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IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDING ~~JAN 27~~ 1983

BETWEEN

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

APPLETON AREA SCHOOL	)	
DISTRICT	)	Case XXXIX, No. 30100
	)	
and	)	MED/ARB 1825
	)	
APPLETON AIDES ASSOCIATION	)	Decision No. 19932-A

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MEDIATOR/ARBITRATOR: Jay E. Grenig  
S56 W23674 Maplewood Terrace  
Waukesha, WI 53186

APPEARANCES:

For the Employer: Kenneth Johnston  
Director of Admin Services  
Appleton Area School District  
PO Box 2019  
Appleton, WI 54913

For the Association: Richard DeBroux, Chief Negotiator  
Appleton Aides Association  
210 East Hoover Avenue  
Appleton, WI 54911

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act.

The Appleton Aides Association (Union or Association) is the exclusive collective bargaining representative of a bargaining unit consisting of all aides in the Appleton School District (District or Employer).

The collective bargaining agreement between the District and the Union expired on August 15, 1982. On April 22, 1982, the parties exchanged their initial proposals for the new agreement. The parties met on six occasions in an effort to reach agreement. On July 13, 1982, the Association filed a petition with the Wisconsin Employment Relations Commission (WERC) alleging an impasse existed between it and the City. The Association requested the WERC to initiate mediation/arbitration.

A member of the WERC staff conducted an investigation. The parties submitted their final offers to the investigator. The investigator then notified the parties that the investigation was closed and advised the WERC that the parties re-

mained at impasse. On September 22, 1982, the WERC issued an order requiring mediation-arbitration. On October 2, 1982, Jay E. Grenig was notified he had been selected as the mediator-arbitrator by the parties.

The Mediator-Arbitrator conducted mediation sessions on November 18, 1982, and and December 7, 1982, which failed to resolve the impasse. An arbitration hearing was held on December 7, 1982. The Association was represented by Richard DeBroux, Union Chief Negotiator. The District was represented by Kenneth Johnston, District Director of Administrative Services. The parties were given full opportunity to present relevant evidence and arguments at the hearing. Upon receipt of the parties' reply briefs on December 23, 1982, the hearing was declared closed.

## II. FINAL OFFERS

There are three basic issues for the Arbitrator to decide:

1. Wages and Salary Schedule Placement
2. Complaint Procedure
3. Fair Share

The final offer of the Association is attached to this decision as Exhibit A and the final offer of the Employer is attached as Exhibit B.

## III. STATUTORY CRITERIA

In determining whether to accept the District's offer or the Association's offer, the Mediator-Arbitrator must give weight to the following statutory (Wis. Stats. § 111.70(4) (cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by the municipal employees, including direct wages, compensation, vacation, holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into con-

sideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties in the public service.

#### IV. ISSUES

##### A. WAGES AND SALARY SCHEDULE PLACEMENT

##### 1. POSITIONS OF THE PARTIES

##### a. THE ASSOCIATION

##### (1) SALARY SCHEDULE PLACEMENT

According to the Association, the present salary schedule placement system was developed during mediation last year as a compromise position agreed to by the parties in an effort to settle the issue without arbitration. It now wants a salary schedule in which all aides can eventually reach the top. It contends that its offer is a compromise.

If there must be a classification system, the Association maintains that the most logical classification is on the basis of certified and non-certified. Although some certified positions require more work and are more difficult than others, this varies from year to year depending upon the particular students the aides are assigned to. It points out that the WERC upheld a bargaining unit composed of orthopedic aides and all others. It says that the Commission ruled there were no significant differences between the groups.

The changes proposed by the Association with respect to placement of employees on the salary schedule would allow all certified aides to achieve the highest level on the salary schedule. Presently only some of the certified aides can reach that level. It points out that the majority of the school districts in the Appleton area has less than three classifications. Since the majority has only one classification, the Association argues that a good case could be made for its initial proposal that all District aides be treated the same. However, it notes that the issue here is whether the salary schedule structure should be adjusted by removing one of the barriers to advancement and granting the aides a step on the schedule.

With respect to the District's argument that the salary schedules for secretaries and custodians are paid based upon a similar classification system, the Association says the District fails to mention that in both groups the employees can reach the top of their respective salary schedules should they be placed in that particular category. The same should be true for aides if they were moved from a non-certified to a certified position.

##### (2) WAGES

The Association contends that the District will realize a substantial reduction in the cost of aides for the 1982-83 school year compared to the 1981-82.

Comparing yearly wages of all District employee groups, the Association says that the teachers, custodians and secretaries are paid a great deal more than aides. Thus, a percentage increase in aides' salary does not generate nearly the income that it does for the other groups. If the Association's offer were accepted, the lowest paid aide would receive an annual salary increase of \$497 whereas the lowest paid secretary received a salary increase of \$748. Adjusting

for the different lengths of work years, the lowest paid secretary would receive an annual salary increase \$65 more than the lowest paid aide.

