

RECEIVED

NOV 18 1982

STATE OF WISCONSIN

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In The Matter of Mediation-
Arbitration

between

The Westby Area School District

-and-

The Westby Education Association

OPINION & AWARD

Interest Arbitration

WERC Case VII No. 28123

MED/ARB - 1210

Before: J. C. Fogelberg,
Mediator/Arbitrator

Decision No. 19513-A

Appearances -

For the Association:

Thomas C. Bina, UniServ Director
David J. Anderson
Mary Constalie
Sharon Nelson
Eleanor Paulson
Roger Harris
Edward Klos
Bonnie S. Mossholder

For the District:

Karl Monson, Representative
Roger W. Nelson, Board President
Paul Schoenberger, District Administrator
Richard Galstad

Preliminary Statement -

On June 1, 1981 the Westby Area Education Association, representing all regular full-time and regular part-time certified teaching personnel in the District, filed a petition with the Wisconsin Employment Relations Commission alleging that an impasse existed between the Association and the Westby Area School District relative to their collective bargaining over a new Master Contract. The record shows that bargaining over the new Agreement commenced on March 16, 1981 and subsequently negotiations were held on four separate occasions leading up to the petition filed on June 1st.

On September 21, 1981 a member of the Commission's staff conducted an investigation which reflected that the Parties were "deadlocked" in their negotiations. Thereafter both sides began an exchange of tentative final offers. On November 3, 1981 the District filed a petition with the Commission pursuant to Section 111.70 Subd. (4) (b) seeking a declaratory ruling as to other certain portions of the Association's final offer related to mandatory subjects of bargaining. Subsequently however, the Parties were able to successfully resolve this particular dispute and on March 15, 1982 submitted to the appointed Commission member, their final offers along with stipulations regarding matters agreed upon. Concomitant with these stipulations and submissions, the Commission Investigator notified the Parties that the investigation had been concluded and that the Commission had been advised that the Parties remained at impasse.

On April 2, 1982 the Commission's chairman certified that the conditions precedent to the initiation of the mediation-arbitration process as required by Municipal Employment Relations Act with respect to negotiations between the Parties regarding wages, hours and conditions of employment for a new collective bargaining agreement had been met and referred the Parties to the mediation-arbitration process. On April 27, 1982 the Parties selected the undersigned to serve as the Neutral Mediator-Arbitrator. Thereafter on July 28, 1982 the Neutral met with the Parties in an effort to resolve the impasse through the mediation process. When it became apparent that the matter was not going to be settled through mediation, the Neutral thereupon declared mediation to be of

no further assistance and moved directly to an arbitration hearing on that same date. At the hearing, evidence was received and testimony taken relative to the outstanding issues, at the conclusion of which the Parties indicated a preference for filing post-hearing briefs. These briefs were received by the Neutral on or before September 21, 1982. Thereafter both sides expressed a desire to file reply briefs. The reply briefs were received by October 30th, at which time the hearing was deemed officially closed.

The Issues -

The following issues remain at impasse between the Parties:

1. Salary increases for the 1981-82 and 1982-83 school years
2. Longevity
3. Health insurance
4. Life insurance
5. School calendar
6. Mileage reimbursement
7. Outside experience
8. Grievance definition
9. Layoff
10. Duration

Position of the Parties -

For the 1981-82 school year the ASSOCIATION seeks an increase on the BA salary base to \$11,885. This amount is to again be increased to \$12,975 on the BA base for the current 1982-83 academic year. In addition the bargaining unit takes the position that for purposes of health

insurance during the life of the new Contract, full premiums are to be paid by the District accompanied by a "drug card." For purposes of Life Insurance, the teachers ask that the Board pay 70% of a bargaining unit member's cost for the present life insurance program. These money positions are more fully set forth in Appendices A and B attached.

