WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR/MEDIATOR

In the Matter of the Petition of	:	
FOND DU LAC SCHOOL DISTRICT	:	
To Initiate Mediation-Arbitration Between Said Petitioner and	:	AWARD AND OPINION
FOND DU LAC EDUCATION ASSOCIATION	:	Decision No. 21869-A
	:	

Case No.	XXXII No. 3398 Med/Arb-2770
Appearances:	
For the School District	Isaksen, Lathrop, Esch, Hart & Clark, Attorneys at Law, by MR. GERALD C. KOPS
For the Association	MR. ARMIN BLAUFUSS, UniServ Director
Mediator/Arbitrator	MR. ROBERT J. MUELLER
Date of Award	April 3, 1985

BACKGROUND

The Fond du Lac School District, hereinafter referred to as the District, and the Fond du Lac Education Association, hereinafter referred to as the Union, reached an impasse in bargaining for a Collective Bargaining Agreement for the contract term of August 1, 1984 through July 31, 1985. The District filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate mediation/arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission staff conducted an investigation and determined that a deadlock existed. The parties thereafter selected the undersigned to serve as the mediator/arbitrator. Mediation was conducted on October 4, 1984. Mediation efforts failed to result in a voluntary resolution of the issues in dispute and the matter was set to be heard in arbitration with the arbitration hearing occurring on October 22, 1984. Both parties presented documentary evidence and oral testimony in support of their respective positions. Subsequent to the hearing, the parties filed post-hearing briefs which were exchanged through the mediator/arbitrator. Following exchange of said briefs, both parties filed reply briefs which were also exchanged through the mediator/arbitrator.

The mediator/arbitrator is required to consider the total record evidence and arguments of the parties that bear on each of the issues in dispute between the parties, evaluate the total final offer of each party against the record evidence and the factors specified under Section 111.70(4)(cm)7 of

the Wisconsin Statutes and to select the total final offer of one or the other as being the more reasonable under the application of the statutory factors.

FINAL OFFERS OF THE PARTIES

Joinder of the two final offers of the respective parties gives rise to six identifiable issues which the arbitrator would label for identification purposes only as follows:

(1) Article IV-Maintenance of Standards,

(2) Article IIIV - Grievance Procedure,

(3) Article IX - C - Salaries,

(4) Article IX - E 1. - Hospital, Medical and Medicare Insurance,

(5) Article IX - E 6. - Worker's Compensation, and

(6) Article IX - 11 - Teachers Attendance During Bad Weather and School Calendar.

(1) Maintenance of Standards

Union Offer: Maintenance provision of prior agreement is as follows:

"ARTICLE IV

"MAINTENANCE OF STANDARDS

"Nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from standards of employment existing prior to the effective date of this agreement that have a major impact on wages, hours and conditions of employment. Standards to be maintained are:

1. Those that have been in existence for a prolonged period of time, and

2. Those that uniformly apply to all teachers."

District Offer: Add the following:

"3. Those that are mandatory subjects of bargaining."

(2) Grievance Procedure

Union Offer:

"ARTICLE VII

"GRIEVANCE PROCEDURE

"C. Change 'A grievance may be filed by' to 'a grievant may be'

C,1. (New) 'Either party may consolidate grievances that involve similar claims and process such grievances commencing at Step Three of this procedures. Grievances involving more than one building may be initially filed at Step Three of this procedure if such grievances involve similar claims.'

E. Change 'Step 3' to 'Step 1.'

F. Change 'teacher' to 'grievant' and 'teacher's' to 'grievant's' in Step 1, 2, 3 and 4.

F. Step One change 'ten (10)' to 'fifteen (15)'

G. Change 'teacher' to 'grievant' and 'teacher's' to 'grievant's'"

The Union's offer is best understood by setting out those provisions of the existing grievance procedure and highlighting those words or phrases to be changed by the final offer by underlining. Those sections are as follows:

"C. A grievance may be filed by a teacher, a group of teachers, or the F.E.A. When any such grievance arises, the aggrieved employee shall continue to fullfillthe responsibilities pursuant to the employee's assignment,and such grievance shall bė submitted in the manner set forth herein."

"C 1. (New) Either party may consolidate grievances that involve similar claims and process such grievances commencing at Step Three of this procedure. Grievances involving more than one building may be initially filed at Step Three of this procedure if such grievances involve similar claims.

"E. Nothing herein contained shall be construed as limiting the right of any individual teacher having a grievance from presenting, in person or through representation of the teacher's own choosing, such grievance to any appropriate member of the administration and having such grievance adjusted without FEA intervention provided such adjustment is consistent with the terms of this Agreement. No grievance shall proceed beyond Step 3 without a representative of the F.E.A. present. The F.E.A. must be notified of any such adjustments following a settlement of the grievance.

"F. The grievance procedure shall be carried forth in the following manner.

"Step One Within ten (1) working days of the time a grievance arises, the teacher will present the grievance orally to the principal. Within three (3) working days after the oral presentation of the grievance, the principal shall give an answer orally to the teacher.

"Step Two If the grievance is not resolved in Step One, the teacher or the teacher's designated representative may within five (5) working days of receipt of the principal's verbal answer, submit to the principal a signed, written statement of grievance. A copy of this statement shall be forwarded to the Superintendent at the same time. The statement of grievance shall state the facts giving rise to the grievance, shall identify by appropriate references the provisions of this Agreement alleged to be violated, shall state the contention of the teacher and the F.E.A. with respect to these provisions and shall indicate the relief requested. Within five (5) working days, the principal shall give a written response to the grievant, indicating whether or not the grievance is resolved and the remedy provided, a copy of which shall be provided to the Superintendent and the F.E.A.

"Step Three If the grievance is not resolved in Step Two, the teacher or the teacher's designated representative may, within five (5) working days of receipt of the Principal's written response submit the grievance in writing to the Superintendent. The parties shall meet within seven (7) working days. TheSuperintendent shall respond in writing, within five (5) working days after the meeting.

"Step Four If the grievance is not resolved in Step Three, the teacher or the teacher's designated representative may, within fifteen (15) working days, submit the grievance in writing to the Board. The Board shall consider the grievance in executive session at its next regularly scheduled meeting. The grievant or the grievant's designated representative may present his grievance orally at the meeting. The Board shall respond in writing within seven (7) working days following that meeting.

"Step Six Within ten (10) working days after written notice to the Board by the F.E.A. of the F.E.A. intent to submit the grievance to arbitration, the Board and the F.E.A. shall file a joint written request with the Wisconsin Employment Relations Commission to furnish a panel of names of five arbitrators, from which the parties shall alternately strike names, with the surviving name selected as the arbitrator. The party initiating the request for arbitration shall strike first.

"The arbitrator shall be limited to an interpretation of the express terms of the agreement. The arbitrator shall in no way add to, subtract from, modify, or delete the provision of the Agreement. The decision of the arbitrator will be final and binding upon the parties.

"In the event there is a charge for the services of an arbitrator, including per diem expenses if any, and/or actual necessary travel and subsistence expenses, costs for a transcript of the proceedings, or for any other expenses directly caused by the proceedings, the losing party shall pay all expenses.

"G. Any grievance not advanced to the next step by the teacher or the teacher's designated representative within the time limit provided for that step shall be deemed abandoned. Time limits may be extended by mutual agreement of the Superintendent and the F.E.A.

"1. Base Salary (Code I-1) shall be established at 16,150.00 effective August 1, 1984."

District Offer

"1. Base Salary (Code I-1) shall be established at 16,000.00 effective August 1, 1984."

(4) Hospital, Medical, and Medicare Insurance

Union Offer No change - maintain language contained in prior contract which is as follows:

"ARTICLE IX E

INSURANCE

"Hospital, Medical, and Medicare Insurance-- The Board will pay an amount equal to 100% of the premiums for family and single coverage for surgical, medical, hospital, major medical insurance, including prescriptions available at $2.00 per prescription for the duration of the contract. The policy coverage will be equal to or better than the policy in force during the previous contract. The carrier will be selected by the Board."

District Offer

"Article IX E - Insurance - Board proposal 7/16/84 - deductible only, drop co-pay requirement.

"Hospital, Medical, and Medicare Insurance - The Board will pay an amount equal to 100% of the premiums for family and single coverage for surgical, medical, hospital, major medical insurance, including prescriptions available at $2.00 per prescription for the duration of the contract. The policy terms shall be amended to include a $100 deductible per person per calendar year or a maximum of a $200 deductible per family per calendar year. The policy coverage will be equal to or better than the policy coverage in force during the previous contract. The carrier will be selected by the Board."

The District's final offer was clarified by an issued document dated 08/20/84 which is as follows:

"Current negotiation's proposal is the addition of $100 deductible on the base Hospital and Surgical-Medical Benefits. No change in the current Major Medical Plan.

Coverage

Current Policy - Hospital Benefits - Semi-private room 365 days per admission
Surgical-Medical Benefits - Physicians services to a maximum of $10,000 for any one illness for participants

Prescription Drug Program - Subscriber pays the first $2.00 of each prescription drug or refill.

Major Medical - $250,000 coverage

Major Medical Deductible - $100 for covered services during each calendar year by each participant. Thereafter Major Medical pays 80% of covered services.

After 3 deductibles have been satisfied in any one family during the calendar year, no further deductibles will be required.