Asking the Arbitrator to consider dollar increases rather than percentage increases, the Association declares that its exhibits show that almost all of the custodians and the secretaries received wage increases in excess of 45¢ per hour.

Because the aides receive substantially fewer fringe benefits than do other employee groups, the Association Union declares that its final offer is more reasonable than the District's.

The Association maintains that each aide should receive the same dollar increase regardless of position on the salary schedule. It argues that percentage increases tend to widen the difference between the highest and lowest paid employees.

Acknowledging that the Consumer Price Index has dropped in recent months, the Association says its final offer is reasonable in view of the comparison with the wages of other District employees. The Association argues that the aides are clearly underpaid. It also points out that in last year's bargaining, the aides received considerably less than the increase in the CPI at that time.

Although agreeing with the District that the wages of the District aides is comparable to other conference schools, the Association says that aides in the other districts receive considerably more in fringe benefits than do the District aides. Aides in all the conference districts, other than the District here, receive either fully or partially paid health insurance. Some receive fully or partially paid dental, and some receive holiday pay. Thus, when comparing the total compensation received by District aides, it is apparent that they do not fare as well as contended by the District.

While the District argues that beginning pay in the District would be the highest of all the conference districts, the Association points out that the District's offer would result in a starting and top wage higher than that proposed by the Association.

With respect to the District's contention that the number of aide applications on file indicates that the District's proposal is good, the Association believes that every employer in the United States could make a similar argument considering the present labor situation.

#### b. THE DISTRICT

##### (1) SALARY SCHEDULE PLACEMENT

The District states that its salary schedule offer follows an identical format to that of the previous contract. It declares that the Association has given no logical reason for the proposed change. The District feels that no justification exists for the requested format changes.

According to the District, the present salary schedule format was instituted to reflect the difference in the duties of the covered employees. It says that the Association's offer would place aides in two groups: Those working in positions certified by the Wisconsin Department of Public Instruction and all other aides. The District argues that the Association's offer has no merit or logic. It claims that certification by the DPI is really quite meaningless and has nothing to do with necessary training or other qualifica-

tions. The District asserts that the certification requirement is made by the District solely so that financial aides can be received at the special education rate rather than at the general aid rate which would be the case if an aide were not certified. It also contends that the listed requirements are very broad.

It asserts that the current salary schedule format is logical and reflects the differences in responsibility and duties. The District points out that the Association represents one of three recognized bargaining units with hourly employees in the District. The other two units are the secretarial and the custodial/maintenance. In both of those units, pay is based on various classifications of work. The Employer's job is to determine the work that must be done and then pay equitably by the type of work that is done. It concludes that groupings of employees for pay purposes is a standard method of handling this.

With respect to the Association's comparisons of other districts' classification systems, the District asserts that the comparables are silent about work performed or duties required. It says that what counts is the fact that the District has separate pay classifications because of differences in jobs.

## (2) WAGES

Under the District's proposal all aides would receive the same cents per hour increase. If the classification system for the employees were changed, the District states that some employees would receive a greater increase than others.

Contending that the increase in the CPI for calendar year 1982 has been estimated at about five percent, the District declares that its offer appears to be more than generous. Comparing the District with other school districts, the District says that the same conclusion should be reached.

The District asserts that its offer is a good one whether it be compared on a cents per hour or a percentage basis. It exceeds the CPI by a considerable amount; it is comparable with other District settlements; and it is comparable with other districts in the area.

The District argues that percentages are the most common measure of wage increases. It urges that the most appropriate comparable is a comparison with the wages of aides in other districts in the athletic conference.

With respect to the Association's argument that the District saved money through the layoffs of aides, the District states that the layoffs were undertaken by the District in order to effect monetary savings.

Rejecting the Association's argument that aides are paid far less than other District employees and should therefore

able labor market for aide positions under existing and District proposed salary levels for aides.

2. FINDINGS OF FACT

a. **LAWFUL AUTHORITY OF THE EMPLOYER.** There is no contention that the Employer lacks the lawful authority to implement either proposal.

b. **STIPULATIONS OF THE PARTIES.** While the parties were in agreement on a number of facts, there were no stipulations with respect to this issue.

c. **INTERESTS AND WELFARE OF THE PUBLIC AND FINANCIAL ABILITY TO PAY.** The cost of the Association's offer is \$379,695. The cost of the District's offer is \$375,919. The difference between the two offers is \$3,776.

The public has an interest in keeping the District in a competitive position to recruit new employees, to keep competent experienced employees now serving the District. Presumably the public is interested in having employees who by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

d. **COMPARISONS OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT.** The Arbitrator is required to give weight to the comparison of wages with other public and private employees in "comparable communities." Communities are considered to be comparable if they are substantially similar in geographic proximity, population, number of employees, full-value taxable property, and state aid. Although the parties disagree as the significance of certain comparisons, they have not questioned the use of the other school districts in the District's athletic conference and in Outagamie County as "comparable communities."

