STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of EDUCATION ASSOCIATION OF THE SCHOOL DISTRICT OF WEYAUGWEGA-FREMONT To Initiate Mediation-Arbitration Between Said Petitioner and SCHOOL DISTRICT OF WEYAUWEGA-FREMONT	Case IX No. 28687 MED/ARB-1406 Decision No. 19609-A

APPEARANCES

Jack D. Walker, Melli, Shiels, Walker & Pease, S.C., on behalf of the District

David W. Hanneman, Executive Director, Central Wisconsin UniServ Council-South, on behalf of the Association

On May 26, 1982, the WERC appointed the undersigned as Mediator-Arbitrator pursuant to Section 111.70(4)(cm)6 b. of the Municipal Employment Relations Act in the matter of a dispute existing between the School District of Weyauwega-Fremont, hereafter the District or the Board, and the Education Association of the School District of Weyauwega-Fremont, hereafter the Association. Pursuant to statutory responsibilities, the undersigned conducted mediation proceedings between the parties on August 26, 1982. Said mediation effort failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on September 8, 1982 for final and binding determination. Post hearing exhibits and briefs were filed by both parties by November 3, 1982. Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.70(4)(cm), Wis. Stats., the undersigned renders the following award.

SUMMARY OF ISSUES

This dispute covers the agreement between the parties for the 1981-1982 and 1982-83 school years. In dispute are issues related to the salary schedule, the layoff procedure, health and dental insurance, the extra curricular salary schedule, the identification of certain alleged supervisory positions, sick leave, extra duty assignments, extended contracts, mileage reimbursement, the District's duty to "negotiate" vs. "discuss" changes in conditions of employment during the contract term, and the definition of a grievance.

In addition, issues have arisen over comparability which have a significant impact on many of the other substantive issues in dispute. Therefore, comparability will be initially addressed. Thereafter, the merits of the substantive issues in dispute will be discussed individually. Finally, the relative merits of the total final offers of both parties will be addressed.

COMPARABILITY

Association Position

Since teachers are professionals, they should be compared to other professionals, primarily in the public sector, whose jobs also require advanced training and experience.

The Board however has relied upon comparability data dominated by blue-collar workers in the private sector. Since no demonstrable relationship between these groups has been provided the Board's private sector comparables are not justified and therefore, they should not be used as a basis for comparisons. On the other hand, the record demonstrates that white-collar professional workers have received double-digit pay increases during the period at issue (particularly 1981-1982). Such comparable data supports the Association's position in this dispute and not the Board's. Moreover, the teacher's work year - expanded due to continuing education requirements - equals at least 94% of the work year of these other workers, and therefore, distinctions in employment conditions based upon the length of the teachers' work year are no longer valid.

The Board's private sector comparables are further faulted by the failure of the Board to produce any historical tracking of the teachers' inter-relationship with the private sector. This notable absence negates any persuasiveness which the Board's argument might otherwise have.

The Association further maintains that one of the fundamental bases for comparison should be certification since this requirement is the common denominator of the bargaining unit members. Certification, coupled with a uniform statewide public sector funding formula, clearly distinguish teachers from the Employer's alleged private sector "comparables".

The Association also contends that the statutory criteria emphasize the performance of "similar services" in "public employment" as key considerations in determining comparability. In fact, the statute can reasonably be construed in a manner that would dictate that private sector comparability data for employees performing similar services would only be examined in the event that data for such employees in public employment were not available.

The Board and the Association both offered a variety of geographic relationships in an attempt to give the arbitrator guidance on comparable communities. The Association particularly emphasized districts within a 35-mile radius of Weyauwega.

The lack of comparable salary data for 1982-1983 poses an additional problem in utilizing comparability as a criterion in the resolution of the instant dispute. Since only a few districts which are geographically proximate are in fact settled for 1982-83, the Association has in this instance utilized 1982-83 salary data from all settled Wisconsin districts. This data will at least allow for the comparison of relationships between salaries, even though actual salaries are distinguishable based upon geography, size, and other considerations.

District Position

The statutory criteria to be considered by arbitrators in these disputes include eight separate factors with no indication that any one factor should be given more weight than any other. Furthermore, the last factor listed among the criteria is a catchall phrase indicating that the focus of analysis must reflect consideration of all the statutory factors.

In spite of the foregoing comparability has emerged often as the compelling and nearly preeminent concern of arbitrators and the parties. This limited focus is unjustified and fails to fulfill the statutory mandate to consider and apply the entire set of criteria set forth therein. Moreover, teachers and other public employees must not be insulated from the factors which affect the conditions of employment of private sector employees. Thus, the District has introduced into the record evidence from the private sector which reveals the wages and working conditions existing in neighboring industries.

The District further asserts that it is proper to compare Weyauwega with other districts which are in Waupaca County since they are affected by a common labor market, and they also represent districts which are contiguous and of similar size and districts which are in the same athletic conferences.

In addition, Palmyra is offered as a comparable based on similarities in size as well as similarities in recently negotiated issues.

Finally, the 1982-1983 settlements offered as comparables by the Association are worthless in this arbitration since practically all of them are multi-year agreements, the comparability of which is doubtful, and also because the reported settlement percentages are not reliable.

Discussion

As the undersigned has indicated in numerous other arbitration awards, in determining comparable employer-employee relationships, absent an ability to pay issue, the most appropriate comparables to utilize are those involving employees performing the same or similar services who work for employers of approximately the same size, and who are geographically proximate to the parties in question. Utilizing the foregoing criteria, the undersigned will utilize as the most comparable employer-employee relationships the following school districts, which represent districts which are relatively similar in size to Weyauwega and which are either contiguous to it or which are in the same athletic conference. Said districts include: Winneconne, Wild Rose, Manawa, Berlin, Bonduel, Marion, and Oconto.

Since data regarding all of the aforementioned districts is available for the 1981-1982 school year, the undersigned can readily compare the conditions of employment which exist in each of these districts to assist in determining the reasonableness of the parties' proposals for that year. While other factors must clearly be given consideration in determining the reasonableness of the parties' positions, it would be fair to state that the practices in comparable relationships probably provides the fairest and most objective criterion to utilize in determining the relative reasonableness of the parties' proposals, absent unique circumstances which the parties can demonstrate require unique approaches and solutions.

Where however, as here, conditions of employment in comparable employer-employee relationships have not been agreed upon for a similar period of time, i.e., in this instance the 1982-83 school year, arbitrators must turn to other data in order to ascertain what, if any, comparability evidence exists. Such data includes conditions of employment of: a) similar employees in school districts which may not be geographically proximate or which may not be of comparable size; b) of other public sector employees, particularly those who have similar levels of training and responsibility; c) of private sector employees who have similar levels of training and responsibility and who work in the same geographical area; d) and lastly, of other employees in the private sector, more broadly defined. All of the foregoing allows the undersigned to consider the comparability data offered by both parties in determining the reasonableness of the parties' proposals for the 1982-83 school year. However, because much of the District's data in this regard pertains to employees with significantly different levels of training and responsibilities, said data cannot be given substantial weight. Similarly, because the Association's proposed comparables for the 1982-1983 school year are by and large not geographically proximate and in many instances are not of similar size, and because in the vast majority of cases the conditions of employment for the 1982-1983 school year in said proposed comparables were agreed upon some time ago as part of multi-year agreements, under economic conditions which were distinguishable from those which exist now, the Association's proposed comparables for the 1982-83 school year cannot be given

substantial weight in the determination which must be made herein.

Regarding the above conclusion, the undersigned believes it is critical to note that although the conditions of employment resulting from multi-year agreements cannot be ignored by arbitrators in ascertaining what comparable conditions of employment exist, where significant changes in economic conditions occur after the negotiation of such multi-year agreements, such changes cannot be ignored in determining the reasonableness of the parties' positions at a given point in time. Under such circumstances, evidence must be analyzed in light of several statutory criteria which, if applied independently, would lead to conflicting results. As indicated above, the undersigned is of the opinion that the standard of comparability cannot be given as much weight when it results almost exclusively from multi-year agreements which were negotiated prior to significant changes in the economic climate which often dictates the outcome of the collective bargaining process. The foregoing simply reflects the risks that all parties to the collective bargaining process take in agreeing either to a single or multi-year agreement. In either event, the protential for either relative gain or harm to at least one party in the relationship is always present.

While both the Association's and District's proposed comparables do provide data which is somewhat relevant to the resolution of the issues in dispute herein, because of the many distinguishing factors which exist between said comparables and the facts which are present herein, comparability must be given less weight than would be the case if conditions of employment for comparable school districts had been recently established for the 1982-83 school year. Accordingly, in determining the reasonableness of the parties' proposals for the 1982-83 school year, other statutory criteria must be given greater relative weight than would be the case had more useful comparable data been available.