Proposed $100 deductible on Hospital and Surgical-Medical Benefits.

Single Subscriber will pay $100 deductible per calendar year on Hospital and Surgical-Medical Benefits. Thereafter the Insurance Company pays the covered charges.

Family Subscribers will pay $100 deductible per person with a maximum of two deductibles per family on Hospital and Surgical-Medical Benefits. After the two deductibles have been satisfied, the Insurance Company will pay the covered charges. "

(5) Workers Compensation

Union Offer

"ARTICLE IX E

"6. Worker's Compensation -- If a teacher employed by the District becomes entitled to Worker's Compensation pursuant to Chapter 102 of the Wisconsin Statutes, the Board shall continue to pay the teacher's full salary during the period of disability, whether or not such period extends beyond the teacher's term of employment, up to a maximum of one hundred and ninety [190] work days, however, such payment of full salary shall be reduced by an amount equal to the amounts paid to the teacher as worker's compensation. Benefits paid to the teacher by the District shall not result in loss of any accumulated sick leave benefits."

District Offer - No change - retain present policy, the portion that is relevant to the Union offer, is as follows:

"5. If an injury on the job involves loss of time, the employee may elect one of the following two plans:

a. The employee may choose to receive only Worker's Compensation to the maximum amount (per week) as provided in the Worker's Compensation Act. (Medical expenses being paid as indicated in paragraph '3' above.)

b. The employee may choose to receive both Worker's Compensation and prorated sick leave. In this case, regular salary will continue uninterrupted until accumulated sick leave is used up and then Worker's Compensation will continue until the employee is able to return to work. Sick leave cannot be used beyond the terms of the contract. (Medical expenses being paid as indicated in paragraph '3' above.)

If the employee chooses procedure 'b', it is required that the Worker's Compensation check be signed over to the Board of Education because it is not permissible to receive both Worker's Compensation and regular full salary.

In the event an injury does not require absence from work of ten (10) days or more, the first three (3) days shall be full sick leave and from the fourth (4) day on as prorated sick leave."

(6) Teachers Attendance During Bad Weather and School Calendar

Union Offer

NO CHANGE EXCEPT CALENDAR PROVIDES FOR ONE SNOW MAKE-UP DAY (SEE BELOW)

F O N D D U L A C
S C H O O L D I S T R I C T

1984-85 SCHOOL CALENDAR

180 Student Days
First Student Day - August 28, 1984
Last Student Day - June 6, 1985

( ) 2 Half Days K-12 (Aug. 28, June 6)

- - 1 Full Day 7-12 (Aug. 29)
No Classes K-6 (Aug. 29)

/ / 1 Full Day K-6 (Jan. 18)
No Classes 7-12 (Jan. 18)

* In-Service-no classes Feb. 12

X Non-Student and Non-Contract Days
Z Non-Student Days

Snow Makeup - The District may schedule March 8 as a snow makeup day.

NINE WEEKS' PERIODS

DATE	DAYS
1st Period Ends Nov. 2	45
2nd Period Ends Jan. 17	45
TOTAL 1st Semester	90
3rd Period Ends March 29	48
4th Period Ends June 6	42
TOTAL 2nd Semester	90
TOTAL STUDENT DAYS	180

1984

	M	T	W	T	F
August	Z	(28)	-29-	30	31
September	3	4	5	6	7
	10	11	12	13	14
	17	18	19	20	21
	24	25	26	27	28
October	1	2	3	4	5
	8	9	10	11	12
	15	16	17	18	19
	22	23	24	Z	X
	29	30	31		
November				1	2
	5	6	7	8	9
	12	13	14	15	16
	19	20	21	Z	X
	26	27	28	29	30
December	3	4	5	6	7
	10	11	12	13	14
	17	18	19	20	21
	X	X	X	X	X
	X				

1985

January		X	2	3	4
	7	8	9	10	11
	14	15	16	17	/18/
	21	22	23	24	25
	28	29	30	31	
February					1
	4	5	6	7	8
	11	12*	13	14	15
	18	19	20	21	22
	25	26	27	28	

March

				1
4	5	6	7	Z
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

April

1	2	3	4	X
X	X	X	X	X
15	16	17	18	19
22	23	24	25	26
29	30			

May

		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

June

3	4	5	(6)	Z

TEACHER CONTRACT DAYS

190 Contract Days
First contract day - Aug. 27
Last Contract day — June 7

180 Student Days
5 holidays (Sept. 3, Nov. 22, May 27)
3 convention or inservice days
4 meeting/work days
2 half days - Aug. 28, June 6
3 full days - Aug. 27, 29, Jan.18, June 7

End of Contract Year - June 7, 1985

District Offer

Article IX H-11 - Attendance During Bad Weather - as per Board proposal 7/16/84.

1. Teachers are expected to be at school every day that schools are in session for students. They will not be paid for those days missed due to weather conditions, when the schools are is session.
2. All days will be made up if all district schools are closed for any reason.

School Calendar - school calendar as proposed by the Board 7/16/84 (see attached).

1984

	M	T	W	T	F
August	Z	(28)	-29-	30	31
September	Z	4	5	6	7
	10	11	12	13	14
	17	18	19	20	21
	24	25	26	27	28
October	1	2	3	4	5
	8	9	10	11	12
	15	16	17	18	19
	22	23	24	Z	X
	29	30	31		
November				1	2
	5	6	7	8	9
	12	13	14	15	16
	19	20	21	Z	X
	26	27	28	29	30
December	3	4	5	6	7
	10	11	12	13	14
	17	18	19	20	21
	X	X	X	X	X
	X				

1985

January		X	2	3	4
	7	8	9	10	11
	14	15	16	17	/18/
	21	22	23	24	25
	28	29	30	31	
February					1
	4	5	6	7	8
	11	12*	13	14	15
	18	19	20	21	22
	25	26	27	28	

FOND DU LAC
SCHOOL DISTRICT

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No Classes 7-12 (Jan. 18)

* In-Service-no classes Feb. 12

X Non-Student and Non-Contract Days
Z Non-Student Days
○ Non-Student and Non-Contract Day - Emergency Make-up Day

NINE WEEKS' PERIODS

DATE	DAYS
1st Period Ends Nov. 2	45
2nd Period Ends Jan. 17	45
TOTAL 1st Semester	90
3rd Period Ends March 29	48
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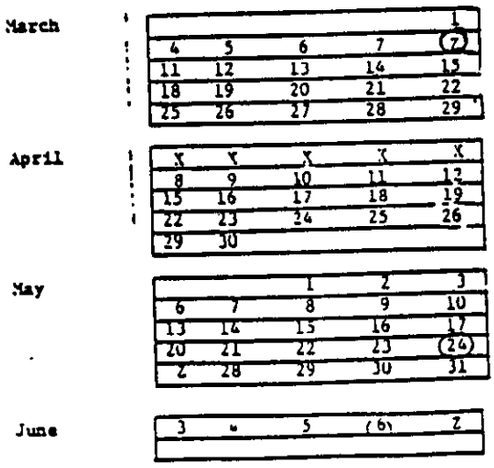

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End of Contract Year - June 7, 1985

DISCUSSION

(1) Maintenance of Standards

This issue is raised as a result of the District's proposal to add, what it termed clarifying language, to the existing Maintenance of Standards contractual provision. The District pointed out that the existing Maintenance of Standards provision has remained unchanged in the labor agreement between the parties for a number of years. Two disputes have arisen under such provision. One became the subject of a grievance that was withdrawn by the Union prior to being resolved at arbitration. The second was submitted as a grievance and went to arbitration. The District explained the reason for its language proposal on this issue in its brief as follows:

> "However, during the course of negotiations for the successor agreement, an issue arose over the scope of the clause. The Association for the first time contended that the provision required the District to maintain standards which were permissive subjects of bargaining as well as those standards which were mandatory subjects of bargaining. TP 236-37. (Board Negotiation Minutes June 4, 1984 P 4). Furthermore, when the District requested that the Association identify the permissive standards it was obligated to maintain the Association was unable to do so. TP 237.
>
> "The District proposal to amend the current Maintenance of Standards provision limiting its application to mandartory (sic) subjects of bargaining was introduced into negotiations immediately following the contentions of the Association regarding the scope of the provision and its unwillingness to identify the permissive standards maintained by the current language."

The District argued that,

> "...The Board's Maintenance of Standards provision maintains standards which primarily relate to employees' interest. It also insures the integrity of the political entity through reservation of its authority

over matters when management and direction of the school system or the formulation of public policy predominate over employee interests."

The Union argued that the current Maintenance of Standards clause as contained in the old agreement, contains greater restrictions than one finds in other Maintenance of Standards clauses of other comparable school districts. They argue that the District's proposal to exclude mandatory subjects of bargraining as an additional restriction in such clause, would severely and narrowly limit those matters to which the Maintenance of Standards clause would apply.

Both parties tacitly acknowledge that the Maintenance of Standards issue was not a significant issue and not one upon which a resolution of the total final offer should rest. The arbitrator is in agreement with that tacit acknowledgement. The argument of both parties is grounded upon anticipated or theoretical actions by the opposite party where each expresses the concern that if they do not prevail in their respective positions, the other party will somehow take advantage of them and their positions will be compromised. In the judgment of the arbitrator, neither party has established by persuasive evidence in relationship to the statutory factors, that their respective final offer on this issue should be preferred over that of the opposite party.