In addition the WEA seeks the following language changes and/or additions for the term of the new Contract: that the school calendar be amended to include language whereby teachers will not be required to "make up" the first two days of a school closing due to bad weather, but would be required to do so for the next three make up days; that for purposes of driving while on school business, teachers be compensated at a rate of 24¢ per mile for the second year of the new Agreement; that teaching experience outside of the Westby system will be offered for up to five years of teaching experience for a new instructor entering the system with a minimum BA degree, and that credit for years beyond this will be determined by the applicant and the School District; that the grievance provision in the contract be amended to include the Association itself as a "grievant" within the definition section; that a new lay-off procedure be implemented (see Appendix C attached) and; that the 1982-83 calendar year consist of 180 student-contact days, three paid holidays, two convention days, five in-service days for a total of 190 contract days, and in the event that the Parties do not reach an agreement on a successor agreement by June 30, 1983 the provisions of this Contract shall remain in full force and effect during the pendency of negotiations and until such a successor agreement is executed.

Conversely the DISTRICT is offering an increase on the BA base for the 1981-82 school year to \$11,800, and for 1982-83 the starting rate on the base would be \$12,610.* The entire schedule as proposed by the Employer is set forth in Appendix D attached.

Regarding the issue of outside experience, the School Board offers language to be included in Article V reserving with the District Administrator the discretion to grant up to full credit for outside teaching experience in terms of placement of new teachers on the Salary Schedule. Concerning the other remaining issues the Employer takes the following position: that mileage be paid at the rate of 21¢ per mile for both years of the new agreement; that the School Calendar call for not less than 190 contract days within the academic year and for a revised definition of inservice days; that the layoff policy be amended as set forth in Appendix E attached; that every reasonable effort will be made to provide teachers with a minimum of thirty continuous minutes of preparation time for elementary schools; that the grievance definition as set forth in Article VIII of the new Contract not include the word "Association" within the definition of a Grievant; that the term of the Contract be for a period of two years expiring on the 30th day of June, 1983 and shall not be orally extended beyond that time and; that the longevity pay under the Salary Schedule be frozen effective the 1981-82 school year whereby those who were receiving longevity in 1980-81 be "Grandfathered," but no further teachers be eligible for such additional pay.

* At the hearing it was stipulated that the structure of the schedule itself shall remain in tact.

Analysis of the Evidence -

In arriving at the decision that has been made here, the Arbitrator has given careful consideration to each of the criteria enumerated in Section 111.70 (4) (cm) (7) of the Wisconsin Municipal Employment Relations Act as they relate to the documents, testimony and written arguments submitted by the Parties.

While a number of issues have been certified as being at impasse, it is abundantly clear that the Parties are principally concerned with the salary increase for the second year of the new Contract, the longevity issue and the matter of teacher layoffs. This conclusion is made readily apparent from the sum of their arguments both written and oral. The exhibits submitted aptly demonstrate that for the 1981-82 school year, the difference in salary positions is relatively minimal (approximately \$25,000). Moreover, by their own admission, several of the peripheral issues have been classified as "minor." Indeed as stated by the Association's Representative in his post-hearing brief, "Of the remaining issues in dispute in this interest arbitration, not all are of equal weight in determining the decision."

While the Parties are separated by approximately 1½ percentage points on their respective total package final offers for the school year 1981-82, the difference grows more substantial in the second contract year. For 1982-83 the Association seeks an improvement of 11.5% in the total cost figures, while the Board's final offer approximates 8%. Numerous documents were presented by both sides demonstrating the relative position that the faculty at Westby would find themselves vis-a-vis schools within

their athletic conference and the Cooperative Education Service Agency No. 11 (CESA). As would be expected, the teachers assert that an adoption of their final position will serve to retain (and in some instances improve) Westby's relative standing within the conference, while the Employer's final offer would erode that position -- particularly when salary and fringe benefits are paired for comparison purposes. The School Board counters by maintaining that an adoption of their position will more closely follow the rationale employed by the Neutral in the previous contract award (when the Association's position was favored) and that its own final position is the most fair and equitable under the circumstances.

