing his or her obligations under the individual teaching contract but did not exercise such option, the District was obligated to pay the insurance premium through the month of such termination.

A. District's Offer. The District contends, in its reply brief, that it was never the intention of the District, in entering into stipulations and formulating its final offer, to modify or eliminate this provision of the agreement. Thus, contrary to the arguments contained in the Association's brief, the District contends that under the stipulations agreed to and its final offer, teachers who fulfill their contractual obligations and elect to exercise their conversion privilege under the hospital-surgical insurance program will have their premiums paid for the months of July and August as in the past. It is undisputed that the District's offer does not include an expansion of the provisions of the 1979-1981 Collective Bargaining Agreement to provide for the continuation of other group insurance benefits during those months, as proposed by the Association.

B. Association's Offer. The Association proposes to include a new paragraph a in Article XI which would provide fully paid coverage for all existing insurance benefits (including hospital/surgical, dental, life and long term disability) through the month of August for all teachers who complete the term of their individual contract. The provision in question would read as follows:

> "K. Continuation of Fringe Benefits: For employes who complete the term of his or her individual contract, the District shall provide fully paid coverage for insurance benefits through the month of August following the date of completion of the individual contract.
>
> "Employes who do not complete the term of his or her individual contract during the school year shall have insurance benefits terminated at the end of the month following the employe's actual severance of employment with the school district."

II. Continuation of Insurance Benefits for Teachers who are Laid Off.

The terms of 1979-1981 Collective Bargaining Agreement were similar with regard to the continuation of insurance benefits for teachers who are laid off. However, under the terms of that agreement, the District's practice was to lay off teachers consistant with their contract rights in Section 118.22 of the Wisconsin Statutes. Thus, a teacher would normally complete the term of their individual teaching contract before the effective date of the layoff and the provisions of the agreement described above allowed such teachers to continue participation in the group hospital-surgical insurance program provided they exercised the conversion privilege under such program. There was no provision for the continuation of other insurance coverage for such teachers.

A. District's Offer. The District proposes to include in Article XXVII, dealing with staff reduction, a provision specifically dealing with the continuation of group health insurance for teachers who are laid off. Basically that provision would allow for the continuation of group health insurance coverage for one year, with the teacher prepaying the monthly premiums, unless the teacher was laid off during the school year. If the teacher is laid off during the school year "for the second semester" in accordance with the time lines agreed to between the parties, the Board has offered to continue to provide the teacher with group health insurance at the District's expense, through the month of August. The provision in question reads as follows:

"4. a.) The layoff of each teacher shall commence on the date specified in the layoff notice and such teacher shall be paid for services performed under that contract to the date of such layoff in accordance with this Agreement. When a teacher is laid off (other than during the school year) the teacher will have the option of continuing with the District's group health insurance program for one (1) year with the teacher prepaying the monthly premiums unless prohibited by the insurance carrier or State or Federal law. The teacher shall not be precluded from securing other employment during such teacher's re-employment rights period. Upon obtaining continuing employment the employe shall, within seven (7) days, notify the District of the name and address of the employer.

b.) In the event that the Board lays off a teacher during the school year for the second semester in accordance with the timelines stated in paragraph 1 a.) above, the Board shall continue to provide the teacher with the group health insurance program benefits provided to employes under this collective bargaining agreement, at the Board's expense, through the month of August following the completion of the individual teacher's contract, except where such benefit is prohibited by the insurance carrier or State or Federal law. The provisions of this paragraph shall not apply to the layoff of a teacher, if the Board provides written notice to the teacher that the teacher has been selected for layoff for the ensuing school year no later than June 15 of the current school year."

B. Association's Offer. The Association's offer also includes a provision to be included in the staff reduction article which reads the same as that proposed by the District with the significant exception that the Association proposes that the District allow teachers to exercise the option of continuing coverage under all of the group insurance policies when laid off at the end of the school year and that the District continue to provide, at its expense, all of the group insurance program benefits through the month of August in the case of teachers who are laid off for the second semester. The Association's proposal, like the District's proposal, would make the District's obligations subject to the provisions of the insurance carrier and State and Federal law.

III. Employee Health and Welfare Benefit Account.

The terms of the 1979-1981 Collective Bargaining Agreement included, in Article XI, provision for a number of group insurance programs which were fully paid by the District, including disability insurance, to be provided through a carrier selected by the District. During the term of the agreement and these negotiations, the Association has

negotiations of the 1979-1981 agreement.

B. Association's Offer. The Association's final offer contains a comprehensive proposal which would establish an employee health and welfare benefit account for the purpose of purchasing group prescription drug coverage and disability insurance through a carrier to be selected by the Association. The proposal in question reads as follows:

"J. Employe Health and Welfare Benefit Account

"1. Prescription Drug Coverage. The employer shall contribute $11.04 per month on behalf of each bargaining unit employe choosing family prescription drug coverage, and $3.74 per month on behalf of all other bargaining unit employes to the Association's Employe Health and Welfare Benefit Account (hereinafter referred to as The Account effective September 1, 1981. Effective September 1, 1982, the contributions for family and other bargaining unit employes shall be increased (if any) by the amount of the percentage increase in the family and single health insurance rate of increase rounded to the nearest one tenth of one percent for the health insurance plan in effect on January 1, 1982.

"Example: Jan. 1, 1982 Fam. Health Rate = $114.55
Sept. 1, 1982 Fam. Health Rate = $125.00
% Inc. in Rate - $\frac{125.00 - 114.55}{114.55} \times 100 = 9.12\%$

The Sept., 1982 prescription drug rates would be increased by 9.1%
1.091 X $11.04 = $12.04

"Disability Insurance Coverage. Effective the month following the receipt of a binding award the contract language on disability insurance (Article XI, paragraph 6 of the prior labor agreement) shall become inoperative and this provision shall become effective.

"The employer shall contribute .37% of salary on behalf of each bargaining unit employe to the Association's Employe Health and Welfare Benefit Account (hereinafter referred to as The Account).