(2) Grievance Procedure

The first amendment sought by the Union to the grievance procedure consists of a change to paragraph C. The Union stated in its brief that such issue was brought to a head during the April 24, 1984 negotiation meeting between the parties. At such meeting the Union alleged that the District counsel stated that, "grievance procedure is for teachers and not the F.E.A." They state that their proposal to amend paragraph C is intended to clarify and make clear that the Union has the unfetted right to grieve.

The Board responded, pointing out that any confusion that developed during negotiations on April 24 as a result of the District counsel's statement, was resolved at the next negotiation meeting on May 3, 1984 when counsel for the District apologized for such statement and withdrew it. The District further contends that a language change to insure that the F.E.A. has a right to file grievances is not necessary. The present contract language clearly gives the F.E.A. the right to do so and it has done so in the past without any objection thereto being raised by the District.

A review of the record evidence on such item leads to the clear conclusion by the arbitrator that the Board position is accurate. The Union position on such issue has no basis in fact.

The second aspect of the Union's proposal as it relates to the grievance procedure concerns their proposal to insert language permitting consolidation of grievances that involve similar claims.

The Union stated that prior to 1983-1984, the parties had mutually agreed to the consolidation of a number of

grievance matters between the years 1981-1982 and through the years 1982-1983. They contend the proposal to insert specific consolidation language into the contract was motivated by the District's action in refusing to consolidate three grievances filed during the 1983-1984 school year, which grievances arose at three different buildings. Each of the grievances involved an allegation that the District was requiring teachers to perform professional responsibilities that the Union contended was in excess of those provided in the professional responsibilities article of the labor agreement. The Union contended that all three grievances were similar and should therefore be consolidated. They argue that their consolidation provision is consistent with the prior practice of the parties and is supported when compared to similar provisions found in a majority of other school districts to which comparison is made.

The District argues that such proposed consolidation language is unnecessary. Past history reveals that where matters have involved multiple claims and the same contract provision so that a resolution of one could be regarded as serving to resolve all others of multiple and similar nature, the District has agreed to consolidate such grievances.

The District contends that the only support argued by the Association for their consolidation proposal concerns the dispute identified as "Professional Responsibility Theisen/ Parkside/Sabish." The District addressed such matter in their brief as follows:

> "...The Association acknowledged that three separate grievances were filed by the Association involving the 'Professional Responsibility' grievances at three separate schools. (TP 160.) The Association was careful to process these grievances separately until the arbitration step. Then prior to arbitration when the District objected to consolidation of the disputes, the Association dropped the Parkside grievance. Further, during the course of arbitrating the Sabish grievance the Association withdrew the Theisen grievance. In short, the Association proposal for consolidation of grievances is unnecessary."

The District also argues that the term "similar claims" is an imprecise word and one that could result in many disputes. They state in their brief:

> "...For example, all teachers receive notice of nonrenewal at about the same time. The issue in each case may involve 'cause' for the Board's action and therefore involve the same provision of the parties' Collective Bargaining Agreement. Could the District or the FEA insist that all nonrenewal grievances be consolidated and heard before the same arbitrator? The Association protested that such consolidation would not be possible. But, if claims involving the same contract provision arising at approximately the same time may not be consolidated under the language proposed, what criteria are the parties left with in order to properly interpret and apply the consolidation provision."

On review of the evidence and respective arguments of the parties on the consolidation issue, the arbitrator is of the judgment that the Union has failed to establish any persuasive need to revise the existing contract language with respect to consolidating grievances. In fact, the Union's proposal by referring to "similar claims" leaves open to argument the same matters that presumably were considered by the parties when determining to either consolidate or not consolidate grievances in other years.

By reference to the Thiesen/Parkside/Sabish grievance matter as support for its consolidation proposal, the Union has failed to show that the three grievances were similar in such a nature that made them reasonably subject to consolidation. For example, if each involved significantly different facts, even though they may be processed under the same contractual provision alleged to have been violated, they could be quite dissimilar because of different facts and therefore not be subject to being tried as consolidated cases. The arbitrator finds that the Union has not presented any evidence supporting a persuasive need to amend the grievance procedure with respect to consolidation of grievances.

The third element of the Union's proposal concerned amending paragraph E to provide that "no grievance shall proceed beyond Step One (rather than Step Three) without a representative of the F.E.A. present."

The Union entered into evidence what was marked Association Exhibit No. 53 which purported to list the grievances filed with the School District from 1980 to the present, along with the resolution of the listed grievances. The Union points out that from 1980 through 1983 the vast majority of grievances were resolved at the superintendent or board level short of arbitration. The disputes that arose during the 1983-1984 contract and to date under the 1984-1985 relationship, show that the majority of the disputes went beyond the superintendent or board level step without resolution. The Union points to such developments as indicating a significant change in the relationship of the parties. They argue that as a result of such changing relationship the Union must be able to exercise its rights and responsibilities to maintain the agreement and in that respect must have a contractual right to be present beginning at Step One of any grievance.

The District contends that the record is devoid of any support for the Union's proposal on such point. They point to the fact that one of the Union witnesses under cross-examination testified that the Union had encountered no problems with respect to the Association being present at any step of the grievance procedure in the past. Secondly, the Board argued that the current labor agreement does leave room for either the teacher or the representative to be present at the first and second step of grievances. The decision to include or exclude a Union representative at either Step Two or Three is a decision that rests with the grieving teacher and not with the District. Thirdly, the Board argues the current contract language safeguards the Union's interest in the integrity of the agreement by providing that any agreement in the absence of the Union must be consistent with the terms of the agreement and the F.E.A. must be notified of any such grievance adjustment.

The Board also contends that such language modification would serve to impede the prompt and efficient handling of grievances. They suggest that the Union's proposal would halt the processing of grievances unless a representative of the F.E.A. was present.

The arbitrator is not sure from reviewing the current grievance procedure provisions of whether or not the Union's proposal on this point is at all meaningful. In the first instance, the Union's proposal is to change Step Three to Step One in a manner that would mandate that the F.E.A. must be present at all steps beyond Step One. That would mean that the F.E.A. must be present at Step Two of the grievance procedure. An examination of the Step Two language reveals that such step is the one where the oral grievance is reduced to writing and presented to the principal. The principal then has five working days in which to give a written response to the grievance. There is no provision in Step Two for a meeting such as is contained in Step Three and Step Four. The arbitrator can understand that where a meeting is provided, that the F.E.A. would wish to be present. In Step Two, however, there is no provision for any meeting but only that the grievance be reduced to writing and submitted to the principal. Factually, the Step Two provision would seem to indicate that the F.E.A. does in fact participate in such step by virtue of the statement that provides that the written grievance, "shall state the contention of the teacher and of the F.E.A...." (Emphasis supplied) Use of the word 'and' clearly denotes that the written grievance is a joint effort between the teacher and the F.E.A. It would therefore appear that the Union's proposal to amend paragraph E so that they would mandatorily be present, would add nothing to what is already contained in the Step Two provision.

The arbitrator finds that the Union has not supplied a sufficient evidentiary basis or any substantive need for the proposed change above discussed.

The fourth element of change proposed by the Union to the grievance procedure involved the enlargement of the time limits for initiating a grievance in Step One from ten working days to fifteen working days. The Association entered into evidence a survey of nine other school districts in the Fox River Valley, including Manitowoc and Sheboygan. They argue that the initial filing period contained in the majority of the districts provide for a greater initial filing period than is allowed in the Fond du Lac contract. The Association further argues that enlarging the minimum filing period from ten working days to fifteen working days constitutes a reasonable and fair extension of the initial time frame so as to afford more effective policing of the contract and resolution of any perceived violations.

The District argues that the current ten working day time limit adequately serves the needs of the parties and needs no liberalization. Further, the Union presented no evidence in support of the proposed change and gave no examples of any situations where the ten working day time limitation jeoparized the filing or processing of any grievance. The District further points out that the current master agreement counts the ten days as ten working or teacher contract days. That means that

the time is tolled by teacher vacations, summer recess, and similar off days that are not working days. The ten working day provision in Fond du Lac is comparable to the 14 or 15 calendar day provisions found in some of the other District contracts.

While it may be desirable from the standpoint of the F.E.A. and its members to have the largest possible time within which to originate and file grievances, it is in the Emplyer's interest to limit the time for initiating grievances for a number of reasons. In some instances or types of grievance matters, it is similarly in the best interest of the Union to have a limited grievance initiation period.

The record evidence bearing on this specific issue simply establishes it as a desirable thing that the Union would prefer as against the present working day time limit. The arbitrator is not persuaded by the arguments or evidence that any real need for change has been shown to exist nor that the Union or any bargaining unit member has been injured due solely to the time limit being ten working days as opposed to some larger time period. The record evidence does not support the preference under application of the statutory factors for the Union's proposal over that of the Employer.

Viewed in totality, the arbitrator is of the judgment that the Union has not established by substantial evidence a persuasive need nor by evidence directed to the statutory factors establishing persuasive considerations toward granting of their proposal over that of maintaining the existing grievance procedure provisions as proposed by the District.

(3) Salaries

The first issue to be resolved is that of determining the comparables. The parties were unable to agree as to the districts to be regarded as primary comparables. The District argued that the primary comparables should consist of the school districts of Green Bay, Manitowoc and Sheboygan because such districts are members of the same athletic conference, and have been since 1971. The District argues that Arbitrators Joseph Kerkman in a Manitowoc School District case and June Miller Weisberger in a Sheboygan School District case, both found that the athletic conference was the appropriate primary comparable group.