The Arbitrator in this instance has found the decision making process to be more difficult than it might normally be based, to a large extent, upon the quality and obvious energy put into the evidence and briefs submitted by the Association. While both sides exhibited ample competence in preparing their respective arguments, it is clear from an examination of the entire record that the Association's thoroughness exceeds the average. Further compounding the problem was the apparent inaccuracies shown in some of the District's documents; cited by the Bargaining Unit Representative and supported (to an extent) by the record itself. The degree of skill exhibited by one side however, does not necessarily forecast an award in their favor. However thorough the preparation may be, in the final analysis the reasonableness of the certified position on the issues themselves must dictate the outcome. In this instance, the Neutral perceives that such criteria on balance favors the District's view. Matters such as the ability to fund the new Contract,

the apparent consequences should the Association's position be implemented (i.e. reduction in programs and faculty) the parallels (successfully) drawn between the teachers' arguments in the previous award and the Board's essential adoption of them here, and the cost of living as currently reflected in relative governmental data -- all weigh considerably in favor of the Employer. Though it is true, as the WAEA points out, that some settlements within the geographic area closely parallel their final demands in terms of an over-all percentage increase, it is equally apparent that many of these agreements were arrived at prior to the disbursement of what is now clear and obvious evidence regarding the general decline in inflation. Given the current state of the Consumer Price Index (estimated to be approximately 6% or less) an award of over 23% for the term of this Contract is deemed out-of-step with the realities of the economy. As argued by the Board, their final position still exceeds in inflation rate. Moreover, it is significant to note that the final position of the Employer is exactly identical to the settlements already reached in the District itself with the remaining Collective Bargaining Units with whom the Employer negotiates.

Of equal importance is the matter of longevity. In the preceding award, the Arbitrator rationalized that the District's fears regarding the "ballooning" effect of the provision was (at that time) speculative. Speaking to the Board's concern regarding this issue at that time, the Neutral stated:

"The real thrust of the Employer's concerns over the salary structure and its 'ballooning' effects relate to future years beyond 1980-81 and a feeling that 'something should be done now' to prevent future anticipated difficulties. For those years beyond 1980-81, the Employer will have ample opportunity to negotiate structural changes. It

will also be in a position to offer definite proof as to more immediate adverse affects and comparisons rather than speculation about possible future adverse affects, both at the bargaining table and during any impasse procedures."

In the instant impasse, the Arbitrator believes that the Employer has indeed met its burden of proof in this regard. Under the current provision, those teachers at the top of the Schedule receive annual longevity increases of either two or four percent depending upon their years in the District. These longevity payments are cumulative, and have been in effect since 1970. According to the Board, with the relative maturation of the faculty, the cost of financing this provision has sky-rocketed to the point of becoming prohibitive. The faculty matrix presented at the hearing reveals that for the base year 1980-81, nearly 74% of the staff received longevity payments. Clearly, a faculty as heavily weighted at the top of the Salary Schedule as this one is, presents a genuine concern to the Administration in terms of funding this particular benefit. School Board Exhibit 25 reveals that the benefit is without significant parallel to the Coulee Athletic Conference. While the Association presented numerous exhibits presenting Westby's relatively poor ranking when salary is coupled with fringe benefits for comparison purposes, it is extremely significant — in the Arbitrator's view — that the compilation of this data did not include the longevity payments made. The District stressed the point that had this benefit been added in, Westby would rank either at or near the top in all of the "benchmark" positions on the Schedule. This fact was never truly refuted by the teachers. Inasmuch as Westby ranks fifth out of the seven schools in the Conference in terms of student enroll-

ment and faculty size, such a superior position seems rather unusual. Moreover the rapidly accelerating cost of funding the benefit was made manifest through the presentation of the costing data of both final positions. It was essentially agreed that in the base year 1980-81, the cumulative cost of the provision to the District was \$51,500. Under both final offers, that amount increases to \$63,500 in the first year of the new Contract or 23.3%. Under the Association's position, the cost would again increase in 1982-83 by approximately \$14,000 to a total of \$77,500 or an additional 22%. In total therefore, for the life of the Agreement, the funding for longevity would increase by over 45% should the teachers' position be implemented. Such an inordinate amount is excessive when other increases are taken into consideration, and therefore unreasonable. Under the Employer's version, those who were receiving the benefit in the school year 1980-81 would retain the payment (i.e. be "Grandfathered") in this and succeeding agreements. Those teachers then would not be affected by this award to the extent that they would retain payment of a fixed dollar amount representing longevity pay throughout their tenure in the District. While the Arbitrator understands the Association's argument that those who have taught in the District for so long should not go unrewarded, this nevertheless does not negate the fact that by its very definition, a salary schedule has a built in limitation. Certainly those teachers who are now coming into the District must be cognizant of this fact. Given the economic realities of school funding, the fact that this award will allow the teachers at Westby to keep pace with inflation and the District to remain competitive (there was evidence

to support the fact that Westby has encountered no difficulties in recruiting new staff to the District) the Arbitrator finds that the Employer's final position is the most reasonable of the two. Finally, although disputed, the Neutral favors the Employer's contention that a good faith attempt was made by the Board to rectify the problem of longevity at the bargaining table, but was unable to reach a compromise with the Association.

