ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between WHITEWATER UNIFIED SCHOOL DISTRICT And WHITEWATER EDUCATION ASSOCIATION	Case XVIII No. 29805 MED/ARB-1692 Decision No. 20760-A

Impartial Mediator-Arbitrator

William W. Petrie
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Hearing Held

November 12, 1983
Whitewater, Wisconsin

Appearances

For the District

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For the Association

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BACKGROUND OF THE CASE

This is a statutory mediation-arbitration proceeding between the Whitewater School District and the Whitewater Education Association, with the matters in dispute, certain aspects of a renewal labor agreement covering the 1982-1983 and the 1983-1984 school years.

After preliminary negotiations between the parties had failed to result in a negotiated settlement, the Association on May 25, 1982 filed a petition with the Wisconsin Employment Relations Commission requesting statutory mediation-arbitration of the matter. Following the completion of a preliminary investigation, the Commission on June 22, 1983 issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring mediation-arbitration. On July 6, 1983, the Commission issued an order appointing the undersigned to mediate and/or to hear and decide the matter pursuant to the Wisconsin Statutes.

Mediation of the dispute began at 10:00 AM on November 12, 1983 and continued until the Arbitrator determined that a reasonable period of mediation had taken place, and that it was appropriate to move to arbitration. The arbitration hearing began at 1:30 PM on the same date, at which time the Association modified its final offer to conform with certain aspects of the District's final offer, which modification was agreed to by the District. Both parties received a full opportunity at the hearing to present evidence and argument in support of their respective positions, and both elected to close with the submission of post-hearing briefs. Following the receipt of the parties' briefs, the record was closed by the Arbitrator effective December 19, 1983.

THE FINAL OFFERS OF THE PARTIES

In their original certified final offers, each party proposed a basic salary schedule for the 1982-1983 and the 1983-1984 school years, along with an additive schedule for each of the two years. As referenced above, the parties mutually agreed that the Association could modify its final offer by accepting the District's proposed basic salary schedule and its proposed additive schedule for each of the two school years in the renewal agreement.

Except as modified above, the Association proposed the following changes in the renewal agreement:

(1) That the reduction in staff provisions of the prior agreement be modified to provide as follows:

"L. Reduction in Staff

* * *

3.a. Prior to implementing any layoff(s), the District shall notify the Association in writing of the position(s) which it is considering for reduction. Thereafter, upon Association request, the District shall meet with the Association to bargain concerning the impact of any staff reduction(s).

b. Layoffs of teachers shall be implemented in accordance with a time frame consistent with the provisions of Section 118.22, Stats. The District shall give written notice to the teachers it has

selected for layoff for the ensuing school year on or before March 15 of the school year during which the teacher holds a contract. The layoff of each teacher shall commence on the date that he or she completes the teaching contract for the current school year.

c. The District shall simultaneously provide the Association with copies of all layoff notices which it sends to employes pursuant to this section."

(2) That the conditions of employment provisions of the prior agreement be modified to provide as follows:

"B. Teaching Workload.

1. The District shall determine the number and type of work assignments (within a teacher's area(s) of certification) which teachers shall perform during the regular teacher workday. The District shall establish the amount of student-contact time (e.g., classroom instruction, study halls and student supervisory periods) and preparation time within the regular teacher workday to which a teacher is assigned.

2. Preparation Time.

(a) Elementary school teachers to whom the District does not provide three and one-half (3½)hours of preparation time per week during the student school day shall receive compensation, in addition to their scheduled salaries, at 60% of the teacher's regular hourly rate of pay for each such hour less than three and one-half (3½) per week provided by the District. Junior high school teachers to whom the District does not provide seven (7) preparation periods per week during the student school day shall receive compensation, in addition to their schedules salaries, at 60% of the teacher's regular hourly rate of pay for each such preparation period less than seven (7) per week provided by the District. Senior high school teachers to whom the District does not provide ten (10) preparation periods per week during the student school day shall receive compensation, in addition to their scheduled salaries, at 60% of the teacher's regular hourly rate of pay for each such preparation period less than ten (10) per week provided by the District.