ASSOCIATION PROPOSED SALARY SCHEDULE 1981-82 SCHOOL YEAR

YEAR	INC.	BS	INC.	BS+12	INC.	BS+24	INC.	MS/BS+30	INC.	MS+12
		(1.00)		(1.03)		(1.06)		(1.09)		(1.12)
Base	1.00	$12,000	1.00	$12,360	1.00	$12,720	1.00	$13,080	1.00	$13,440
1/2		12,180		12,546		12,911		13,276		13,642
1	1.03	12,360	1.03	12,731	1.03	13,102	1.03	13,472	1.03	13,843
1 1/2		12,540		12,917		13,293		13,668		14,045
2	1.06	12,720	1.06	13,102	1.06	13,483	1.06	13,865	1.06	14,246
2 1/2		13,020		13,442		13,849		14,258		14,683
3	1.11	13,320	1.115	13,781	1.1175	14,215	1.12	14,650	1.125	15,120
3 1/2		13,620		14,121		14,584		15,049		15,534
4	1.16	13,920	1.170	14,461	1.1755	14,952	1.181	15,448	1.1865	15,947
4 1/2		14,220		14,801		15,315		15,834		16,357
5	1.21	14,520	1.225	15,141	1.2325	15,677	1.240	16,219	1.2475	16,766
5 1/2		14,760		15,546		16,030		16,612		17,200
6	1.25	15,000	1.276	15,771	1.2880	16,383	1.300	17,004	1.3120	17,633
6 1/2		15,240		16,019		16,638		17,266		17,902
7	1.29	15,480	1.316	16,266	1.3280	16,892	1.340	17,527	1.3520	18,171
7 1/2		15,720		16,513		17,147		17,789		18,440
8	1.33	15,960	1.356	16,760	1.3680	17,401	1.380	18,050	1.3920	18,708
8 1/2		16,200		17,008		17,656		18,312		18,977
9	1.37	16,440	1.396	17,255	1.4080	17,910	1.420	18,574	1.4320	19,246
9 1/2		16,680		17,502		18,165		18,836		19,515
10	1.41	16,920	1.436	17,749	1.4480	18,419	1.460	19,087	1.4720	19,784
10 1/2		17,160		17,996		18,673		19,359		20,053
11	1.45	17,400	1.476	18,243	1.4880	18,927	1.500	19,620	1.5120	20,321
11 1/2		17,640		18,491		19,182		19,882		20,590
12	1.49	17,880	1.516	18,738	1.5280	19,436	1.540	20,143	1.5520	20,859

BOARD PROPOSED SALARY SCHEDULE 1981-82 SCHOOL YEAR

YEAR	INC.	BA	INC.	BA+12	INC.	BA+24	INC.	MA/BA+30	INC.	MA+12
Base		$12,050.00		$12,350.00		$12,650.00		$12,950.00		$13,250.00
1/2		12,230.75		12,535.25		12,839.75		13,144.25		13,448.75
1	1.03	12,411.50	1.03	12,720.50	1.03	13,029.50	1.03	13,338.50	1.03	13,647.50
1 1/2		12,592.25		12,905.75		13,219.25		13,532.75		13,846.25
2	1.06	12,773.00	1.06	13,091.00	1.06	13,409.00	1.06	13,727.00	1.06	14,045.00
2 1/2		13,014.00		13,338.00		13,662.00		13,986.00		14,376.25
3	1.10	13,255.00	1.10	13,585.00	1.10	13,915.00	1.10	14,245.00	1.11	14,707.50
3 1/2		13,496.00		13,832.00		14,168.00		14,504.00		15,038.75
4	1.14	13,737.00	1.14	14,079.00	1.14	14,421.00	1.14	14,763.00	1.16	15,370.00
4 1/2		13,978.00		14,326.00		14,674.00		15,086.75		15,701.25
5	1.18	14,219.00	1.18	14,573.00	1.18	14,927.00	1.19	15,410.50	1.21	16,032.50
5 1/2		14,460.00		14,820.00		15,180.00		15,734.25		16,363.75
6	1.22	14,701.00	1.22	15,067.00	1.22	15,433.00	1.24	16,058.00	1.26	16,695.00
6 1/2		14,942.00		15,314.00		15,749.25		16,381.75		17,026.25
7	1.26	15,183.00	1.26	15,561.00	1.27	16,065.50	1.29	16,705.50	1.31	17,357.50
7 1/2		15,424.00		15,808.00		16,381.75		17,029.25		17,688.75
8	1.30	15,665.00	1.30	16,055.00	1.32	16,698.00	1.34	17,353.00	1.36	18,020.00
8 1/2		15,906.00		16,363.75		17,014.25		17,676.75		18,351.25
9	1.34	16,147.00	1.35	16,672.50	1.37	17,330.50	1.39	18,000.50	1.41	18,682.50
9 1/2		16,388.00		16,981.25		17,646.75		18,324.25		19,013.75
10	1.38	16,629.00	1.40	17,290.00	1.42	17,963.00	1.44	18,648.00	1.46	19,345.00
10 1/2		16,930.25		17,598.75		18,279.25		18,971.75		19,676.25
11	1.43	17,231.50	1.45	17,907.50	1.47	18,595.50	1.49	19,295.50	1.51	20,007.50
11 1/2		17,532.75		18,216.25		18,911.75		19,619.25		20,388.75
12	1.48	17,834.00	1.50	18,525.00	1.52	19,228.00	1.54	19,943.00	1.56	20,670.00

ASSOCIATION PROPOSED SALARY SCHEDULE 1982-83 YEAR

YEAR	INC.	BS	INC.	BS+12	INC.	BS+24	INC.	MS/BS+30	INC.	MS+12
		(1.00)		(1.03)		(1.06)		(1.09)		(1.12)
Base	1.00	$12,975	1.00	$13,364	1.00	$13,754	1.00	$14,143	1.00	$14,532
1/2		13,170		13,565		13,961		14,355		14,750
1	1.03	13,364	1.03	13,765	1.03	14,167	1.03	14,567	1.03	14,968
1 1/2		13,559		13,966		14,373		14,780		15,186
2	1.06	13,754	1.06	14,166	1.06	14,579	1.06	14,992	1.06	15,404
2 1/2		14,078		14,534		14,975		15,416		15,858
3	1.11	14,402	1.115	14,901	1.1175	15,370	1.12	15,840	1.1225	16,312
3 1/2		14,727		15,269		15,769		16,272		16,777
4	1.16	15,051	1.170	15,636	1.1755	16,169	1.181	16,703	1.1865	17,242
4 1/2		15,376		16,004		16,560		17,120		17,686
5	1.21	15,700	1.225	16,371	1.2325	16,952	1.240	17,537	1.2475	18,129
5 1/2		15,960		16,712		17,334		17,962		18,598
6	1.25	16,219	1.276	17,052	1.2880	17,715	1.300	18,386	1.3120	19,066
6 1/2		16,479		17,320		17,990		18,669		19,357
7	1.29	16,738	1.316	17,587	1.3280	18,265	1.340	18,952	1.3520	19,647
7 1/2		16,998		17,855		18,541		19,235		19,938
8	1.33	17,257	1.356	18,122	1.3680	18,816	1.380	19,517	1.3920	20,229
8 1/2		17,517		18,389		19,091		19,800		20,520
9	1.37	17,776	1.396	18,656	1.4080	19,366	1.420	20,083	1.4320	20,810
9 1/2		18,036		18,924		19,641		20,366		21,101
10	1.41	18,295	1.436	19,191	1.4480	19,916	1.460	20,649	1.4720	21,391
10 1/2		18,555		19,458		20,191		20,932		21,682
11	1.45	18,814	1.476	19,725	1.4880	20,466	1.500	21,215	1.5120	21,972
11 1/2		18,074		19,993		20,741		21,498		22,263
12	1.49	19,333	1.516	20,260	1.5280	21,016	1.540	21,780	1.5520	22,554