"General Provisions.
a. The Association shall determine the Employe Health and Welfare Benefit Program (hereinafter referred to as The Program) to be provided by or through The Account to bargaining unit employes and their dependents.

b. The Employer shall make a payment of the total of the contributions specified to the Administrator of The Account, designated by the Association, no later than 10 days prior to the beginning of the month for which coverage for bargaining unit employes under The Program is to be in effect. These monthly payments shall continue for the duration of this agreement between the Board and Association.

"2. Upon reasonable notification from the Association, the Employer shall deduct from the monthly paychecks of bargaining unit employes an amount designated by the Association for the employe contributions to The Account and shall forward the total of the amounts deducted to the Account Administrator at the same time as the payment required under subsection 1b above.

"3. The Employer shall continue to provide the necessary employe information to the designated Administrator for the purpose of enrolling and maintaining employes in the Employe Health and Welfare Benefit Program coverages, and shall continue

to provide the other necessary administrative functions currently performed.

"4. The contributions made by the Employer to The Account on behalf of each bargaining unit employe shall begin as of the date of employment and shall continue for the duration of employment.

a. Employes who fulfill the terms of their employment contract for the full school year shall be considered employed under the terms of this paragraph through August 31 of the year in which their employment terminates.

b. Employes who resign during the school year shall be considered employed under the terms of this paragraph through the end of the month in which their resignation becomes effective.

c. Employes on paid leaves of absence shall be considered employed under the terms of this paragraph during the period of the leave. Employes on unpaid leaves of absence shall not be considered employed under the terms of this paragraph.

d. Employes who receive health insurance benefits, if any, under a retirement clause shall have their prescription drug contributions containued on the same basis as the health insurance until such time as the health insurance benefits expire.

"5. Contributions made by the Employer to The Account shall be used only for the purposes of providing and administering the Employe Health and Welfare Benefit Program for employes and their dependents."

IV. Salary Proposals.

The 1980-1981 Collective Bargaining Agreement contained salary schedules for the two years in question which contained a "zero" step in each of the six salary lanes provided (BA, BA+15, BA+30, MA, MA+15, and MA+30). Although the salary schedules did not specifically so provide, the provisions of the agreement dealing with placement on the schedule and the practice of the District included the granting of one-half step credit under certain circumstances. There were a total of 14 full increment steps in the BA lane, 15 full increment steps in the BA+15, BA+30 and MA lanes, 16 full increment steps in the MA+15 lane and 17 full increment steps in the MA+30 lane. The schedule was indexed and the index for the MA+30, step 16 cell was 2.11. Both the District and the Association have made proposals for a 1981-1982 salary schedule which would eliminate the "zero" step as well as the one-half step after the "zero" step. Further, there is no real dispute concerning the internal structure of the schedule, which will have an overall index of 2.06. The basic difference between the two schedules proposed for 1981-1982 relates to the salary base.

A. District's Offer. The District proposes a BA base figure of $12,760 for the 1981-1982 schedule. This proposed base would result in a $26,290 figure for the MA+30 step 16 cell. The District's proposed 1981-1982 salary schedule is attached hereto and marked as Appendix A.

The District has made no specific proposal for a 1982-1983 salary schedule. Instead, the District has proposed that the agreement be reopened for the purpose of negotiating over the subject of wages to be contained in the 1982-1983 salary schedule.

Because the District does not propose a specific percentage increase in the base salary for 1982-1983 at this time, it has instead proposed to increase all hourly assignment rates by the same percentage increase in the salary base which is ultimately established for the 1982-

1983 school year. (The parties have already agreed that said hourly rates should be adjusted by the same percentage ultimately established for the salary base in the 1981-1982 school year.)

B. Association's Offer. The Association has proposed a salary schedule for 1981-1982 which has a $12,785 base and provides for a salary of $26,337 at step 16 of the MA+30 lane. That salary schedule is attached hereto and marked as Appendix B.

The Association has also proposed a salary schedule for the 1982-1983 school year, which is identical in structure to the salary schedule proposed for the 1981-1982 school year and has been adjusted by increasing each cell by 9.3859%.

Consistent with its proposal to increase each cell of the 1981-1982 salary schedule by 9.3859%, the Association has also proposed to increase the rate for hourly assignments under the terms of the agreement by the same percentage.

DISTRICT'S POSITION GENERALLY STATED

The District contends that, for a number of reasons related to the potential ramifications and uncertainties of the Association's employee health and welfare benefit account proposal, the Board's position on group insurance coverage, which would maintain the status quo, should prevail. Specifically it argues as follows:

1. The proposal will impair the District's ability to provide insurance for other District employees at a reasonable cost if the teachers are removed from the group.

2. The Association's proposal in effect allows the Association to name the insurance carrier, which has been ruled to be a permissive subject of bargaining.

3. If the Association insures with the WEA Trust, the District's future ability to negotiate with a new carrier for premium rates at the lowest possible level, will be impaired.

4. The District may be exposed to fiduciary responsibility if the WEA Trust is selected and the trust becomes insolvent since the trust is not insured.

5. The Association's proposal to tie increases in the prescription drug contribution to increases in health insurance premiums is unrealistic.

6. The Association's proposal fails to deal with the handling of any cash savings secured if the Association obtains the desired levels of insurance coverage at premium rates which are less than the District's contribution.

7. The Association's proposal does not allow the administration to work effectively toward cost containment of insurance premiums.

8. There is only one other municipal employer in Wisconsin who has a similar program and there are significant differences between the Association's proposal and that program.