(b) As used herein, preparation time provided by the District shall not include any unassigned time after the regular teacher workday begins but before the student school day begins, or after the student school day ends but before the regular teacher workday ends.

(c) As used in this Article, a teacher's regular hourly rate of pay shall be determined by dividing the teacher's yearly salary by the product of 187 (contract days per year) x 8 (hours per workday).

3. Junior High School.

(a) Junior high school teachers who are assigned no more than fifteen (15) periods of classroom instruction and three (3) periods of student supervision (e.g. study hall) per four-day cycle per semester shall be compensated in accordance with the provisions of the Salary Schedule, unless otherwise provided in this Agreement.

(b) The District may assign work to junior high school teachers in addition to the basic assigned workload described above in paragraph (a). Teachers whose workloads exceed those compensated by the Salary Schedule, as provided above in paragraph (a), shall be compensated, in addition to their scheduled salaries, as follows: A teacher to whom the District chooses to assign more than fifteen (15) periods of classroom instruction per four-day cycle per semester shall receive additional compensation at 60% of the teacher's regular hourly rate of pay for each additional period of assigned classroom instruction in excess of fifteen (15) per four-day cycle.

4. Senior High School.

(a) Senior high school teachers who are assigned no more than five (5) periods of classroom instruction and one (1) period of student supervision (e.g., study hall, laboratory, or other supervision) per workday, averaged on a semester basis, shall be compensated in accordance with the provisions of the Salary Schedule, unless other provided in this Agreement.

(b) The District may assign work to senior high school teachers in addition to the basic assigned workload described above in paragraph (a). Teachers whose workloads exceed those compensated by the Salary Schedule, as provided above in paragraph (a), shall be compensated, in addition to their scheduled salaries, as follows: A teacher to whom the District chooses to assign more than five (5) periods of classroom instruction per workday, averaged on a semester basis, shall receive additional compensation at 60% of the teacher's regular hourly rate of pay for each additional period of assigned classroom instruction in excess of five (5) per workday.

5. For teachers with less than full-time contracts with the District, the amounts of preparation time and the workloads described above in sub-sections 2, 3 and 4, and the additional compensation provided for in paragraphs 2 (a), 3 (b) and 4 (b), shall be pro-rated according to the percentage of a full-time contract held by such teachers.

6. Any additional compensation earned by a teacher under this Article shall be separately itemized and paid monthly by the District.

C. Class Size.

1. The parties recognize that the number of students assigned to a class is a matter of basic educational policy and that the District may assign any number of students it so desires to a teacher's class. The parties also recognize that teaching and learning conditions are directly affected by class size and that the size of the class affects the conditions of employment and workload of teachers.

2. (a) Elementary school teachers who are assigned twenty-five (25) or fewer students per workday, averaged on a semester basis, shall receive wage compensation in accordance with the provisions of the Salary Schedule.

(b) Teachers at the junior and senior high school levels who are assigned twenty-five (25) or fewer students per class in academic subjects, excluding band and choir, and with the exception of English, Industrial Arts, Home Economics and Science classes, shall receive wage compensation in accordance with the provisions of the Salary Schedule. Teachers assigned to English, Industrial Arts, Home Economics and Science classes at the junior and senior high school levels, who are assigned twenty (20) or fewer students per class, shall receive wage compensation in accordance with the provisions of the Salary Schedule.

3. (a) In the event the District chooses to assign more than twenty-five (25) students per teacher per workday at the elementary school level, the teachers so affected shall receive, as work overload compensation in addition to their scheduled salaries, additional compensation at the rate of one percent (1%) of their base salary per student in excess of twenty-five (25) per semester.

(b) In the event the District chooses to assign more than twenty-five (25) per class at the junior and senior high school levels (excluding band and choir and with the exception of English, Industrial Arts, Home Economics and Science classes), the teachers so affected shall receive, as work overload compensation in addition to their scheduled salaries, additional compensation in accordance with the following formula:

$$\frac{\text{Number of Students in Excess of 25}}{25} \times \text{Teacher's Regular Hourly Rate of Pay} \times \text{Number of Periods (Classes) of Class Overload}$$

Junior and senior high school teachers assigned to English, Industrial Arts, Home Economics and Science classes, who are assigned more than twenty (20) students per teacher in such classes, shall receive work overload compensation in addition to their scheduled salaries in accordance with the above formula, substituting the number 20 for the number 25 in said formula.