The Association asserts that the primary set of comparables should be Appleton, Fond du Lac, Green Bay, Manitowoc, Neenah, Oshkosh and Sheboygan. Districts that should be given secondary consideration are those of Kaukauna, Kimberly and Menasha.

The Association traced the history and changes of the athletic conferences. For years the Fox River Valley athletic conference included the school districts of Appleton, Fond du Lac, Green Bay, Manitowoc, Oshkosh and Sheboygan. On or about 1970 Neenah also became a part of the athletic conference. At some unspecified point in time subsequent to 1970, the Union points out that the conference had grown too large with too many high schools and two athletic conferences were formed with the addition of Kaukauna, Kimberly and Menasha being added. The Fox River Valley athletic conference then had as its members Fond du Lac and Manitowoc with one high school each, Green Bay with four high schools and Sheboygan with two. The Fox Valley Association athletic conference had as its members Kaukauna, Kimberly, Menasha and Neenah with one competing high school each and Appleton and Oshkosh with two competing high schools

each.

The Union contends that historically the parties have utilized comparisons with the school districts of Appleton, Oshkosh and Neenah along with those of Green Bay, Manitowoc and Sheboygan during the course of evaluating various issues that were subject to negotiations between the parties.

In the judgment of the arbitrator, the District's position is too restrictive and is lacking in persuasive support. In the first place, the District's contention that "two recent arbitration awards have determined the athletic conference as a primary comparable set for this arbitration," (Supplemental brief, p. 8) is not accurate. The District is making reference to the arbitration decision of Arbitrator Kerkman in Manitowoc School District and of Arbitrator Weisberger in the Sheboygan School District. A close reading of both of said decisions failed to yield the conclusion stated by the District. In the Manitowoc case, Arbitrator Kerkman observed that, "the Association concedes that the most comparable school districts to which the instant district compares are those of Fond du Lac, Green Bay and Sheboygan...." The arbitrator went on to observe that the Association urged consideration of additional comparables consisting of Appleton, Menasha, Neenah, Two Rivers and West Bend. It appears to the arbitrator that Arbitrator Kerkman simply accepted what was an apparent agreement among the Association and the District in the Manitowoc case to regard the athletic conference districts as the most comparable. One must note, however, that in his decision he paid great deference to the settlement that had occurred in Two Rivers which is a contiguous district to Manitowoc.

If one also examines carefully the decision of Arbitrator Weisberger in the Sheboygan case, one finds that she chose the districts of Green Bay, Fond du Lac and Manitowoc as the prime comparables and in doing so voiced consideration of geographical proximity and historical reference and comparative use of those districts by the parties.

In the judgment of the undersigned, arbitrators pay deference to athletic conferences to some degree because athletic conferences are made up on the basis of comparative size and proximity so as to afford substantially comparative abilities to compete. The division between Class C, Class B, and Class A levels of competition is based upon those same type considerations. Arbitrators have utilized, independent of athletic association reference, matters of similar size, similar tax base, comparable enrollment, comparable F.T.E., and other statistical data in determining comparability issues. Additionally, the matter of geographical proximity has likewise been a significant consideration in determinining comparability.

If one then looks at the location of Sheboygan and Manitowoc, one finds that they cannot make comparisons to any school districts lying east of their location as Lake Michigan is located in that area. They must of necessity then make reference only to districts north, west and south of their location. What may then constitute primary comparables to Sheboygan or to Manitowoc, may not necessarily be regarded as primary comparables to all of the other primary districts to which Sheboygan or Manitowoc make comparison. If one were to determine that on the basis of size, population, tax base, enrollment and F.T.E that the

districts of Green Bay, Manitowoc, Sheboygan, Fond du Lac, Oshkosh, Neenah, and Appleton were relatively equal and therefore of primary comparability, why would one not then conclude that Sheboygan, for example, should regard Oshkosh, Appleton and Neenah School Districts as primary comparables for the simple reason that all three are closer mileage-wise to Sheboygan than is Green Bay? Geographical proximity has always been given significant weight in determining comparability, all other comparability data being substantially equal, for the simple fact that there is frequently interchange and movement of employees between close geographic areas. In that respect Green Bay District being the farthest from the Fond du Lac District of all the named schools, would be the last school listed as a comparable, while Oshkosh District, being the closest, would be the first one listed.

It may be that parties and arbitrators use schools in the same athletic conference by accepting the proposition that athletic conferences are formulated based on consideration of many of the same type considerations arbitrators use in determining comparables. Use of athletic conferences to determine comparables is then a convenient method and may explain in part why arbitrators and parties have frequently used athletic conferences as constituting the comparables.

It seems to the undersigned that a utilization of the athletic conference districts as the primary comparables without questioning in this case would be improper. First, the history of how the two athletic conferences developed is meaningful. Prior to the latest alignment, Oshkosh, Neenah and Appleton were in the athletic conference with Fond du Lac. All three of those districts are geographically closer to Fond du Lac than are the other districts presently in the athletic conference with Fond du Lac. In fact, of all the districts in the two conferences, Fond du Lac and Green Bay are the farthest distant from each other and yet they are in the same athletic conference for some unknown reason. Clearly, it would seem to be much more logical to have Oshkosh, Neenah and Appleton in the same athletic conference as Fond du Lac from the consideration of proximity rather than Green Bay in particular.

In the arbitrator's judgment, the most appropriate primary comparables to Fond du Lac are the districts of Appleton, Green Bay, Manitowoc, Neenah, Oshkosh and Sheboygan. The districts of Kaukauna, Kimberly and Menasha are comparable to a somewhat lesser extent.

The Union presented evidence directed at showing the settlement levels in comparable districts and develop for comparison purposes, (1) the dollar increase per returning teacher, (2) the percent increase per returning teacher, and (3) the historical relative position of Fond du Lac teachers to teachers in comparable districts.

The District directed its comparative analysis at the concept that the District's final offer results in Fond du Lac teachers receiving absolute dollar amounts in their individual salary schedule positions that are comparable to, and in many cases above, teachers in comparable positions in other comparable districts. The District analyzes and compares, (1) the actual structure of the various salary schedules, (2) the

number of steps in each lane, (3) the number of salary lanes, (4) the dollar lift to each step and lane, and (5) the existence of longevity payments beyond the salary schedule maximums.

Each party concludes on the basis of their respective comparative analysis, that their respective offers are the most reasonable within the application of the statutory factors.

At the time of the arbitration hearing, the parties had arrived at different costing results of their final offer. They agreed to jointly investigate the causes for such differences after the hearing and to submit data clarifying such costing figures to the arbitrator. The parties did discover the reasons for their differences and jointly advised the arbitrator thereof. In its brief, the District stated that it would utilize the Union's costing figures as contained in their exhibits for purposes of this case and for purposes of predicating its arguments in support of its position.

As a result of the parties' efforts in resolving their costing differences, the average per teacher increase, using 370.34 F.T.E. of the District's final offer would be $1,784.00. The average teacher increase of the Association offer would be $2,040.00.

Association Exhibit 13 is a summary of the settlements in the Fox Valley city school districts, but excluding Manitowoc for the 1984-85 school year. The Union has set forth settlement figures for all those that were settled as of the date of the arbitration hearing. No data is set forth for Green Bay or Kaukauna, as those two districts were not settled as of that date. In its brief at page 18, the Union prepared the following comparative chart and used as averages only those that had reached voluntary settlements which was Appleton, Neenah, Oshkosh and Sheboygan as the primary comparables and Kimberly and Menasha as the two additional voluntary settlements which then comprised what the Union has referred to as "all" comparables.

	Salary Only		Total Package	
	$/Teacher	Percent	$/Teacher	Percent
Primary Comparables				
Voluntary Settlements	$2,111.16	8.19%	$2,808.99	8.57%
Total	$1,978.93	7.43%	--	--
All Comparables				
Voluntary Settlements	$2,115.59	8.51%	$2,692.39	8.63%

Oshkosh-8.23%, and Sheboygan-8.2%.

The Union also prepared an exhibit which compared the dollar and percent increases at the salary schedule benchmarks of the Association and District final offers to those in the primary comparable school districts, using an average of the comparable school districts as the dollar and percentage level of measurement. The Union pointed out by its comparison chart that was set out at page 24 of its brief, that under either the dollar increase or percentage increase formula, the settlement level at the primary comparables were higher than either the Union or District final offer at all benchmarks, with the exception of a single one involving the schedule maximum of the primary comparables and the Union final offer. The chart prepared by the Union found on page 24 of its brief which drew its data from Union exhibits presented into evidence at the hearing, was as follows:

	Primary Comparables		Assn. Offer		District Offer	
	Dollar	Percent	Dollar	Percent	Dollar	Percent
BA Min.	$1,275	8.4%	$1,030	6.8%	$ 880	5.8%
BA Step 7	$1,476	7.7%	$1,430	6.8%	$1,235	5.8%
BA Max.	$1,707	7.2%	$1,494	6.8%	$1,276	5.8%
MA Min.	$1,375	8.1%	$1,164	6.8%	$ 994	5.8%
MA Step 10	$1,719	7.2%	$1,688	6.8%	$1,441	5.8%
MA Max.	$1,930	7.0%	$1,862	6.8%	$1,590	5.8%
Schedule Max.	$2,054	6.8%	$1,995	6.8%	$1,704	5.8%

In addressing the comparative relative position aspect of its argument in this case, the Union stated at page 21 of its brief that:

> "During negotiations for the 1982-83 collective bargaining agreement the Association and District clearly established voluntarily and mutually Fond du Lac's relative position among comparable school districts. There is nothing in the hearing record in the instant dispute to demonstrate that relative position should change substantially. The following argument will conclusively demonstrate that the Association's offer more nearly maintains this mutually established relative position.
>
> " Association Exhibit 23 is a comparison of Fond du Lac's relative position among its primary comparables under the Association and District final offers. The following chart compares the impact of the Association and District final offers on Fond du Lac's relative position to the voluntarily established relative position that the parties mutually agreed upon during 1982-83 negotiations. A dollar and percent figure shown in the 1982-83 relative position column are those that are a result of the second semester costing agreement.