The District also contends that local economic conditions, described in testimony and exhibits introduced at the hearing, favor acceptance of the District's offer. The District notes that the parties are not in agreement on the choice of comparable school districts to be utilized for comparative purposes and argues that the District's choice of comparables is more appropriate. The District contends that its offer is more reasonable when considered in light of the wage increase afforded other public employees and private sector employees in the Washington County area. It contends that its economic offer is fundamentally more reasonable because: it establishes an overall improvement in rank order among the comparable pool in 1981-1982; it provides overall compensation which is outstanding;

and it allows for establishment of an hourly assignment rate consistent with a more reasonable rate of increase for the 1982-1983 school year than that proposed by the Association. The District contends that its offer is more reasonable when compared with increases received by other District employees and exceeds increases in relevant inflationary indexes. Finally, the District contends that its offer regarding the contribution to group insurance in the case of employees who are laid off or terminate their employment after the completion of their obligations under their individual teaching contract, is more reasonable.

ASSOCIATION'S POSITION GENERALLY STATED

The Association contends that the most appropriate group of school districts for comparison purposes consists of the 15 largest school districts, other than Milwaukee, located within CESA District No. 16 and CESA District No. 19 and the four county area which is treated as a standard metropolitan statistical area (SMSA), which includes Washington, Ozaukee, Waukesha, and Milwaukee Counties. Those 16 districts are Elmbrook, Germantown, Hartford High, Hartland High, Menominee Falls; Mequon-Thiensville, Mukwonago, Muskego, New Berlin, Nicolet High, Oak Creek, Oconomowoc, Waukesha, Wauwatosa, and West Allis. In addition, the Association argues that a secondary group of comparables that should be considered by the undersigned, consists of the 12 school districts located within the same four county area that have settled their agreements for the 1982-1983 school year. This group consists of the following 12 districts: Brown Deer, Elmbrook, Franklin, Grafton, Greendale, New Berlin, Nicolet, Shorewood, Wauwatosa, West Allis, Whitefish Bay, and Whitnall.

Based on its evidence introduced with regard to these comparables, the Association contends that its offer conforms to a settlement pattern established by these districts, which pattern should override the District's arguments concerning a decrease in the cost of living and the other evidence introduced by the District at the hearing (which the Association contends was unreliable hearsay)dealing with adverse economic conditions in the West Bend area.

According to the Association, its data demonstrates that its two-year economic proposal is justified because of the need for "catch up" in the salary schedule because the second year salary schedule; contained in the 1979-1981 Collective Bargaining Agreement, provided for a substantially smaller increase than that provided for by other agreements which were negotiated in 1980 for the 1980-1981 school year. Specifically, the Association points to the school district of New Berlin as an example of the only other school district, among its comparables, that did as poorly as West Bend during the 1980-1981 school year and argues that the substantial increases negotiated in that district supports its position.

With regard to the issues dealing with the maintenance of fringe benefits for employees who are laid off or terminate their employment after completing the term of their individual teaching contracts, the Association argues that:

1. The District's offer takes away benefits previously enjoyed by laid off employees, i.e., voluntary participation in the group insurance plans on a self-paid basis, and would only allow them to participate in the group health insurance plan for a period of one year, to be measured from a date that is uncertain.

2. The District's offer takes away the two months of paid health insurance benefits previously enjoyed by employees who complete the term of their individual teaching contracts, even though the comparables support the Association's proposal to continue all group insurance benefits through August.

3. The Association's proposal to continue fully paid group insurance benefits for teachers who are laid off for the term of their individual teaching contracts, is not only supported by the comparables, but is also a reasonable form of "liquidated damages" for the early termination of employment that results from such layoffs.

The Association also contends that its proposal, dealing with disability insurance and prescription drug coverage, is supported by the evidence dealing with problems that have been encountered by the Association in its efforts to increase the level and quality of such coverage to compensate for changes in the tax laws dealing with disability insurance and to achieve parity with other districts that have prescription drug coverage. The fact that the Association does not have comparables to support the form of its proposal, should not be controlling since such a position would effectively foreclose the introduction of an innovative proposal that otherwise has merit.

Finally, the Association argues that it would be appropriate public policy to provide a two-year agreement in this case. In this regard the Association points to the lengthy negotiations and litigation which preceded and delayed the establishment of the terms of the instant agreement.

DISCUSSION

The four issues in dispute will be evaluated in the order of their discussion above. The first issue in dispute deals with the continuation of fringe benefits for teachers who terminate their employment after having completed the term of their individual contract.

I. Continuation of Insurance Benefits for Teachers who Complete the Term of Their Individual Contract.

The evaluation of the parties' position on this issue is complicated by the dispute which arose during the briefing of the instant proceeding, concerning the content of the District's final offer in this regard. That dispute must be resolved before the issue can be evaluated on the merits.

The parties entered into numerous tentative agreements regarding language changes which are reflected in three sets of stipulations submitted to the WERC along with the parties' final offers. The first set of stipulations is dated September 21, 1981 and states on its cover sheet that "this stipulation incorporates all items from the 1979-1981 Collective Bargaining Agreement which will remain unchanged, except as modified by this stipulation and the final offers of the District and the WBEA." That set of stipulations did not include any changes in Article XI, which deals with insurance benefits. The second set of stipulations entered into by the parties on November 16-17, 1981 reflects that Article XI, BENEFITS, would contain the following Section A.

> "A. Health Insurance. During the term of this agreement the District agrees to maintain and make available a group hospital/surgical insurance program providing benefit levels set forth in the Blue Cross/Blue Shield health benefit policy #89309. Effective January 1, 1982 the deductible for the Major Medical program will be $50. The usual, reasonable and customary standard in effect as of 8/1/81 shall be maintained for the duration of this agreement. The District shall pay the premium for either single or family coverage for all active, eligible employees.
>
> "In the case of any teacher who has attained age sixty (60) and completely fulfills his/her individual teaching contract for a full school year at the end of which such teacher retires from the District's employ, such teacher's coverage under its group hospital/surgical program shall continue through the August immediately following such retirement with the District contribution toward such coverage's cost remaining unchanged; and, at the end of said August, such teacher may continue

to be covered under such program until he/she becomes eligible for Medicare benefits under the Federal Social Security Act provided that such teacher pays in advance the annual premium cost for such continued coverage equal to the premium in effect."

