

STATE OF WISCONSIN

BEFORE THE

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MAY 2 1983

In the Matter of Arbitration Between

ONDOSSAGON EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF THE TOWNS OF
BARKSDALE, DELTA, EILEEN, KELLY,
KEYSTONE, MASON, PILSEN, WASHBURN,
AND THE VILLAGE OF MASON (ONDOSSAGON)

MED/ARB-1914
Decision No. 20141-A

Gordon Haferbecker,
Arbitrator

May 25 , 1983

APPEARANCES:

Mr. Bruce Barker, Mulcahy & Wherry, S.C., Eau Claire, on behalf of the Employer.
Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, Hayward, on
behalf of the Union.

BACKGROUND

On April 19, 1982, the parties exchanged their initial proposals for a 1982-83 collective bargaining agreement. Thereafter, the parties met on five occasions in efforts to reach agreement. On September 15, 1982, the Association filed a petition for mediation-arbitration. On November 1, 1982, Raleigh Jones, a member of the Commission's staff, conducted an investigation which reflected a continued deadlock in negotiations. By November 29, 1982, the parties submitted their final offers and agreed stipulations to the investigator. The investigator advised the Commission of the impasse.

On December 6, 1982, the Commission initiated Mediation-Arbitration and provided the parties with a panel of Mediator-Arbitrators from which they selected a Mediator-Arbitrator. Gordon Haferbecker of Stevens Point, Wisconsin, was selected by the parties and was appointed by the Commission on January 11, 1983.

The Mediator-Arbitrator met with the negotiating teams in a mediation session on March 21. Mediation was not successful and was followed by arbitration on the same day. The parties presented evidence and exhibits concerning their positions.

At the hearing it was agreed that certain additional exhibits, as well as exhibit corrections, would be sent to the other party and to the Arbitrator on or before April 11. It was agreed that briefs would be exchanged through the Arbitrator on April 22 and that reply briefs, if any, would be sent to the Arbitrator one week after receipt of the brief. The date of the briefs was extended to April 29 by mutual consent. The reply briefs were received on May 10 and May 11.

THE FINAL OFFERS

The Ondossagon Board of Education's Final Offer for a 1982-83 collective bargaining agreement effective from July 1, 1982 through June 30, 1983, including all of the provisions of the 1981-82 Master Contract except for;

- a) Those modifications, deletions, and/or additions that have been

M.A. base	\$13,767.77
M.A. step 11	\$22,441.47
M.A. maximum	\$23,370.79

<u>82-83</u>	<u>81-82</u>	<u>\$+</u>	<u>%+</u>
801,074	739,261	64,812	8.76
27,668	26,051	1,617	6.2
F.I.C.A.		4,249.00	
Retirement		7,294.00	
Life Insurance		200.00	
Medical-family (28.66x33x12)		11,349.00	
Medical-single (9.16x8x12)		879.36	
Family dental (2.36x33x12)		934.56	
Single dental (.79x8x12)		<u>75.84</u>	
TOTAL		88,411.00	9.34%
		91,411.00	

All extra-curricular activities and duties at the same percentage or dollar rates as per the 1981-82 contract.

ADD an additional \$150.00 to Step 11 to teachers who were on Step 11 in 1981-82.

ADD an additional \$150.00 to Step 14 to teachers who were on Sept 14 in 1981-82.

1982-83
TEACHER'S SALARY SCHEDULE
ONDOSAGON PUBLIC SCHOOLS
(4.5% Increments on Base)

	<u>B.A.</u>	<u>B.A. + 8</u>	<u>B.A. + 16</u>	<u>B.A. + 24</u>
0	12,631.00	12,915.20	13,199.39	13,483.58
1	13,199.40	13,483.60	13,767.79	14,051.98
2	13,767.79	14,052.00	14,336.19	14,620.38
3	14,336.18	14,620.40	14,904.59	15,188.78
4	14,904.57	15,188.80	15,472.99	15,757.18
5	15,472.96	15,757.20	16,041.39	16,325.58
6	16,041.35	16,325.60	16,609.79	16,893.98
7	16,609.74	16,894.00	17,178.19	17,462.38
8	17,178.13	17,462.40	17,746.59	18,030.78
9	17,746.51	18,030.80	18,314.99	18,599.18
10	18,314.90	18,599.20	18,883.39	19,167.58
11	18,883.29	19,167.60	19,451.79	19,735.98

Add \$391.05 to Step 11 to teachers who were on Step 11 in 1981-82.

19,274.34	19,558.65	19,842.84	20,127.03
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In order to advance beyond the B.A./B.S. degree on this schedule teachers must take courses which are job related (this includes administrative courses). Courses taken prior to September 1, 1979 will be exempted from this provision.

	<u>M.A.</u>	<u>M.A. + 8</u>	<u>M.A. + 16</u>	<u>M.A. + 24</u>
0	13,767.77	14,077.54	14,387.31	14,697.08
1	14,387.32	14,697.09	15,006.86	15,316.63
2	15,006.87	15,316.64	15,626.41	15,936.19
3	15,626.42	15,936.19	16,245.96	16,555.74
4	16,245.97	16,555.74	16,865.51	17,175.29
5	16,865.52	17,175.29	17,485.06	17,794.84
6	17,485.07	17,794.84	18,104.61	18,414.39
7	18,104.62	18,414.39	18,724.17	19,033.94
8	18,724.17	19,033.94	19,343.72	19,655.49
9	19,343.72	19,653.49	19,963.27	20,273.04
10	19,963.27	20,273.04	20,582.82	20,892.59
11	20,582.82	20,892.59	21,202.37	21,512.14
12	21,202.37	21,512.14	21,821.92	22,131.69
13	21,821.92	22,131.69	22,441.47	22,751.24
14	22,441.47	22,751.24	23,061.02	23,370.79

Add \$391.05 to Step 14 to teachers who were on Step 14 in 1981-82.

	22,832.52	23,142.29	23,452.07	23,761.84
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ONDOSSAGON BOARD OF EDUCATION
November 22, 1982

CHANGE ARTICLE LV, SECTION 5, PARAGRAPH 2, PAGE 4 TO READ:

The Board of Education shall pay the single or family plan cost, including major-medical coverage, as is applicable to all employees presently under contract for the 1981-82 school year and including those employees on leave and those on lay-off who may be recalled shall receive the above paid insurance.

All new employees working less than 20 regular hours per week will not be eligible for medical or dental insurance. Employees working over 20 regular hours but less than 30 hours will receive a prorated share of their medical and dental paid by the district. A 38 hour work week shall be the basis for prorating. Employees working 30 to 40 regular hours per week will be considered full-time employees. The district may choose to prorate benefits under 20 hours based on the individual employment situation.