As regards the "language issues," while the Mediator-Arbitrator perceives the Teachers' final position on matters such as grievance definition and duration to be the most logical, this conclusion alone cannot erase the relative importance of the disputed layoff language, as professed by the Parties themselves. While both sides seek to alter the existing language, the WAEA's proposal is clearly the most dramatic departure from what has in the past been Article VI. The exhibits presented by the District which support the contention that the proposed change by the Teachers is truly unique among comparable schools. Indeed the Association has acknowledged that their proposal is unlike any other but points to the fact that it arises out of a genuine concern on the part of the faculty that teachers could conceivably be reduced in hours to the point that they would be forced out of their job under the existing language. Thus it is the Bargaining Unit's position that reduction in hours must necessarily be included in the new provision along with layoff language. In support for this position, the WAEA cites the case of the school nurse who, more recently, has had her full-time position cut by approximately twenty percent. Given this event, the teachers ask, what is to

prevent the School Board from reducing full-time senior teachers to part-time -- thereby effectively eliminating their assignments altogether? The Arbitrator believes that such a scenario is not supported by documented evidence and indeed collides with the current realities in the District. As the Neutral observed in the previous impasse between these Parties regarding the issue of longevity, so too the Arbitrator in the instant dispute must conclude that the Association's fears are speculative at the writing of this award. Indeed, given the relatively "late hour" in which these impasse proceedings are being finalized, it would appear that the concerns of the Teachers have yet to be realized. Moreover it is perceived that should such an occurrence come to pass (i.e. a forced exodus based upon an unreasonable reduction in hours of a senior bargaining unit member) then the affected teacher could avail him or herself of the grievance procedure for redress, as the District has acknowledged that an event such as this would not fall within the layoff provision of the Contract.


Finally, dissecting the relative positions of the Parties regarding the matter of layoffs, the Arbitrator finds that in terms of employee "pools" the Association's final position is perhaps the most rationale of the two. It is the balance of their position however, that represents a significant departure from the norm. Factors such as group insurance benefits, liquidated damages and penalties for notification coming less than thirty days in advance, are essentially without comparison among common similar school districts. Conversely, the Employer's final position represents a relatively minor change from the existing contract language regarding pools, appears to be more readily

supported through comparability material, and should go a long way in remedying any problems that may arise under this provision.

Award -

Accordingly, for the reasons set forth above, the Arbitrator finds that the final offer of the District as certified by the Wisconsin Employment Relations Commission, is to be implemented.

Respectfully submitted this 12th day of November, 1982.



J. C. Fogelberg, Mediator/Arbitrator

WESTBY AREA EDUCATION ASSOCIATION

1981-82

	<u>BA</u>	<u>BA+12</u>	<u>BA+24</u>	<u>MA</u>	<u>MA+6</u>
0	11,885	12,135	12,385	12,635	12,760
1	12,360	12,620	12,880	13,140	13,270
2	12,835	13,105	13,375	13,645	13,780
3	13,310	13,590	13,870	14,150	14,290
4	13,785	14,075	14,365	14,655	14,800
5	14,290	14,591	14,891	15,192	15,342
6	14,795	15,107	15,417	15,729	15,884
7	15,300	15,623	15,943	16,266	16,426
8	15,805	16,139	16,469	16,803	16,968
9	16,310	16,655	16,995	17,340	17,510
10	16,845	17,201	17,552	17,909	18,084
11	17,380	17,747	18,109	18,478	18,658
12	17,915	18,293	18,666	19,047	19,232
				19,616	19,806

Health Insurance: Full premium paid by the District.

Life Insurance: No change.