Thereafter, the stipulation goes on to indicate that Sections "B", "C", "D", and "E", dealing with group life insurance, income protection insurance, personal liability insurance, and tax sheltered annuity, would all remain "per the current contract language." A comparison of new Section "A" as well as the subject matter referred to in the other lettered sections identified in the stipulation to the provisions of the 1979-1981 Collective Bargaining Agreement, leads to the conclusion that the above quoted Section "A" was intended to replace Section 1 of the 1979-1981 Collective Bargaining Agreement. What is significant about this conclusion is that the language of the old agreement which provided that teachers who completely fulfill their individual teacher contract for a full school year and then leave their employment for reasons other than retirement, shall be entitled to receive two months contribution towards health insurance after the month of their termination if they exercise the conversion privilege under such program, is missing from new Section "A".

Further, the November 16-17, 1981 set of stipulations goes on to provide a new Section "G" dealing with dental insurance and a new Section "H" dealing with the District's right to change insurance carriers. In the third set of stipulations, dated February 9, 1982, specific provision is made to reletter and include as Section "I", former Section 6 dealing with long term disability insurance. Finally, it is noted that in the Association's final offer it has assigned the letter J to its proposed health and welfare benefit account proposal. Thus, a careful review of the stipulations and final offers leads the undersigned to conclude that Article XI, as it will appear in the new agreement if either final offer is selected, will not include the specific language which would guarantee continuation of the status quo with regard to District paid insurance coverage for July and August for teachers who complete the term of their individual contracts. Only if the Association's final offer, which includes a Section "K" set out above in the description of the Association's final offer, will such employees be contractually guaranteed such benefits. The new provision, proposed by the District to be included in the staff reduction language, would only cover teachers who are laid off after completing the term of their individual contract and would not obligate the District to provide such coverage for teachers who terminate for other reasons.

The undersigned has also taken into consideration the inclusion, as part of the District's final offer, a provision which states that "the status quo shall be maintained as to all other items in the West Bend Teacher's contract. All language items tentatively agreed to shall be implemented and incorporated into the contract as previously agreed." In the opinion of the undersigned, this statement is not sufficient to alter the terms of new Section "A" set out in the parties' stipulation and thereby include the missing language.

For these reasons the undersigned has concluded that the District's final offer, when read in light of the prior contract provisions and the stipulations of the parties, does not contain a contractual commitment to maintain the status quo on this issue, even though its failure to do so may have been inadvertent.

The District argues that the burden of proof should be placed upon the Association to justify its proposal to expand the provisions of Article XI to provide for continuation of all group insurances through August for teachers who complete the terms of their individual teaching contracts, and that the Association has failed to meet that burden. Further, the District argues that its comparables support the District's position on this proposal. However, even if the Association's comparables are utilized for purposes of deciding this issue, the District contends

that its proposal compares favorably. According to the District, group insurance benefits are not "routinely" continued through August in those districts which provide for their continuation. The employees in question must fully complete the obligations under their individual teaching contracts to be eligible.

As noted above, the Association contends that the District has made a regressive proposal which takes away benefits currently enjoyed by teachers who complete the term of their individual teaching contracts. It is not persuasive, according to the Association, to argue that teachers are free to extend health insurance for one year. If the teacher moves out of state the coverage is automatically terminated under the law. The Association also contends that the District's proposal would cut off the right of employees to participate in other group insurance plans on a self-paid basis. On the other hand, the Association argues that its proposal encourages resigning employees to give early notice. The employees in question have completed the same amount of work as other employees and therefore have earned the benefits in question. The Association also notes that in its costing figures the District has included 12 months of insurance coverage for costing purposes. Finally, the Association argues that the comparables relied upon by the Association and the comparables relied upon by the District, both support its proposal. According to the Association's figures, 12 of the 15 districts relied upon by the Association continue dental coverage and 11 of 15 districts relied upon by the District, continue dental coverage.

In reply to Association arguments, the District contends that the Union has "confused" the issues and arguments; that the argument which proceeds from state law is without merit since any employee who leaves the state automatically loses coverage under a group plan by law; and the Association's exhibits, which are not backed up by contract language, fail to establish that such benefits are available as a matter of contract in the other districts in question.

In reply to District arguments, the Association points out that Section 632.897(6) of the Wisconsin Statutes merely spells out minimum rights of employees and has nothing to do with the previous contract language or the new standard that has been proposed by the Association. According to the Association, the District does not compare favorably to Association comparables as claimed in the District's brief since current Board policy would only continue health insurance and would not continue dental, long term disability or life insurance. Also, the Association contends that its proposal has taken into account the dollar value of the benefits and notes that they are only $26.61, $4.81, and $5.90 per month for the two months in question.

This issue has been treated separately because the evidence and arguments, which largely combined this issue with the next issue, tended to be confusing and misleading. Viewed separately on its merits, the undersigned believes that the Association's position on this issue is reasonable and should be sustained. The lack of a contractual guarantee for continuation of the current practice, is not deemed determinative in this regard. While the comparative data is somewhat deficient, due to the lack of exhibits setting out exact contractual language except in a few school districts, there is no substantial evidence to rebut the Association's claims with regard to the policy in other districts. However, the undersigned does not believe that this issue should be resolved on the basis of comparability alone. What is deemed most persuasive to the undersigned is the Association's argument that the employees who have completed their obligations under their individual teaching contracts have "earned" this benefit just as much as teachers who return to classes in the fall. Further, to the extent that a resigning teacher remains in the teaching profession, it is unlikely that he or she could obtain group coverage for the summer months. Although the undersigned would, if the law were to permit him to do so, revise the wording of the Association's provision slightly to insure that resigning employees do not receive unnecessary duplicative coverage and to insure that they complete all of their obligations under their individual teaching contracts, the provision as worded is not

so deficient as to make it unreasonable in those respects. Thus, if this were the sole issue in dispute, the undersigned would tend to favor the Association's proposal.