	1982-83 Relative Position	1984-85 Relative Position	
		Assn. Offer	District Offer
BA Min.	-$106 (-.74%)	-$302 (1.84%)	-$452 (-2.75%)
BA Step 7	$394 (2.17%)	$350 (1.70%)	$155 (.75%)
BA Max.	-$1,824 (-8.09%)	-$2,053 (-8.06%)	-$2,271 (-8.92%)
MA Min.	$22 (.14%)	-$127 (-.69%)	-$297 (-1.62%)
MA Step 10	$877 (3.89%)	$983 (3.86%)	$737 (2.89%)
MA Max.	-$338 (-1.29%)	-$34 (-1.09%)	-$592 (-2.01%)
Sched. Max.	-$852 (-2.99%)	-$856 (-2.66%)	-$1,146 (-3.57%)

"The foregoing chart clearly demonstrates that the District's salary offer is substandard and will result in a significant erosion of Fond du Lac's relative position among its primary comparables. While in most cases the Association's salary offer also results in some erosion of relative position the Association offer without a doubt more nearly maintains the voluntarily established relative position that the parties mutually agreed upon during negotiations for the 1982-83 agreement.

"The same results can be seen by analyzing the impact of the Association and District offers on Fond du Lac's relative position among all comparable school districts. Association Exhibit 27 shows the impact of the Association and District final offers on Fond du Lac's relative position at the various benchmarks among all comparable school districts. The chart below compares Fond du Lac's voluntarily established relative position in 1982-83 to the relative position of the respective offers by the Association and District. The 1982-83 relative position that is shown below is that which is the result of the second semester costing agreement.

	1982-83 Relative Position	1984-85 Relative Position	
		Assn. Offer	District Offer
BA Min.	-$25 (-,17)	-$168 (-1.03%)	-$318 (-1.95%)
BA Step 7	$627 (3.49%)	$517 (2.52%)	$322 (1.57%)
BA Max.	-$1,346 (-6.1%)	-$1,414 (-5.69%)	-$1,632 (-6.57%)
MA Min.	$195 (1.22%)	$7 (.04%)	-$163 (-.89%)
MA Step 10	$1,350 (6.11%)	$1,192 (4.72%)	$946 (3.74%)
MA Max.	-$185 (-.71%)	-$143 (-.49%)	-$414 (-1.41%)
Schedule Max.	-$331 (-1.18%)	-$330 (-1.04%)	-$620 (-1.96%)

"Once again it is clear that the District's salary offer is substandard in that it significantly diminishes Fond du Lac's relative position among all comparable school districts. The Association's final offer on salary more nearly maintains the voluntarily established relative position of Fond du Lac among all comparable school districts."

In developing its argument in this case, the District analyzed what it labeled as three components of the salary schedules. The District labeled them (1) educational achievement, (2) length of service rewarded by the salary schedule, and (3) longevity rewarded beyond the schedule. The Board addressed those three components in its brief at pages 17-20 as follows:

'The first component is level of educational achievement. This is expressed by a series of horizontal lanes. The Fond du Lac salary schedule has ten educational achievement lanes (BA, BA + 6, BA + 12, BA + 24, BA + 30, MA, MA + 6, MA + 12 and MA + 18). No other primary comparable has as many educational achievement lanes. In fact, the Fond du Lac schedule has more educational achievement lanes than any district proposed as comparable by the Association. The traditional salary schedule also accords each education lane a percent factor above the base lane. In Fond du Lac, the achievement of each BA lane results in a 2 percent salary increase above the base salary. The MA lane is 13 percent above the BA base lane. The achievement of each additional MA lane results in an additional three percent salary increase above the BA base salary. Only Oshkosh of all the district schedules mentioned in this arbitration accords a greater percent adjustment for lane movement. All districts mentioned in this arbitration not only have less lanes and lower percent adjustment factors but also require more credits be achieved in order to jump lanes. For example, Neenah's first horizontal lane is BA + 15 which yields a 2 percent salary adjustment. Fond du Lac's BA + 6 lane yields a 2 percent salary adjustment and the BA + 12 lane yields a 4 percent salary adjustment. Another aspect of the educational achievement or horizontal component of the traditional salary schedule is the level of achievement at which they terminate. The Fond du Lac schedule terminates at the MA + 18 achievement level. The Appleton schedule terminates at MA + 15 level. Neenah has the only schedule which has a PhD lane. (Brief Appendix 5.) It follows that comparison of schedule maximums is very difficult because lane numbers, percent adjustment factors and maximum achievement awarded by the schedules differ. The unique characteristics of each schedule complicate the comparison of the parties final offers. However, one general conclusion can be reached regarding the Fond du Lac schedule it rewards teachers for professional achievement quicker and at a higher rate than all the districts mentioned in this arbitration except Oshkosh. It follows that a Fond du Lac base increase yields substantially more horizontally quicker per teacher than any other district mentioned except Oshkosh.

"The second component of the traditional salary schedule is the schedule reward for length of service. Fond du Lac has nine vertical steps at the BA lane, ten at the BA + 6 and eleven at the BA + 12 lane. All lanes commencing with the BA + 18 lane contain 12 vertical steps. The salary adjustment between steps is determined by applying a percentage figure to the base salary and adding it to the previous years' number. The percentages applied by Fond du Lac meet or exceed those applied by all school districts mentioned as comparable in this proceeding. However, some school districts do not utilize percentage factors when determining the appropriate reward for length of service. Oshkosh, for example, adds a flat dollar amount for each year of service. That flat dollar amount is equivalent to approximately 4 percent on the base of the lane on which the teacher is situated. Therefore, at the tenth year in the schedule the flat dollar amount yields a percentage adjustment of approximately 4 percent on the base of the lane on which the teacher is situated. Therefore, at the tenth year in the schedule the flat dollar amount yields a percentage adjustment of approximately 2.7 percent. So the Oshkosh schedule becomes flat faster than the Fond du Lac schedule. The number of vertical steps on each lane varies considerably between districts mentioned in this arbitration, but most districts have less BA steps than MA steps. Therefore, it is apparent that most districts wish to encourage members of their teaching staff to continue their professional development. Fond du Lac has the least BA steps and therefore has historically ranked low at this benchmark. But it also accords salary incentive credit for professional development sooner (smaller number of credits is required) than any district utilized by the parties. Therefore, it would not appear to be appropriate to judge the Fond du Lac offer because of the District's rank at the BA Maximum benchmark. It would also seem inappropriate to judge the Fond du Lac offer against the MA Maximum and Schedule Maximum benchmarks unless the third component of the traditional salary schedule is considered, that being longevity.

"The third component of the traditional salary schedule is salary adjustment accorded for years of service which are beyond those reflected in the salary schedule. Fond du Lac rewards teacher longevity by applying a percentage factor to the BA base commencing with the fourteenth year of service. This factor is adjusted to 4 percent at the sixteenth year, 5 percent at the nineteenth year, 6 percent at the twenty-second year and 7 percent at the twenty-fifty year. Some districts urged as comparable do not reward off-schedule longevity. It does not appear, for example, that Oshkosh rewards longevity beyond the schedule.* However, it has fifteen steps at the Master's lane and beyond. (Assn Ex 17.) Sheboygan has a fourteen step schedule for all lanes but only grants $600 to

* Arbitrator's Note: Such statement is not accurate.

teachers who are at the top of the schedule and that commences at the beginning of their sixteenth year of service. Finally, Appleton also rewards longevity by using a flat dollar amount. It follows that the BA Maximum, MA Maximum and Schedule Maximums are inappropriate benchmarks to judge the salary offer of the district since the benchmarks do not take into account unscheduled salary adjustments, where again Fond du Lac compares quite favorably among all the districts mentioned by the parties.

The District contends that the Fond du Lac schedule rewards educational achievement quicker, more often, and at a higher rate than do comparable districts. The schedule also rewards service more quickly than most of the comparable districts. Finally, the more generous longevity payment plan in effect for teachers serves to reward the vast majority of teachers in the District in an amount substantially greater than the maximums contained in the salary schedule and at a level that is not only favorable but frequently in excess of the amount that a comparable teacher would receive in any of the other comparable districts. The Board pointed out that fully 72% of the Fond du Lac teachers are at the top of their respective lanes. In 1984-85, more teachers will qualify for longevity and/or will be at the top of their respective lanes to where fully 80% of the teaching staff will be so situated.