CHANGE ARTICLE IV, SECTION 1, ADDENDUM F, PAGE 20 TO READ:

The Board of Education shall provide Plan I Dental Insurance through WEA Insurance Trust for 1981-82. The Board shall pay the single or family plan cost as is applicable to all employees presently under contract for the 1981-82 school year and including those employees on leave and those on lay-off who may be recalled shall receive the above paid insurance. All new employees working less than 20 regular hours per week will not be eligible for medical or dental insurance. Employees working over 20 regular hours but less than 30 hours will receive a prorated share of their medical and dental paid by the district. A 38 hour work week shall be the basis for prorating. Employees working 30 to 40 regular hours per week will be considered full-time employees. The district may choose to prorate benefits under 20 hours based on the individual employment situation. The district may change carrier and/or plan if the change is mutually agreeable with the Board of Education and the Ondossagon Education Association.

The Ondossagon Education Association's Final Offer; for a 1982-83 Collective from July 1, 1982, through June 30, 1983, (ARTICLE XVI); includes all of the provisions of the 1981-82 Collective Bargaining Agreement except for;

- a) those modifications, deletions, and/or additions that have been agreed to by the parties,
- b) those modifications, deletions, and/or additions that are listed within this document,
- c) and the changing of the Dates in Addendum F to reflect the 1982-83 year.

1. Page 23

Delete the first paragraph which reads;

"Snow days will be made up at the end of the year with up to two snow days used for teacher in-service and more than two days to be made up by the students also."

Replace the above first paragraph with;

"The first snow day will not be made up and there shall not be a pay deduction for the first snow day. Other snow days will be made up at the end of the year with the second and third days used for teacher in-service and the rest of the snow days (4th, 5th, 6th, etc.) to be made up by the students also."

2. Addendum B, page 19, (EXTRA CURRICULAR SALARY SCHEDULE)

1. Change Marching Band, Contests, Pep Band to a rate of 4.50.
2. Change High School Vocal Music and Contests to a rate of 3.00.

3. Addendum B, page 19

Change the rates of Noon Hour Duty to;

Ondossagon (2 teachers)	\$899.00 annually
Benoit-Mason	\$245.00 annually

4. Addendum C, page 20

Increase all rates by 9.0%.

5. ARTICLE III, Section 6, page 3

1. In the second paragraph change "\$10.00" to "\$10.90".
2. Change the third paragraph to read;

"Class advisors or chaperones will be compensated at the rate of \$10.90 per hour for work performed outside of normal school hours."

6. ARTICLE IV, Section 7, page 5 (Early Retirement)

Change "\$250" to "\$275".

7. ARTICLE V, Section 6, page 8, Promotion and Transfer

Delete the entire section and replace with the following;

"(a) Vacancies will be posted, by the District, with the OEA President as soon as a vacancy is known by the District. Teachers requesting consideration for transfer or promotion within the system, when a vacancy occurs, shall make an application in writing to the Superintendent of Schools.

(b) Teachers who are current employees of the System, who apply for a bargaining unit vacant position, shall be transferred to said position if they are fully certified for the position by the DPI. When two or more current employees, who are fully certified for said vacant position, apply for the vacant position; the employee with the greatest indistrict seniority shall be transferred to the vacant position.

The only exceptions possible to this procedure will be when the District can show that such transfer would result in a situation which would be harmful to the welfare of affected students."

8. ARTICLE III, Section 3, page 2

Add the following sentence;

"On the last teacher work day of the year, teachers will receive their summer checks in the same manner that they were issued during the 1981-82 year."

9. Add a new Addendum H, School Psychologist, which reads:

"The salary for the school psychologist, who was employed during the 1981-82 year, shall be \$18,250 for 1982-83. The number of work days for the school psychologist position shall exceed the teacher work year by ten days. Should there be a change in who is the school psychologist, the OEA and the District shall bargain a different salary."

ARTICLE IV, SECTION 1

ADDENDUM A
1982-83
TEACHER'S SALARY SCHEDULE
Ondossagon Public Schools
(4.5% Increments on Base)

	B.A.	B.A. + 8	B.A. + 16	B.A. + 24
0	\$12936.00	13227.06	13518.12	13809.18
1	13518.12	13809.18	14100.24	14391.30
2	14100.24	14391.30	14682.36	14973.42
3	14682.36	14973.42	15264.48	15555.54
4	15264.48	15555.54	15846.60	16137.66
5	15846.60	16137.66	16428.72	16719.78
6	16428.72	16719.78	17010.84	17301.90
7	17010.84	17301.90	17592.96	17884.02
8	17592.96	17884.02	18175.08	18466.14
9	18175.08	18466.14	18757.20	19048.26
10	18757.20	19048.26	19339.32	19630.38
11	19339.32	19630.38	19921.44	20212.50

Add \$237.37 to step 11 to teachers who were on step 11 in 1981-82.

19576.69 19867.75 20158.81 20449.87

In order to advance beyond the B.A./B.S. degree on this schedule teachers must take courses which are job related (this includes administrative courses). Courses taken prior to September 1, 1979 will be exempted from this provision.

	M.A.	M.A. + 8	M.A. + 16	M.A. + 24
0	14100.24	14417.50	14734.75	15052.01
1	14734.75	15052.01	15369.26	15686.52
2	15369.26	15686.52	16003.77	16321.03
3	16003.77	16321.03	16638.28	16955.54
4	16638.28	16955.54	17272.79	17590.05
5	17272.79	17590.05	17907.30	18224.56
6	17907.30	18224.56	18541.82	18859.07
7	18541.82	18859.07	19176.33	19493.58
8	19176.33	19493.58	19810.84	20128.09
9	19810.84	20128.09	20445.35	20762.60
10	20445.35	20762.60	21079.86	21397.11
11	21079.86	21397.11	21714.37	22031.63
12	21714.37	22031.63	22348.88	22666.14
13	22348.88	22666.14	22983.39	23300.65
14	22983.39	23300.65	23617.90	23935.16

Add \$237.37 to step 14 to teachers who were on step 14 in 1981-82.

23220.76 23538.02 23855.27 24172.53

STATUTORY STANDARDS

"(7) 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the 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 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 wage compensation, vacation, holidays and excused time, insurance and pension, 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 consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment.'

INTRODUCTION

This has been a difficult case for the Arbitrator. As the Final Offers indicate there were nine unresolved issues. It is unfortunate that so many issues were unresolved during collective bargaining and mediation. The mediation-arbitration law works best, I believe, when the parties have been able to resolve most of the issues and have been able to substantially narrow their differences prior to arbitration.

Each side presented over 90 exhibits and the briefs and reply briefs were very extensive. The Arbitrator has reviewed all of the materials but it is not practical to report every argument and counter-argument of the parties. I will review the chief Association and Employer arguments on each issue and then present my own analysis for each.

THE 1982-83 WAGE SCHEDULE

The total package cost of the Board's final offer is \$1,070,072 which is \$92,151 or 9.4% above the 1981-82 wage and benefit cost. The total package cost of the Association's offer is \$1,092,408 which is \$114,487 or 11.71% above the 1981-82 wage and benefit cost. The difference between the wage offers of the parties equals \$16,340 and between the package costs is \$22,336 (from Employer Brief, pp. 6-7).

Employer Position. The Employer states that its wage offer is more reasonable based on the interests and welfare of the public and the District's ability to pay. The Employer cites recent Wisconsin arbitration decisions in which the arbitrator has given weight to the current depressed state of the economy. The Employer points out that the District is primarily agricultural and rural and the farm economy is particularly depressed at present. The average unemployment rate in Bayfield County in 1982 was 12.2%. This compares to a national average of 9.7% and a Wisconsin average of 10.3%.