WESTBY AREA EDUCATION ASSOCIATION

1982-83

	<u>BA</u>	<u>BA+12</u>	<u>BA+24</u>	<u>MA</u>	<u>MA+6</u>
0	12,975	13,225	13,475	13,725	13,850
1	13,494	13,754	14,014	14,274	14,404
2	14,013	14,283	14,553	14,823	14,958
3	14,532	14,812	15,092	15,372	15,512
4	15,051	15,341	15,631	15,921	16,066
5	15,602	15,903	16,204	16,504	16,653
6	16,153	16,465	16,777	17,087	17,240
7	16,704	17,027	17,350	17,670	17,827
8	17,255	17,589	17,923	18,253	18,414
9	17,806	18,151	18,496	18,836	19,001
10	18,390	18,746	19,102	19,454	19,624
11	18,974	19,341	19,708	20,072	20,247
12	19,558	19,936	20,314	20,690	20,870
13				21,308	21,493

Health Insurance: Full premiums paid by the District; add drug card -- teacher pays \$2.00 for each prescription.

Life Insurance: The Board will pay 70% of the teacher's cost for the present life insurance program.

(SUBSTITUTE the following provisions, as a new Article, for Article VI - Layoff Policy)

LAYOFF PROCEDURE

1. In the event the Board determines to reduce the number of employee positions (full layoff) or the number of hours in any employee position (partial layoff) because of a decrease in enrollment, budgetary or

financial limitations, or education program changes, the provisions set forth in this article shall apply.

2. In implementing teacher layoffs, the Board will determine on an individual basis and in comparison with other teachers in the relevant layoff pool, which teachers are to be selected for layoff in accordance with the following criteria, which are listed in the order of importance: certification, length of district service and qualification. The term "qualification" as used herein shall be determined by:

- a. Teaching performance in the District as previously and currently evaluated by the immediate supervisor or Superintendent.
- b. Appropriateness of training and experience with respect to the teaching assignments which must be filled.
- c. Further education.
- d. Current co-curricular assignments or activities that are to be filled.

3. The selection of teachers for full or partial layoff shall occur within the following layoff pools.

- a. Grades K-8
- b. Grades 7-12, by department
- c. Specialists (if the particular specialists do not have general K-12 classroom certification in addition to their specialist certification)

The determination of which layoff pool is relevant to a particular layoff shall be made on the basis of the certification(s) of the least senior teacher in the position being eliminated or reduced. Teachers with more than one area of certification will be listed in each pool or department for which they are certified.

4. a. The parties recognize the importance of notifying employees of a layoff as soon as possible in order to enable them to seek other employment and timely apply for unemployment compensation. The Board shall provide written notice to the employees it has selected for layoff under this article at least thirty (30) calendar days prior to the effective date of their layoff. Such written notice shall include a statement of the employee's recall rights under this article. The Board shall simultaneously provide the Association with copies of all layoff notices it sends to employees under this section.

b. In the event that the Board fully lays off an employee during the term of that employee's contract with the District (including the summer months prior to the beginning of the school year for which the employee has been issued an employment contract), the Board shall continue to provide the employee with all group insurance program benefits provided

to employees under this collective bargaining agreement, at the Board's expense, for the duration of the term of that employee's contract. Such employee shall also receive from the District, as and for liquidated damages, an amount of money equal to fifty percent (50%) of the amount of earnings lost as a result of the layoff.

c. In the event the Board implements the partial layoff of an employee during the term of that employee's full-time contract with the District (including the summer months prior to the beginning of the school year for which the employee has been issued that employment contract), the employee shall continue to receive the same rights and benefits provided to full-time employees under this collective bargaining agreement (including all group insurance program benefits, but excluding salary and retirement contributions, which shall be prorated) for the duration of the term of that employee's contract. An employee whose hours have been reduced (partially laid off) shall also receive from the District, as and for liquidated damages, an amount of money equal to fifty percent (50%) of the amount of earnings lost as a result of the partial layoff.

d. The provisions of subsections (a), (b), and (c), above, shall not apply to the layoff of an employee, if the Board provides written notice to the employee that the employee has been selected for layoff for the ensuing school year no later than June 1 of the current school year. However, such written notice of layoff shall include a statement of the employee's recall rights under this article.

e. Employees who were initially hired on a full-time basis and were subsequently reduced to less than full-time status shall continue to receive the same rights and benefits provided full-time employees under this collective bargaining agreement (including all group insurance program benefits offered at the same level as if they were continuing in full-time employment status).