(c) For elementary school teachers with less than full-time contracts with the District, the class size workload described above in paragraph 2(a), and the additional compensation provided for in paragraph 3(a), shall be prorated according to the percentage of a full-time contract held by such teachers.

4. Where class size overloads occur as the result of exceptional circumstances (e.g., flexible scheduling, team teaching, experimental programs, etc.), the work overload compensation provisions of subsection 3, above, shall not apply; provided, that the Association has been advised of the situation by the District and agrees to waive the work overload compensation provisions.

5.(a)During the first ten (10) school days of each school year/semester, class size overloads will be allowed without additional compensation to the teacher, while administrative schedule changes are being attempted.

(b) If class size overloads persist beyond the first ten (10) school days, the teacher shall receive additional

compensation from the first day of the overload, including those days occurring within the first ten (10) days of the school year/semester, in accordance with the provisions of subsection 3, above.

6. Study Halls. In the event that only one teacher is assigned to a study hall at the junior high school level to which more than fifty (50) students are assigned, that teacher shall receive compensation in addition to the teacher's scheduled salary at the rate of one-half (½) times the teacher's regular hourly rate of pay for each such study hall period. In the event that only one teacher is assigned to a study hall at the senior high school level to which more than seventy-five (75) students are assigned, that teacher shall receive compensation in addition to the teacher's scheduled salary at the rate of one-half (½) times the teacher's regular hourly rate of pay for each study hall period."

The District proposed the following changes in the renewal labor agreement.

(1) Certain increases in the 1982-1983 and in the 1983-1984 salary schedules and additive schedules. These elements of the District's proposal were agreed to by the Association in its agreed upon modification of its original final offer.

(2) That Article II, entitled Teacher Employment Policies be modified to provide as follows:

"Section L, Reduction in Staff

* * * * *

3. In the teacher's notice of layoff, the Board shall explain the reason for layoff and clarify the teacher's re-employment rights. A staff member being considered for a layoff shall be notified by June 1."

(3) That Article III, entitled Condition of Employment, be modified to provide as follows:

"c. Teacher Load

1. Junior High School

The teacher load shall consist of eighteen (18) class or supervision assignments in a four-day cycle per semester. The eighteen (18) assignments generally will consist of fifteen (15) class assignments and three supervisions. The total number of students in the eighteen (18) assignments shall not exceed 150 students (excluding study hall, band and choir) with the exception of English, Industrial Arts, Home Economics and Science, which will be limited to 120 students. Efforts will be made to have study halls of large numbers supervised by more than one staff member. Any assignment in addition to the above eighteen (18) assignments shall be compensated at the rate of $650.00 per semester. No teacher shall be required to take a nineteenth (19th) assignment unless the individual teacher agrees to do so.

2. Senior High School

The normal teacher load shall consist of six (6) class or supervision assignments per day. The six (6) assignments generally will consist of five (5) classes and one study hall, or laboratory supervision or other supervision per day. The total number of students in the six (6) assignments shall not exceed 150 (excluding study hall, band and choir) with the exception of English, Industrial Arts, Home Economics and Science, which will be limited to 125 students. Teachers who take a semester assignment beyond the normal six (6) assignments will be compensated at the rate of $650.00 per semester. No teacher shall be required to teach a seventh (7th) assignment unless the individual teacher agrees to do so."

THE STATUTORY CRITERIA

The merits of the dispute are governed by the Wisconsin Statutes, which in Section 111.70(4)(cm)(7) direct the Mediator-Arbitrator to give weight to the following criteria:

"a) The lawful authority of the municipal employer.
b) The 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) Comparisons 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 of 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, holiday and excused time, insurance and pensions, medical and hospitalization benefits, and 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, or arbitration or otherwise between the parties in the public service or in private employment."

POSITION OF THE DISTRICT

In support of its contention that the final offer of the District was the more appropriate of the two before the Arbitrator, the District emphasized the following principal arguments.

(1) That the proposal of the Board would make only minimal adjustments to the prior agreement, while the Association is proposing substantial modifications in the prior agreement.