The share of the Ondossagon District budget supported by state aid has decreased in the past few years. In 1981-82 state aids supported 51.6% of the operating costs in Ondossagon which was 7.7% below the average of the Indianhead Athletic Conference (Employer Exhibits 67 & 68). This increases the property tax burden on Ondossagon taxpayers.

Because of the depressed economy, unemployment and lower personal incomes, Bayfield County taxpayers are having difficulty in paying their property taxes. Tax delinquency increased from 9.45% of the County levy in 1978 to 13.09% in 1982 (Employer Exhibit 17).

In the Ondossagon School District more people have been postponing their tax payments, making their property tax payments in two installments instead of one. In 1978-79, the District collected 77.2% of the levy before July 1. Since then the percentage has fallen to an estimated 60% for 1982-83 (Employer Exhibit 18). The District has developed a serious cash flow problem which requires it to operate at a deficit, borrow money to reduce the shortfall, or reduce expenditures.

The District also faces problems because of the aged, deteriorating physical plant. Mason Primary School is over 100 years old and it has been recommended that it be abandoned as soon as possible. Architects have recommended that portions of the Benoit School be razed. Ondossagon High School needs a new heating system. Eleven of the buses owned by the District have an average mileage of over 100,000 miles.

The budget-making process for 1982-83 has been very difficult for the Board of Education. The Board has tried to reconcile the interests of the hard-pressed taxpaying public, the educational needs of the District's children, and the economic needs of the District's personnel.

At the 1982-83 annual school district meeting, the Board proposed a 22% increase in the tax levy in order to resolve the problems of deferred taxes and educational costs. The taxpayers defeated the proposal by a 91 to 66 vote. The Board made various budget cuts (Employer Brief, p. 21) but did not propose any teacher layoffs.

The annual meeting reconvened on September 20, 1982, to review the revised budget. The Board recommended a tax levy of only 9.32% above the 1981-82 tax levy. The taxpaying public expressed their concerns about economic hardships including reduced incomes, unemployment, and rising property taxes. The Board's proposed levy was rejected by a vote of 201 to 98 (Employer Exhibit 28).

The results required the District to further reduce expenditures, including the elimination of a cook and cook's helpers. The District's teachers were unaffected by the staffing cuts except for a one-sixth reduction of an art teacher's contract.

Conservative estimates are that the District will have a 1982-83 deficit of \$140,996 at the end of the 1982-83 contract year (Employer Exhibit 18).

Despite its financial difficulties the Employer has offered the Association an equitable pay package. The Association's proposal of 11½% for wages and benefits would exacerbate the tenuous economic situation of the District.

Concerning the Consumer Price Index, the Employer states that CPI increases from October, 1981 to October, 1982 were well below both the Employer and Association wage package offers. The Urban Worker CPI increased 5.1% during that time while the Employer's wage and benefit package is 9.4% and the Association package is 11.7% (Employer Brief, p. 25).

The Employer also compares wages and benefits received by Ondossagon teachers since 1978-79 and finds the wage and benefit increases exceed the CPI increases (Employer Brief, p. 28).

The Employer questions the Association's use of the June Index for the non-metro urban area for the North Central states and the Minneapolis-St. Paul Index. The Employer feels the Minneapolis-St. Paul Index is not appropriate for comparison with a rural area of northern Wisconsin. The Employer feels that the use of June, 1981 to June, 1982 as the Union's base period is not satisfactory because of the drop in inflation since then, and because when the parties prepared their final offers in November, 1982, they were well aware of the 1982 decline in inflation. Even so, the Employer's offer of 9.4% is still above the June, 1981 to June, 1982 increase in the non-metro urban area cited by the Association.

Concerning comparables the Employer has compared Ondossagon teacher wages with those of schools in the Indianhead Athletic Conference. The districts have similarities in high school size, student body, athletic competitiveness, and geographic proximity.

Using the Bayfield County school districts as the primary comparables, as the Association proposes, is unsatisfactory. The division of the four districts is too small to form a reliable basis for comparison. The settlements in one district may have an exaggerated effect on any average of the four.

The Employer points out that most Ondossagon teachers moving through the salary schedule would receive wage increases of over 10% under the Employer offer for 1982-83 (Employer Brief, p. 42). Under the Association proposal the increases would be in the 12.6 to 14.1% range (Employer Brief, p. 43).

Employer Exhibits 70-74 and Chart E, Employer Brief, p. 44 show that the Board's offer is competitive with other districts in the conference. Under the Board's final offer for 1982-83 Ondossagon teachers will continue to earn significantly more than the area average at the BA, O credit maximum, the MA maximum, and the Schedule maximum. Almost 50% of the bargaining unit in Ondossagon is placed at the maximum steps of the salary schedule.

Taking the equalized value of the school districts into account, the Ondossagon District ranks fourth of the nine school districts that have settled. Under the Board offer, the District's rank is above fourth in five of eight benchmark positions (Employer Exhibits 70-74 and Chart F, Employer Brief, p. 46). The Association's final offer would place Ondossagon above fourth place in all eight benchmark positions. It would result in great economic hardship for the populace of the school district.

The Employer argues that the Association has based its entire offer on the comparability factor and has failed to address the present economy, the cost of living, the District's ability to pay, the interests of the students and general public, or the change in conditions that has occurred during the negotiation process.

Association Position. The Association believes that the primary comparable districts for Ondossagon should be all of the districts in Bayfield County and the secondary comparable districts should be the Indianhead Athletic Conference Districts. The four other Bayfield County districts are Bayfield, Drummond, South Shore (Port Wing) and Washburn. They are the closest to Ondossagon geographically. The percent of the Ondossagon budget revenues from state and federal sources is the median percent of the five Bayfield County Districts (Union Exhibit 12).

Many of the Association and Employer exhibits express the economic situation for all of Bayfield County. These statistics do not apply to the other five districts of the Indianhead Athletic Conference.

The levy rate for Ondossagon is the median levy rate of the districts in Bayfield County (Union Exhibit 14).

The adjusted gross per capita income for Ondossagon is the second highest in Bayfield County (Employer Exhibit 63) but the average of the four other districts is within \$93 of Ondossagon. The average for the other five districts of the Indianhead Conference is \$1,105 below Ondossagon or one can say that the Ondossagon adjusted gross per capita income is 25% higher than those five other districts. The wealth in Ondossagon is very close to the wealth of other districts in Bayfield County but is much greater than the wealth of the Indianhead Districts outside of Bayfield County.

The longevity amount for 1981-82 averaged \$217 for each eligible teacher. The Employer's offer for 1982-83 contains a longevity rate of \$391.05 which is a 79.9% increase. The Union offer has a longevity rate of \$237 which is a 9.2% increase.

Employer's Exhibits 76 & 76 show that none of the other Bayfield County Districts have longevity. Of the other Indianhead Conference Districts only Mellen and Mercer have longevity. The Employer's proposal clearly goes against the pattern set by the rest of the districts.