The District contended that the two-year settlement for 1984-86 in the Sheboygan School District constituted to a significant extent, a catch-up agreement whereby the school district agreed to place $1,950 on each cell of the district's salary schedule for each of the two years of the two-year agreement. They argue that such across the board implementation of a flat dollar adjustment serves to distort the dollars per teacher statistics and the percentage increase statistics and that it significantly serves to distort the schedule base salary.

The District argued that the most meaningful comparison is to compare the actual dollars a Fond du Lac teacher would be paid under the District offer to what that same teacher with the same years of service and same education credits would be paid under the schedules in effect at comparable districts. Because approximately 80% of the teachers will be at or near the top of the salary schedule in 1984-85, comparisons at those levels are the most relevant.

The District attached comparative salary schedule analysis based on data contained in Association and District exhibits. Those comparisons to Sheboygan (Appendix A, page 2-16), Appleton (Appendix A, page 4-16), Oshkosh (Appendix A, page 7-16), and Neenah (Appendix A, page 9-16) are attached hereto and are as follows: (Fond du Lac rates represent the District wage offer)

APPENDIX A
Page 2-16

4. 1984-85 Salary Payments

BA Lane

	Fond du Lac	Sheboygan	Fond du Lac +-
8	21,600	21,462	+ 138
9	22,400	22,159	+ 241
10	23,200	22,856	+ 344

BA+12 Lane		BA+15	
Fond du Lac		Sheboygan	Fond du Lac +-
11	24,960	24,632	+ 328
12	25,792	25,364	+ 428

BA+24 Lane		BA+30	
Fond du Lac		Sheboygan	Fond du Lac +-
12	26,784	25,922	+ 862
13	27,648	26,671	+ 977
14	28,128	27,420	+ 708

BA+30 Lane			
Fond du Lac		Sheboygan	Fond du Lac +-
12	27,280	25,922	+ 1,358
13	28,160	26,671	+ 1,489
	480		
14	28,640	27,420	+ 1,220

MA Lane			
Fond du Lac		Sheboygan	Fond du Lac +-
12	28,024	26,479	+ 1,545
13	28,928	27,245	+ 1,683
	480		
14	29,408	28,012	+ 1,396

MA+12 Lane		MA+15 Lane	
Fond du Lac		Sheboygan	Fond du Lac +-
12	29,512	27,595	+ 1,918
13	30,464	28,395	+ 2,069
	480		
14	30,944	29,197	+ 1,747

MA+18 Lane		MA+30	
Fond du Lac		Sheboygan	Fond du Lac
12	30,008	28,709	+ 1,299
13	30,979	29,546	+ 1,433
	480		
14	31,459	30,381	+ 598

4. 1984-85 Salary Schedule Comparison

BA Lane			
Fond du Lac		Appleton	Fond du Lac +-
7	20,800	21,024	- 224
8	21,600	21,722	- 122
9	22,400	22,420	- 20
10	23,200	23,118	+ 82

BA+12		BA+15	
Fond du Lac		Appleton	Fond du Lac +-
10	24,128	23,775	+ 353
11	24,960	24,679	+ 281
12	25,792	25,377	+ 415
13	25,792	26,075	- 283

BA+24

	Fond du Lac	Appleton	Fond du Lac +-
11	25,920	25,336	+ 584
12	26,784	26,034	+ 750
13	27,648	26,732	+ 916
	480		
14	28,128	27,430	+ 698
		650	
15	28,128 AL*	28,080 NAL**	+ 48

MA Lane

	Fond du Lac	Appleton	Fond du Lac +-
11	27,120	26,766	+ 354
12	28,024	27,563	+ 461
13	28,928	28,361	+ 567
	480		
14	29,308	29,158	+ 150
15	29,308	30,169	- 861

MA+12 Lane

	Fond du Lac	MA+15 Lane Appleton	Fond du Lac +-
11	28,560	27,502	+ 1,058
12	29,512	28,299	+ 1,213
13	30,464	29,097	+ 1,367
	480		
14	30,944	29,894	+ 1,050
15	30,944	30,905	+ 39
16	31,104	31,702	- 598

*AL - Additional Longivity
**NAL - No Additional Longivity

4. Salary Schedule Analysis

BA Lane

	Fond du Lac	Oshkosh	Fond du Lac +-
7	20,800	20,336	+ 464
8	21,600	20,992	+ 608
9	22,400	21,648	+ 752
10	23,200	22,302	+ 898
11		22,960	+ 240

BA+30 Lane

	Fond du Lac	Oshkosh	Fond du Lac +-
11	26,400	25,718	+ 682
12	27,280	26,453	+ 827
13	28,160	27,188	+ 972
	480		
14	28,640	27,923	+ 717

MA Lane

	Fond du Lac	Oshkosh	Fond du Lac +-
11	27,120	26,634	+ 486
12	28,024	27,395	+ 629
13	28,928	28,156	+ 772
	480		
14	29,408	28,917	+ 491
15	29,408	29,678	- 270
	640		
16	29,568	29,678	- 102

MA+18 Lane	Fond du Lac	MA+20 Lane Oshkosh	Fond du Lac +-
11	29,040	28,466	+ 574
12	30,008	29,279	+ 729
13	30,976	30,092	+ 884
14	31,456	30,905	+ 551
15	31,456	31,718	- 262
16	31,616	31,718	- 102

4. Salary Schedule Analysis

BA Lane	Fond du Lac	Neenah	Fond du Lac +-
8	21,600	21,221	+ 379
9	22,400	22,017	+ 383
10	23,200	22,842	+ 358

BA+12 Lane	Fond du Lac	BA+15 Neenah	Fond du Lac +-
10	24,128	23,299	+ 829
11	24,960	24,173	+ 787
12	25,792	24,898	+ 894
13	25,792	25,645	+ 147
14	26,272	26,414	- 142
15	26,272	27,207	- 935

BA+30 Lane	Fond du Lac	Neenah	Fond du Lac +-
11	26,400	25,595	+ 805
12	27,280	26,362	+ 918
13	28,160	27,153	+ 1,007
14	28,640	27,968	+ 672
15	28,640	28,807	- 167
16	28,800	29,671	- 871

MA+12	Fond du Lac	MA+15 Neenah	Fond du Lac +-
11	28,560	27,254	+ 1,306
12	29,512	28,071	+ 1,441
13	30,464	28,913	+ 1,551
14	30,944	29,781	+ 1,163
15	30,944	30,674	+ 270
16	31,104	31,594	- 490

MA+18	Fond du Lac	MA+30 Neenah	Fond du Lac +-
11	29,040	28,430	+ 610
12	30,008	29,292	+ 716
13	30,976	30,170	+ 806
14	31,456	31,075	+ 381
15	31,456	32,008	- 552

The District contends it is apparent from the above analysis that Fond du Lac remains at or near the top of the salary levels where most Fond du Lac teachers are located on the salary schedule. The District states:

> "...The district is above average at the BA +7 lane and the MA + 10 lane in absolute dollar amounts. More importantly, only one school district exceeds the compensation paid at BA + 7 level in the 1983-84 salary rankings and only one district does so under the 1984-85 district offer. (Brief Appendix 3-4). Finally, no district paid its teachers at the MA + 10 level as much as Fond du Lac in 1983-84. That status remains unchanged under the district offer. The total percentage increases may be higher in the secondary districts used by the Association, but these percentages reveal only that other school districts are approaching what Fond du Lac has been paying or will pay similarly situated teachers in 1984-85.

In response to the Union argument that the District offer fails to follow the historical relationship of Fond du Lac rates to others as mutually set by the parties, the District alleges that it is not true. They contend that Fond du Lac has historically ranked low at BA minimum, BA maximum, MA minimum and MA maximum. The existence of more lanes, faster progression, greater lift between lanes and longevity serves to factually yield more dollars to teachers and results in high comparative rankings at the higher schedule levels. Historically that has been and still is the fact. In addition, there is no significant change in the historical ranking under the District final offer. The District offered the following analysis as Brief Appendix 3 which was as follows:

FOND DU LAC
HISTORICAL RANKINGS

Flaten Comparables

Salary Analysis (5 Districts)

	79-80	80-81	81-82	82-83 A*	82-83 SS*	83-84	84-85 B/A*
BAMIN	4	4	4	4	4	4	5/5
BAMAX	5	5	5	5	5	5	5/5
MAMIN	3	4	3	5	3	3	3/3
MAMAX	5	5	5	5	4	4	4/4
SCHEDULE MAX	5	5	5	5	4	4	4/4
BA7	2	2	2	2	2	2	2/2
MA10	1	1	1	2	1	1	1/1

* A - Annualized
* SS - Second Semester
*B/A - Board/Association

Source - Assn Ex. 26

Both parties in this case have astutely developed analytical evaluations of the salary offers of each in a manner that places each of their respective positions in a reasonable and persuasive posture. The Union's analysis by comparison of the amount of dollars paid each returning teacher on an average shows that the District's final offer on wages is on the low side in comparison with all except the Manitowoc settlement. The Union's analysis from a percentage basis also results in a showing that the District's wage offer is on the low side. There is a 1% difference between the Union offer and the District's offer as calculated by the parties.