CHART NO. 1 COMPARISON OF HOURLY WAGES PAID AIDES IN 1981-1982		
District	Start	Top
APPLETON	\$3.90	\$5.30
Menasha	3.94	4.32
Oshkosh	3.99	4.89
Kimberly	3.75	5.50
Kaukauna*	3.48	4.47
Neenah*	4.22	6.09

\*Aides paid on a calendar year.

Of the comparison districts, the District ranked fourth from the top with respect to starting salaries. It ranked third with respect to top salaries. The average starting salary (not including the District) was \$3.88. The District's salary was 2¢ higher than the average. The median starting salary (not including the District) was \$3.94. The District's starting salary was 4¢ lower than the median.

The average top salary (not including the District) was \$5.05. The District's salary was 25¢ higher than the average top salary. The median top salary was \$4.89. The District's top salary was 41¢ higher than the median top salary.

CHART NO. 2  
COMPARISON OF HOURLY WAGES PAID AIDES IN 1982-1983

District	Start	Top
APPLETON†	\$4.30	\$5.70
APPLETON††	4.15	5.55
Menasha	4.29	4.72
Oshkosh	4.21	5.11
Kimberly	4.00	5.75
Kaukauna*	3.83	4.92
Neenah*	4.58	6.61
† District's offer. †† Association's offer. * Aides paid on calendar year basis.		

With respect to starting salary, the District would rank second among the comparables if the District's offer were implemented; it would rank fourth if the Association offer were implemented. The average starting salary (not including the District) is \$4.18. The District's offer is 12¢ above the average and the Association's offer is 3¢ below the offer. The median starting salary (not including the District) is \$4.21. The District's offer is 9¢ above the median and the Association's is 6¢ below.

Examining top salaries, the District would rank third if either offer were implemented. The average top salary (not including the District) is \$5.42. The District's offer is 28¢ higher than the average and the Association's is 13¢ higher. The median top salary is \$5.11. The District's offer is 59¢ higher than the median and the Association's is 44¢ higher.

The comparable districts report that most aides are at the top of the schedule and thus only the base increase benefits them. Thus aides in Kimberly at the top of the salary schedule received a 25¢ per hour increase; Menasha aides received a 40¢ per hour increase; Oshkosh aides received a 22¢ increase. Although aides in Kaukauna and Neenah have not yet set their aide salaries for the next calendar year, aides in Kaukauna received a 45¢ per hour increase in 1982 and aides in Neenah received a 52¢ per hour increase.

The lowest teacher salary in the District is \$14,675 and the highest (excluding longevity stipends) is \$28,324. The lowest salary was increased by \$1,125 in 1982-83 and the highest by \$2,171. The teachers' salary increases averaged 10.57%. The 1982-83 increase was included in the second year of a two-year contract.

The lowest custodian salary is \$14,331 and the highest is \$18,179. The lowest custodian salary was increased by \$1,331 in 1982-83 and the highest salary was increased by \$1,248. The increases in the hourly wages of custodians ranged from 38¢ to 91¢ per hour. The custodian increase was 8.5%.

The lowest secretarial salary in the District is \$9,713 and the highest is \$16,110. The lowest secretarial salary was increased by \$912 in 1982-83 and the highest by \$1,049. The increase in hourly wages of secretaries ranged from 47¢ to 55¢ per hour. The increase in the secretaries' wages for 1982-83 was 8.5%.

The District's proposal would result in the lowest aide salary being \$5,478 and the highest \$7,508. The lowest salary would be increased by \$511 and the highest by \$546. The Association's proposal would result in the lowest aide salary being \$5,542 and the highest \$7,576. The Association's offer would increase the lowest salary by \$575 and the highest by \$613. The District's proposal would result in an average increase of 8.7%. The Association's proposal would result in an average increase of 9.8%.

Although teachers, custodians and secretaries receive fully paid health insurance from the District, the District pays the health insurance premiums only for the nine orthopedic aides. The District pays all or part of the dental insurance premiums of teachers, custodians and secretaries. Aides must pay the full premium. The District general provides more life insurance for employees other than the aides. Long term disability insurance premiums for teachers and secretaries are fully paid by the District and partially paid for aides and custodians.

Aides receive no paid vacation or holidays. Sick leave provided aides is generally similar to the sick leave provided other employees. Teachers receive two days paid personal leave per year and secretaries receive a total of five days of personal and emergency leave. Aides and custodians receive no personal leave days. Aides and custodians receive five emergency leave days per year. Teachers' emergency leave days depend on the situation. Secretaries receive a total of five days of personal and emergency leave.

Leave of absence provisions for the aides are similar to the provisions for teachers, secretaries and aides. Teachers are the only employees in the district entitled to sabbaticals.

The District pays the employer's share plus 100% of the employees' share of retirement contributions for the custodians and secretaries. The District pays the employer's share plus five percent of the retirement contributions for teachers. The District pays the employer's share plus five percent for aides employed for three and one-half or more hours per day. Only teachers are eligible for early retirement.