All four Bayfield County Districts have settled for 1982-83. The average increases for six benchmark positions range from 8.8 to 9.1%. The Ondossagon Union offer is 9.2% in each case. The Employer's offer is 6.6% (Union Exhibits 15, 16, 18, 19, 26, 27, 30, 31 and Union Brief p. 34).

The Ondossagon Union offer is from .1% to .4% above the average Bayfield County District's increases from 1981-82 to 1982-83 while the Ondossagon Employer offer is 2.2 to 2.5% below the average (Union Brief, p. 35).

Under the Employer's offer, Ondossagon loses rank in 1982-83, compared to 1978-79 in 5 of the 7 benchmark positions--comparing with the Bayfield County Districts. With the Union's offer Ondossagon retains its ranking in 6 of the 7 positions and loses rank in one (Union Brief, p. 35).

Comparisons are also made with the other seven of the Indianhead Athletic Conference Districts that have settled for 1982-83. The average increase is 8.5 or 8.6 at seven benchmark positions, compared to 6.6 under the Ondossagon Employer offer and 9.2 under the Union offer (Union Brief, p. 37).

Over the period from 1978-79 to 1982-83 for the same Districts, comparing seven benchmark positions, the increases range from 35.6 to 38.6%. This compares with the Ondossagon Employer offer of 33% and the Union offer of 36.1% (Union Brief, p. 37).

When the Employer's and the Union's offers are compared to the settlements for 1982-83 within the Bayfield County Districts or the Athletic Conference Districts, the conclusion must be drawn that the Union's offer is closer to the average settlement over both a one-year period or a four-year period.

The Employer's main two arguments for the Arbitrator not to select the Union's offer are; (1) more taxpayers are deferring their tax payments and (2) the economic situation in the District is so bad that the Union's offer would place an undue burden on the local citizens.

The District's Annual Reports for 1981-82 and 1982-83, as filed with the Department of Public Instruction, show that the District will receive \$294,531 more revenue in 1982-83 than in 1981-82 (Union Exhibits 90 & 91 and Union Reply Brief, p. 2).

While the number of deferred tax payments is increasing, the amount of taxes collected for past years is also increasing. For 1982-83 the District plans on getting \$292,442 in property tax monies that were deferred from 1981-82 (Union Exhibit 91, p. 8). The result is that for 1982-83 the District will receive 45% more deferred tax monies than it received the year before.

Employer Exhibit 37 quotes the Ondossagon Superintendent as stating that the deferred tax problem is affecting districts throughout the state. The problem is not unique to Ondossagon.

While the tax payers turned down a 22% tax levy increase on August 30, 1982, this is understandable since the District's total revenues would be increasing 17.1% above the prior year's revenues (Union Exhibit 90, p. 8 and 91, p. 9).

The 1981-82 report showed that expenditures exceeded revenues by \$42,930 but the 1982-83 Annual Report shows a projected \$260,834 left over on June 30, 1983 (Union Exhibit 91, p. 7). This does not suggest a financial problem.

The Employer's data concerning unemployment, home loans, and tax delinquency for Bayfield County do not establish that the economic situation is worse for Ondossagon than for the other four districts in Bayfield County. The situation here seems like Arbitrator Krinsky's decision in the Ladysmith School District case, where Krinsky "concluded that the record does not establish that the District is less able to pay than comparable districts or that the interests and welfare of the District's taxpayers require that a lower settlement be awarded in the District than elsewhere" (Union Reply Brief, p. 5).

Other Wisconsin arbitrators have also pointed out that certain school districts have not established that their economic situation is unique enough to justify lower wage increases than neighboring districts are providing.

Ondossagon is not worse off than other districts. Employer Exhibit 63 shows that the adjusted gross per capita income for Ondossagon is the second largest of all five districts within Bayfield County and is the second largest in all of the Indianhead Conference Districts. Union Exhibit 87 shows that the average income per worker in Ondossagon is the second largest of all the Indianhead Conference Districts. But yet only three districts within the Indianhead Conference have a lower tax rate while six districts have higher rates (Union Ex. 14). At the same time, the District is spending less money per student than seven other Indianhead Districts (Union Ex. 73).

The State bases its aids on the property wealth behind each student. The poorer the district the higher the state aid. Thus, if Ondossagon is receiving less state aid than its neighbors it must be because its property values are rising at a faster rate than the other schools.

The lack of a 1982-83 settlement should have helped the District's 1983 cash flow problem because salary increases of \$64,425 or \$80,765 have been deferred for most of the school year.

While the Employer has argued that the CPI-U and the CPI-W (U.S. City Average) should be used to determine the increased cost of living for the Ondossagon District, the Union believes that the CPI for Non-metro Urban areas (North Central States of areas with a

population of less than 75,000) or the CPI for Minneapolis-St. Paul should be used. Cost of living increases do vary in different areas and it seems reasonable that the CPI for the region or the nearest large city would more accurately reflect the cost of living in nearby communities than a national average.

The Employer's brief states that the October or December indexes should be used. The Union used the June index because the termination date of the salary schedule is in June. Many arbitrators have concluded that the most appropriate period is the twelve months preceding the implementation of a new contract.

The Employer's historical comparison of the CPI and Ondossagon teacher wages (Employer Brief, p. 28) lacks validity because it is not based on actual individual teachers in the District (Union Reply Brief, p. 13).

From Union Exhibit 82, we find that 20 of the 43 teachers are at the maximum step in their salary lanes. These teachers do not receive the annual increment that goes to the teachers who have not reached the top of their lane. In the Union's brief (p. 36) we find that these teachers' salaries will increase 33.0% with the Employer's offer and 36.1% with the Union's offer from 1978-79 to 1982-83. These percentage increases are a long way from the 48.4% CPI increase that the Employer uses to make the claim that Ondossagon teachers have stayed ahead of inflation over the past several years.

The Union argues that annual increments based on experience are not given to offset inflation but are based on an increase in efficiency that comes with experience (Union Reply Brief, pp. 15-16).

Over a one-year period (1981-82 to 1982-83) the Union's offer increases the benchmark position salaries by 9.2% and the Employer's offer increases them by 6.6%. The CPI increase for all U.S. cities was 7.1% (Union Exhibit 56). This is between the rate increases proposed by the parties. If the Minneapolis rate of 10.1% is used or the Non-metro Urban rate of 9.3%, both offers represent less salary rate increases than the increase of inflation (Union Reply Brief, p. 16).

The Union also reviews the rationale used by some arbitrators in holding that the appropriate measure of the impact of cost of living increases can best be measured by the increase in wage rates in negotiated comparable contracts (Union Reply Brief, pp. 17-18). Over the past four years, and taking the Union's 1982-83 wage offer, the percentage increase for Ondossagon teachers would be below the average increase for both the Bayfield County Schools and the Indianhead Conference Schools (Union Brief, pages 36 & 38).

For a one-year increase the Employer's offer is 2.2 to 2.5% below the average increase of settlements in Bayfield County and the Union's is 0.1% to 0.4% above the average (Union Brief, p. 35). For the Indianhead Conference Districts the Employer's offer is 1.9% to 2% below the average settlement increase while the Union's offer is 0.6%-0.7% above.