BOARD PROPOSED SALARY SCHEDULE 1982-83 YEAR

YEAR	INC.	BA	INC.	BA+10	INC.	BA+20	INC.	MA/BA+30	INC.	MA+10
Base		$12,500.00		$12,800.00		$13,100.00		$13,400.00		$13,700.00
1/2		12,587.50		12,992.00		13,296.50		13,601.00		13,905.50
1	1.03	12,875.00	1.03	13,184.00	1.03	13,493.00	1.03	13,802.00	1.03	14,111.00
1 1/2		13,062.50		13,376.00		13,689.50		14,003.00		14,316.50
2	1.06	13,250.00	1.06	13,568.00	1.06	13,886.00	1.06	14,204.00	1.06	14,522.00
2 1/2		13,500.00		13,824.00		14,148.00		14,472.00		14,864.50
3	1.10	13,750.00	1.10	14,080.00	1.10	11,410.00	1.10	14,740.00	1.11	15,207.00
3 1/2		14,000.00		14,336.00		14,672.00		15,008.00		15,549.50
4	1.14	14,250.00	1.14	14,592.00	1.14	14,934.00	1.14	15,276.00	1.16	15,892.00
4 1/2		14,500.00		14,848.00		15,196.00		15,611.00		16,234.50
5	1.18	14,750.00	1.18	15,104.00	1.18	15,458.00	1.19	15,946.00	1.21	16,577.00
5 1/2		15,000.00		15,360.00		15,720.00		16,281.00		16,919.50
6	1.22	15,250.00	1.22	15,616.00	1.22	15,982.00	1.24	16,616.00	1.26	17,262.00
6 1/2		15,500.00		15,872.00		16,309.50		16,951.00		17,604.50
7	1.26	15,750.00	1.26	16,128.00	1.27	16,637.00	1.29	17,286.00	1.31	17,947.00
7 1/2		16,000.00		16,384.00		16,964.50		17,621.00		18,289.50
8	1.30	16,250.00	1.30	16,640.00	1.32	17,292.00	1.34	17,956.00	1.36	18,632.00
8 1/2		16,500.00		16,960.00		17,619.50		18,291.00		18,974.50
9	1.34	16,750.00	1.35	17,280.00	1.37	17,947.00	1.39	18,626.00	1.41	19,317.00
9 1/2		17,000.00		17,600.00		18,274.50		18,961.00		19,659.50
10	1.38	17,250.00	1.40	17,920.00	1.42	18,602.00	1.44	19,296.00	1.46	20,002.00
10 1/2		17,562.50		18,240.00		18,929.50		19,631.00		20,344.50
11	1.43	17,875.00	1.45	18,560.00	1.47	19,257.00	1.49	19,966.00	1.51	20,687.00
11 1/2		18,187.50		18,880.00		19,584.50		20,301.00		21,029.50
12	1.48	18.500.00	1.50	19,200.00	1.52	19,912.00	1.54	20,636.00	1.56	21,372.00

Association Position

The most significant monetary issue in dispute is salary. In its proposal, the Association continues the historical, vertical increment that has existed for many years while the Board proposes to change that increment. In fact, the Board has proposed decreases in the vertical increment of up to 3% in the Bachelor column and up to 6% in the Master column.

The offers of both parties depart from their historical practice regarding horizontal lanes. However, the Association's proposal is consistent with that which the parties have agreed on for the 1981-1982 school year; that is, it maintains the same horizontal lanes. In addition, the Association's proposal for 1981-1983 causes the BA-MA ratio to remain at 1.09.

By contrast, the Board proposal adds new lanes and reduces the percentage increase between the lanes. The result is that the Board proposal makes it less advantageous for teachers to obtain additional credits. Therefore, the Association's offer must be deemed superior since it maintains the historical and voluntary practice of the parties.

Furthermore, the Association offer is superior to the Board's regarding base salary and salary in general.

The Association has proposed comparables which include contiguous districts, districts of the same size, athletic conference districts, and 35-mile radial districts. Bench mark comparisons in all of these groups show that the Association offer is at least as comparable, if not more so, than the Board offer at nearly every point. Clearly, logic compels a finding for the Association on the salary structure issue.

The increase in consumer prices may also be cited in support of the Association's proposal. The CPI increased by at least 33.49% during the period from 1979-1980 through 1982-1983. When salary increases are discounted by this inflationary impact, even the Association's offer results in loss of money to teachers at every level except the Schedule Maximum.

It is further noted that the Board offer reduces the spread between the BA and MA - ignoring the fact that these added credits are increasingly expensive to acquire. The new DPI six-credit mandate gives added reason for more pay - not less - for a Master's degree than in the past. Therefore, the Board's position can only be described as regressive.

The Board's offer would also alter the salary structure by reducing the credits needed to advance horizontally. This will almost never benefit teachers however since practically all graduate courses are offered for three credits. Multiples of three-credit courses would invariably place teachers at a twelve-credit lane before additional income could be realized. Furthermore, the Board still separates lanes by $900 which is a regression of $100 from that which was true in 1980-81. Furthermore, the 1982-83 Board offer of a $900 spread between the BA and MA is 7.2% which is a decrease from the 7.47% which was incorporated in the Board's 1981-82 offer.

The Association also asks the arbitrator to note the discrepancy in costing between the parties. The Board's costing results in a depression of costs for 1980-1981 and elevations for 1981-1982 and 1982-1983. The percentage discrepancies range from .14% to .27% overthe two years at issue. In this regard, the Association costs its 1981-82 salary proposal at 10.63% while the Board costs it at 10.9%. The Board's 1981-82 salary proposal is costed by the Association at 9.37% and by the Board at 9.61%. In 1982-83 the parties' proposals are costed as follows:

	Assn. Costing	Board Costing
82-83 Assn. proposal	9.75%	8.89%
Board proposal	5.17%	5.39%

District Position

First, it is necessary to identify the 1979-1981 agreement as a consent award in which the Union obtained significant monetary as well as language improvements. Moreover, in this round of bargaining, the Board offers two new lanes amounting to a 66.6% increase in lanes. The one percent reduction at the BA Maximum is intended to stimulate productivity by encouraging continued staff education and horizontal movement on the salary schedule. By contrast, the Association proposes extreme protection to anyone at the top of the schedule.

The overall picture of the Board's proposal is a 2% increase in the top increment from lane to lane.

The District calculates the Association's two-year total package demand at 28.5%, and given at least a 5% increase in the Weyauwega 1980-1981 agreement, if the Association's final offer were selected the District's teachers would achieve a three-year package exceeding the rate of inflation over the last three-year period, an unheard of achievement in collective bargaining. With such dramatic increases, it is difficult to find the Association's arguments purporting to show the impact of increased costs for continuing education persuasive.

The comparables also support the District's position which would place Weyauwega in the thick of things, albeit on the low side. The Association's offer, on the other hand, is much too high - particularly in view of its other demands for large premium increases and a radical change in the layoff clause.

The District further maintains that private sector comparables should be of primary concern since they pay the bills and reflect collective markets as well. All of these private sector comparables are below the Association's proposal; and most contain inferior fringes besides.

Cell comparisons do not support the Association's offer, either. No unsettling slippage has been shown. Even when compared with the catchup agreement of Iola-Sandinavia, the Board offer is superior in the bench marks while maintaining its average ranking. By contrast, the Union offer attempts to play leap frog with the Iola-Scandinavia agreement.

In sum, the Board offer does not cause any Weyauwega teacher to lose substantial ground even under the old inflationary view of the world. In fact, at a time when many people are worrying about whether they have a job at all, the unit at Weywauwega would enjoy substantial increases under the employer's offer, which would even improve their rankings in certain categories.

The District cannot afford any of these increases, and offers them because of interest arbitration. With collective market as the criterion, the increases would be much smaller, or nonexistent, which would be in line with the private sector.

Discussion

Utilizing the aforementioned comparable school districts and seven salary bench marks which are commonly used as a basis of comparisons, the undersigned has constructed the following tables to assist in the analysis of the parties' salary proposals for the 1981-82 school year:

BA BASE

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	11,200		12,200	9	1,000
Wild Rose	11,000		12,150	10.5	1,150
Manawa	11,000		11,850	7.7	850
Berlin	11,500		12,467	8.4	967
Bonduel	11,370		12,300	8.2	930
Marion	11,000		11,850	7.7	850
Oconto	11,100		11,900	7.2	800
Average	11,167		12,102	8.4	935
Weyauwega	11,100	Bd.	12,050	8.6	950
		Assn.	12,000	8.1	900
+/- Average	-67	Bd.	-52	.2	15
		Assn.	-102	-.3	-35
Rank Among 8	4/5	Bd.	5		
		Assn.	5		

BA 7th STEP

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	13,888		15,128	8.9	1,240
Wild Rose	13,040		14,190	8.8	1,150
Manawa	13,160		14,070	6.9	910
Berlin	13,500		14,612	8.2	1,112
Bonduel	14,099		15,252	1.8	253
Marion	13,325		14,430	8.3	1,105
Oconto	14,166		15,182	7.2	1,016
Average	13,597		14,695	7.2	969
Weyauwega	13,875	Bd.	14,701	6	826
		Assn.	15,000	8.1	1,125
+/- Average	278	Bd.	6	-1.2	- 143
		Assn.	305	.9	156
Rank Among 8	4	Bd.	4		
		Assn.	4		