II. Continuation of Insurance Benefits for Teachers who are Laid Off.

Both parties rely on many of the same arguments made with regard to the prior issue, in support of their position on this issue. Those arguments will not be repeated herein.

The District argues that the Association has failed to realize the dollar value of its proposal with regard to the continuation of group insurance in the case of teachers who are laid off for the second semester under the newly negotiated contract provisions. The potential cost involved is $142.54 per month or a total of $998.00 for the seven months involved. The District also points to the decision of Arbitrator Kerkman in the Port Washington case[2/] wherein it was held that teachers were no different than other public employees who are laid off at times during the school year other than nonrenewal time, and should not expect to be insulated from second semester layoffs. According to the District, the Association is seeking a new benefit at a time when there is high unemployment in the West Bend area even though this same benefit is not generally available to the employees who are laid off in the West Bend area. The District contends that the Association's position is not supported by the comparables and is beyond the willingness of the taxpayers to undertake.

The Association contends that the District's proposal takes away benefits that are currently enjoyed by teachers in West Bend. Further, the District's proposal creates uncertainty as to when the one year referred to therein begins in the case of employees who are laid off. The Association argues that this is not a minor issue since an employee faced with layoff understandably has great concern about the potential loss of insurance coverage. With regard to comparables, the Association argues that some prohibit second semester layoffs entirely and others support its position. The Association notes, that under the prior Collective Bargaining Agreement, the District could not lay off teachers during the second semester and Arbitrator Rice in the recent Turtle Lake[3/] case accepted as reasonable, the concept of liquidated damages (in the amount of 30%) for the breach of individual teaching contracts which occurs if teachers are laid off during the second semester.

In their reply briefs, the parties generally repeat arguments made in their principal briefs on this issue but the District raises additional arguments concerning the parties' failure to have negotiated with regard to this particular issue prior to this year because layoffs during the second semester were previously prohibited and the fact that the District is seeking to avoid increases in its group rates which will occur if laid off employees utilize group insurance at a more intensive level than regular employees.

To the extent that this issue would merely allow teachers who are laid off at the end of the school year to continue to receive fully paid group insurance coverage, it is no different than the prior proposal and that portion of the Association's proposal is deemed to be merely duplicative of its proposal in that regard, which was found to have merit for the reasons set out above. However, that portion of the Association's proposal which would guarantee fully paid group insurance coverage for teachers who are laid off for the second semester, is a much more difficult question. While the Association claims that the comparables indicate that

---

2/ The School District of Port Washington, voluntary impasse procedure, (3/82).

3/ Turtle Lake School District (Decision No. _____), May 24, 1982.

this is a prevalent provision, it has offered little hard contract language to support its claims in that regard. However, for reasons about to be discussed, the claims of comparability are not deemed to be determinative of this issue.

Before concluding that the Association's proposal on this issue should be favored slightly over that of the District, the undersigned has evaluated a number of considerations. On the one hand, layoff and recall guarantees may be viewed as the quid pro quo for the District's right to lay off employees during the term of their individual teaching contracts, if there is a lack of work. Further, the District is probably right with regard to its claim that continuation of fully paid group insurance coverage during periods of extended layoff is not the norm under most industrial contracts. While the undersigned might agree with Arbitrator Kerkman that teachers cannot expect to be more insulated from layoff than other public employees due to lack of funds, it can be argued that the impact of the layoff, when it occurs outside the normal timetable for the nonrenewal of teaching contracts, can fall disproportionately hard on teachers who seek to remain in the profession. In the view of the undersigned, the potential substantial cost of this proposal is a very important consideration. Also deemed important, however, is the fact that under the prior agreement the District was not allowed to lay off teachers during the term of their individual teaching contract. The Association has agreed, albeit reluctantly and through the compulsion of legal process, to drop that limitation during the term of the current agreement. For these reasons, the undersigned has concluded that if the Association's proposal in this regard is not otherwise outbalanced by other Association proposals for a two-year agreement, it should be favored over the District's proposal, the potential cost of which is only $261.24 less (assuming that disability coverage is available for laid off employees).

III Employee Health and Welfare Benefit Account.

The District's basic arguments concerning this Association proposal are set out above. In addition, in its reply brief, the District points out that most of the Association's evidence and arguments with regard to alleged problems with the existing group insurance plan, relate to the group health insurance coverage which is not included in this proposal. The District admits that there have been some minor problems with coverage under the group health insurance plan, which resulted from a change of carriers, but argues that those problems, which are currently the subject of grievance and negotiation, do not justify the Association's "imaginative proposal" for disability and prescription coverage. Specifically, with regard to disability coverage, the District points out that the average teacher's salary will be far less than the new maximum salary of $28,000 plus that would result in the Association's proposal. With regard to the Association's contention during bargaining that it could obtain cheaper disability coverage from the WEA Trust and use the savings to improve benefit levels, the District argues that it does not desire to provide such coverage through an uninsured carrier. In this regard the District points out that employees were protected from loss or hardship when the prior carrier became insolvent because of such insurance coverage. According to the District, the Association did have an alternative to its proposal to bargain concerning the carrier and it did not, as argued by the Association in its brief, present a proposal which is "precisely in the same format" as the only other employee benefit plan existing in the State of Wisconsin.

The Association contends that its proposal on this issue is a "major difference" between the two offers and that its position is supported by the record. According to the Association, it sought from the outset of negotiations to bargain for increased disability coverage due to changes in the tax law and the fact that the current level of benefits is effectively capped at a salary of $21,600. Because the District refused to bargain for a new carrier which would have provided

increased benefits at no additional cost, the Association has proposed to establish the health and welfare benefit account. It would not have done so if there were not problems with existing coverage.