Arbitrator's Analysis. On the basis of the evidence presented by the parties, the Arbitrator makes the following findings: (1) It is appropriate to use as comparables both the Bayfield County School Districts and the Indianhead Conference Schools. The Union has shown the high comparability of the Bayfield Districts and some of the Employer's economic statistics are based on Bayfield County, (2) The Employer has not established that Ondossagon is so different from other Bayfield County Districts and other Indianhead Districts as to justify its markedly lower 1982-83 wage proposal, (3) The Ondossagon District has had a serious cash flow problem requiring it to operate at a deficit in 1981-82, to borrow money, and reduce expenditures. It also faces problems because of its aged, deteriorating physical plant. (4) The interests of the public in the 1982-83 settlement are legitimate and are illustrated by the difficulties of the Board in getting budget approval from the taxpayers. The Union has not given adequate recognition to this factor. (5) As this Arbitrator and other arbitrators have noted, the one-year period immediately preceding the start of a new contract is the most appropriate period to use in looking at CPI changes. None of the existing CPI indexes is completely satisfactory for Ondossagon so in the absence of agreement by the parties, the national CPI for all U.S. Cities and the Non-metro Urban index are pertinent. Concerning the cost of living the Union's proposal is more appropriate than that of the Employer, based on the Union's data (Union Reply Brief, p. 16). However, if the last year's increase (June 1981 to June 1982) is taken, the Union's proposed increase is a little higher than the national CPI increase (Union Reply Brief, p. 16). (6) The Union's 1982-83 wage offer is .1% to .4% above the average increase for the Bayfield County School Districts and 0.6% to 0.7% above the Indianhead Conference Districts while the Employer's offer is 2.2% to 2.5% below the average increase in Bayfield County and 1.9% to 2% below the average settlement increase for the Indianhead Conference Districts (Union Reply Brief, p. 18). (7) The Employer's annual reports to the Department of Public Instruction show a substantial improvement in the District's 1982-83 financial situation in comparison to 1981-82. (8) Compared to other schools in the Indianhead Conference, the Ondossagon School District is relatively high in equalized value and per capita income and relatively low in its tax rate.

Conclusion: Taking all of the above into account the Arbitrator feels that the most appropriate wage settlement for 1982-83 would have been a little below the Union's offer and considerably above the Employer's offer. Between the two final wage offers, I find the Union wage offer slightly more reasonable. I say slightly because I do not feel that it gives adequate consideration to the District's recent financial problems and to the concerns of the District's taxpayers.

FILLING VACANCIES

This is a major issue for both the Employer and the Union. Section 6 of the contract states that "Teachers within the system shall receive top consideration for promotion or transfer, however, the Board shall consider such requests along with other applications and base its decision on the merits of the situation." The Employer wants to keep the current language and the Union wants to substitute language as shown in its Final Offer.

Union Position. The Union is proposing that "Teachers who are current employees of the system, who apply for a bargaining unit vacant position, shall be transferred to said position if they are fully certified for the position by the DPI." If two or more current employees who are fully certified apply, the one with the greatest in-District seniority shall be transferred to the vacant position. "The only exceptions possible to this procedure will be when the District can show that such transfer would result in a situation which would be harmful to the welfare of affected students."

In supporting its case the Union cites extensively from a recent arbitration award concerning the transfer clause in the contract (Union Exhibit 48). The arbitrator decided that "top consideration" required the Employer to provide an interview but nothing else. She held that the final determination as to filling the vacancy under the parties' contractual language rested squarely with the District.

The Union cites details concerning several instances where Ondossagon teachers were denied transfers by the Board. Mary Ann Zifco applied for a fifth grade position and was turned down. She applied for a sixth grade position and was recommended for the position by the principals and District Administrator but was turned down by the Board.

The District stated that Mrs. Walther was filling a position that was critical (kindergarten) and could not be transferred because of this (Union Brief, p. 11). In another case, the District Administrator told Mrs. Bucheger that he was not aware that she had fifth grade teaching experience at the time she was being disqualified for a fifth grade position (Union Brief, p. 14).

A teacher who has proven his/her worth should be able to transfer to a vacancy of his/her desire or transfer from part-time to full-time employment. This concept seems to have been applied within at least six other schools within the Indianhead Athletic Conference for the last seven years (Union Exhibit 51). Apparently these districts do not need contract language providing filling of vacancies on a seniority basis because they have established a policy to do it anyway.

Employer Position. The present language sets forth a fair and equitable procedure which allows for transfers within the system but recognizes that the "welfare of the pupils" is to be given "first consideration" when considering transfers. The present language guarantees that any teacher requesting a transfer will receive "top consideration;" however, it does allow the Board to maintain their management right to "base its decision on the merits."

The Union's proposed language would represent a major departure from the status quo. It would provide for automatic transfers. Transfers could only be disallowed in extreme situations similar to non-renewal situations. It would eliminate the Board's managerial right to choose the best applicant for the position. It would establish a contradiction to the present layoff and bumping procedure (this refers to teachers not changing to a position more than five grades from their previous district experience within the last five years).

The recent arbitration upheld the right of the Board to hire outside applicants and the contract was not violated when new employees were hired to fill vacancies. The Union cannot show that all transfers have been denied. This past year the sixth grade teacher at the Benoit School requested a transfer to a seventh grade position at Benoit and the request was granted.

The proposed change should be negotiated by the parties, not awarded through arbitration.

Arbitrator's Analysis. The Arbitrator sympathizes with the Union's feelings concerning the Board's application of the transfer clause. The Employer has not adequately explained its failure to approve several of the transfers. It appears that the Board has not always been fair to the employees requesting transfers. Sometimes it has not been fully aware of the employee's teaching experience that was not pertinent to the vacancy. Sometimes it seems to have denied a transfer in part because the teacher's present assignment was critical.

However, the Arbitrator cannot in this instance, at this time, support a position as extreme as the Union's proposed language. It would give so much weight to seniority that the District could not deny a transfer unless the District could supply enough evidence to non-renew the teacher. For example, a teacher who was teaching first grade, who was certified for grades one to eight, could request a transfer to grade eight even though she had not had any significant teaching experience in grade eight. The Board could not deny the request, under the Union proposal, unless it could show that the transfer would result in a situation which would be harmful to the welfare of affected students. This would be nearly impossible to establish.

Conclusion: The Arbitrator finds the Employer position on this issue more reasonable. I recognize that this will continue to be a major Union concern unless some compromise language is developed or unless the Board shows more consideration for teachers when they make reasonable requests for transfer.

BAND AND VOCAL MUSIC

This issue involves the pay which one teacher receives for music-related extra-curricular duties. The Union wants to change "Marching Band, Contests, Pep Band" from a rate of 3.00% to a rate of 4.00% of the salary schedule position that the teacher has relative to experience with this activity. It also wants to change "High School Vocal Music and Contests" from a rate of 1.50% to a rate of 3.00% of the salary schedule position. The Employer proposes no change.