BA MAX

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	17,920		19,520	8.9	1,600
Wild Rose	17,470		18,995	8.7	1,525
Manawa	15,320		16,290	6.3	970
Berlin	16,700		18,297	9.6	1,597
Bonduel	16,828		18,204	8.2	1,376
Marion	15,890		17,010	7.	1,120
Oconto	18,254		19,558	7.1	1,304
Average	16,912		18,268	8.	1,356
Weyauwega	16,539	Bd.	17,834	7.8	1,295
		Assn.	17,880	8.1	1,341
+/- Average	-373	Bd.	-434	-.2	- 61
		Assn.	-388	.1	- 15
Rank Among 8	5	Bd.	6		
		Assn.	6		

MA BASE

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	12,175		13,175	8.2	1,000
Wild Rose	11,600		12,806	10.4	1,206
Manawa	12,375		13,225	6.9	850
Berlin	12,800		13,897	8.6	1,097
Bonduel	12,393		13,530	9.2	1,137
Marion	11,800		12,850	8.9	1,050
Oconto	11,800		12,600	6.8	800
Average	12,135		13,155	8.4	1,020
Weyauwega	12,100	Bd.	12,950	7.	850
		Assn.	13,080	8.1	980
+/- Average	-35	Bd.	-205	-1.4	- 170
		Assn.	- 75	- .3	- 40
Rank Among 8	5	Bd.	5		
		Assn.	5		

MA 10th STEP

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	16,558		17,918	8.2	1,360
Wild Rose	14,695		15,901	8.2	1,206
Manawa	16,515		17,680	7.1	1,165
Berlin	16,000		17,307	8.2	1,307
Bonduel	16,854		18,401	9.2	1,547
Marion	15,385		16,720	8.7	1,335
Oconto	16,687		17,820	6.8	1,133
Average	16,099		17,392	8.1	1,293
Weyauwega	17,182	Bd.	18,000	4.8	818
		Assn.	18,574	8.1	1,392
+/- Average	1,083	Bd.	608	-3.3	- 475
		Assn.	1,182	0	99
Rank Among 8	1	Bd.	2		
		Assn.	1		

MA MAX

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	19,480		21,080	8.2	1,600
Wild Rose	18,070		19,651	8.7	1,581
Manawa	17,895		19,165	7.1	1,270
Berlin	19,200		20,937	9.	1,737
Bonduel	19,333		21,107	9.2	1,774
Marion	18,065		19,300	7.1	1,275
Oconto	19,402		20,720	7.	1,318
Average	18,772		20,280	8.	1,508
Weyauwega	18,634	Bd.	19,943	7.	1,309
		Assn.	20,143	8.1	1,509
+/- Average	- 138	Bd.	- 337	-1.	- 199
		Assn.	- 137	.1	1
Rank Among 8	5	Bd.	5		
		Assn.	5		

SCHEDULE MAX

	1980-81 $		1981-82 $	% Increase	$ Increase
Winneconne	19,480		21,560	10.7	2,080
Wild Rose	18,070		19,651	8.7	1,581
Manawa	18,410		19,740	7.2	1,330
Berlin	19,700		21,487	9.1	1,787
Bonduel	20,399		22,143	8.5	1,744
Marion	18,325		19,700	7.5	1,375
Oconto	19,898		21,202	6.6	1,304
Average	19,183		20,783	8.3	1,600
Weyauwega	18,634	Bd.	20,670	10.9	2,036
		Assn.	20,859	11.9	2,225
+/- Average	- 549	Bd.	- 113	2.6	436
		Assn.	189	3.6	625
Rank Among 8	5	Bd.	5		
		Assn.	5		

This comparative data indicates that at the BA base neither proposal is appreciably more comparable than the other. At the BA 7th step the same conclusion applies since the proposals are approximately equally above and below the comparable averages, while there appears to be no apparent need for specific correction or adjustment of the District's salary at this benchmark. At the BA maximum the same conclusion applies. However, at the MA base, the Association's proposal appears to be the more comparable of the two based upon average salaries, as well as percentage and dollar increases. On the other hand, at the MA 10th step, although the Association's proposal is more comparable in terms of the size of the increase, the District's is more reasonable in terms of the range of actual salaries paid at this benchmark. Since a corrective adjustment appears to be supported by the comparable data in order to make the District's salaries at this point more comparable, the District's proposal is deemed to be more reasonable than the Association's at this point even though it is less comparable in terms of relative size of the proposed increase. At the MA Maximum the Association's proposal is clearly the more comparable of the two, while at the schedule maximum, the opposite is true. In light of all of the foregoing it would appear that at three of seven salary benchmarks neither proposal is appreciably more comparable than the other, at two, the District's is the more comparable of the two, and at the remaining two, the Association's is the most comparable. Based upon these conclusions, it would appear that neither party's salary proposal for the 1981-82 school year is appreciably more comparable than the other's, and therefore, neither is deemed to be the most reasonable in that regard.

As indicated above, data is not available to enable the undersigned to compare the parties' proposed 1982-83 school year salary schedules with comparable school district salaries as defined in the foregoing discussion. While it would appear that 1982-83 school district salaries which were negotiated as part of multi-year agreements during the past few years are more comparable with the Association's proposal, in terms of the size of the increases granted, the undersigned agrees with several arbitrators who have recently concluded that because of the severe recessionary trends the economy has recently been experiencing, such settlements cannot be determinative of a dispute which must be resolved at this time. 1/

Although the parties have not introduced evidence in the record regarding other public sector settlements, based upon the cases the undersigned has recently reviewed and considered, it would

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1/ West Bend School District No. 1, Med/Arb Dec. No. 19443-A, 9/82; School District of Cudahy, Med/Arb Dec. No. 19635-A; School District of South Milwaukee, Med/Arb Dec. No. 19668-A).

appear that the range of increases which have been granted to other Wisconsin public sector employees in 1982 is more comparable with the District's proposal than the Association's. Similarly, although data in the record on comparable private sector employment relationships is sparce, it would appear that the District is accurate in its assertion that its salary proposal is more comparable than the Association's in terms of what is occurring in the private sector generally. 2/

One other factor which deserves mention with respect to this issue is the fact that several recent mediation/arbitration awards have been issued during the course of the instant proceeding which indicate that at least the initial 1982-83 Wisconsin school district settlements may fall in a range of between eight and ten percent. 3/ In addition to these awards, in several cases presently pending before the undersigned, the districts have submitted final offers which also fall within this range.

Based upon all of the foregoing data, it would appear that the Association's 1982-83 salary proposal, which is in excess of nine percent, is unreasonably high based upon relevant public and private sector comparability, the lack of a need for catch up adjustments in order to correct inequities, and particularly in light of current economic conditions when inflation has been substantially reduced, unemployment is rampant, and public revenues are diminishing.

On the other hand, the District's salary proposal for 1982-83, which is somewhat in excess of five percent, though more comparable with the settlements which are occurring elsewhere in the public and private sectors, appears to be significantly below the level of settlements which are likely to be reached in Wisconsin school districts for said year. In addition, the District has failed to demonstrate that the structural changes it has proposed in the salary schedule are meritorious based upon either comparability or other legitimate problems which said changes are designed to address.

For all of the foregoing reasons it would appear that neither of the parties' 1982-83 salary proposals is significantly more reasonable than the other's. In fact,they both appear to be relatively unreasonble. For all of the foregoing reasons, the undersigned has decided not to give significant weight to the salary issue, standing alone, in determining the relative reasonableness of the parties' total package final offers. Instead, this issue will be considered only as a major component of the total cost of the parties' economic proposals, which shall be considered on the basis of their own relative merit.

HEALTH AND DENTAL INSURANCE

In 1980-81 the Board paid the following amounts for health and dental insurance, which amount covered the full premium for both:

Dental:

Family - up to $22.50 per month
Single - up to $7.50 per month

Health

Family - up to $95.00 per month
Single - up to $40.00 per month

2/ See 110 LRR 277, August 9, 1982.

3/ Madison Area Vocational, Technical and Adult Education District, Dec. No. 19793-A; School District of Cudahy, supra; School District of South Milwaukee, supra.