(a) At the Junior High level that the Board proposal would merely provide for a total of eighteen classes or supervisory assignments with a normal limit of 125 students per day. That this proposal differs only slightly from the old agreement, which provided for fifteen classes plus three supervisory assignments.

(b) At the High School level that the Board proposal would merely substitute a six classes maximum for one which previously provided for five classes and one supervisory assignment. That the daily student limit has been modified solely to provide for the sixth class period.

(c) That the Association proposes to add several pages to the current agreement by describing methods of compensating teachers for variations in the load, and by providing for specific class sizes with compensation provisions for exceeding the limits. That the Board is satisfied to continue as the parties have done in the past, and that the Association has failed to meet its burden of justifying the proposed substantial changes in prior practices and procedures.

(2) That Whitewater teachers already have smaller classes than do teachers in comparable school districts. Despite the fact that certain past classes have exceeded the contractual limitations due to scheduling difficulties or special circumstances, that the overall pupil/teacher ratios have not exceeded 15.6 to 1 in recent years.

(3) That the teaching load within the Whitewater District is less than that in comparable districts, and that adoption of the District's final offer would make the Whitewater teaching load equivalent to that in other Districts.

(a) That a teaching load actually consists of both the number of teaching periods and the length of such periods.

(b) Despite variations in the number of teaching periods per day, that the majority of comparable districts provide for 260 to 315 minutes of teaching per day, versus the existing 220 minutes per day of teaching in the Whitewater District.

(c) That the District is merely proposing the use of some current supervisory time as teaching time, which would alleviate some of the class size difficulties which have existed in the past.

(4) That some changes are necessary, based upon the existing class size overloads. That the District's proposal would allow the necessary flexibility to deal with some of the larger classes through the creation of additional classes.

(5) That the proposal of the Association is both complex and unworkable, and that this was clear from the testimony of both Association and District witnesses at the hearing. That the Association did not adequately

deal with such factors as classes assigned to specialists in music, art and physical education, with special education students assigned to classes on a part time basis, with classes which do not meet daily, and with changes in class enrollment due to such factors as suspensions, expulsions, drop-outs, etc. That utilization of the contract grievance procedure is an inadequate method of addressing matters not adequately treated in the Association's proposal.

(6) That the District's proposed change from March 1 to June 1 in layoff notice is not a significant one, and that it actually would benefit both parties.

(a) That under the existing agreement, the Board must notify teachers in advance of full completion of planning and scheduling for the next school year, which results in layoff notifications to extra teachers to insure compliance with the March 1 date.

(b) That the Board's proposal is fair and equitable to both parties, and is justified by practices among comparable school districts.

POSITION OF THE ASSOCIATION

In support of its contention that the final offer of the Association was the more appropriate of the two offers before the Arbitrator, the Association emphasized considerations relating to three of the statutory criteria: the stipulations of the parties, comparisons with other municipal employers, and certain other factors normally taken into consideration in the determination of wages, hours and terms or conditions of employment. Within the frame of reference of these criteria, the Association emphasized the following arguments.

(1) That the Association's comparables are the most appropriate basis for statutory comparison purposes. In this connection, it submitted comparisons with other Southern Lakes Athletic Conference schools, and with thirteen other schools located within a twenty-five mile radius, which schools have a student population range similar to that within the athletic conference.

(a) That districts which are comparable based upon geographic proximity, size, and economic resources are the most appropriate for comparison purposes.

(b) That the District rationalized its comparisons as based upon similar enrollment sizes and geographical contiguity grounds, but that it was not consistent in these respects.

(2) That the bargaining history and the historical relationship between the parties favor the adoption of the Association's final offer, because it more closely reflects the prior status quo than does the District's offer.

(a) That the District had thrown a "monkey wrench" into the works during the investigation of the matter by representatives of the WERC, by

filing a petition for declaratory relief over several alleged permissive areas of bargaining.

(b) That those items currently before the Arbitrator dealing with preparation time, teaching load, class size and notice of layoff were the subject of the declaratory relief petition. That in rewriting proposals in these areas in such a way as to fall within the mandatory bargaining area, the Association merely sought to preserve the status quo.