Union Exhibit 82, and the Union Brief, page 29, shows the Employer offer to be very low compared to what other districts are paying for the Band and Vocal Music positions. The Union's offer is more reasonable. It provides for salaries that are less than the average of all Indianhead Conference Schools that have such positions.

Taking into account the hours that the Ondossagon teacher is devoting to these activities, her rate of pay is currently \$3.37 per hour for band and \$3.44 for vocal music. The District is paying higher hourly rates for ticket sellers and bus chaperones.

Employer Position. The Union's proposal would double the current extra-curricular salary for vocal music and band. While the individual assigned this work has estimated her hours, she stated at the hearing that no specific hourly assignments had been made by the District and that the amount of time spent on the various activities was up to the teacher's discretion. She testified that there had been no change from last year and this year and that no change was contemplated for next year. The Union has not shown any additional duties or responsibilities from previous years that would justify a 50% increase in her extra-curricular pay.

The Union has not shown that the other districts are similar in the time requirement, the number of students involved, or the number of specific programs involved. Without establishing a foundation of common assignments, common hours, common duties, and common responsibilities, the comparison of salaries is meaningless.

Arbitrator's Analysis. I find the Union position to be more reasonable on this issue. The Union has made a good faith effort to show what appears to be an inequity in one teacher's extra-curricular pay. Because the inequity has existed for some time and because there has been no recent change in duties, does not mean that it should not be remedied. Districts do compare their extra-curricular positions in determining fair salaries even though there may be differences in the time involved and in the details of the assignments.

EXTRA-CURRICULAR PAY

This issue concerns the pay for noon hour duty, supervision of athletic events, meetings advisers and chaperones. The Union proposes 9% increases for these assignments. The Employer proposes no change.

It should be noted that other extra-curricular wages found in Addendum B of the Collective Bargaining Agreement increase at the same rate as the regular teaching salary schedule cells do since these rates are indexed to the teaching schedule.

Union Position. The Union contends that through other years of bargaining, the parties have come to a conclusion of what different wage rates should be. A basketball coach will be paid a certain percentage above a volleyball coach or eleven percent of a classroom teacher. Unless a position has a change in duties or responsibilities, it is logical that these inter-position wage relationships should be maintained at the level the parties agreed to in past years.

The Employer's offer does not maintain the previous agreed-to relationships. The Employer wishes to increase the wage rate of longevity by 79.9%, regular teaching rates by 6.6%, basic extra-curricular rates by 6.6%, and no increase for other extra-curricular rates like chaperones and noon-hour duty. The Employer has not explained by a coach's rate should be increased by 6.6% but a noon-hour supervisor receives no increase.

Employer Position. The current agreement provides that teachers who are required by the Board or the Administration to attend meetings that extend more than one-half hour beyond

EARLY RETIREMENT

The existing contractual language provides that the Board of Education shall provide a monthly stipend for teachers electing to retire between the ages of 60 and 65 in the amount of \$250 per month. The Union has demanded that this be increased to \$275 per month. The Employer has proposed that the status quo be maintained.

Union Position. The Union feels that this stipend should be increased at about the same proportion as it is proposing for the basic salary schedule. The increase proposed here is near the 9.2% that the Union proposed for a general salary increase.

Employer Position. Five out of the eight comparable districts in the Indianhead Conference do not provide an early retirement benefit for their employees (Employer Exhibit 90). Employer Exhibit 90 also indicates that only Drummond and South Shore provide for an early retirement provision in their collective bargaining agreements. Both of these provide for the early retirement provisions available under the State Teachers' Retirement System. Because there is no comparability with the early retirement provision proposed by the Union and because of the District's serious financial difficulties faced by the District, the proposed increase should not be awarded to the teachers.

Arbitrator's Conclusion. I do not feel that the Union has established that this benefit needs to be adjusted every year, even when the District is facing budget difficulties. I find the Employer position on this issue more reasonable.

SNOW DAYS

The Union has proposed deleting the following existing contract language: "Snow days will be made up at the end of the year with up to two snow days used for teacher in-service and more than two days to be made up by the students also."

The Union has proposed that the above language be replaced with the following: "The first snow day will not be made up and there shall not be a paid deduction for the first snow day. Other snow days will be made up at the end of the year with the second and third day used for teacher in-service and the rest of the snow days (4th, 5th, 6th, etc.) to be made up by the students also."

The Employer has proposed maintaining the existing language.

Union Position. Within the Bayfield County comparables, three of the four other districts provide a number of snow days that do not have to be made up (Union Exhibit 52). In the Indianhead Conference, six of the remaining nine districts do not make up some snow days (Union Exhibit 52).

Ondossagon has the largest number of days that teachers must work for collecting their entire salary. The average number of scheduled work days for other Districts within Bayfield County is 137 days. Within the nine other districts within the Indianhead Conference, it is 136 days. Under the Employer's offer, Ondossagon teachers must work more days than any other district due to the 190 days that are scheduled and the lack of any forgiven snow days. Even with the Union's offer, the Ondossagon teachers will have to work more days than any other district when there are snow days within the geographical area.

Employer Position. The Union proposal would result in the teachers receiving an extra day of pay without working every year when a snow day occurs. Due to the District's geographic location, one can assume that the teachers would receive this extra day's pay for no work every year.

The burden of proof to justify a drastic change in an existing contract provision is on the party proposing the change. The Union has not presented "persuasive reasons" for the change. The Employer quotes various arbitrators who have held that a fundamental change in the bargaining relationship should be negotiated voluntarily and not imposed by an arbitrator (Employer Brief, pp. 53-55). In a 1982 case involving the same issue, Arbitrator Rice upheld the Employer position holding that the Union had not shown that making up the snow days had placed any unusual burden on the teachers even though in that case also other schools in the conference did not make up snow days (Employer Brief, p. 55).

In its Reply Brief, the Employer states that while the Ondossagon contract identifies 190 days, three of those days are holidays. Addendum G of the existing contract indicates that Labor Day, Thanksgiving, and Memorial Day are included in the 190-day contract. Teachers are not required to report on those days. Therefore, Ondossagon teachers work 187 days, the same as the average number of days worked by other Bayfield County Districts and one day more than the average for the entire conference (Union Brief, p. 21).

The Union is requesting additional time off without offering the District anything in return.

Arbitrator's Comment and Conclusion. I do not know whether the work days cited by the Union for the other districts also include paid holidays as in Ondossagon. In any event, I do not feel that the Union has presented persuasive reasons to change the status quo. I agree with the Employer that such a new provision should be negotiated rather than imposed by an arbitrator unless there are exceptional circumstances involved. I find the Employer's position on this issue to be more reasonable.

HEALTH AND DENTAL INSURANCE

The present contract requires the Board of Education to provide full payment of the health and dental insurance premiums for full-time and part-time employees. The Employer has proposed to prorate its contribution of these benefits for future part-time employees as follows:

- A. Employees working less than 20 hours per week will not be eligible for these benefits.
- B. Employees working more than 20 hours per week but less than 30 hours will receive a prorated share of these benefits.
- C. Employees working over 30 hours per week will have the full premium paid by the Board.

The Union has proposed no change in the existing language.