For the 1981-82 school year the health and dental premiums were as follows:

Dental:

Family - $24.90 per month
Single - $7.85 per month

Health:

Family - $122.90 per month
Single - $47.50 per month

The parties' proposals for 1981-82 are as follows:

Board Offer

Dental:

Family - up to $22.50 per month (90%)
Single - up to $7.50 per month (96%)

Health:

Family - up to $115.00 per month (94%)
Single - up to $40.00 per month (84%)

Association Offer

Full single and family health and dental coverage

For the 1982-83 school year the health and dental premiums are as follows:

Dental:

Family - $34.50 per month
Single - $11.88 per month

Health:

Family - $165.34 per month
Single - $68.52 per month

The parties' proposals for 1982-83 are as follows:

Board Offer

Dental:

Family - up to $23.75 per month (69%)
Single - up to $8.00 per month (67%)

Health:

Family - up to $145.00 per month (88%)
Single - up to $50.00 per month (73%)

Association Offer

Full single and family health and dental coverage

Association Position

The Board's insurance offer is another example of regression from prior agreements.

In the area of health and dental coverage, although the contract specifies a maximum dollar amount to be paid by the employer, historically this amount has been equal to or has exceeded the full premium. The Association simply proposes that the contract state that the Board will pay the full premium; in essence, continuing the status quo.

It is also noted that maintaining this type of tax-free compensation provides a benefit to both the employee who saves tax dollars and the employer who saves STRS and FICA contributions. Moreover, no offset has been proposed to make up for this proposed benefit reduction by the Board.

District Position

The purpose of having a stateddollar health cap even if the actual premium is equal to or less than the cap is to reflect the parties' agreement that health insurance premiums are money which must be considered as an important part of the total compensation package. Every Weywauwega contract in evidence contains such a stated dollar premium.

However, the Union is now demanding that the employer pay the entire premium regardless of the size of increases. Moreover, the Union demands that the dollar amount no longer be used, but that the contract simply state that the District will pay the full premium.

It is pointed out that Weywauwega is self-rated; accordingly, rate increases reflect the use of insurance coverage by unit members.

Nevertheless, the Board is willing to increase its share of the insurance cost, but believes that that some recognition should be given by employees to the fact that such contributions directly benefit the employees in the bargaining unit.

In addition, an examination of comparable districts demonstrates that Weywauwega's premiums are higher than many others, and that several districts only pay a part of the total premium - the employee paying the balance, particularly for family coverage. In fact, the bulk of the close comparables do not have Board payment of "full" premiums.

Finally, it is not reasonable to get both a 10 percent raise and a 30 to 40 percent increase in paid health and dental insurance premiums, for two years running.

Discussion

The record contains the following evidence regarding health and dental benefits which are provided by comparable school districts:

HEALTH AND DENTAL PREMIUM DATA

	BOARD CONTRIBUTIONS			ACTUAL PREMIUMS		
	1980-81	1981-82	1982-83	1980-81	1981-82	1982-83
Berlin						
Single Health	33.50(92%)	46.51(92%)	51.12(92%)	36.27	50.55	55.56
Family Health	92.00(92%)	128.67(92%)	140.61(92%)	99.82	139.86	152.84
No Dental						
Bonduel						
Single Health	30.94(100%)	40.92(100%)	49.56(100%)	30.94	40.92	49.56
Family Health	80.86(100%)	106.88(100%)	128.48(100%)	80.86	106.88	128.48
Single Dental	12.52(100%)	12.52(100%)	15.02(100%)	12.52	12.52	15.02
Family Dental	39.53(100%)	39.53(100%)	47.46(100%)	39.53	39.53	47.46
Manawa						
Single Health	25.96(65%)	43.00H&D(85%)	43.00H&D*	40.14	50.72H&D	52.96H&D
Family Health	91.63(75%)	130.90H&D(91%)	130.90H&D*	121.68	143.48H&D	137.46H&D
Single Dental	5.00(61%)			8.22		
Family Dental	19.92(79%)			25.28		
* May change when settled						
Marion						
Single Health	35.43(100%)	46.36(100%)	53.26(100%)	35.78	46.32	53.26
Family Health	92.65(100%)	121.14(100%)	139.30(100%)	93.58	121.14	139.30
Single Dental	8.56(100%)	11.70(100%)	11.88(100%)	8.56	11.70	11.88
Family Dental	25.85(100%)	34.62(100%)	34.50(100%)	25.85	34.62	34.50
Oconto						
Single Health	32.92(99%)	33.25(80%)	Up to 50.00(100%)	33.25	41.66	49.54
Family Health	86.02(99%)	86.88(80%)	Up to 120.00(93%)	86.88	108.00	128.36
Single Dental	5.34(90%)	9.36(90%)	Up to 13.00(100%)	5.94	10.40	10.92
Family Dental	16.59(90%)	27.59(90%)	Up to 35.00(100%)	18.43	30.66	32.20
Wild Rose						
Single Health	30.82(100%)	32.98(100%)	59.08(100%)	30.82	32.98	59.08
Family Health	84.00(100%)	92.62(100%)	166.34(100%)	84.00	92.62	166.34
Single Dental	7.59(100%)	10.40(100%)	10.40(100%)	7.59	10.40	10.40
Family Dental	22.35(100%)	30.66(100%)	30.66(100%)	22.35	30.66	30.66
Winneconne						
Single Health	52.51(100%)	65.00(84%)	52.51(68%)	52.51	77.42	77.42
Family Health	115.00(72%)	135.00(57%)	159.84(68%)	159.84	236.79	236.79
No dental						

The foregoing data indicates that in 1981-82 three of the seven identified comparable districts provided full family health coverage, and the same is true for 1982-83, although in one district said issue has not been resolved. With respect to family dental insurance, in 1981-82 three comparable districts provided full coverage while in 1982-83 three will provide such coverage.

Because of the significant diversity in the range of health insurance benefits, premiums, and Board contributions toward same which exist in comparable districts, the undersigned cannot conclude, based upon comparable practices, that either party's health and dental insurance proposals, standing alone, are more reasonable than the other party's. Accordingly, insurance benefits will have to be considered not on their individual merit, but as part of the total economic package.

LAYOFF PROCEDURES

The District proposes to continue the layoff clause contained in the parties' 1979-81 agreement, which provides as follows:

> 1. When the Board, at its discretion, determines to eliminate a teaching position because of a decrease in enrollment, budgetary or financial limitations, education program changes, or to reduce staff for reasons other than the performance or conduct of the teacher, the administration will, on an individual basis and in comparison with other teachers, evaluate and recommend to the Board which teacher or teachers are to be laid-off in accordance with the following criteria:
>
> 2. The criteria to be used are "qualifications", "length of departmental service", and "length of service in the district".
>
> (a) The following standards shall be applied by the administration in making the comparative evaluation of "qualifications".
>
> > 1. Teaching performance in the district as previously and currently evaluated by the appropriate supervisor.
> >
> > 2. Appropriateness of training, experience, and certification with respect to the remaining teaching assignments which must be filled.
> >
> > 3. Academic achievements, and where applicable, co-curricular assignments or activities held or to be filled.
>
> (b) In the event two or more teachers are found to be equally qualified upon application of the above standards, then length of departmental service shall prevail, and if equal, length of service in the district shall prevail.
>
> (c) For the purpose of employment such departments are identified as follows:

Elementary:	Kindergarten	Kindergarten
	Primary	1-3
	Intermediate	4-5
	Library	K-5
Middle School:	Grades	6-8
	Foreign Language, Industrial Arts, & Home Economics	6-8
	Library	6-8

High School:	Social Studies, English, Mathematics, Science, Foreign Language, Business Education, Driver Education, Home Economics, Distributive Education, Industrial Arts, Library, Vocation Industrial Arts, Guidance	9-12
Miscellaneous:	Speech Therapy, Psychologist, Federal Programs, Art, Instrumental Music, Reading, L.V.E.C., Vocal Music, Physical Education	K-12

3. In the notice of layoff, the Board of Education will notify the teacher of that fact and of the teacher's re-employment rights, which they have under this section. The notice of layoff will be given by March 15, for the succeeding school year.

4. When a teaching position is made available and a laid off teacher or teachers have re-call rights and the desired qualifications established for the position, than if more than one qualified laid off teacher has re-call rights, the administration shall, after applying the standard for comparing individual "qualfications" set forth in paragraph (a) recommend to the Board the teacher to be recalled. If two or more teachers subject to recall are found to have equal "qualifications" then the laid off teacher having the greatest length of previous service, if any, in the department shall be first re-called, and, if departmental service is equal, then the teacher having the greatest length of service in the district shall be recalled.

5. The Board shall mail the re-call notice by certified mail to the teacher's last known address. The notice of re-call shall advise the teacher of the time and place that the teacher is to report for duty.

(a) It shall be the teacher's responsibility to keep the Board informed as to the teacher's current address.