(c) That Association proposals in the above areas were not designed to escalate demands beyond what had appeared in prior agreements, but rather were intended to preserve the essence of prior contract provisions which, in some cases, had been in the labor agreement for over ten years; that the Association was not seeking to increase costs to the District, but was merely attempting to hold on to provisions which were of significant importance to its membership.

(d) Contrary to expectations, that the District had re-proposed much of the permissive contract language for inclusion in the renewal agreement, but that it also proposed increasing the class size limits and the number of classes which could be assigned to junior and senior high school teachers. Further, that the thrust of the District's position at the hearing was an attempt to discredit the Association's proposal, rather than independently addressing the merits of its own proposal.

(e) That the District has failed to meet the high burden of persuasion normally required of a party which is proposing the innovative plowing of new ground. That the Arbitrator must avoid giving the District that which they did not even bring to the bargaining table.

(3) That the Association's final offer is representative of the Industry Practice.

(a) That the absence of direct comparables has less significance than normal, when the situation is due to an Employer's successful challenge of prior language on the basis of it constituting a permissive item of bargaining.

(b) That the Association's proposals dealing with preparation time, teacher overload and class size were affected by the Employer's petition for declaratory relief, but that the new proposals are conceptually supported by a large number of comparable schools.

(c) That the Association's Teacher Load proposal is supported by comparisons with eight of fourteen comparable schools within a twenty-five mile radius, and with nine of the twelve schools within the Athletic Conference.

(d) That the preparation time proposal of the Association is supported by comparisons with ten of fourteen comparable schools within a twenty-five mile radius, and/or with eight of twelve schools in the Athletic Conference.

(e) That the class size proposal of the Association is comparable with ten of fourteen schools within a twenty-five mile radius and with seven of twelve schools within the Athletic Conference.

(f) That in considering the notice of layoff date proposal of the District, seven of fourteen schools within a twenty-five mile radius have such a date, and six of the seven have notification dates earlier than that proposed by the District. That within the Athletic Conference, eight of twelve schools have a notification date, and five of the eight schools provide for notification dates prior to that proposed by the District.

By way of summary and conclusion, the District submitted that the case before the Arbitrator appears to be more complex than is actually the case. In reality, it argues, the Arbitrator is not being asked to plow new ground, but rather is faced with choosing between the modifications suggested by the two parties; it urges that the Association has proposed new language in an attempt to maintain the status quo, while the Board has proposed contract language similar to that utilized in the past, but has also sought to seriously reduce the benefits to employees under the language.

FINDINGS AND CONCLUSIONS

During the process of their prior negotiations, the parties reached substantial preliminary agreement with respect to the terms of the renewal agreement. At a point in the process, however, declaratory relief was sought by the District in connection with the mandatory or permissive status of certain items which had been included in the parties' prior labor agreement, and which had been preliminarily agreed upon for inclusion in the 1982-1984 renewal agreement. The declaratory relief request affected the negotiations/mediation-arbitration processes in a number of ways.

(1) There was a significant slowdown in the timetable for the completion of the process. In this connection, it should be noted that the Arbitrator is writing a decision in March of 1984 relative to a two year renewal agreement covering the 1982-1983 and the 1983-1984 school years.

(2) Each of the parties in their final offers, proposed changes in language and in substance, beyond those originally contemplated by either party, and probably beyond the reasonable range of expectations of either party.

As a result of the above, and despite the highly professional presentations of the parties, the final offer process in the case at hand has assumed a more adversarial character than would otherwise have been the case. Stated another way, the process has assumed some of the attributes of a contest with a winner and a loser, rather than serving as a continuation of the negotiations process between the parties.

In addressing the specific areas of dispute before the Arbitrator for resolution, it should be noted that the parties are apart in two basic areas. First of all, they differ with respect to the timetable for advance notification of the affected teachers and the Association, in connection with any proposed teacher layoffs; the Association is also proposing certain advance bargaining rights and obligations in connection with the impact of any such layoffs. Secondly, the parties are apart in relationship to certain aspects of teacher workload; specifically, they differ in connection with teacher preparation time, with the number of classroom teaching assignments which can be required of a teacher, with respect to normal class size, and with certain premium or penalty pay considerations in connection with exceeding the negotiated norms in the above connections. Each of the parties addressed a variety of arguments in support of their respective final offers, but they emphasized the following major considerations.