The lack of comparables is not a persuasive argument, according to the Association, since the problem needs to be addressed. Further, other arbitrators have recognized that lack of comparables alone does not justify rejection of a new concept. Given the District's position with regard to the bargainability of the Association's proposal to seek other coverage, such as the WEA Trust which provides improved disability benefits and prescription coverage at no extra cost, the Association had no alternative but to formulate this "impact" proposal. It is noteworthy, according to the Association, that the only other place where such an account has been created was with the same employer who successfully challenged the bargainability of the insurance carrier.

According to the Association, its data concerning both District and Association comparables shows that West Bend has one of the lowest maximum benefit levels; provision for primary offsets are common; and West Bend has one of the lowest contribution rates (.37%) among the comparables. According to the Association, the District's proposal is substandard and contrary to the two basic reasons why unions accept fringe benefits: the tax shelter aspects and improved group rates available. The District's contribution toward health insurance coverage is low among the comparables and therefore the Association's proposal of $11.04 for the cost of prescription coverage is reasonable and supported by the Association's comparables who generally have prescription coverage. Finally, the Association points to the large number of grievances over health insurance coverage and argues that if it could have remedied this problem through bargaining, it would not have been necessary to propose the new benefit account. It is the Association's position that the employees should be free to decide where they wish to buy coverage with the dollars they earn.

In its reply brief the Association argues extensively with regard to the objections raised by the District in its brief. In particular, the Association contends: there have been problems not only with health insurance but also with the carrier of disability insurance and the lack of prescription coverage; there is no evidence to support the District's claim that costs will increase; the Association is not naming the carrier, it is bargaining dollar benefit levels; there is no reason to suppose that the Association will select the WEA Trust, as assumed by the District; other major carriers are also uninsured; if the District's contribution exceeds costs of coverage, the dollars will be put in an escrow account or used to purchase additional coverage; there is a showing of compelling need, as evidenced by the filing of three declaratory rulings by the District; the fact that the District pays 100% of the cost of group insurance is irrelevant; the District claims that a major deductible is a more cost effective proposal, is self-serving and unpersuasive; and any alleged deficiency in the wording of the Association's proposal should not preclude its implementation, since it can be remedied during the next round of negotiations.

The undersigned has a problem accepting a number of the Association's arguments. First of all, it would appear that the problems which the Association has with the existing disability coverage and lack of prescription drug coverage could more easily have been dealt with through proposals directly related to the disability benefit levels and the provision of prescription drug coverage. The problems that have been encountered with the benefit levels for health insurance coverage have no direct bearing on this question. Further, in the view of the undersigned, the Association's claim that it is not bargaining with regard to the naming of the insurance carrier, but only the dollar contribution levels, is a distinction without a practical difference. That distinction might be relevant if the principal issue here were the bargainability of

the Association's proposal. However, here the question is presented whether the Association has provided justification for a proposal which would place effective unilateral control over the selection of the insurance carrier in the hands of the Association, even though the District has, up to this point in time, paid 100% of the cost of all agreed to group insurance benefits and even though the Association's proposed plan has no save harmless clause.4/ In the view of the undersigned, the establishment of such a relatively radical new concept in the provision of group insurance coverage through the involuntary procedures of mediation-arbitration is unjustified when the record establishes that there is a reasonable alternative available to the Association to correct the alleged deficiencies. Any such new approach should be negotiated by the parties after adequate research into the legal implications of such a departure and with the establishment of adequate safeguards for the protection of the funds and the question of liability.

For these reasons the undersigned concludes that the Association's proposal should be selected and would exclude the provision from the new agreement if it were the only issue in dispute. While the undersigned must agree with the Association that this proposal constitutes a major issue in the dispute, he does not necessarily agree with the District in its argument that the Association's final offer should be rejected based solely on this issue. However, the merits of this issue do weigh more heavily on the outcome than do the two issues discussed above.

IV Salary Proposals.

The parties' positions and arguments with regard to their salary proposals are outlined above. In its reply brief the District argues that the Association has failed to establish a convincing rationale for its selection of comparable districts; the District's recital of the economic conditions present in the community merits serious consideration; and the Association has failed to meet the burden of proof on its catch-up argument.

According to the District, the Association's arguments with regard to comparables ignores the fact that West Bend is and continues to be "its own economic epicenter." Evidence submitted by the Association helps establish that residents of the West Bend community are not transient since most work and shop in the community. The Association's claim that the District's evidence concerning local economic conditions is "hearsay" is erroneous and constitutes an effort by the Association to belittle the District's evidence and avoid dealing with the facts. Testimony from the mayor of the community and executives in local corporations not only support the District's claim, but reflect upon the level of concern being expressed in the community with regard to this proceeding. According to the District, their testimony provides a substantial basis for determining economic conditions in the local community and should not be ignored. According to the District, the burden of proof should be placed on the Association to substantiate its "catch-up" argument and it has failed to do so. Even the Association's own representative acknowledged on the record that few, if any teacher locals have negotiated increases which have exceeded the cost-of-living. Further, the Association fails to provide and adequate historical basis for its catch-up argument. The District points out that the comparables relied upon by the Association all represent subsequent years in multi-year agreements which were "negotiated in a different economic climate." On the other hand, the comparables relied upon by the District all remain unsettled, save one. The District contends that the increases provided under either 1981-1982 salary schedule are substantial, and

---

4/ The question of whether a save harmless clause such as that included in the Walworth County plan would be effective, is another issue, not addressed by either party in its brief.

under the Board's offer, would afford every employee an increase between 8.3% and 13.63% when the step adjustment is included in the calculation. The Association's proposal which would provide increases of 8.5% to 13.86% is very similar and little weight should be given to the elimination of the first half step and step, as agreed to by the parties. This is so because all employees who return to the District will be afforded increases in the magnitude above.