Employer Position. The Board has structured its offer so that no part-time employee in the District in 1981-82 will lose any benefit they currently enjoy. The Employer maintains that in view of the already heavily-taxed populace, a more reasonable approach to health and dental care is fiscally responsible.

Health and dental care costs have skyrocketed to an unprecedented degree. Since 1978-79, the single health plan insurance premium has increased by 83.6% and the family health plan has increased by 78.9%. Since 1978-79, the single dental premium provided by the Board has increased by 80.4% and the family premium by 79.5%. During the same period, the Consumer Price Index rose by 49.5%, significantly less than the dental and health insurance premium costs (Employer Brief, p. 36). In spite of this the District has never asked its employees to share the premium costs. But the Board maintains that the costs must in some measure be contained.

Some employers in the face of these ever-rising costs have required employees to pay a portion of the premium, or redesigned the health care plan, or increased the deductible. The District is proposing a more reasonable approach by pro-rating the benefits for new part-time teachers.

Among the ten athletic conference schools Ondossagon is among the top third in the size of the dental and health insurance premiums paid (Employer Exhibit 81 and Union letter of 4-11-83 noting corrections).

Several schools in the conference do not provide full benefits to part-time teachers (Glidden, Solon Springs, South Shore; Employer Exhibit 85, Union Brief, p. 23).

The Ondossagon Board of Education and the bargaining representatives for the non-certified teaching employees have voluntarily agreed to change the insurance provision so that individuals working less than 20 hours per week would no longer receive insurance coverage. Arbitrators have given weight to such action as a precedent to extend a new provision to other local bargaining units.

Union Position. The Union made several corrections in the Employer's health insurance data. It pointed out that three of the four Bayfield County Districts pay the same premiums for single or family plans. It should be noted that several other districts have long-term disability insurance, group life insurance, and vision insurance which Ondossagon does not have.

In health and dental insurance, five out of nine districts treat part-time teachers the same as full-time teachers (Union Reply Brief, p. 23).

The Union Brief points out that the Employer's proposed language on this issue is unclear. For example, does lunch hour duty count toward 20 regular hours per week? What happens when a week does not have 5 scheduled work days (Thanksgiving week)? Does the employee have insurance paid for spring break and Christmas holidays? What about summer breaks? How do extra-curricular activities count toward the required 20 hours? Why was 38 hours selected as a work week?

The Union points out that three of the districts that treat part-time teachers differently than full-time have developed appropriate language (Union Brief, p. 27).

Since the Employer has not spent enough time to develop a workable proposal on this issue, the Union cannot take the offer seriously. The Employer has not even bothered to show how this proposal would go into effect or what cost savings there may or may not be.

Arbitrator's Comments. The Union is correct in pointing out that the Employer's language on this proposal is unclear. In its Reply Brief, the Employer states that the questions regarding lunch hours, different hours at different schools, and prep time are minor questions which could be resolved by the parties when new employees are hired. These factors would not reduce a full-time teacher below the cut-off point. Reporting and dismissal times are set forth in the contract. Lunch periods and in-school preparation time are included but not extra-curricular assignments. Therefore, all of the points raised by the Union are explained by the contract or could be clarified before any actual problem occurs.

Conclusion. The Arbitrator concludes that in principle, the Employer's health and dental insurance proposal is more reasonable than the status quo. The principle has been established locally for the non-teaching employees of the District and a number of schools in the conference have established such a clause. It is a reasonable approach to the problem of rising health care insurance premium costs.

As the Union points out and the Employer at least partially concedes, there may be some problems in applying the Employer's clause. If the Employer's Final Offer is selected in this case, the parties will need to negotiate concerning the language and its application and also concerning its implementation for 1982-83. How will this year's part-time teachers be affected and when?

SUMMER PAY PERIODS

The Union is proposing that teachers receive all of their summer paychecks at the end of the school year. The Employer is proposing to maintain the present contract language which states: "Teachers will be paid on the 10th and 25th day of each month on a twelve-month basis."

Union Position. The Union proposal is as follows: "On the last teacher work day of the year, teachers will receive their summer checks in the same manner they were issued during the 1981-82 year."

Prior to this year, on the last work day of the school year, teachers received their summer checks (Union Exhibit 44). Last fall, the Employer informed the employees that the summer payroll checks will not be given to the teachers on the last work day but will be distributed throughout the summer.

Eight of the remaining nine Indianhead Conference Districts have contract language that provides their teachers with the opportunity to have their full year's salary paid up when the summer recess starts (Union Exhibit 45). The Union is not proposing a change in the past practice nor a benefit that is different from the vast majority of comparable school districts.

Under the Employer proposal, teachers will not be paid in full for work completed on June 3, 1983 until August 25, 1983. This is 81 days after the teachers have completed all of their contractual work. It seems unlikely that the Arbitrator can think of very many situations where employees wait such a long period for the payment of services provided.

The non-payment of summer checks presents three types of problems for some employees. Employees who have fallen behind in their budgets due to payment of income and property taxes need this money they have earned. Employees who desire to purchase items such as a car or summer trips can use the money instead of borrowing (and paying interest) or cashing in bonds and treasury bills with a penalty loss. There are also teachers who are not in the geographical area during the summer and are not able to receive the two checks monthly that are needed for their summer expenses.

Under the Employer proposal, the Employer gains interest on monies that the employees have already earned and the employees forfeit the opportunity to collect interest on past earnings.

Employer Position. The Employer contends that in proposed language changes, the burden is on the Union to show sufficient cause and it has not done so. Comparing one district's practices with other districts is insufficient cause for a change that should be negotiated. While the District did issue summer paychecks at the end of the school year during 1981-82 and 1980-81, this is not sufficient cause for a change. Past practice is not a basis for arbitration decisions according to Section 111.70(14)(cm)7.

Union Exhibit 44 clearly shows that the District Administrator and the School Board had not agreed to the practice, did not know of the practice prior to the spring of 1982 and had not accepted such practice as a modification of the clear and unambiguous contract language.

The Association's proposal would also add to the District's economic problems. Payment of three months' salary at the end of June would create a cash-flow problem for the District. The School District is on a July 1-June 20 fiscal year. The Union's proposal would force the District to pay two months of next year's salary out of this year's budget. This prepayment would come at the very end of the fiscal year when reserves are at their lowest and it would also be prior to the July 31 collection date for deferred taxes.

In its Reply Brief the Employer states that there is no evidence concerning how the negotiated language was agreed upon. Certainly some trade-offs occurred. If the Union wishes to obtain the benefits enjoyed by other districts, they should be willing to pay for those benefits through the negotiations process.

The Union has identified possible problems under the present contractual payment schedule but has failed to identify one specific case.

Arbitrator's Comments. As a former public school teacher, it was my understanding that the plan to allow teachers to receive their nine months' earnings over a twelve-month period was intended to help the teacher and his family budget income and expenditures over the calendar year. I elected the plan and it was helpful.

In recent years, as the Union indicates, most area districts have provided contract language allowing their teachers the opportunity to have their full salary paid up at the start of the summer recess. When I elected the 12-month pay plan in the 1940's, interest on savings accounts was 3% and no interest was paid on checking accounts. Times have changed and it is certainly understandable that most area districts allow their teachers to get the last of their school-year salary early in the summer. Someone in the Ondossagon District apparently recognized the validity of the teacher's needs and in 1981 and 1982 allowed the teachers to draw their earnings before the summer recess.