(1) The bargaining history of the parties, and the significance of the prior contractual status quo in each of the impasse areas.

(2) Comparisons in the various impasse areas, between the District and other comparable school districts.

(3) Certain considerations of fairness and equity as between the proposals of the parties.

Each of these areas falls well within either the specific or the general coverage of Section 111.70 (4)(cm)(7) of the Wisconsin Statutes.

The Bargaining History and the Prior Contractual Status Quo

The primary goal of an interest arbitrator is to operate as an extension of the collective negotiations process, and to attempt to select a settlement which puts the parties into the same position they would have reached had they been able to reach a voluntary settlement. This process is not always possible, and the achievement of the goal is sometimes made more difficult by virtue of the fact that the Wisconsin Mediator-Arbitrator is normally limited to the selection of the final offer of one of the parties in its entirety, even where neither of the offers conforms with the settlement which could have or should have been reached across the table. As argued by both parties and as generally recognized by interest neutrals, an interest arbitrator normally shuns innovation, and should avoid giving either of the parties something which they could not reasonably have hoped to achieve across the bargaining table during the negotiations process.

Interestingly enough, each of the parties to this proceeding sought to characterize the other party as the one seeking major change or innovation from the Arbitrator, and each argued that its final offer was more closely attuned to the reasonable range of mutual expectations of the parties, and closer to the prior status quo. Each characterized the other party as seeking major change in the arbitration process, despite their alleged inability to achieve such changes in direct negotiations.

(1) During the course of arguing its case, the Association particularly referenced the Employer's actions in

seeking declaratory relief relative to certain matters included in the prior agreement. It submitted that the extraordinary changes proposed by the Association were confined to areas directly affected by the declaratory relief request, and the necessity to modify language proposals to keep them within the mandatory bargaining area.

(2) The District did not comprehensively address the implications of the declaratory relief request, rather relying upon characterization of itself as the proponent of stability rather than the advocate of change.

Initially, the Arbitrator must recognize that the normal standards for evaluating the merits of innovative proposals for change do not strictly apply in any situation where one of the two parties has challenged pre-existing contract language and prior tentative agreements on the basis of a declaratory relief request. Voluntary bargaining on a non-mandatory item is not contrary to public policy, and any agreement reached on such an item is enforceable. When contract renewal negotiations on such an item is refused, it is both understandable and predictable that the party which is losing the benefit of prior contract language on a permissive item will seek accomodation in the form of alternative language proposals or offsetting benefits or concessions in another area. Indeed, it would also be difficult for the party who was successful in getting previous agreements set aside, to persuasively argue that the other party is the one seeking to comprehensively change the status quo.

In accordance with the above, the Impartial Arbitrator must consider any proposed changes by the parties in light of both the impact and the scope of the District's declaratory relief requests. Proposals addressed toward preserving elements of the prior contractual status quo in the face of District challenge, should not place the normal heavy burden of persuasion upon the Association as the proponent of such change; proposed innovative changes which go beyond the scope of necessary responses to the District's actions must, however, be persuasively justified.

In first applying the above considerations to the layoff notification and procedures it should be noted that the prior agreement provided for notification to the affected teacher by March 1 of the current contract year, and the parties initially agreed to a renewal of the prior contract language. Following the petition for declaratory relief, the District proposed renewal of the previous contract language with a substitution of June 1 for the previous March 1 notification date; the Association proposed a March 15 notification date, with certain additional notification requirements to the Association and with certain impact bargaining obligations to be undertaken upon request. While certain other changes in the new agreement have been proposed by the Association, the major consideration in this area remains the advance layoff notification date which must be met by the District. Despite the District's arguments relative to the practicality of a March 1 date, it cannot be disputed that it had agreed to this date both in prior contracts, and during preliminary negotiations on this renewal agreement. The Association's proposal for a March 15 notification date is much closer to the prior notification date than the June 1 date proposed by the District, and it also conforms with the permissive statutory notification date contained in Section 118.22 of the Wisconsin Statutes. The Impartial Arbitrator has

preliminarily concluded, therefore, that consideration of the parties' negotiations history and their prior contractual status quo favors the final offer of the Association concerning layoff notifications and procedures. Despite the additional language proposed by the Association, its position is clearly favored by virtue of the March 15 rather than the June 1 advance layoff notification date.