5. Recall of laid-off teachers shall be in the inverse order of their layoff; provided the teachers are qualified and certified. Notice of recall shall be in the form of a registered letter to the teacher's last known address. It shall be the teacher's responsibility to keep the District informed of his/her current address. If the Board does not receive written notice of the teacher's acceptance of a recall offer and intent to return to work within 14 calendar days after such teacher's receipt of the recall notice, the teacher shall lose his/her right to be recalled. Any teacher not recalled within 16 months following his/her layoff shall be deemed to be no longer on the recall list and shall have no recall rights.

Westby Area School District
1981-82

ep.	BA	BA + 12	BA + 24	MA	MA + 6
0	11,800	12,050	12,300	12,550	12,675
1	12,272	12,532	12,792	13,052	13,182
2	12,744	13,014	13,284	13,554	13,689
3	13,216	13,496	13,776	14,056	14,196
4	13,688	13,978	14,268	14,558	14,703
5	14,190	14,490	14,791	15,091	15,242
6	14,691	15,003	15,314	15,625	15,780
7	15,193	15,514	15,836	16,158	16,319
8	15,694	16,027	16,359	16,692	16,858
9	16,196	16,539	16,882	17,225	17,396
0	16,727	17,081	17,435	17,790	17,977
1	17,258	17,623	17,989	18,354	18,537
2	17,789	18,165	18,542	18,919	19,108
3				19,484	19,678
1982-83					
0	12,610	12,860	13,110	13,360	13,485
1	13,114	13,374	13,634	13,894	14,024
2	13,619	13,889	14,159	14,429	14,564
3	14,123	14,403	14,683	14,963	15,103
4	14,628	14,918	15,208	15,498	15,643
5	15,164	15,464	15,765	16,065	16,216
6	15,699	16,011	16,322	16,633	16,789
7	16,235	16,557	16,879	17,201	17,362
8	16,771	17,104	17,436	17,769	17,935
9	17,307	17,650	17,993	18,337	18,508
0	17,875	18,229	18,583	18,938	19,115
1	18,442	18,808	19,173	19,539	19,722
2	19,010	19,386	19,763	20,140	20,329
3				20,741	20,935

ARTICLE VI

Teacher AbsenceLayoff Policy

When the Board, in its judgement, determines that a layoff of teachers is necessary because of a decrease in enrollment, budgetary or financial limitation or educational program changes, the Board will determine, on an individual basis and in comparison with other teachers, which teachers are to be laid off in accordance with the following criteria:

1. The Board shall determine where the layoffs are to occur within these categories:

K-3 grades
4-6 grades
7-8 grades
9-12 by department
Specialists

In determining who shall be laid off, the Board shall apply, in order of importance, the following criteria: certification, length of District service, and, qualification.

The term "qualification" as used herein shall be determined by:

- (1) Teaching performance in the District as previously and currently evaluated by the immediate Supervisor or District Administrator
- (2) Appropriateness of training and experience with respect to the teaching assignments which must be filled.
- (3) Further education.
- (4) Current co-curricular assignments or activities that are to be filled.

2. The parties agree that a layoff shall not be considered a non-renewal or discharge notwithstanding the fact that the Board may be required by Wisconsin Statutes to give a formal notice of nonrenewal to each teacher being laid off.

3. The Board will notify a teacher, in writing, at the time of layoff, the fact that he/she is being laid off, and stating the teacher's recall rights.
4. Recall of laid off teachers shall be in the inverse order of their layoff, provided they are qualified and certified and such notice of recall shall be in the form of a registered letter to the teacher's last known address.
 - a. If the Board does not receive written notice of the teacher's intent to return to work within 14 calendar days, the teacher loses his/her right to be recalled.
 - b. It shall be the teacher's responsibility to supply the Board with his/her current address.
 - c. Any teacher not recalled within sixteen (16) months shall be deemed to be no longer on the recall list and has not recall right.
5. The grievance procedure, including arbitration, may be utilized in a layoff situation, only in the event the Board fails to comply with the above mentioned criteria.