Aides in all conference districts except the District receive fully or partially paid health insurance. Some receive fully or partially paid dental insurance. Two of the districts receive holiday pay.

Of the sixteen school districts in Outagamie County and the District's athletic conference, only three (including the District) have three or more aide classifications; three districts have two classifications (certified and non-certified); nine districts have no classifications; and one district has no aides. Orthopedic students in these districts are sent to the District because they do not have their own orthopedic departments.

e. COST OF LIVING. The Consumer Price Index has been increasing at a declining rate throughout 1982. The CPI for All Urban Consumers increased by 7.1% from June 1981 to June 1982. The CPI for Urban Wage Earners increased by 6.9% during the same period. The CPI for Urban Wage Earners increased by 6.3% from July 1981 to July 1982.

The CPI for Urban Wage Earners from July 1981 to July 1982 increased by 2.9% in the Milwaukee Metropolitan Area. From September 1981 to September 1982 the CPI for Urban Wage Earners increased by five percent in the Milwaukee Metropoli-



tan Area. The most recent change in the CPI shows an increase of 3.9% increase from December 1981 to December 1982.

Both offers are in excess of the increases in the national CPI. The Association's offer exceeds the July 1981 to July 1982 increase in the CPI by 3.5%; the District's offer exceeds the increase by 2.2%. It is noted that the aides previous wage increase was less than the increase in the appropriate CPI.

f. TOTAL COMPENSATION. The data relevant to this criterion has been discussed under section d above.

g. CHANGES DURING THE PENDENCY OF THE ARBITRATION. The Arbitrator is required to consider changes in the foregoing circumstances during the pendency of the arbitration proceedings and has considered changes in the CPI reported since the hearing.

h. OTHER FACTORS. Among other things, this criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining occurs. Cudahy Schools, Dec. No. 19635 (Gundermann, 1982); Madison Schools, Dec. No. 19133 (Fleischli, 1982). As noted by Arbitrator Gundermann, the general state of the economy has been characterized as in a state of severe recession, even depression. At least ten percent of the national workforce is unemployed, the highest unemployment in the last forty years. Generally, the state of the economy is reflected in the statutory criteria the arbitrator is required to consider.

### 3. ANALYSIS

#### a. PLACEMENT ON SALARY SCHEDULE

The Association has failed to carry its burden of justifying a change in the previously negotiated contract language. Because of other districts' assignment of orthopedic students to the District, the comparable districts have less need for the classifications provided by the previous contract. Thus, the comparables are of little help in determining whether the classifications are reasonable. It is not unreasonable to classify employees for pay purposes on the basis of the employees' duties and responsibilities. The evidence does not establish what relationship certification has upon an aide's duties or responsibilities.

In addition, the District's offer implemented aides who may not move above Rate C would still receive an hourly wage higher than three of the five comparable school districts.

#### b. WAGES

The Association's offer would maintain the District's 1981-82 relative position with respect to starting salary and the District's would improve it. At the top salary position, both offers would maintain the District's 1981-82 relative position. Thus, both offers would appear to be reasonably close to maintaining the status quo of the District's relative wage position ranking. This is true even if the fact that aides in the comparable districts receive fully or partially paid health insurance while aides in the District do not is considered.

Although the starting and top salaries on the District's proposal are higher than the Association's, the actual per hour increase for each aide would be higher under the Association's proposal. Under the Association's proposal, each aide would move up one step, while under the District's pro-

posal they would remain on the same step as during 1981-82. Thus, the District's offer would result in a 40¢ per hour increase while the Association's offer which increases each step by 25¢ would result in a 50¢ per hour increase (except for those persons who are not eligible to move on the schedule).

Because cost of living increases are generally "catch up" in effect, the increase in the CPI during the twelve months preceeding the effective date of a contract is usually considered the relevant period. See Hartford Sch. Dist., Dec. No. 18845 (Zeidler, 1982); City of Franklin, Dec. No. 195969 (Imes, 1982). Both offers provide for wage increases in excess of increase in the CPI from July 1981 to July 1982.

Of greatest assistance in determining the relative reasonableness of the parties' offers is a comparison of the wages rates and wage increases of aides in comparable school districts. Two distinct comparisons must be made: First, the actual salaries and benefits paid by comparable districts; and second, the increase in salaries and benefits paid by the comparables.

The record shows that both offers will maintain the District's relative position with respect to the wage rates of the comparables. Both offers would be higher than both the average and the median top salary. The Association's offer would result in a salary schedule with a starting salary that is slight below the median and average starting salary. The average hourly wage increase in the three comparables that have settled for this school year is 29¢. The average percentage increase of the three comparables is 6.1%. The District's proposal would result in an 8.7% overall wage increase and the Association's offer would result in an overall increase of 9.8%.