According to the District, the Association places undue reliance on the experience of one school district, New Berlin. It notes that New Berlin is not in the same athletic conference and is located many miles away in a different county. According to the District, the Association has not established a close correlation between the experiences of New Berlin and West Bend which would require an absolute comparability as to levels of settlement for either 1981-1982 or 1982-1983. For these reasons and because of the wide four county set of comparables proposed by the Association, the District challenges the Association's use of New Berlin as "the" comparable district.

In its reply brief, the Association takes issue with the District's description of local economic conditions; the District's position on comparability; the District's comparison to other public and private sector employers in the Washington County area; the District's assertion that its economic offer is more reasonable; the District's contention that increases received by other District employees should be determinative in this arbitration and the District's claim that is offer exceeds increases in relevant inflationary indexes.

According to the Association, the District's arguments with regard to local economic conditions, are akin to Chicken Little's quotation that "the sky is falling." Subjective opinions concerning "unnecessary additional tax burdens" are not as relevant, according to the Association, as the evidence it presented in the record concerning justification for its offer. It notes that West Bend is "the largest community and the third wealthiest county" in the state. Because the county has a higher median income than the entire four county SMSA, it should not be assumed that they are unwilling or unable to pay comparable salaries with that of other large school systems in the four county SMSA.

On the issue of comparability, the Association repeats a number of its arguments with regard to the appropriateness of utilizing population figures and size as well as geographic proximity for determining comparables. According to the Association, precedents establish that it is reasonable to look at least 30 to 50 miles distance for comparable districts.

The evidence and arguments presented by the District with regard to other public and private sector employees in Washington County is not as relevant, in the opinion of the Association, as its data dealing with other public sector employees performing similar services, i.e., teachers in other similar sized schools. Further, there are problems with the evidence presented with regard to the percentage figures utilized and the question of whether there were additional increases experienced by said employees.

Contrary to the District's assertion that its economic offer is more reasonable, the Association claims that its rank comparisons are misleading. In this regard the Association reiterates it argument that the elimination of the half step and zero step makes comparisons at the entry level misleading. Further, according to the Association, it has established sufficient proof in the record to support its claim for the "need to catch up." According to the Association, the evidence establishes that the use of reopener clauses is not a common occurrence. On the contrary, according to the Association, most contracts do not provide for reopeners, and when they do, provide for a broader reopener than that proposed by the District.

With regard to the arguments concerning increases granted other District employees, the Association contends that some of the arguments

made by the District are based on matters not in the record and are unpersuasive because of differences between the categories of employees involved. Finally, with regard to the District's arguments with regard to the cost-of-living, the Association contends that the appropriate base for measuring the cost-of-living is the consumer price index for the Milwaukee area in relation to "what has taken place over the last two-year contract."

As the Union correctly points out in its reply brief, there is no real dispute in this proceeding concerning the hourly rate of pay for those activities calling for an hourly rate of pay under the terms of the agreement. The parties are, at this juncture, in agreement that that hourly rate should be based on the percentage increase ultimately established for each of the two years of the agreement. In addition, both parties acknowledged at the hearing that the proposed rate of pay for such work would not have a significant impact on the outcome of this proceeding and therefore neither party offered any comparative data or other data concerning the hourly rate of pay for such work.

Further, in the opinion of the undersigned, there is little significant difference between the parties' offers with regard to a salary schedule for 1981-1982. Both proposals include substantial percentage increases and a modification in the structure of the schedule which has advantages for both the District and the Association. While the overall index of the schedule is reduced thereby, the elimination of the first half step and step on the old schedule provides the District with a higher base salary for recruitment purposes, and reduces the length of time required to progress through the schedule, from the Association's point of view. Thus, the salary issue in this case boils down to the reasonableness of the Association's proposal for a 9.3859% increase in each cell of the schedule vis-a-vis the District's proposal to reopen negotiations with regard to the salary schedule for the 1982-1983 school year.

The Association's case relies heavily on two supporting arguments. First, to support its request, which admittedly exceeds the rate of inflation during the prior year, the Association argues that the increase is needed to "catch up" with its relative position among the districts it argues should be treated as comparable. Two key aspects of this argument are acceptance of the Association's grouping as the comparable group and acceptance of the New Berlin settlement as representative of the increase that should be granted to maintain the District's ranking in that group. The second key argument, which is related to the first, is that the Association's request is not unreasonable in view of the second year, 1982-1983, agreements in the area wherein the Association's primary comparables lie.

The undersigned cannot accept the Association's position that the districts relied upon constitute the comparable group for purposes of salary comparisons. There is considerable merit to the Association's arguments with regard to the relative size of the districts as measured by the size of their faculties and student bodies. However, the group in question includes a large number of Milwaukee suburbs and excludes other school districts, such as Watertown, which are arguably in a similar relationship to the City of Milwaukee. Further, it gives little or no consideration to the question of geographic proximity, especially to the extent that it stretches to the southern half of Waukesha and Milwaukee Counties.

The District's comparables are subject to the legitimate criticism that they include districts which are considerably smaller than West Bend. Nevertheless, evidence in the record does tend to establish the District's claim that, at least to some extent, West Bend is its own "epicenter." Thus, West Bend may very well be comparable to contiguous districts and enjoy a leadership role in that position.

Contrary to the Association's contention there is evidence in the record supporting the otherwise compelling inference that most two-year agreements relied upon by the Association were negotiated earlier, in a different economic climate. Thus, the Association's representative admitted on cross-examination that to his knowledge none of those agreements had been entered into since January 1982. While this factor is not necessarily deemed controlling, it should be given some significance. When parties enter into two-year agreements they do so with the fore knowledge that they are each risking the possibility that subsequent events may establish that they settled too high or too low. (In fact, this is what the Association argues under the prior two-year agreement.)

Had the parties to this dispute settled the terms of their agreement in that same time frame, they might very well have settled on the terms proposed by the Association. The problem at this juncture, as confirmed by the testimony at the hearing, is that there is no emerging group of settlements which will serve as a persuasive basis for establishing a fair settlement for 1982-1983. Under these circumstances, the traditional heavy reliance placed on comparability data in mediation-arbitration proceedings is very questionable. In the view of the undersigned, the comparability criterion is most persuasive and useful when the pattern of settlements is clearly established.