In next addressing the teacher workload question, the significance of bargaining history and prior status quo is not as clear, as both parties are proposing changes. The Employer is proposing to change the ground rules relative to the normal number and relationship between teaching and supervisory assignments, and is proposing an increase from $600.00 to $650.00 per semester, in the additional salary for teachers who take a semester assignment beyond the normal maximums. This increase was previously tentatively agreed upon by the parties.

The Association's major proposals in this area would include changes in preparation time, in the compensation schedule for those teachers who exceed the normal teaching load or who have classes or study halls with more students thanthe contractually described norms, and in elimination of the prior language dealing with the discretion of the individual teachers to teach or to supervise in excess of the normal maximum number of periods.

In the teaching load area it is clear that each of the parties is proposing changes beyond those which it would have been likely to receive across the bargaining table, and beyond those agreed upon in the past. While neither of the parties has met the normal burden of persuasion for such proposals, the final offer of the District is significantly closer to the status quo than that of the Association. The Association's preparation time and teaching load proposals are significantly more complex and comprehensive than those of the District, and go well beyond the level made necessary by the declaratory relief petition of the District; this is particularly apparent in the new and innovative proposals dealing with the determination of additional compensation. Consideration of the negotiations history and/or the prior contractual status quo, favor the adoption of the teacher work load proposals of the District, which are significantly closer to the prior agreement than those of the Association.

Consideration of the Comparison Criterion

Each of the parties addressed considerable attention and argument to comparison considerations in support of their respective positions; in this connection, each cited practices within the athletic conference, and each also referred to certain other comparisons. The comparison criterion was cited in connection with both the preparation time/teacher workload dispute, and in connection with the dispute relating to the layoff notification and related procedures.

Preliminarily, the Impartial Arbitrator will note that it is relatively difficult to compare contract language of the type and complexity in dispute in these proceedings. For obvious reasons, salary or fringe benefits disputes more readily lend themselves to comparison with comparable employers. While the Wisconsin Statutes provide for a normal March 15 notification date in connection with layoffs, the parties have the opportunity under the statute to negotiate other layoff notification procedures.

An examination of the layoff notification comparison data contained in Association Exhibits #13 and #14 indicates no universally used notification date, but it also indicates that the District proposed June 1 notification date is the latest of the specific dates provided for in the various collective agreements in the Athletic Conference and among those other schools submitted as comparable by the Association. Under the old agreement, the parties had agreed to the earliest of the specific notification dates specified in the same exhibits.

On the basis of the above, the Arbitrator has preliminarily concluded that consideration of the comparison criterion in connection with the layoff notification dispute, favors the selection of the final offer of the Association in this area.

The teacher workload comparison data presented by the District at the hearing and argued by it in its post-hearing brief, shows a relatively low number of students per teacher in the Whitewater District as compared to other Western or Eastern Division Southern Lakes Conference Schools; the Whitewater figures are only slightly above the average for such comparable districts as Brodhead, Edgerton, Evansville, Fort Atkinson, Palmyra-Eagle, Parkview and Turner. (Employer Exhibits #31 and #33) Additionally, while the bulk of Southern Lakes Conference schools have five daily teaching periods at the 10th grade level, all of the reporting schools have longer than the 44 minute periods provided for in the Whitewater District, and various provide for a permissive 6th period. The majority of the schools in the other comparable districts have more than five teaching periods per day at the 10th grade level, and all of the schools have longer than the 44 minute period provided for in the Whitewater District. (Employer Exhibits #39 and #41)

On the above basis, the Employer has substantiated the basis of its argument that Whitewater Teachers have fewer minutes of classroom pupil contact time than do their counterparts at other schools. Without regard to time considerations, the number of classroom periods proposed by the District is also reasonably competitive.