The Employer's case is not without some merit. The Employer is following the contract language. Teachers were notified early last September that the District would follow the payroll procedure outlined in the contract. I also agree that a change in this part of the contract should be bargained between the parties. The parties should look at the language used by other districts to determine what might meet the needs of the Employer and Union in this case.

It is not clear whether the Employer will have a serious cash-flow problem this summer. The Employer states that to be the case but according to his financial statement filed with the DPI, there may be over \$250,000 on hand July 1, 1983.

The Arbitrator finds the Union position on this issue to be more reasonable but recognizes that implementation in the summer of 1983 could be difficult for the Employer if the Union Final Offer were accepted.

SCHOOL PSYCHOLOGIST

The Union's offer states: "The salary for the school psychologist, who was employed during the 1981-82 year, shall be \$18,250 for 1982-83. The number of work days for the school psychologist shall exceed the teacher work year by ten days. Should there be a change in who is the school psychologist, the OEA and the District shall bargain a different salary."

The Employer has proposed no special language or special salary rate for the position of school psychologist. The District has issued an individual contract to the current school psychologist for the 1982-83 year (Employer Exhibit 92, dated May 18, 1982).

Union Position. On June 17, 1982, the Wisconsin Employment Relations Commission determined that the position of school psychologist is in the bargaining unit (Union Exhibit 41).

Since the collective bargaining agreement applies to the current school psychologist, he should be placed in the MA lane, number one step of the salary schedule when there is no special wage rate for the school psychologist.

Since the District has not proposed a special wage rate for the position, the District's Final Offer means a salary of \$14,387.32 for Mr. Van Dyk. Mr. Van Dyk signed an individual contract offered by the District last May of \$18,270. Should the Arbitrator select the Employer's offer, Mr. Van Dyk would have to reimburse the District \$3,882.68 that he was overpaid for the 1982-83 school year. The Employer cannot pay the school psychologist more than the agreement provides for in the same manner that other salaries are limited by the agreement.

If the Employer's offer is selected, the Union, an employee, or a group of employees who do not feel that the school psychologist should be paid \$3,883 more than a teacher could file a grievance which would have to be sustained by an arbitrator. This is a critical flaw in the Employer's offer.

The Union's offer provides Mr. Van Dyk with a salary that is within \$20 of what the District offered Mr. Van Dyk as an individual. The Union's offer provides Mr. Van Dyk with a length of work year that is ten days longer than a regular bargaining unit member. The Employer's offer provides Mr. Van Dyk with a 190-day work year just like all other bargaining unit members. Again, the Employer's last offer differs from what it offered Mr. Van Dyk in his individual contract (200 days).

The Union's offer provides Mr. Van Dyk with a mileage reimbursement of the same rate (Joint Exhibit 1, Article IV-4) as other bargaining unit members which is different from the mileage reimbursement rate found in Mr. Van Dyk's individual contract (Employer Ex. 92). If the Arbitrator selects the Employer's offer, employees could bring a grievance concerning mileage reimbursement.

Employer Position. The Employer in its Brief assumed that the issue had been resolved and that "the parties are in complete agreement on this issue" (Employer Brief, p. 51). The Employer noted that the Union wage offer for the psychologist position and the Board's contract with him were nearly identical. This was also true of the length of the school year. The Employer also noted that future negotiations for the psychologist salary would be with the Union, not the individual.

In its Reply Brief, the Employer was then aware of the Union arguments cited above. The Employer notes that it entered into a legal contract with Mr. Van Dyk prior to the WERC decision. To deviate from that contract would leave the District susceptible to civil suit.

The District is bound by its contract with the School Psychologist and since the terms of that contract are similar to the Association's final offer, the Arbitrator's decision in this case will have no impact on the 1982-83 wages, hours, or conditions of employment for the School Psychologist.

Arbitrator's Comments. This is an issue which should have been resolved in negotiations or in mediation. The parties are in substantial agreement concerning the psychologist's 1982-83 salary and weeks of employment. I conclude this based on the Employer's contract with the psychologist and the Union's final offer.

It may be that the Employer was in error in not including a specific proposed salary and employment terms in its Final Offer. I presume the Employer thought its contract with the psychologist defined its position and there was no real issue since the Union came up with a similar salary proposal.

I do not know whether the Union's position is correct. Did the WERC decision invalidate the Employer's contract with the psychologist? This may need to be determined by a court or an arbitrator if the parties do not voluntarily resolve the matter. I would urge that they do so since the intent of both parties as to salary and terms are so similar. I do not think that the Union really wants the psychologist to be paid \$4,000 less than his individual contract with the Board. I doubt that either party wants this issue to result in grievance arbitrations. I again urge that the parties reach a voluntary agreement to avoid litigation on this issue.

GENERAL CONCLUSIONS

As indicated in my review, the unsettled issue can be divided into about nine categories. The Union states that the non-teaching salary schedule issues in their totality are the most critical issues in dispute (Union Brief, p. 1). The Employer did not prioritize the issues but seems to have given a major emphasis to the salary schedule matter but with other issues such as snow days, transfer rights, insurance and summer paychecks receiving significant attention.

About the only minor issue, based on the emphasis given by the parties, seems to be the increased monthly stipend for early retirement.

On an issue-by-issue basis, the Arbitrator, as indicated in the material above, found the Union salary schedule offer to be a little more reasonable than that of the Employer. He also found the Union position to be more reasonable on the issues of summer paychecks and the inequity adjustment for band and vocal music. On the other issues--transfer rights, health and dental insurance for part-time teachers, snow days, extra-curricular pay and meetings, and early retirement, he found the Employer position to be more reasonable. I do not find a significant difference between what the parties think the psychologist should be paid for 1982-83.

I have selected the Employer's Final Offer because it seems to be more reasonable on the majority of the issues. The Union, I feel, did not give adequate consideration to the interests of the public and the District's financial situation. While the District's finances do not seem to be as bad as the Employer pictured them, there are serious financial difficulties at least in the short run as shown by the School District's meetings, the Board's budget actions, and the physical plant needs. The Union's demands concerning extra-curricular pay, early retirement, health and dental insurance, and snow days did not give adequate consideration to the public's interests and concerns.

On the major non-economic issue, transfer rights, I could not support the Union position to make transfers almost completely automatic. While the Union has proper concerns in this area, I do not feel that an arbitrator should so drastically limit management rights when other solutions to the issue may be developed through negotiations or policy changes.

Some of these 1982-83 issues, I am sure, will be part of the 1983-84 bargaining and I hope that my review and analysis may be of some value in helping the parties reach an early voluntary settlement.

AWARD

The Final Offer of the Ondossagon School District, along with the stipulations and modifications previously agreed to by the parties, shall be incorporated into the 1982-83 contract between the Ondossagon Board of Education and the Ondossagon Education Association.

Gordon Haferbecker
Gordon Haferbecker, Arbitrator

May 25, 1983