(b) If the Board does not, within 14 calendar days from the date of mailing the notice, receive written confirmation of the teacher's acceptance of re-call, the teachers loses all rights to be re-called. Failing to report at the requested time and place will void the re-call and all re-employment rights of the re-called teacher.

(c) Re-employment rights for teacher laid off under this section shall terminate on September 1 of the year next following the year in which layoff notice was given.

The Association proposes to modify the layoff procedure in a number of ways. The most significant changes proposed by the Association include:

1. Layoffs based upon seniority, provided the teachers who remain are certified to fill the needs of the District at the time they assume their assignment.

2. Bumping rights to a position for which a teacher is certified which is filled by the least senior teacher so certified.

3. Waiver of seniority rights for purposes of layoff if veteran teachers do not volunteer to cover curricular positions if certified, and/or co-curricular positions held by less senior teachers.

4. A three-year recall period.

Association Position

One of the two major issues in dispute is the layoff clause. An analysis of this issue centers around identification of problems and the extent to which comparables support the proposal being offered.

The Association contends that seniority should be the basis for layoff, and since such provisions are commonly included in comparable districts, the Association's burden is easily met.

The need for a seniority provision is evident given the fact that veteran teachers in Weyauwega have little, if any, job security. In fact, teachers with twenty years' experience have recently been reduced in preference to teachers with only one to five years' experience.

Furthermore, an analysis of comparative groups overwhelmingly supports the Association's proposal. In private sector agreements, employee seniority among those able to do the work is the primary, if not the sole criterion, for staff reduction. That is the proposal of the Association, which interlocks seniority and certification.

It is noted that even the Board's own exhibits of alleged private sector comparables provide for seniority as the base for layoff.

Moreover, the school district comparables also support the use of seniority as a basis for layoff.

By contrast, the Weyauwega Board proposes a flat rejection of the seniority concept by continuing current contract language. This position is clearly unsupported by the comprehensive sample of layoff provisions provided by the Association.

The Association proposal includes several important elements currently not present in the contract, including seniority based layoff (conditioned on certification, a clearer statement of what constitutes layoff, bumping to the least senior position for which an employee is certified, waiver of seniority rights if veteran teachers do not volunteer to cover curricular positions if certified and/or co-curricular positions held by less senior teachers, and a three-year recall period. Modifications have been made only in those areas clearly in need of revision. In this regard while the current language offers great latitude to the Board, it provides little security to teachers.

Furthermore, adoption of the Association's layoff proposal will encourage teachers to continue their education and broaden their certification base in order to enhance their job security, which will improve quality of construction in the District and provide the District with more flexibility in scheduling.

Since the Board can remove teachers who are not performing satisfactorily by means of the disciplinary process, and since the District has long recognized the fact that teachers are entitled to more compensation based upon years of experience in the District, the Board should facilitate layoffs on the basis of seniority provided those who remain after layoff can perform the needed work.

The Association's proposal, in clearly differentiating between full and partial layoffs, will prevent potential disputes over who should receive a layoff notice which might arise if the current contract language were allowed to continue.

The bumping proposed by the Association is carefully constructed to allow a veteran teacher who is to be laid off the right to bump only the least senior teacher is an area where the veteran teacher is certified. Thus, there is a high probability that only one bump will occur, or, at the most two.

It cannot fairly be argued that the Association proposal would restrict the District's ability to meet the needs of the students, whether curricular or co-curricular in nature, since it provides for unlimited exemptions from seniority based layoffs to assure that all curricular and extra-curricular needs will be met.

The three-year recall period proposed by the Association is reasonable in that it affords affected teachers a reasonable opportunity to come back into the system whereas the one-year period currently in the agreement does not.

Furthermore, it provides the Board with a pool of qualified people who have experience in the District.

District Position

The Association has made an overbroad series of changes to the layoff clause, some totally unsupported by argument.

This proposal eliminates the words "at its discretion" from the layoff language which would apparently subject the Board's layoff decision to arbitral review.

The Board, on the other hand, is willing to retain the March 15th limitation, a concession it made to the Association in the 1979-1981 agreement in order to remove the word "nonrenewal" from the provision. In fact, the Association is now attempting to get back all of its own concessions made in the consent award resulting in the 1979-81 agreement.

The District further submits that although the Association's current proposal appears to continue some of the existing layoff language, in reality, because of the modification it has proposed, it maintains only some rather meaningless terminology.

In this regard, although definitions of departments are reproduced, departments are only relevant to department seniority, which in turn, is only relevant in the event of an absolute tie in district seniority. This in effect eliminates departmental experience as a meaningful criterion in the decision making process.

Similarly, although the Association continues to use the word "qualification", it now defines that word to mean legal "certification", which prohibits the Board from even considering whether a teacher has ever taught in a position.

Moreover, the Association's bumping provision in Section 6 is inconsistent with the section on the initial layoff which requires layoff of the least senior certified teacher. Even if the bumping provision is not incompatible with the initial layoff provision, it would very likely result in a complete reshuffling of partial assignments.

The Association proposal in Section 4 that the teacher must have qualfications "at the time that they assume their assignments" would have the effect of sending all laid off teachers back to school after they have received notification of layoff to obtain necessary certification. This would make it essentially impossible for the District to plan who is going to be teaching a given course.

On the other hand, the District's effort to continue the present layoff clause will encourage teachers to go back to school before a layoff to reduce their own risk of layoff.

On top of all these sweeping proposals, the teachers also seek to extend the recall right to three years, not even allowing loss of seniority in cases where the teachers turns down a recall.

The Association's layoff proposal is not supported by sound rationale or the comparables which have negotiated as nearly as many forms of layoff procedures as there are comparable districts.

Further, the District has implemented the existing language in good faith and no grievances on layoff have occurred. In fact, the only evidence regarding a need for change in the layoff language was the testimony of Robert Jeske who expressed concern that veteran teachers may be laid off in preference to less senior staff members.

The District's final offer provides teachers with significant job security, even allowing them the right to refuse any work without losing recall rights to other work. Ultimately, however, job security comes from productivity, which is stressed by the existing language and the Board's proposal, which gives weight to seniority, academic experience and progress, and extra-duty assignments.

While it is conceded that the Association proposal allows the Board to retain a teacher because of curricular and co-curricular assignments if more senior unit members will not accept such assignments, this proposal gives no weight to the relative ability of the individuals to perform such assignments, and therefore it is unreasonable.

Layoff clauses around Waupaca County vary greatly. In many cases ambiguous language prevents exacting analysis. The Association has unjustifiably drawn inferences from such provisions in order to support its contentions.

The District has introduced the GAIU contracts as an example of recent private sector negotiations. These employees, who are highly skilled and highly paid, are required to maintain their high level of skill in order to remain employed. It is only reasonable that decisions regarding the layoff of teachers should involve more than a simple inquiry as to how long the teacher occupied space in the district.

Discussion

The District correctly points out that comparisons of layoff procedures in comparable school districts is frought with potential error because of the many ambiguities which exist in said procedures, and because of the broad diversity of approaches which have been utilized even by comparable school districts in attempting to address the problems associated with layoffs.

Taking into consideration the aforementioned limitations, a review of the 1981-82 layoff procedures in the districts which have previously been identified as comparable indicates the following:

While the parties' 1979-81 layoff procedure appears to give greater discretion to the District and less weight to seniority in the identification of teachers for layoff than is the case in comparable school districts, the Association's seniority proposal appears to give greater weight to seniority and less consideration to other facts, such as specific teaching experiences, than is the case in the majority of the comparable districts.

Similarly, comparable districts appear to use as a norm a two-year recall period, whereas the District wishes to retain a one-year period while the Association proposes a three-year period.

Furthermore, the District correctly points out that the bumping rights proposed by the Association, particularly when applied to partial layoffs, could result in significant confusion and difficulties for the District in view of the fact that bumping rights for individual courses would appeasr to be contemplated.

The District also properly points out that the Association's proposal could cause it significant problems since it contemplates that teachers can avoid layoff on the condition that they acquire

certification by the time they are expected to assume their assignments, since the District is given no assurance that its educational needs will be met in the event such teachers do not acquire the proper certification in a timely manner.

Based upon the foregoing considerations, although the undersigned is persuaded that the comparables support the Association's objectives of giving greater emphasis and predictability to the use of seniority in layoff decisions, and of extending the period during which laid off teachers retain recall rights, the Association's proposals in this regard exceed the rights teachers have in comparable school districts, and therefore, the Association's proposals in this regard cannot be supported on the basis of comparability. In addition, since the Association has proposed additional bumping rights, the impact of which could cause unreasonable assignment problems for the District, particularly in the case of partial layoffs, it is the undersigned's opinion that the layoff language in the parties' 1979-81 agreement, which was negotiated by the parties, remains the more reasonable of the two layoff proposals, even though modifications of said proviso would appear to be justified in future rounds of negotiations.