In the view of the undersigned, the District has not sought, in its final offer, to "hold back" in the first year of the agreement based on changed economic circumstances. If it were to attempt to do so for purposes of the 1981-1982 school year it would fly in the face of the comparative data of both parties. Thus framed, the issue can be stated whether the District's proposal to reopen negotiations with regard to a salary schedule for the 1982-1983 school year is more reasonable than the Association's proposal. The undersigned concludes that is. In the view of the undersigned, the magnitude of the increase sought by the Association would not be voluntarily agreed to under existing negotiation conditions even under the threat of compulsory arbitration. This judgment is substantiated by the testimony in the record concerning the lack of settlements in the area and the certified final offers which were a matter of record at that time. The District's proposal of a salary reopener will not result in great harm to the Association. The undersigned is sympathetic to the fact that the negotiations in this proceeding have been extremely protracted, however, it is undisputed that the reason related to the number of language issues negotiated and disputes over the bargainability of many of those issues. Hopefully, the parties' negotiations concerning the second year of the agreement will go quickly once a pattern of settlements emerges.

In summary, the undersigned has concluded that the Association's position on the first two issues should be favored over that of the District. The first issue, dealing with the continuation of fringe benefits for teachers who complete the term of their individual teaching contract, will only affect a few employees and therefore the issue is not deemed to be of great consequence to the outcome of this proceeding. Further, the District has indicated that it intends to continue the practice of paying health insurance premiums during July and August for such employees and it would be inconsistent for the District to do so for employees who are laid off and not do so for teachers who voluntarily terminate their employment for other reasons. While the Association's position has been favored slightly on the second issue, it should be noted that the District's offer provides for the most important and expensive group insurance benefit, health insurance coverage, for teachers who are laid off during the second semester. Thus, even though the Association's position has been favored on this issue, it does not weigh heavily on the outcome. The Association's proposal to establish an employee health and welfare benefit account has been found to be not supported by the evidence and arguments, and this issue weighs more heavily than the first two issues on the appropriate disposition of the final offers. Finally, with regard to the most significant issue in dispute, the salary schedule for the second year of the agreement, the District's position

has been favored over that of the Association. Thus, overall, it is clear that the District's final offer should be selected for inclusion in the parties' agreement.

Based on the above and foregoing, the undersigned renders the following

AWARD

The District's final offer submitted to the WERC should be included in the parties' 1981-1983 Collective Bargaining Agreement along with the stipulations agreed to during negotiations and the provisions of the 1979-1981 Collective Bargaining Agreement which are to remain unchanged.

Dated at Madison, Wisconsin this 28th day of September, 1982.

George R. Fleischli
Mediator-Arbitrator

WEST BEND JOINT SCHOOL DISTRICT NO. 1

FINAL OFFER

81-82

Step	BA	BA+15	BA+30	MA	MA+15	MA+30
1	12760	13398	13781	14164	14802	15568
2	13270	13908	14291	14802	15440	16206
3	13780	14418	14801	15440	16078	16844
4	14290	15056	15439	16078	16716	17482
5	14928	15694	16077	16716	17354	18120
6	15566	16332	16715	17354	17992	18758
7	16204	16970	17353	17992	18630	19396
8	16842	17608	17991	18630	19396	20162
9	17480	18246	18629	19268	20162	20928
10	18118	18884	19267	19906	20928	21694
11	18756	19522	20033	20672	21694	22460
12	19394	20160	20799	21438	22460	23226
13	20032	20798	21565	22204	23226	23992
14		21436	22331	22970	23992	24758
15					24758	25524
16						26290

APPENDIX A

WEST BEND EDUCATION ASSOCIATION 81-82 FINAL OFFER <02/18/82> --

STEP	B.A.	BA+15	BA+30	M.A.	MA+15	MA+30
1.0	12,785	13,424	13,808	14,191	14,831	15,598
1.5	13,041	13,680	14,064	14,511	15,151	15,918
2.0	13,296	13,936	14,319	14,831	15,470	16,237
2.5	13,552	14,192	14,575	15,151	15,790	16,557
3.0	13,808	14,447	14,831	15,470	16,109	16,876
3.5	14,064	14,767	15,151	15,790	16,429	17,196
4.0	14,319	15,086	15,470	16,109	16,748	17,515
4.5	14,639	15,406	15,790	16,429	17,068	17,835
5.0	14,958	15,726	16,109	16,748	17,388	18,155
5.5	15,278	16,046	16,429	17,068	17,708	18,475
6.0	15,598	16,365	16,748	17,388	18,027	18,794
6.5	15,918	16,685	17,068	17,708	18,347	19,114
7.0	16,237	17,004	17,388	18,027	18,666	19,433
7.5	16,557	17,324	17,708	18,347	19,050	19,817
8.0	16,876	17,643	18,027	18,666	19,433	20,200
8.5	17,196	17,963	18,347	18,986	19,817	20,584
9.0	17,515	18,283	18,666	19,305	20,200	20,967
9.5	17,835	18,603	18,986	19,625	20,584	21,351
10.0	18,155	18,922	19,305	19,945	20,967	21,735
10.5	18,475	19,242	19,689	20,329	21,351	22,119
11.0	18,794	19,561	20,072	20,712	21,735	22,502
11.5	19,114	19,881	20,456	21,096	22,119	22,886
12.0	19,433	20,200	20,840	21,479	22,502	23,269
12.5	19,753	20,520	21,224	21,863	22,886	23,653
13.0	20,072	20,840	21,607	22,246	23,269	24,036
13.5		21,160	21,991	22,630	23,653	24,420
14.0		21,479	22,374	23,013	24,036	24,803
14.5					24,420	25,187
15.0					24,803	25,570
15.5						25,954
16.0						26,337

APPENDIX B