While the Association argued that its teacher workload and preparation time proposals were considerably favored by an examination of the comparables, this conclusion was not strongly supported by an examination of the data submitted by it at the hearing. While certain individual elements in the Association's proposals are supported by certain of the schools, no pattern emerges, either in examining schools within a twenty-five mile radius or through consideration of those schools in the Athletic conference. An examination of Association Exhibits #4 through #9 and the individual contract excerpts, for example, simply fails to support the broad and sweeping arguments of the Association.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that consideration of comparables favors the final offer of the District relative to the teacher workload and the preparation time disputes, while they favor the Association's final offer with respect to the preliminary notification procedures relating to anticipated layoffs.

Considerations of Fairness and Equity

In either rights or interest arbitration proceedings, arbitrators will strive where possible to select a position which

is fair and equitable, rather than one which would disadvantage either of the parties to the proceeding. Each of the parties argued that the other party's proposal was unreasonable or inequitable in certain particulars, and each submitted that equitable considerations favored the selection of its final offer.

Without unduly belaboring the record, the Impartial Arbitrator will merely indicate that neither of the parties has a priority on the equitable issues. Certain questions are raised relative to the delay and the uncertainty occasioned by the District's petition for declaratory relief, and in the resulting retreat from areas of prior preliminary agreement. Frankly, the District has failed to present a completely persuasive case for the proposed June 1 notification date in layoff situations, and some questions are also raised by its proposed changes in teacher workload. On the other hand, the Association's proposed changes in preparation time, and its far reaching and relatively complicated proposals in teacher workload and related penalty pay provisions, go far beyond the scope of the declaratory relief situation.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the equitable considerations advanced and argued by the parties do not significantly favor the position of either party.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized preliminary conclusions.

(1) The major arbitral criteria addressed by the parties in their presentations were the bargaining history of the parties, the prior contractual status quo, comparisons between the District and various other comparable school districts, and certain arguments relating to fairness and equity. All of these criteria fall within the scope of Sections 111.70 (4)(cm)(7)(a), (g) or (h) of the Wisconsin Statutes.

(2) The primary goal of an interest arbitrator is to operate as an extension of the negotiations process, and to attempt to select a settlement which puts the parties into the same position they would have reached had they been able to achieve a voluntary settlement.

The proponent of significant change in the interest arbitration process typically bears a rather heavy burden of persuasion, due to the normal reluctance of interest arbitrators to innovate and/or to plow new ground. Proposed changes directed toward the preservation of the prior status quo, in the face of petitions for declaratory relief, however, may not carry the same heavy burden of persuasion in all areas of proposed change.

(3) Consideration of the bargaining history and the prior contractual status quo favor the selection of the Association's proposal in the area of layoff notification and related procedures. The same arbitral criteria, however, favor the selection of the District's final offer in the teacher workload and preparation time areas.

(4) Consideration of the comparison criterion favors the selection of the Association's position relative to layoff notification and related procedures, but comparison considerations favor the selection of the District's final offer in the areas of teacher workload and preparation time.

(5) The arguments of the parties relating to considerations of fairness and equity do not significantly favor the selection of the final offer of either party. While the Employer has not presented a persuasive case in the area of the proposed change in layoff notification procedures, the Association has also failed to establish equitable grounds in support of its comprehensive and complex proposals for change in teacher workload and preparation time.

Selection of the Final Offer

After a careful consideration of all of the statutory criteria and the entire record before me, it is apparent to the Impartial Arbitrator that the final offer of the District is the more appropriate of the two final offers.

In reaching the above decision, it should be emphasized that final offer arbitration sometimes entails selection between two final offers, neither of which represents a settlement which the parties would have been likely to reach across the bargaining table. The parties were relatively close in terms of economics, even before the modification of the Association's final offer; the settlement which probably should have evolved out of these proceedings was the adoption of the prior contract language dealing with teacher workload, preparation time and layoff notification, which language had also been preliminarily agreed upon in initial contract renewal negotiations. It is unfortunate that a winner or a loser should evolve out of negotiations where the parties had previously gotten so close to a negotiated settlement.

AWARD

Based upon a careful consideration of all the evidence and argument, and all of the various arbitral criteria provided in Section 111.70 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Whitewater School District is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the District's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

March 7, 1984