EXTRA-CURRICULAR SALARY SCHEDULES

The parties' proposed extra-curricular schedules are related to the proposed changes in the base on the salary schedule. The differences in said proposed schedules reflect the impact the differences in the proposed base would have on the schedule, based upon a percentage formula both parties have agreed to utilize.

In addition, the parties disagree on the compensation coaches are entitled to for working an extended year, and for participating in WIAA sponsored competitions.

Lastly, the parties have a minor disagreement regarding a girls' basketbell coaching position.

Association Position

Both parties propose to continue the past practice of paying extra-curricular salaries based on the base salary. Thus, since the base salaries differ in the parties' proposals, the merits of extra-curricular pay will pivot accordingly.

A related issue, although miniscule, is the pay for coaches who work an extended year, and whose teams participate beyond the first level of WIAA state sponsored competition.

Finally, there is no need to allow the Board's proposal regarding girls' basketball. Instead the status quo should be continued by choosing the Association's position.

District Position

The dispute over these extra pay provisions is fairly minor. In fact, neither party adduced any evidence about the actual issues in dispute. However, it should be noted that the District has offered increases of up to 20% for these extra-duty assignments.

Discussion

In all candor the record simply does not provide the undersigned with sufficient evidence and/or argument to determine the relative merit of the parties' proposals on this issue, either on the basis of comparability or legitimate need. Accordingly, no determination will be made on the relative merit of the parties' positions on this particular issue.

MILEAGE REIMBURSEMENT

The current agreement provides for mileage payment equal to the amount permitted by Internal Revenue Service regulations, including all increases in the amount the IRS allows for mileage deductions. The District proposes that for the duration of the 1981-82 and 1982-83 school years, effective September 1 and January 15, mileage reimbursement shall be equal to the amount permitted by IRS regulations.

Association Position

Regarding mileage reimbursement, the Association proposes to maintain the language of prior agreements. However, the Board offer would cause rate adjustments on September 1st and January 15th "(for two years)", possibly implying an intent by the Board not to reimburse for mileage on the expiration date of the 1981-1983 contract.

District Position

The Association's proposal calls for an automatic rate increase triggered any time the IRS rate changes (increases). The District, on the other hand, proposes to match the IRS rate twice a year, thus allowing for adjustments - but limiting them to twice a year. District budgeting and book work is more efficient as a result. Moreover, the Board believes that the rate should be equal to the IRS rate, thus allowing decreases as well as increases.

Discussion

Although in reality there is little appreciable difference between the parties' positions on this issue, there is slightly more merit to the District's contention that if mileage reimbursement is tied to IRS regulations, it cannot reasonably be limited to increases therein. Because of the relative infrequency in the changes which have occurred in the IRS regulations in this regard, neither party's position is substantially superior to the other regarding changes which may occur. For both of the foregoing reasons, the District's proposal on this issue is deemed to be slightly more reasonable than the Association's on this issue.

LONG TERM DISABILITY INSURANCE WAITING PERIOD

The District proposes changing the current contractual language pertinent to this issue from a thirty (30) day waiting period to one of sixty (60) days.

Association Position

The Board has proposed an LTD plan which has a sixty-day waiting period instead of the current contract language which specifies thirty days. Although the Board maintains that the thirty-day period is a misprint, there is no proof in the record that the parties intended otherwise.

District Position

Testimony revealed that the parties by agreement changed from a 30-day to a 60-day waiting period when switching carriers several years ago. This was unrebutted by the Association, and no test of the policy has occurred since its purchase. Moreover, the Association's own proposal for disability insurance made February 4, 1980 shows a qualifying period of 60 days. This proposal became the agreed upon policy. The Association has not made any assertion nor is there any evidence that would in any way contradict these facts.

Discussion

The preponderance of the evidence in the record supports the District's assertion that the parties intended coverage by long term disability insurance after a sixty (60) day waiting period and that the thirty (30) day peiod set forth in the current agreement was in error. Accordingly, the District's proposal in this regard is deemed to be the more reasonable of the two.

SUPERVISION AND RECORDS - IDENTIFICATION OF SUPERVISORS

Section 4.15 of the current agreement provides in pertinent part:

> "Each teacher employed will be supervised by an L.V.E.C., reading specialist, principal, or district administrator...."

Section 4.17 of the agreement provides:

> "Each employee shall be responsible for keeping such records as the L.V.E.C., reading specialist, principal, or District Administrator request."

The District wishes to add to the list of positions identified in each of the foregoing provisos the "I.M.C. director" and "athletic director".

Association Position

The Board proposes that the I.M.C. and Athletic Director be inserted in Sections 4.15 and 4.17, essentially prescribing duties for them which would necessitate their exclusion from the bargaining unit. Such a blatant attempt to reduce the bargaining unit through arbitration should be rejected.

District Position

The I.M.C. Director and Athletic Director are in fact, supervisors, and this procedure of adding them to the list of supervising personnel in Sections 4.15 and 4.17 has been done in the past. Such a process simply makes the contract's terms consistent with practices which exist in the District.

Discussion

The instant record is simply not sufficient for the undersigned to ascertain whether or not the District's proposal accurately defines the relationship between the incumbents in the positions in question and the remainder of the teachers in the bargaining unit, nor has the District demonstrated why these positions need to be incorporated into the provisions in question. It would appear that if there is a dispute between the parties regarding the supervisory status of said positions, such a dispute should be resolved in a unit clarification proceeding before the W.E.R.C. Accordingly, the undersigned deems the Association's proposal to be the more reasonable of the two in this regard.

SICK LEAVE

The current agreement provides that sick leave will be paid for illness of the employee or in the event of an emergency for members

of the employee's family. The District wishes to modify this proviso by defining family to include: mother, father, brother, sister, son/daughter, or spouse.

Association Position

The Board's proposal seeks to strip benefits from the bargaining unit by deleting the word "family" and substituting a partial list of parties generally included in the family concept. The effect would clearly be to disallow benefits for absences due to step children's emergencies, which would have direct and harmful monetary impact on affected teachers. No harm results from continuing the current language as proposed by the Association.

District Position

This District proposal adds the same definition of a family in Section 7.6 as exists in the prior contract and both parties' offers for funeral leave. Some definition of the term is preferable to none; moreover, a precise definition in one place and its absence in another creates an inherent ambiguity. One party might argue that the definition is impliedly the same in both places and another party might argue that the absence of a specific definition in one place implies a different definition. The Union has proposed no definition at all.

Discussion

There is merit to the District's assertion that continued use of the undefined term "family" will likely lead to disagreements, and that the parties should accordingly attempt to define the term. There is also merit to the Association's contention that there are additional relatives which should be reasonably be included in the definition. In view of the fact that the Association has opted to continue utilizing the undefined term rather than to develop what it believes to be a reasonable definition of said term, the undersigned believes that the District's position on this issue is the more reasonable of the two, though the issue would appear to be an appropriate subject for future renegotiation.

EXTRA DUTY ASSIGNMENTS

Related to this issue the current Agreement provides:

School Functions - Ticket Taking, Selling, Chaperoning

> "Teachers from the respective school will be responsible for the activities in their building. However, other teachers may volunteer for duties in buildings that host a number of activities. Teachers on work lists are to receive (currently $10) per assignment and free season passes for those activities. Those staff members that are not on the work list will pay admissions."

The District wishes to modify the foregoing in two ways: it wishes to limit payment to teachers on "athletic" work lists, and secondly, it wishes to increase the payment to $12 per assignment.

Association Position

The Board is proposing to insert the word "athletic" in Section 7.7, thereby allowing teachers to be assigned to extra duties without compensation except for assignments to work at athletic events. No justification was shown by the Board for the removal of this benefit or potential benefit, and therefore, the arbitrator should support the Association's offer which continues the status quo.

District Position

The purpose here is very simple: the clarification of the intent to pay, as in the past, for athletic work assignments, and to make

the agreement conform to that intent and to present a past practice.

Discussion

There is inherent ambiguity in the provision in the current agreement regarding this issue since the provision's title would seem to indicate that it was intended to apply to more than athletic events, and in addition, there is no reference in the body of the provision to athletic activities; while on the other hand the provision refers to "free season passes" to such activities as partial compensation for such extra duty assignments, which clearly would indicate that the parties intended to apply the proviso to athletic events. In addition, the record seems to indicate that the practice under the current provision has applied it to athletic events only.

Neither party has presented comparable data in support of the merits of its position on this issue.