The District has settled with the secretaries for an 8.5% increase and the custodians for an 8.5% increase. The teachers received a 10.75% for the 1982-83 school year. However, the teachers' salary increase is the product of a two-year contract negotiated under different economic circumstances and is not indicative of the settlement patterns which have evolved for one year agreements for 1982-83. See Sch. Dist. of Cudahy, Dec. No. 19635-A (Gundermann, 1982); Westby Area Sch. Dist., Dec No. 28123 (Fogelberg, 1982).

Little weight has been given to the comparisons of the salaries and benefits provided teachers, custodians and secretaries in the District. The teachers, custodians and secretaries are not performing similar duties, do not have similar responsibilities, and do not have similar working conditions. Likewise, the dollar increases provided teachers, custodians and secretaries is not of probative value here. Of greater help is the comparisons of wages and wage increases paid aides in the comparable districts.

#### 4. CONCLUSION

Both offers maintain the District's relative position with respect to the wage rates of aides in the comparable districts. The District's offer is closer to the rates of increase in the comparable districts and the rates of increase of the other bargaining units in the District. The District's offer is also closer to the increase in the cost of living as measured by the CPI during the relevant period. In addition, the Association has not justified its offer with respect to changing the salary schedule classification system. Accordingly, it is concluded that the District's offer

with respect to the issues of wages and salary schedule placement is more reasonable than the Association's.

## B. COMPLAINT PROCEDURE

The final offers of both the Association and the District on this issue contain identical language regarding Step 5 of the Complaint procedure. Therefore, it is not necessary to determine which of these offers is more reasonable.

## C. AGENCY SHOP

### 1. POSITIONS OF THE PARTIES

#### a. THE ASSOCIATION

According to the Association, the justification for fair share is quite simple. All bargaining unit members receive the benefits; therefore, all bargaining unit members should be required to obtain membership or remit their appropriate fair share. In addition, fair share aids in creating a more stable labor/management relationship.

The Association stresses that Wisconsin law requires a union certified as an exclusive representative to represent all employees in the bargaining unit, whether they are members of the union or not. If employees in the bargaining unit are dissatisfied with the exclusive representative, they may petition to decertify the union or nullify the fair share agreement. This is preferable to members using their dues as a lever to win a point not supported by the majority.

It contends that comparability overwhelmingly justifies the Association's proposal. The Association points out that fair share has already been won by two of the District bargaining units. The teachers won it in an interest arbitration and the custodians negotiated for it. Even if comparability did not justify fair share, the Association says that principles of collectivism and equity justify fair share.

With respect to increases in the cost of living, the Association states that the cost of representation increases with the cost of living.

Directing its attention to overall compensation, the Association says that fair share directly affects an employee's wages because, among other things, it directly affects an employee's wages. With a fair share agreement the overall compensation received by employees in the bargaining unit would be more equitably distributed, since each employee would contribute equally to the costs of collective bargaining and representation.

#### b. THE DISTRICT

The District feels very strongly that contracts are negotiated to set out wages, hours, and conditions of employment for employees, not for the union. It says that employees in the bargaining unit have the opportunity for dues deductions. The District claims that the provision does not benefit the members. It asserts that the greater portion of the fair share collected from the employees would go to the state organization.

Noting that approximately thirty-four out of the seventy-four bargaining unit members have not joined the Association, the District argues that the Association has not been able to sell itself to eligible bargaining unit members as a viable organization to which they should belong. While arguments might be raised where only a small number or percentage

of eligible individuals are not members, the District contends the same is not true here.

The District states that the Association's proposal would have all bargaining unit members pay the equivalent of full dues, whether they are part-time or full-time employees. It argues that this is inequitable.

With respect to the comparable districts, the District says that most districts in the athletic conference do not have separately recognized bargaining units for aides. Only aides in Menasha currently have an agency shop agreement. Examining the District bargaining units, the District says that in both cases where bargaining units have obtained agency shop the percentage of non-members was around seven percent. The secretarial bargaining unit has never requested agency shop, although it has ninety-seven percent of the eligible employees as union members.

The District argues that the costs of negotiating and administering the collective bargaining agreement are minimal since the Association uses its own personnel to bargain. The Association has filed only three grievances since it began bargaining. One was settled; a second is pending; and a third was resolved.

The District quotes the following language from the Association's brief:

No longer is the union a voluntary association of individuals united together to improve their own welfare, nor is it an entity charged under law to provide representation and fair treatment for all individuals within the government certified unit.

The District says that this statement is undoubtedly reflectively true and it assuredly flies in the face of statute and the publicly avowed cry of the union for "fair share" to be able to represent all bargaining unit members equally.