If one assumes or if it is factually shown that all those within the comparison group are substantially comparable or equitably related one to the other in the first instance, one would then conclude that in order to maintain that same comparable or equitable relationship one to the other, substantially the same level of settlement measured in dollars per returning teacher or percentage of increase would be required to maintain the same comparative or equitable relationship, one to the other. In this case the District has challenged the validity of that premise and directed its argument at the contention that the District's offer, being somewhat lower in both percentage and dollar yield per returning teacher, nevertheless places Fond du Lac teachers in an equitable and parity situation with teachers in comparable districts. The District analyzed teachers in each comparison district to teachers in the Fond du Lac District at various levels of the salary schedule so that comparisons were between two teachers with comparable years of experience and educational achievement. It can be seen by such analysis that the District's contention contains substantial merit. The analytical results show that the vast majority of Fond du Lac teachers, who are in the top ranges of the salary schedule, are paid more on the average than teachers at the same level at most comparison levels in the other districts to which comparison is made.

The bottom line result that is sought after all analysis and consideration is concluded, is to come as close as possible to the end that as between two comparable employees performing the same work, that the pay shall be reasonably equal.

In the considered judgment of the arbitrator, the most directly relevant analysis is the one presented by the District. Such analysis more closely addresses the "bottom line" result that is the aim of all comparisons and the ones to which the statutory factors are directed.

In this case, both final offers are reasonable. Both offers can be justified by rational and recognized evaluative approaches. The method of comparing the actual dollar yield to teachers in comparable positions over the major spectrum of the various salary schedules is a method that is more directly relevant to the bottom line comparative result of whether or not there is equal pay for equal work. The arbitrator finds on the basis of the above analysis, that the District's wage offer more closely approaches that bottom line result.

While the Union entered argument with regard to the need to maintain a historical relationship in the salary structure,

the arbitrator is unable to find support for that contention from two viewpoints. First, the arbitrator is not persuaded that there exists any mutually acknowledged relationship that is discernible and identifiable. Secondly, one cannot conclude that the District's wage offer being 1% less in yield to returning teachers as compared to that of the Union, would distort and destroy any claimed historical relationship. The District's evidence and analysis of historical ranking shows that there is very little if any change either up or down in the historical ranking at various levels of the salary structure as a result of the District's wage offer.

While the arbitrator finds that both offers are reasonable and are supportable by the evidence, the wage offer of the District is supported by the more persuasive and directly relevant considerations and analysis and is therefore subject to slight favorability on that issue alone.

(4) Hospital, Medical and Medicare Insurance

The evidence revealed that the District currently pays 100% of the premiums for health insurance for both single and family subscribers. At some time prior to negotiations on the 1984-85 school year, the District became aware that their insurance carrier was intending to increase the premium costs significantly. As a result the District determined to change carriers. The District's subsequent actions resulted in the District changing carriers and engaging in a partial self-funding plan and proposing to maintain the same insurance coverage previously in existence with the exception of the proposal to institute a $100 front end deductible for single subscribers and a $100 deductible per person with the maximum of two deductibles per family for family subscribers.

The Union rejected the District's proposal and proposed to retain insurance coverage fully paid by the Employer that would not result in any reduction in benefits.

The Association pointed out that an insurance committee made up of Union and District representatives was formed during the 1983-84 negotiations to study methods of cost containment for insurance coverage. Despite numerous meetings and initial agreement on the part of the insurance committee members that they would seek ways to accomplish cost containment without reducing benefits or shifting the cost of cost containment measures to employees, no recommendations issued from the insurance committee to give direction to the parties. The District then proceeded to enter into a contract with a different insurer beginning September 1, 1984 which provided for the up front deductible.

Both parties engaged in presenting substantial testimony and documentary evidence directed at the subject of cost containment of health insurance and engaged in computations as to the projected cost of the front end deductible insurance to the District. The Union and District were not in full agreement as to what the realistic costs of such insurance coverage would be to the District.

The Union also presented a number of exhibits directed at showing what the cost of insurance providing the same coverage as that proposed by the District would be if the

WEA insurance trust were to be utilized as a carrier rather than the one selected by the District. While the single and family premium amounts for insurance under the WEA insurance trust was approximately the same as the estimated premium payment costs to the Board under its selected plan, the Union contends that by utilization of what it termed an "option plan" available under the WEA insurance trust, that a large number of teachers who elect family coverage, would elect to take single coverage where the teacher's spouse also has insurance coverage under some other plan or with some other employer. The Union contends that utilization of such option plan would result in projected savings of from 50 to $70,000 per annum. They argue that such savings would be sufficiently ample to permit coverage that would exclude the up front deductibles and would therefore not reduce benefits to the teachers at any point.

The District stated that the provider advised them that inclusion of the up front deductible would serve to reduce the premium cost without the deductible by approximately 10%. They argue that the deductible is sensible in view of the high cost and escalating cost of insurance. Secondly, the up front deductible increases the awareness and sensitivity on the part of employees to the high cost of medical and hospitalization care. Thirdly, the District argues that the deductible targets the employees that utilize the benefits as opposed to impacting on all employees such as is the effect under those comparable school districts, such as Green Bay, Sheboygan and Manitowoc where employees are required to pay a portion of the insurance premium.

The District contends that the history of the parties bargaining as it relates to the WEA insurance trust, is immaterial and not relevant to the issue in this case. They suggest that the issue before the undersigned in this case is to determine the reasonableness of the District's insurance offer in relationship to the status quo. They argue that,

> "...The final offer of the Association does not include a demand for benefits contained in Association Exhibit 61 and 62. Therefore, the reasonableness of those proposals or the negotiations regarding those proposals are not before the arbitrator. The District suggests that if the speculative grand conclusions asserted by the Association regarding the Trust could stand the test of analysis those benefit demands would have been included in the Association final offer. The fact is they have not been included. Therefore, the real issue is simply whether the institution of a deductible is more reasonable than retaining a 100% contribution for health insurance by the District for single and family subscribers."

The Board entered argument in support of its offer and drew comparison to other districts that are currently in its athletic conference. They stated at page 19-20 of their brief:

> "...All athletic conference comparables require family subscribers to contribute a portion of their health insurance premium regardless of benefit utilization.

Green Bay requires family subscribers to contribute $121.08. Sheboygan requires family subscribers to contribute $240.60. Manitowoc requires family subscribers to contribute $137.76. The District proposal does not require any contribution unless the single or family subscriber utilizes benefits. But more important, it is apparent fromthe above athletic conference comparables that the District's proposal for cost sharing is not without precedence. Further, it will impact on users only and in that sense rewards the teachers and their dependents who practice wellness techniques.

"The District offer is also reasonable when the board's premium contribution is compared to the average premium contributions of the Association's primary comparables. The family contribution in Fond du Lac exceeds the family average contribution of the Association's primary comparables by $4.47 per month, even if the board's proposal is accepted. The board contribution to single premiums exceeds the average of the Association's primary comparables by $9.06 per month even if the board's proposal was accepted. The board contribution is $1.57 per month below the average of board contributions for all districts, but its single contribution exceeds the average of all districts by $7.32 per month."

In its rebuttal brief, the Union disagreed with the District's analysis that implementation of the up front deductible was no different than the contribution toward part of the premium by employees that is done in the athletic conference districts. They point out that other district health insurance plans, whether teachers contribute to the premium or not, do not result in a diminished benefit level such as is the case under the District's proposal. They further state at pages 14-15 of their reply brief:

"While the District argues its proposal is a 'sensible response' to fringe benefit costs, the hearing record demonstrates that it ignored the real cost savings and the 'actual' costs of the Association proposal to change insurance carriers to the WEA Insurance Trust. Under the Association proposal, to move to the WEA Insurance Trust, the 1984-85 health insurance costs for bargaining unit members only would total $583,737 (Association Exhibit 67). This premium cost includes only the <u>likely</u> savings generated by implementation of the option plan, not the maximum savigns. The District argument seems to acknowledge that the real cost of its health insurance program for the 1984-85 school year is that which is designated as the 'expected experience' in District Exhibit 21. If the District had budgeted the cost of this 'expected experience' it would be approximately the same as the District's 1983-84 health insurance costs or a total of $653,425 for bargaining unit members only. Thus, the Association proposal would result in the District achieving in real and actual savings some $50,000. <u>If</u> the current health insurance premiums are at all accurate the District's cost for health insurance

for the 1984-85 school year for bargaining unit members only should total $597,842. The Trust cost, again, results in a savings of some $14,000. If the District were truly interested in real savings it would have seriously considered and discussed with the Association implementing the WEA Insurance Trust health insurance program which includes the option plan.

From a review of the total record evidence and arguments of the parties on this issue, the arbitrator finds that the proposal of the District to implement a front end deductible is likely to serve as a deterrent to some extent and as a vehicle by which employee users would be more cognizant of the cost of hospital and medical care. The arbitrator further finds that the implementation of a front end deductible is not a quid pro quo or comparable to that of requiring employees to contribute a part of the insurance premium. The front end deductible factually reduces the benefits to employees.

On evaluation of the total record evidence on this issue the arbitrator is further of the considered judgment that the District failed to give reasonable consideration to other sources such as the WEA insurance trust in an effort to determine whether or not insurance coverage without reduction in benefits could be obtained through implementation of other possible cost containment features, all at a cost that would be comparable or favorable to that expenditure which it is now faced with. The evidence seems to show that the District simply refused to afford objective consideration to the WEA insurance trust plan. The evidence shows that such plan was in fact identified and discussed at meetings of the insurance committee and some bid information was obtained from them with respect to cost of coverage and of various cost containment measures that were available.