Because a) past practice appears to support the reasonableness of the District's position, b) equitable principles seem to support the reasonableness of the Association's position that extra duty assignments other than atheltic events should be similarly compensated, c) there are inherent ambiguities in the contractual provision with or without modification, and d) comparable data does not support the reasonableness of either party's position, neither is deemed to be substantially more reasonable than the other for purposes of this proceeding.

EXTENDED CONTRACTS

The provision in the current agreement which is pertinent to this issue provides:

> "Any teacher authorized to work more than the regular contracted school year shall be paid 80% of his/her current step divided by 37 weeks:
>
> $$\frac{\text{Current step} \times .80}{37}$$
>
> for professional teaching duties. This will be used in determining pay where the instructor will work a full day 8:00 - 4:00. Partial days will be pro-rated"

The District proposes modifying the above based upon a daily rate of 80% of his/her current step divided by 185 days:

$$\frac{\text{Current step} \times .80}{185}$$

Association Position

Again, the Association merely seeks to maintain the language of the 1979-1981 agreement with regard to summer school. Since computation based on 187½ or 185 days is equally simple, there is no business justification for the change. Thus, without the Board's showing of any support for alteration, its proposal should be rejected.

District Position

The District's final offer proposes to prorate extended contract pay on a daily basis (185 days) rather than a weekly basis (37 weeks). No substantive difference results, but this system would make it clear that the rate for extended contract is to be paid on a 185-day year basis, rather than on a 187½-day basis as is the case with payments for other things such as substitutes.

Discussion

Although the District has asserted that its proposed change would

have no substantive impact, it has not demonstrated that any problems have arisen based upon the use of the current formula which would justify the need for such a change, nor has it demonstrated that potential disagreements might arise from its continued use. In addition, the undersigned has calculated various cells on the salary schedule under both formulas and there does not appear to be any substantive difference in the result. Therefore, because need for the change has not been demonstrated, the Association's position on this issue is deemed to be the more reasonable of the two.

DUTY TO "NEGOTIATE" VS "DISCUSS" DURING THE TERM OF THE AGREEMENT

In the above regard the parties' current agreement in Section 8.2 provides as follows:

> "...It is agreed that any matters relating to this current contract term, whether or not referred to in the Agreement, shall not be open for negotiations except as the parties may specifically agree thereto. All terms and conditions of employment not covered by this Agreement shall continue to be subject to the Board's direction and control. However, the (bargaining agent) shall be notified in advance of any changes having substantial impact of (sic) wages, hours, and conditions of employment for the bargaining unit, given the reason for such change, and provided an opportunity to discuss the matter."

The Association wishes to change the word "discuss" in the last sentence to "negotiate."

Association Position

The Association proposes to change the word "discuss" to the word "negotiate" in the duration clause. This provision would require the Board to fulfill the terms of the management rights clause by requiring bargaining on changes in wages, hours and conditions of employment unless an express waiver is granted. Since this Association proposal merely conforms to the law and attempts to prevent a waiver of rights by unit members, it does not need to rely on comparables or similar proof to be persuasive.

District Position

The Association did not introduce any evidence on their proposal to change "discuss" to "negotiate" in Section 8.2. No complaints have been received from the Association that the District has breached any understanding of the meaning of the word "discuss" in the current agreement. However, there is some evidence that the selection of the word "discuss" was a product of "negotiating" which ultimately led to a med/arb consent award.

Therefore, without any apparent rationale offered by the Union for this proposed change in the contractual language, the arbitrator should favor the status quo - the position of the Board.

Discussion

The Association's proposal, though consistent with the statutory rights of employees, absent contractual waiver of said rights, is not consistent with the contractual proviso wherein it agreed that "...any matters relating to this current contract term, whether or not referred to in the Agreement, shall not be open for negotiations except as the parties may specifically agree thereto. This proviso is clearly compatible with the current last sentence in Section 8.2 which the Association wishes to amend. Were the Association to prevail on this issue, a potential conflict between these two provisions would arise since the former seems to require a specific agreement before the duty to negotiate arises during the term of the agreement, whereas the Association's

proposal seems to require negotiation of any change not covered by the contract having a substantial impact on wages, hours, and conditions of employment. This potential conflict must result in the conclusion that the District's position on this issue is the more reasonable of the two. Although the current agreement in this regard may constitute a waiver of certain statutory right, it appears to reflect a clear mutuality of intent, which the Association's proposed amendment would not clearly modify.

DEFINITION OF A GRIEVANCE

The parties' current agreement defines a grievance as a dispute regarding wages, hours or conditions of employment as specifically covered by this agreement and state law. The Association wishes to retain the current definition while the Board wishes to delete the reference to "state law" in the definition.

Association Position

The Board's proposed deletion of "and state law" from Section 3.1 of the grievance procedure constitutes a radical change which would significantly narrow the scope of the grievance procedure. There is no justification for this radical change, nor have there been comparables offered as evidence; consequently, this Board proposal must be rejected.

District Position

The deletion of "and state law" from the grievance definition in Section 3.1 helps to eliminate ambiguous language. It would be erroneous to construe the language to allow grievances alleging violations of state law. However, another interpretation may be that grievances are limited thereby to matters covered by the agreement which also constitute wages, hours or conditions of employment under state law. Regardless, such ambiguities provide a good basis for getting rid of the language.

Discussion

The District has correctly pointed out potential definitional and jurisdictional difficulties which might result from continued utilization of the definition of a grievance contained in the parties' current collective bargaining agreement. In addition, although the parties have not relied on comparable data in support of their respective positions on this issue, it is the undersigned's opinion that the District's proposed definition of a grievance is much more in accord with the norm in this regard than is the Association's. Accordingly, the District's position on this issue is deemed to be the more reasonable of the two submitted herein.

TOTAL PACKAGE

The undersigned considers three of the foregoing issues to be critical in the resolution of the instant dispute: salaries, health and dental insurance, and the layoff procedure.

As indicated in the foregoing discussion, the undersigned is of the opinion that the relative merit of the parties' positions on the salary and insurance issues cannot be determined on an individual issue basis, but instead, they must be viewed as components of the overall economic package at issue. In that regard it seems relatively clear from the record that for the 1981-82 school year, the Association has proposed an economic package, the value of which is in excess of 11% while the District has proposed a package which is worth between 9½ and 10%. For the 1982-83 school year, utilizing the District's 1981-82 proposal as a base, it would appear that the District has proposed an economic package worth approximately 6%, whereas, the Association has proposed an economic package worth more than 14%, based upon its 1981-82 proposal. This latter difference reflects not only a substantial difference between the parties' 1982-83 salary proposals,

but also significantly increased insurance premiums and an enlarged gap between the parties' positions on the District's contribution toward health and dental insurance benefits.

While persuasive arguments probably could be made supporting either party's economic proposals for 1981-82 based upon evidence pertaining to comparables, cost of living, and other pertinent economic factors, there appears to be little question in the undersigned's mind that for the 1982-83 school year, the District's total economic proposal, though probably low in light of developing patterns of settlements in Wisconsin school districts under the med/arb law, is more in line with the pattern that seems to be developing than is the Association's total economic proposal for the 1982-83 school year. In this regard, although the Association's position on individual economic issues is not all that unreasonable, when said issues are combined, the economic impact of the Associations' position becomes untenable, particularly in this economic climate. Accordingly, because the undersigned has concluded that the total economic package of the Association for 1982-83, which exceeds 14%, cannot be deemed reasonable when the parties are confronted with serious recessionary economic conditions and significantly reduced inflation, the District's total economic package is deemed to be the more reasonable of the two for purposes of this proceeding.

In addition, for reasons set forth above, the District's layoff proposal is also deemed to be the more reasonable of the two submitted herein.

With respect to the issues which appear to be of lesser importance in this dispute, the undersigned has concluded that neither of the parties' proposals are substantially superior, based upon the record evidence, on the following issues in dispute: extra curricular compensation, and payment for extra duty assignments. The Association's proposals have been found to be more reasonable in the following areas: supervision and records, and extended contracts. And lastly, the District's proposals have been found to be more reasonable as they pertain to: sick leave, mileage reimbursement, the duty to "negotiate" vs "discuss" changes in conditions of employment during the term of the agreement, and the definition of a grievance.

Based upon all of the foregoing considerations, it would appear that the District's total final offer is the more reasonable of the two submitted herein. Accordingly, the undersigned hereby renders the following:

ARBITRATION AWARD

The final offer submitted by the District herein shall be incorporated into the parties' 1981-1983 agreement.

Dated this 3rd day of January, 1983 at Madison, Wisconsin.

Byron Yaffe
Arbitrator