## 2. FINDINGS OF FACT

a. **LAWFUL AUTHORITY OF THE EMPLOYER.** There is no contention that the Employer lacks the lawful authority to implement either offer.

b. **STIPULATIONS OF THE PARTIES.** While the parties were in agreement on a number of facts, there were no stipulations with respect to this issue.

c. **INTERESTS AND WELFARE OF THE PUBLIC AND FINANCIAL ABILITY TO PAY.** There was no evidence that the Association's proposal would cost the District.

d. **COMPARISON OF CONDITIONS OF EMPLOYMENT.** The record discloses that the bargaining units for the teachers and the custodians in the District have fair share. The teachers received fair share as a result of an arbitration decision. The District secretaries have never requested fair share.

Of seventeen bargaining units in Outagamie County school districts (excluding the District), fourteen have fair share and three do not. Of the twelve bargaining units in school districts in the Fox Valley Association Athletic Conference (excluding the District), eleven have fair share and one does not.

e. **COST OF LIVING.** The Consumer Price Index is not relevant to this issue.

f. TOTAL COMPENSATION. Although arguments regarding the impact of a fair share provision on total compensation were presented, no evidence was presented on this issue.

g. CHANGES DURING THE PENDENCY OF THE ARBITRATION. No evidence was presented on this issue.

h. OTHER FACTORS. Forty-five of the seventy-four aides in the District are members of the Association. Sixty-one percent of the bargaining unit members are Association members. This does not include the five laid-off aides who have continued to maintain their membership in the Association. Out of the forty-five members, thirty-three are full-time aides and twelve are part-time. Of the twenty-nine non-members, ten are full-time aides and nineteen are part-time aides.

The language of the Association's proposal is the same as the teachers' fair share provision. According to the Association, the policy of the Wisconsin Education Association Council, to which both the teachers' and the aides' unions are affiliated, is that members who work fifty percent or less pay fifty percent dues. That is the fair share amount that part-time teachers have been paying since 1979.

### 3. ANALYSIS

The designation of a union as the exclusive representative carries with it great responsibilities. The tasks of negotiating and administering a collective bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult tasks which often entail the expenditure of much time and money. See Int'l Ass'n of Machinists v. Street, 367 U.S. 740 (1961.) Because the collective bargaining system of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit, the exclusive representative is obliged to fairly and equitably represent all employees, union and non union, within the bargaining unit. Vaca v. Sipes, 386 U.S. 171, 177-78 (1967).

A fair share or agency shop arrangement has been thought to fairly distribute the cost of these activities among those who benefit. A fair share provision counteracts the incentive that employees might otherwise have to become "free riders"--to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees. See Oil, Chemical & Atomic Workers v. Mobil Oil Corp., 426 U.S. 407, 415 (1976); NLRB v. General Motors Corp., 373 U.S. 734, 740-41 (1963).

The District's argument that a fair share provision does not benefit a union's members is without merit. As discussed above, the tasks of negotiating and administering a collective bargaining agreement for the benefit of all bargaining unit members entails the expenditure of considerable time and money. Although the greater portion of fair share collected from the employees under the Association's offer may go to WEAC, even that portion must be related to the cost of the collective bargaining process and contract administration. See Browne v. Milwaukee Bd. of Sch. Directors, 83 Wis. 2d 316 (1978). In its offer the Association agrees to certify to the District only such fair share costs as are allowed by law.

While only sixty-one percent of the aides are members of the Association, there is no doubt that the Association en-

joyed majority support when it was designated as the exclusive representative and continues to enjoy majority support. Should a majority of the aides ever decide it does not want to be represented by the Association, there are procedures for terminating the Association's exclusive representative status. In the meantime, the Association is charged with the duty of fairly representing all employees. Carrying out this duty is made more difficult by the failure of a significant number of employees to pay dues to the Association. With fair share payments from the thirty-nine percent that are not members, the Association would be in a better position to perform its duties as exclusive representative.

With respect to the fair share payments by part-time aides, the record indicates that the present practice under the similar language in the teachers' contract is to charge part-time employees one-half of the full fair share payment. The record indicates that this practice would be followed here too.

The fact that most of the comparable districts do not have bargaining units of teacher aides is of little import. What is important is that the comparability data in the record establishes that a large majority of the bargaining units in the comparable districts has fair share provisions in their collective bargaining agreements.

The District's argument regarding the Association's statement that "[n]o longer is the union a voluntary association of individuals . . . , nor is it an entity charged under law to provide representation and fair treatment for all individuals within the government certified unit" (underlining supplied) is based on an apparent typographical error in the Association's brief. The quoted language is from a decision of Arbitrator James L. Stern in Manitowoc Public School District, Dec. No. 16227-A (Stern, 1978). He stated that "now it is an entity charged under law to provide representation and fair treatment . . . ." Obviously, this is what the Association intended to say in its brief.