The insurance issue is a difficult issue to assess in this proceedings. The arbitrator is convinced that greater efforts on the part of the District could have been exerted to achieve cost containment without cost shifting and reduction in benefits. On the other hand, the implementation of the proposed front end deductibles do not place an unreasonable impact upon the employees. When one weighs the impact of the front end deductible against the standing of the majority of employees within the salary schedule, and compares the total compensation of Fond du Lac employees to those in comparable districts, one must conclude that the impact of the District's insurance proposal does not seriously alter the conclusions reached under the salary comparison above discussed.

As a matter of preference, on consideration of all facts bearing on this issue, while the arbitrator would by personal preference be inclined to favor the Union's proposal, an objective application of the statutory factors and consideration thereof to this issue leads the arbitrator to conclude that neither offer deserves preference at the expense of the expense of the other based on consideration of this issue alone.

(5) Worker's Compensation

The Association addressed such issue in its brief at pages 71-72 as follows:

> "Association Exhibit 76 summarizes the worker's compensation provisions in comparable school districts. Within the primary comparables, Appleton and Green Bay provide full pay without loss of sick leave for a period similar to that which the FEA proposes. Neenah equates this protection to a period equal to the teacher's sick leave accumulation. Sheboygan provides a period of up to six months without loss of sick leave. All teachers in Oshkosh have a full 90 days of income protection or sick leave annually. Only Manitowoc requires, as does the District's policy in Fond du Lac, teachers to use sick leave in order to be made whole. Of the additional comparable districts, Kaukauna and Kimberly equate this period to equal the teacher's sick leave accumulation. Menasha provides worker's compensation protection only and presumably teachers in Menasha then have to use sick leave to be made whole. Thus, of the nine comparable districts, seven provide benefits substantially in excess of worker's compensation only (which includes the option of using sick leave to be made whole). Clearly, on this basis the Association offer is appropriate."

The District argued that the Union had presented no evidence to support the need for a change to the existing worker's compensation coverage. By reference to Association Exhibit No. 76, the District also argues that more of the districts contained in such comparison provide the same or less worker's compensation supplemental benefits than demanded by the Association proposal.

It is apparent to the arbitrator that neither party places significant emphasis on the weight to be afforded this issue in comparison to other issues of greater importance contained in the final offers of the two parties. In fact, both parties affirmatively state in their respective briefs that the two issues of salary and insurance are regarded by each as constituting the two controlling issues of the total final proposals of the two parties.

An evaluation of Association Exhibit No. 76, however, does show that Appleton, Green Bay, Neenah, Oshkosh and Sheboygan school districts all afford better remuneration in the worker's compensation provision than does Fond du Lac. Only Manitowoc district appears to be fairly comparable to the level of benefits in the worker's compensation area to that provided by Fond du Lac. On the comparative analysis only as contained in Association Exhibit No. 76, one would be required to conclude that an improvement in the worker's compensation benefit would be indicated and called for on the part of Fond du Lac. It would appear that the degree of improvement called for in such benefit so as to attain the average of the benefit provided in other comparable districts, would be something less than the full 190 days contained in the Union proposal.

In conclusion, the arbitrator would find that the Union proposal is worthy of slight preference over that of the Employer on the basis of the comparability data contained in the record.

(6) Teachers Attendance During Bad Weather and School Calendar

In its brief, the Union set forth a comparison of the parties' proposals to the school calendar as it existed in the 1983-84 contract as follows:

	1983-84	Association	District
Easter Vacation	Good Friday and week after Easter	Good Firday and week after Easter	Week before Easter including Good Friday
Emergency Make Up	Two days not made up -- all others made up	One day not made up -- all others made up with March 8 Inservice Day reserved for make up if necessary	All days made up with March 8 Inservice Day and May 24 reserved for make up if necessary

The Union argued that with the exception of the 1980-81 school year when due to unusual circumstances a different work week and makeup days were negotiated, Easter vacation has always been set for Good Friday and the week following Easter. The Association described the application of the Wisconsin Statutes to the makeup day situation and the resulting District's offer as it relates to the changing of Easter vacation in its brief as follows:

> "Section 115.01 (10) of the Wisconsin Statutes specifies that school days required by the State of Wisconsin include 'days in which school is closed by order of the school district administrator because of inclement weather and days on which parent-teacher conferences are held, not to exceed 5 days during the school term.' The calendar negotiated between the Association and District has historically included three parent-teacher conference days; thus, of the five flexible days provided in Section 115.01(10), only two have been available for emergency closing purposes. Parties have historically not made up these days. In fact, Association negotiations spokesperson Mand testified that since 1969 there has been only one school year when there was more than one emergency closing or snow day.
>
> "The Association has provided, in its final offer, for the make up of one emergency closing or snow day at the discretion of the District. March 8, which is now scheduled as a Northeastern Wisconsin Education Association inservice day is designated as a make up day if such is necessary. Any emergency closings or snow days up to two days occurring after March 8 would not be made up. It is important to note that in the past, as is now, had there been more than two emergency closing or snow days those days would have had to be made up as otherwise the District would have exceeded the total of five days provided in Section 115.01. (10).
>
> "The District proposes that teachers make up all emergency closing or snow days and provides March 8 and May 24 as dates within the school year calendar for the make up of the first two such days. The District's proposal to use March 8, the Northeastern

Wisconsin Education Association inservice day, as a potential make up day does not differ from the Association's proposal. The District has scheduled May 24 as a day off for teachers and students. In the event a second emergency closing day is necessary or the first emergency closing day falls after March 8, May 24 would be scheduled as a make up day. It is this part of the District's proposal which causes it to revise the traditional Easter vacation schedule. In order to end the school year on June 7, a Friday, rather than on June 10, a Monday, the District had to carve out of the school year calendar an additional teaching day. It did this by changing the Easter vacation from Good Friday and the week after Easter to the week before Easter, which includes Good Friday."

At page 70 of their brief the Association observes:

"The benefit of not making up the two emergency closing or snow days in the past has been minimal to the teachers, but it has been a benefit, nevertheless. As Mand's testimony pointed out, on only one occasion since 1969 have teachers been able to take advantage of this benefit. Other than this one time there has either been no emergency closing or teachers have had one day which they did not have to make up. The Association offer modestly, probably too modestly, addresses the District's concern by providing for one make up day while maintaining the traditional structure of the calendar. As a result, the District's offer must be rejected."

The District argued that the matter of making up teaching days due to school closures is founded in sound educational policy and clearly in the interest and welfare of the public. They contend that the comparables of Sheboygan and Manitowoc require teachers to make up all days lost to inclement weather. The District states as follows in its brief:

"Remember, the District is not asking that teachers work more days than those for which they are paid. It is merely asking them to provide the full measure of professional service for which the District has contracted. This demand is clearly consistent with the interests and welfare of the public. Failure to make up days lost to inclement weather is a disservice to the children of the District and a windfall to the teaching staff."

The arbitrator views this particular issue as exerting minimal impact on the broad consideration involving the total package final offers of the respective parties. On the basis of the specific considerations of this issue in isolation, it appears that both positions contain merit. Certainly, the Union's position of maintaining a traditional Easter holiday vacation contains merit as departure from traditional time off often times will conflict with the time off that other family members have so that teachers cannot enjoy an Easter holiday with the family. It would seem to the arbitrator that the possible loss of one day due to inclement weather which may or may not occur during a particular year, is of less importance than is the good will and desires of the teacher work force for the scheduling of an Easter vacation at a time that is more convenient and desirable for the

work force. Based on those considerations, the arbitrator would find the Union proposal on this issue to be the one preferred.

Conclusions

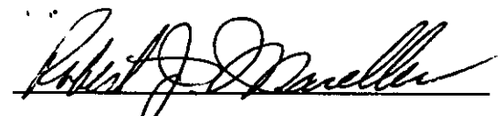
The arbitrator regards the issues of salary and insurance to be the controlling issues and the ones that would dominate in determining which of the total final offers should be chosen as the more reasonable of the two. There is very little to choose from as between the two total final offers. The arbitrator has not engaged in a discussion of the factor involving cost of living as that factor neither adds to nor detracts from the preference to be afforded either the District or the Union's final offer over that of the other. The statistical cost of living as shown by the statistics issued by the Department of Labor, are not indicative, per se, of what the actual cost of living impact is or should be upon the levels of settlement in a particular area. As stated earlier by the undersigned and other leading arbitrators, the cost of living is reflected to a large degree by the levels of settlement that other comparable districts have entered into on a voluntary basis. The voluntary nature of such settlements reflects the impact that the parties have voluntarily attributed to cost of living statistics.

The arbitrator concludes in the final analysis that the relevant statutory factors that bear upon the issues contained in the final offers of each of the respective parties result in the conclusion that the final offer of the District is subject to but a slight margin of favorability by an overall consideration of each issue and a relative weighting of importance to the dominant issues of salary and insurance.

It therefore follows on the basis of the above facts and discussion thereon that the undersigned renders the following decision and

AWARD

That the final offer of the District be incorporated along with the stipulations and prior agreements of the parties as and for the 1984-85 Collective Bargaining Agreement.



Robert J. Mueller
Mediator/Arbitrator

Dated at Madison, Wisconsin
this 3rd day of April, 1985.