#### 4. CONCLUSION

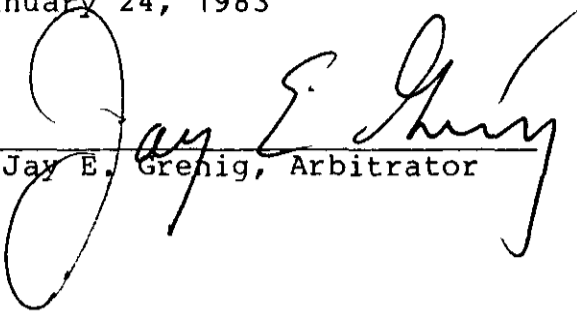
Fair share provisions are simply arrangements whereby a democratically chosen representative taxes those whom it must serve, regardless of whether they prefer another representative or no representative. See Twin Lakes Elem. Jt. Sch. Dist. No. 4, Dec. No. 16302-B (Bellman, 1979). Based on the above discussion, it is concluded that the Union's offer on this issue is more reasonable.

#### V. AWARD

The Arbitrator cannot divide the parties' offers, but must select one of the parties' total offers. Of the issues before the Arbitrator, it appears that the fair share issue is somewhat more critical than the wage issue. The fair share issue has a substantial impact on the ability of the Association to properly represent the members of the bargaining unit. While the District's wage offer is more reasonable than the Association's, it would appear that the \$3,776 additional cost of the Association's wage offer would have less of an impact on the District than the loss of fair share payments from thirty-nine percent of the bargaining unit members would have on the Association. Indeed, the additional cost of the Association's wage offer works out to only \$51.03 for each of the seventy-four members of the bargaining unit. Accordingly, it is concluded that the Association's total offer is more reasonable than the District's.

Therefore, having considered all the evidence and arguments submitted in this matter in accordance with the statutory criteria, it is the decision of the Arbitrator that the Association's final offer is to be incorporated into the parties' collective bargaining agreement.

January 24, 1983

  
Jay E. Grenig, Arbitrator

To: Ms Coleer A. Burns, WERC Investigator

From: Richard De Broux, Association Representative

Subj: Final Offer to the Appleton Area School District from the  
Appleton Aides Association

Date: August 30, 1982

The following is presented as a final offer by the Appleton Aides Association in the mediation/arbitration with the Appleton Area School District on all outstanding issues of a contract for the time period from August 16, 1982 through August 15, 1983:

Part II E 4 - Salary Schedule.

Rate	Hourly Stipend
A	\$5.55
B	5.35
C	5.15
D	4.95
E	4.75
F	4.55
G	4.35
H	4.15

Replace existing language with the following:

All aides working in positions certified by the Department of Public Instruction and the orthopedic cook shall qualify for rates H through A.

All other aides shall qualify for rates H through B.

Normal advancement within each rate range shall be one(1) rate increase for each year of continuing employment. Exceptions shall be noted to the affected employee(s) and the Association in writing specifying the reason(s) that the employee did not advance in the normal progression. Employees shall only be held on step for good cause.

Part II F 3 - Complaint Procedure. Add a Step 5 as follows:

If not settled at step 4 either party shall notify the other party



the two so selected shall select a third member. If the two members cannot agree on a third member, a third member shall be selected from a panel of five(5) names requested from the Wisconsin Employment Relations Commission. Each party shall alternatively strike one(1) name from the panel until one(1) remains. That individual shall be designated the third member of the arbitration board in this case and shall also serve as chairman. The party requesting arbitration shall in each arbitration case have the first strike from the panel.

The Board of Arbitration shall conduct hearings and receive testimony relating to the grievance, and shall submit its findings and decisions as soon as possible after the completion of the hearings.

The chairman shall determine who shall pay for the arbitration costs, such costs to be the arbitrators fee and travel expense. The chairman will determine on the basis that the loser pays. In the event of a split decision by the chairman, he/she may apportion his/her fees between the parties. If the proceedings are transcribed by joint request of the parties, or by the chairman, the cost of transcription shall be divided equally between the parties to this agreement. If a transcript is requested by just one of the parties, that party shall bear full cost of said transcript.

The decision of the Board of Arbitration shall be final and binding to both parties to this Agreement, but this decision shall be limited to the interpretation of specific terms of this Agreement. It is understood that the Board of Arbitration shall not have the authority to change, alter or modify any of the terms or provisions of this Agreement.

#### Part II G 3-Fair Share

- A. All employees in the bargaining unit shall be required to pay, as provided in this article, their fair share of the costs of representation by the Association. No employee shall be required to join the Association but membership in the Association shall be available to all employees who apply, consistent with the Associations constitution and by-laws.

B. Effective thirty(30) days after the date of initial employment of an aide or thirty(30) days after the opening of school in the fall semester, the District shall deduct from the monthly earnings of all employees in the collective bargaining unit, except exempt employees, their fair share of the cost of representation by the Association, as provided in section 111.70 (1) (h) Wisconsin statutes, and as certified to the District by the Association, and pay said amount to the treasurer of the Association on or before the end of the month following the month in which such deduction was made. The District will provide the Association with a list of employees from whom deductions are made with each monthly remittance to the Association.

1. For purposes of this article, exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to Part II, C., 3 (Dues Check Off) or paid to the Association in some other manner authorized by the Association. The Association shall notify the District of those employees who are exempt from the provisions of this article by the first day of September of each year, and shall notify the District of any changes in its membership affecting the operation of the provisions of this article thirty(30) days before the effective date of such change.
2. The Association shall notify the District of the amount certified by the Association to be the fair share of the costs of representation by the Association, referred to above, thirty(30) days prior to any required fair share deduction.

- C. The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees to abide by the decisions of the Wisconsin Employment Relations Commission and/or courts of competent jurisdiction in this regard. The Association agrees to inform the District of any change in the amount of such fair share costs thirty(30) days before the effective date of change.
- D. The Association shall provide employees who are not members of the Association with an internal mechanism within the Association which will allow those employees to challenge the fair share amount certified by the Association as the cost of representation and to receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association.
- E. Indemnification Clause - The Association and the Wisconsin Education Association Council do hereby indemnify and shall save the District harmless against any and all claims, suits, demands or other forms of liability, including court costs, that shall arise of or by reason of action taken or not taken by the District, which District action or non-action is in compliance with the provisions of this Article(Fair Share Agreement) and in reliance on any lists or certificates which have been furnished to the District pursuant to this Article: provided the defense of any such claims, demands, suits or other forms of liability shall be under the control of the Association and its attorneys. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this Article (Fair Share Agreement) through representatives of its own choosing and at its own expense.

APPLETON AREA SCHOOL DISTRICT

120 E HARRIS STREET P O BOX 2019  
APPLETON, WISCONSIN 54913  
PHONE 414-735-6161

FINAL OFFER

The following is presented as a final offer by the Appleton Area School District to the Appleton Aides Association on all outstanding issues in bargaining for settlement of a contract between those parties for the time period from August 16, 1982, through August 15, 1983.

Part II E 4 - Salary Schedule

Bargaining unit members shall be paid according to the following salary schedule:

<u>Rate</u>	<u>Hourly Stipend</u>
A	\$5.70
B	5.50
C	5.30
D	5.10
E	4.90
F	4.70
G	4.50
H	4.30

1982-83 employees shall be placed at their 1981-82 rate for the 1982-83 employment year. Thereafter, normal advancement within each rate range shall be a one (1) rate increase for each satisfactory year of continuing employment. Exceptions, to be made only in exceptional instances, shall be noted to the affected employee and the Association in writing specifying the reason(s) that employee did not advance in the normal progression manner. Employees shall only be held on step for good cause.

Orthopedic aides, the orthopedic cook, and aides working with severely emotionally disturbed as certified by the Department of Public Instruction shall qualify for Rates H through A.

Exceptional Education Needs aides working in Type 1 (self-contained complete) and 2 (self-contained modified) as approved by the Department of Public Instruction (other than orthopedic and SED aides) shall qualify for rates H through B.

All other aides shall qualify for rates H through C.

Longevity of \$175 after 10 years, \$225 after 15 years.

EXHIBIT B

p. 2, Final Offer

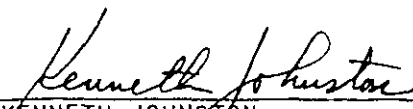
Part II F 3 - Complaint Procedure. Add a Step 5 as follows:

If not settled at Step 4, either party shall notify the other party within ten (10) calendar days of the completion of Step 4 of its desire for the appointment of a Board of Arbitration. Within fifteen (15) calendar days of such notice, the Board and the Association shall each select one (1) member who shall act on the Board of Arbitration, and the two so selected shall select a third member. If the two members cannot agree on a third member, a third member shall be selected from a panel of five (5) names requested from the Wisconsin Employment Relations Commission. Each party shall then alternatively strike one (1) name from the panel until one (1) name remains. That individual shall be designated the third member of the arbitration board in this case and shall also serve as chairman. The party requesting arbitration shall in each arbitration case have the first strike from the panel.

The Board of Arbitration shall conduct hearings and receive testimony relating to the grievance, and shall submit its findings and decisions as soon as possible after the completion of the hearings.

The chairman shall determine who shall pay for the arbitration costs, such costs to be the arbitrator's fee and travel expense. The chairman will determine on the basis that the loser pays. In the event of a split decision by the chairman, he/she may apportion his/her fees between the parties. If the proceedings are transcribed by joint request of the parties, or by the chairman, the cost of transcription shall be divided equally between the parties to this agreement. If a transcript is requested by just one of the parties, that party shall bear full cost of said transcript.

The decision of the Board of Arbitration shall be final and binding to both parties to this Agreement, but this decision shall be limited to the interpretation of specific terms of this Agreement. It is understood that the Board of Arbitration shall not have the authority to change, alter or modify any of the terms or provisions of this Agreement.

  
\_\_\_\_\_  
KENNETH JOHNSTON  
Director of Administrative Services  
For the Employer

9-9-82  
(Date)